

MOUNTAIN BROOK METROPOLITAN DISTRICT

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 • 800-741-3254
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NOTICE OF A REGULAR MEETING AND AGENDA

| <u>Board of Directors:</u> | <u>Office:</u> | <u>Term/Expiration:</u> |
|----------------------------|----------------|-------------------------|
| Kevin Mulshine | President | 2023/May 2023 |
| Kenneth Spencer | Treasurer | 2023/May 2023 |
| Conley Smith | Secretary | 2023/May 2023 |
| VACANCY | | 2022/May 2022 |
| VACANCY | | 2022/May 2022 |

DATE: June 27, 2022
TIME: 9:00 a.m.
PLACE: Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/86501449946?pwd=dWxBRUZsMVFBclRITThPOEh0NDQwQT09>

Meeting ID: 865 0144 9946

Passcode: 665846

Call In: 1-669-900-6833

I. ADMINISTRATIVE MATTERS

A. Present Disclosures of Potential Conflicts of Interest.

B. Approve Agenda, confirm location of meeting and posting of notices.

II. *CONSENT AGENDA - These items listed below are a group of items to be acted on with a single motion and vote by the Board. An item may be removed from the consent agenda to the regular agenda by any Board member. Items on the consent agenda are then voted on by a single motion, second, and vote by the Board. **Enclosures included in electronic packets only; hard copies available upon request.**

- Review and approve the Minutes of the May 4, 2022 Regular Meeting (enclosure).
-

III. PUBLIC COMMENTS

A. _____

V. FINANCIAL MATTERS

- A. Review and ratify approval of the payment of claims as follows (enclosure):

| Fund | Period Ending |
|--------------|----------------------|
| General | \$ 140,772.46 |
| Debt | \$ -0- |
| Capital | \$ -0- |
| Total | \$ 140,772.46 |

-
- B. Discuss and consider approval of Requisition No. 2 (under the Series 2021 Bonds) authorizing payment to Mountain Brook Metropolitan District for Engineering Services related to Public improvements paid in May 2022 in the amount \$29,100.00 (enclosure).

-
- C. Discuss and consider approval of Requisition No. 3 (under the Series 2021 Bonds) authorizing payment to Mountain Brook Metropolitan District for Engineering Services related to Public improvements paid in May 2022 in the amount \$127,722.47 (enclosure).
-

VI. LEGAL MATTERS

- A. Consider approval of Construction Agreement with Splashtacular LLC for construction and installation of sprayground equipment (enclosure).
-

- B. Ratify approval of Preconstruction Services Agreement with Landmark Homes for the Amenity Center (enclosure).
-

VII. CAPITAL IMPROVEMENT MATTERS

- A. _____

VIII. OTHER BUSINESS

- A. _____

- IX. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR AUGUST 22, 2021**

RECORD OF PROCEEDINGS

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE MOUNTAIN BROOK METROPOLITAN DISTRICT HELD MAY 4, 2022

The special meeting of the Board of Directors of the Mountain Brook Metropolitan District (referred to hereafter as the “Board”) was convened on Wednesday, the 4th day of May, 2022, at 11:00 a.m. The District Board meeting was held via Zoom. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Kevin Mulshine, President
Kenneth Spencer, Treasurer
Conley Smith, Secretary

Also In Attendance Were:

Peggy Ripko; Special District Management Services, Inc.

Anna Wool, Esq.; Icenogle Seaver Pogue, P.C.

Don Burchett; City of Longmont

Diane Wheeler; Simmons & Wheeler, P.C.

Mickey Leyba; Permontes Group, Inc.

Don Hinson; Hinson Companies

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Attorney Wool noted that disclosures of potential conflict of interest statements for each of the Directors were filed with the Secretary of State seventy-two hours in advance of the meeting. Attorney Wool requested that the Directors consider whether they had any additional conflicts of interest to disclose. Attorney Wool noted for the record that there were no new disclosures made by the Directors present at the meeting and incorporated for the record those applicable disclosures made by the Board Members prior to this meeting and in accordance with the statutes. It was noted that disclosure statements had been timely filed for all Directors.

ADMINISTRATIVE MATTERS

Agenda: Ms. Ripko distributed for the Board’s review and approval a proposed agenda for the District’s meeting.

RECORD OF PROCEEDINGS

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote unanimously carried, the agenda was approved, as presented.

Approval of Meeting Location: The Board entered into a discussion regarding the requirements of §32-1-903(1), C.R.S., concerning the location of the District's Board meeting.

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Board determined this District Board Meeting was held via Zoom. The Board further noted that notice of this meeting format was duly posted and that it has not received any objections to the meeting format or any requests that the meeting format be changed by taxpaying electors within the District boundaries.

CONSENT AGENDA **Consent Agenda:** The Board considered the following actions:

- Approve the Minutes of the December 8, 2021 Special Meeting.
- Ratify approval of Agreement between Basham & Lucas Design Group, Inc. and the District for the design of the amenity center.
- Ratify approval of the engagement for preparation of 2021 Audit, in the amount of \$5,200.00.

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board approved the Consent Agenda, as presented.

PUBLIC COMMENTS There were no public comments.

FINANCIAL MATTERS

Claims: The Board considered ratifying the approval of the payment of claims as follows:

| Fund | Period Ending |
|--------------|---------------|
| General | \$ 22,922.64 |
| Debt | \$ -0- |
| Capital | \$ -0- |
| Total | \$22,922.64 |

RECORD OF PROCEEDINGS

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board ratified the approval of the payment of claims, as presented.

Unaudited Financial Statements: Ms. Wheeler reviewed with the Board the unaudited quarterly financial statements of the District through the period ending March 31, 2022.

Following review and discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board accepted the unaudited financial statements for the period ending March 31, 2022.

2021 Audit: The Board discussed the approval of the 2021 Audit.

Following review and discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board approved the 2021 Audit, subject to legal review.

LEGAL MATTERS

There were not legal matters to discuss at this time.

CAPITAL IMPROVEMENT MATTERS

Proposals for the Amenity Center: The Board reviewed and considered the qualification documents received for construction manager services for the amenity center.

Following review and discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board accepted the response from Landmark Homes for construction manager services for the amenity center and directed legal counsel to prepare contract documents to provide to Landmark.

Proposal from Permontes Group, Inc.: The Board reviewed and considered the approval of the proposal from Permontes Group, Inc. for Engineering Services.

Following review and discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board approved the proposal from Permontes Group, Inc. for Engineering Services.

RECORD OF PROCEEDINGS

OTHER BUSINESS

There was no other business.

ADJOURNMENT

There being no further business to come before the Board at this time, upon motion duly made, and seconded, and upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: _____
Secretary for the Meeting

Mountain Brook Metropolitan District
6/21/2022

| <u>Invoice #</u> | <u>Vendor</u> | <u>Description</u> | <u>Invoice Date</u> | <u>Invoice Amount</u> |
|------------------|--|------------------------|---------------------|-----------------------|
| 104922 | Special District Management Services, Inc. | District Management | 5/31/2022 | 281.20 |
| 284.001-02 | Permontes Group | Planning & Engineering | 6/3/2022 | 2,072.47 |
| 21720 | Icenogle Seaver Pogue, PC | Legal | 5/31/2022 | 3,411.27 |
| 33207 | Simmons & Wheeler | Accounting | 5/31/2022 | 647.25 |
| 102769 | Special District Management Services, Inc. | District Management | 4/30/2022 | 858.40 |
| 8910 | Basham & Lucas Design Group Inc | Planning & Engineering | 5/20/2022 | 44,700.00 |
| 8877 | Basham & Lucas Design Group Inc | Planning & Engineering | 4/25/2022 | 29,100.00 |
| 8960 | Basham & Lucas Design Group Inc | Planning & Engineering | 6/21/2022 | 51,850.00 |
| 32971 | Simmons & Wheeler | Accounting | 4/30/2022 | 738.00 |
| 21569 | Icenogle Seaver Pogue, PC | Legal | 4/30/2022 | 1,511.20 |
| 21467 | Icenogle Seaver Pogue, PC | Legal | 3/31/2022 | 226.50 |
| 02/28/2022 | Icenogle Seaver Pogue, PC | Legal | 2/28/2022 | 1,237.17 |
| 01/31/2022 | Icenogle Seaver Pogue, PC | Legal | 1/31/2022 | 4,139.00 |
| | | | | <u>140,772.46</u> |

CONSTRUCTION AGREEMENT

This Agreement (the “Agreement”) is made and entered into on this ____ day of June, 2022, between Mountain Brook Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado located in Longmont, Colorado (the “Owner”) and Splashtacular LLC, of Paola, Kansas (“Splashtacular”). The Owner and Splashtacular are individually referred to as a “Party” and collectively referred to herein as the “Parties.”

In consideration of the mutual promises and payments set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Project.** The subject matter of this Agreement is the following project (“Project”): Longmont, CO – Mountain Brook Amenity Center.
2. **Work.** Splashtacular agrees to perform work (“Work”) for the Project as described in its Proposal dated May 23, 2022 (“Proposal”), a copy of which is attached hereto as Exhibit A, incorporated herein in its entirety and made a part of this Agreement. The Proposal shall control in the event of a conflict between the Proposal and this Agreement and/or the Contract Documents.
3. **Price and Payment Terms.**
 - a. Owner shall pay Splashtacular the total sum of \$259,606.00 (“Contract Price”), according to the following schedule:

| | | |
|----------------------|------|---|
| \$ 25,961.00 | 10 % | Deposit to initiate contract and prepare shop drawings. |
| \$ 25,961.00 | 10 % | Due at client’s receipt of shop drawings. |
| \$ 77,882.00 | 30 % | Due at receipt of approved shop drawings and prior to fabrication. |
| \$ 103,841.00 | 40 % | Due upon completion of fabrication and prior to shipment. |
| \$ 25,961.00 | 10 % | Due upon completion of installation and prior to commissioning. Final payment to be placed in escrow prior to shipment of materials. Escrow Agreement is attached hereto as Exhibit B, incorporated herein in its entirety and made a part of this Agreement. |
| \$ 259,606.00 | | Total Contract Price |

All Domestic payments are to be sent to Splashtacular's corporate office:

Splashtacular
Attn: Accounts Receivable
401 N. East Street
Paola, KS 66071
(913) 256-8799

ACH or Wire information is available upon request.

- 4. Nonpayment.** Splashtacular shall have the right to suspend the Work if a payment for Work that has been adequately performed is not made on time. Any overdue payment shall bear interest at a rate of eighteen percent (18%) per annum, which shall begin to accrue on the first day payment becomes overdue.
- 5. Contract Documents.** Splashtacular shall perform the Work in accordance with the following (collectively the "Contract Documents") and its Proposal:
Shop drawings prepared by Splashtacular and approved by Owner.
- 6. Schedule.** Shop drawings will be submitted approximately two to three weeks after receipt of an executed copy of this Agreement, Contract Documents and the soils report. Fabrication lead time for materials is 10-12 weeks after receipt of shop drawing approvals and color selections. Delivery and will be scheduled upon notice from Owner that the job site is ready for installation. Installation will be completed 12-14 days days after delivery (the "Completion Date"). The Parties acknowledge that delivery is not anticipated to be scheduled until 2023.
- 7. Force Majeure and Price Escalation.** Splashtacular will not be liable for damages of any nature and will be entitled to a time extension with respect to any delay or failure in performance caused by labor disputes, terrorism, pandemics, Covid 19 (directly or indirectly), riots, fires, casualties, accidents, acts of God, unusual delays in delivery, or other causes beyond the direct control of Splashtacular. In addition, Splashtacular shall be entitled to recover its actual, documented costs for extended job site general conditions due to delays caused by said events.

The Contract Price and the "Schedule" described in paragraph 6 have been calculated based on the then-current prices and delivery times for materials, labor, and/or subcontractor costs. However, the market for certain materials, as well as labor, is considered to be volatile, and sudden price increases and/or delays could occur. Splashtacular agrees to use reasonable and diligent efforts to obtain the lowest possible prices, with manageable deliveries, from available building material suppliers and subcontractors. However, should there be an increase in the prices of specified materials or labor greater than five percent (5%) of the prices utilized by Splashtacular to determine the Contract Price that are purchased or contracted after execution of this Contract, then Splashtacular will provide the Owner with notice of the price increase as soon as possible and all and all documentation reasonably

requested by the Owner to support the same, and the Owner agrees to pay that cost increase to Splashtacular. Additionally, in the event Splashtacular is delayed as a result of market volatility, Splashtacular shall be granted an equitable extension on the Schedule and shall not be liable for any damages as a result of such delay(s).

8. Project Information. Splashtacular has been provided with information and data relating to the site and details of the Project. Splashtacular shall be entitled to rely on the accuracy of all such information.

9. Appropriations. The Owner does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Owner's payment obligations hereunder are subject to annual appropriation. The Owner has appropriated sufficient funds for this Agreement for the current fiscal year. Promptly upon adoption of its annual budget, the Owner will notify Splashtacular that the Owner has appropriated sufficient funds for this Agreement for any subsequent fiscal year. Further, in compliance with Section 24-91-103.6, Colorado Revised Statutes, the following statements are included in this Agreement:

The Owner has appropriated an amount of money equal to or in excess of the Contract Price, for the Work to be performed under this Agreement.

The Owner is prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed by Splashtacular, if such directive causes the aggregate amount under the Agreement to exceed the amount appropriated for the original Agreement, unless Splashtacular is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under a remedy-granting provision in the Agreement. "Remedy-granting provision" means any agreement clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but not be limited to, change clauses, differing site conditions clauses, variation in quantities clauses, and termination not-for-cause clauses.

Any form of order or directive issued by the Owner requiring additional compensable work to be performed by Splashtacular shall be deemed to include a clause that requires the Owner to reimburse Splashtacular for Splashtacular's costs on a periodic basis for all additional directed work performed until such time as a change order is finalized. Provided, however, that in no instance shall the periodic reimbursement be required before Splashtacular has submitted an estimate of cost to the Owner for the additional compensable work to be performed.

10.Limited Warranty.

- a. The equipment manufactured by Splashtacular is warranted by Splashtacular in accordance with the written warranty to be issued by Splashtacular on completion of the Work. The warranty is incorporated herein in its entirety and made a part of this Agreement.

b. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SPLASHTACULAR HEREBY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

11. Mutual Waiver of Consequential Damages. The Parties waive all claims against each other for consequential damages arising out of or relating to this Agreement, including, but not limited to, loss of use, income, profit, financing, business, reputation, and principal office salaries and expenses. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with this Agreement.

12. Liquidated Damages Exclusive Remedy. The Parties understand and agree that the Owner will suffer damages which are difficult to determine and accurately specify in the event Splashtacular does not complete its Work within any agreed upon completion date. As a result, the Parties agree that Splashtacular shall pay the Owner \$100 per day as liquidated damages for each day its Work is not complete beyond any such agreed upon completion date. However, the Parties understand and agree that liquidated damages shall be capped at and shall not exceed two percent (2%) of the Contract Price. The liquidated damages provided herein shall be the Owner's exclusive remedy of damages and shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other actual damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the agreed upon completion date. .

13. Limitation of Liability. Notwithstanding any other provisions of this Agreement to the contrary, in recognition of the relative risks and benefits of the Project to the Parties, and to the fullest extent permitted by law, the total liability in the aggregate of Splashtacular and its officers, directors, employees, agents, subconsultants and subcontractors, and any of them, to the Owner and any one claiming by, through or under it, for any and all damages, injuries, claims, losses, expenses, or damages whatsoever arising out of in any way related to Splashtacular's Work, the Project, or this Agreement, shall not exceed the limitations then in effect pursuant to the Colorado Governmental Immunity Act, Sections 24-101-101 et seq., C.R.S. The Parties acknowledge that sufficient consideration has been provided for this limitation.

14. Insurance. Splashtacular shall acquire and maintain in full force and effect, during the entire term of the Agreement, the following minimum insurance coverages:

1. General Liability minimum limits:

\$1,000,000.00 Each Occurrence

\$2,000,000.00 General Aggregate

\$2,000,000.00 Products & Completed Operations Aggregate

The General Aggregate is subject to a per-project general aggregate provision applicable to the Project. Subcontractor agrees to maintain the above insurance for the benefit of Contractor for 1 year(s) period following completion of the project.

2. Workers Compensation – Employers Liability minimum limits:

\$100,000.00 Each Accident
\$500,000.00 Disease – Policy Limit
\$100,000.00 Disease – Each Employee

3. Business Auto Liability minimum limit:

\$1,000,000.00 Each Accident

4. Equipment Floater with the following limits:

\$200,000.00 Leased or rented equipment
\$350,000.00 Per occurrence
\$ 2,500.00 Deductible per item (except cranes shall be 5% of value subject to maximum of \$5,000.00)

- 15. Indemnity.** To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless Splashtacular and its officers, directors, employees, agents, subconsultants, and subcontractors, and each of them, from and against all claims, causes of action, damages, losses and expenses, including but not limited to reasonable attorneys’ fees, expenses, and expert fees, of, by, or with respect to third parties (“Any Claims”) to the extent caused or alleged to be caused by the negligence of or breach of the Agreement by the Owner or anyone for whose acts it may be liable (including but not limited to, losses or claims resulting from the improper operation or maintenance of the equipment).

To the fullest extent permitted by law, Splashtacular shall defend, indemnify and hold harmless the Owner and its officers, directors, employees, agents, subconsultants, and subcontractors, and each of them, from and against Any Claims, to the extent caused by the negligence of or breach of the Agreement by Splashtacular or any of its subcontractors, material suppliers, agents, representatives or employees or anyone for whose acts it may be liable, including but not limited to, Any Claims resulting from breach of any warranty hereunder and Any Claims which cause or allow to continue a condition or event which deprives the Owner or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised statutes.

The limitation of liability provided for in Paragraph 13 above shall not apply to this paragraph.

- 16. Governmental Immunity.** Nothing in this Agreement or in any actions taken by the Owner pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes.

- 17. Subrogation Waiver.** To the extent damages are covered by insurance, the Owner waives all rights against Splashtacular and against its contractors, consultants, agents and employees for damages, except such rights as the Owner may have to the proceeds of such insurance as provided by Splashtacular under this Agreement.
- 18. Termination.** If either Party materially fails to perform in accordance with the terms and conditions of this Agreement, including, but not limited to, failing to pay the Contract Price as provided above, the other Party may initiate termination by issuing a Notice of Proposed Termination to the other Party. If the default is not cured within seven (7) days after receipt of such Notice or such longer period of time as specified in the Notice, this Agreement may be terminated by the issuance of a Notice of Termination to the defaulting Party. If Splashtacular is entitled to terminate, it shall be entitled to recover from the Owner for Work executed and for proven loss with respect to tools, and construction equipment and machinery, including reasonable overhead, profit, and damages.
- 19. Claims.** Any claim against Splashtacular shall be asserted in writing within twenty (20) days after the event giving rise to the claim, or the claim shall be deemed to have been waived.
- 20. Certification and Training.** The Parties agree that Splashtacular will need to perform certification and training (“C&T”) services for the Project, which are an integral part of the work being performed by Splashtacular and constitute an improvement to the property. As a result, the Parties agree that, for purposes of determining Splashtacular’s last day of work on the Project, such date shall be the later of the last date on which C&T Services are performed or the last date on which Splashtacular provides any other labor, services or materials on the Project and/or the property.

21. Dispute Resolution.

- a. Nonbinding Mediation.** Any claim arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding arbitration. Unless the Parties otherwise agree, the mediation shall be administered by the American Arbitration Association (“AAA”) in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. The request may be made concurrently with the filing of arbitration but the mediation shall be concluded before the arbitration. The Parties shall equally share the mediator’s fee and any filing fees. The mediation shall be held in Boulder County, Colorado.
- b. Binding Arbitration.** Any claim arising out of or related to this Agreement that is not resolved by mediation shall be subject to binding arbitration, which, unless the Parties otherwise agree, shall be administered by the AAA in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other Party, and filed with AAA. The Party filing a notice of demand for arbitration must include all claims then known to that Party that are subject to arbitration.

- i. A demand for arbitration shall be filed with the AAA before the date when the filing of a lawsuit based on the claim would be barred by the applicable statute of limitations or statute of repose, whichever is shorter.
 - ii. Either Party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). Either Party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.
 - iii. This agreement to arbitrate herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
 - iv. The arbitrator(s) shall limit or minimize discovery in the proceedings so as to promote the prompt and efficient resolution of the dispute, while avoiding surprise or prejudice to any party. The arbitrator(s) shall follow the applicable law, but shall not have the power to award punitive damages.
 - v. The arbitration hearing shall be conducted in Boulder County, Colorado.
 - vi. If Splashtacular or the Owner is the prevailing party in any proceeding between the Parties arising out of or related to this Agreement, it shall be entitled to recover its reasonable attorneys' fees, expenses, expert fees, the fees of the arbitrator(s), and the administrative expenses of the AAA.
- 22. Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Colorado, without regard to that State's rules on conflicts of laws.
- 23. Modification.** No modification or amendment to this Agreement shall have any force or effect unless mutually agreed to in a writing signed by both Parties.
- 24. Binding Effect.** This Agreement is binding upon the Parties and their successors, assigns, and related entities.
- 25. Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no other oral, written, express or implied promises, agreements, representations, or inducements not specified in this Agreement. The Parties also agree that all the terms of this Agreement are contractual and not a mere recital.

26. Severability. In the event that one or more of the provisions in this Agreement are, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

27. Other Terms (if any).

This Agreement is entered into as of the day and year first written above.

Mountain Brook Metropolitan District

Splashtacular LLC

By: _____

By: _____

Name: _____

Name: _____

Title _____

Title: _____

LONGMONT, COLORADO

Mountain Brook Amenity

\$259,606.00 Base Bid Aquatic Play Unit & Ground Sprays

Pricing is good for 7 days.

1. DESIGN SERVICES

Shop drawings sealed by a Professional Engineer registered in the State of Colorado.
 The required information for submission to regulatory authorities.
 Operations and Maintenance Manuals.
 One (1) year limited warranty on defects in workmanship and materials.

2. PROPOSED EQUIPMENT

175ft AQUATIC PLAY UNIT

| Item | Qty | GPM / Per | Notes |
|--------------------|-----|-----------|--------------------------------|
| Platform(s) | | | |
| Stair Entrance(s) | 1 | | Includes ADA Transfer Platform |
| Cantilever Deck(s) | 3 | | |
| Square Deck(s) | 1 | | |
| Triangle Deck(s) | 1 | | |

Iconic Feature(s)

| | | | |
|-------------------|---|--|---|
| 4' Tipping Bucket | 1 | | Includes Announcement Bell and custom bucket wrap |
|-------------------|---|--|---|

Feature(s)

| | | | |
|------------------------------------|---|--|--|
| Half Dome Bollard | 1 | | |
| Radial Jet Bollard | 1 | | |
| Water Blaster | 1 | | |
| Bubble Window | 1 | | |
| Water Bomb | 1 | | |
| Deck Bubblers (Set of 4) | 1 | | |
| Circular Down Jets | 1 | | |
| Hose Jets (Pair) | 1 | | |
| Pipe Falls | 1 | | |
| Circular Tippy | 1 | | |
| Overhead Tippy Trough w/ Pull Rope | 1 | | |

Waterslide(s)

| | | | |
|---------------------------|---|------------|--------------------------|
| Dual racer kiddie slide | 1 | 30 to 40 | Included in feature feed |
| 32 inch closed body slide | 1 | 300 to 500 | Requires separate feed |

Accessorie(s)

| Item Totals | Qty | GPM | Notes |
|----------------------------|-----|-----|---|
| Stainless Feature Manifold | 1 | 425 | Requires stup-up. Surface mounted under entrance stair. |

Required Stub-up(s)

| Item Totals | Qty | GPM | Notes |
|--------------------|-----|---------|--|
| Play Unit Manifold | 1 | 425 | Located under top of stair entrance(s) |
| Waterslide A | 1 | 300-500 | Located under Entry tub location |

Ground Sprays

| Item | Qty | GPM / Per | Notes |
|----------------|-----|-----------|-------|
| Dual Shot Jets | 4 | 10 | Embed |
| Gusher Jets | 2 | 20 | Embed |

3. AQUATIC PLAY UNIT

Stainless Steel:

All steel features and supports will be made from 304L stainless steel, unless specified otherwise.

Powder Coat Finish:

All stainless steel will be cleaned and prepped prior to receiving a baked-on Sherwin Williams Powdura RAL Series Super Durable TGIC-Free powder coated finish. Client may select colors from any of Splashtacular’s 188 standard RAL color selections.

Manifold(s):

Splashtacular will provide one (1) surface-mounted manifold(s) to be concealed directly under the play unit deck(s) for controlling features. Splashtacular is not responsible for connecting the main feed to the manifold.

Fiberglass Decking and Stairs:

Play feature platforms and stairs will be reinforced fiberglass decking with rounded edges and integrated non-slip surface. Client may select color from Splashtacular’s 188 standard colors.

Acrylic Guard Panels:

Guard panels will consist of G-Rated architectural grade clear acrylic with UV inhibitors.

Stainless Guard Railing:

Guard railing will consist of stainless steel picketed frames.

Skirting Panels:

All decks below 4’ elevation will have ABS skirting panels covered by 150dpi high-resolution printed art with UV coating. Custom theming is available for an additional charge.

No-climb Netting:

2” HTPP knotless no-climb netting is installed to restrict access under the play unit where skirting is not practical. Available in two (2) colors.

Under Deck Mesh:

All decks and elevated stairs with an exposed underside will be covered by a vinyl encapsulated woven polyester mesh to provide a clean, finished look. Client may select from a variety of the standard colors.

4. ICONIC FEATURE(S)

4ft. Tipping Bucket:

4’ Tipping Bucket dumps up to 280 gallons of water every 3-5 minutes. An announcement bell is included.

5. WATERSLIDE(S)

Fiberglass:

Multiple and/or different slide colors inside and outside are no extra charge. Client may select colors from any of Splashtacular’s 188 standard RAL color selections. KEEP IT SHINY, our proprietary industrial grade protective coating, is applied to all exterior non-riding surfaces for outstanding color retention and lasting protection. Custom colors and translucent fiberglass is available for an additional charge.

Waterslides terminate into run-outs (for flat pool floors) or a pool pad (for sloped pool floors). Pool pad dimensions are 4’ x 6’ x 2.5”.

Hardware:

Fiberglass sections are factory pre-drilled to decrease on-site installation time. All fiberglass flange joint hardware is stainless steel. Custom triple-gasket system as well as polyurethane non-shrink compound is installed between all flume joints to prevent leaks.

Cast-In-Place Flume Support Systems:

Flume supports will be cast-in-place concrete columns that are to be furnished and installed by others. Concrete embeds for the flume supports to be provided by Splashtacular but installed by others.

Powder Coat Finish:

All stainless steel will be cleaned and prepped prior to receiving a baked-on Sherwin Williams Powdura RAL Series Super Durable TGIC-Free powder coated finish. Client may select colors from any of Splashtacular's 188 standard RAL color selections.

6. GROUND FEATURES/LAZY RIVER FEATURES

Embeds:

All embeds will be made from 304L stainless steel, PVC or brass unless specified otherwise. Embeds to be provided by Splashtacular but installed by others. **Splashtacular is not responsible for the supply and installation of below-grade plumbing including a separate valve for each embed.**

Water Feed Stub-ups:

Water features require a 1-3" PVC pipe capped 24" above grade. Splashtacular will include specific dimensions on the engineered shop drawings. **Splashtacular is not responsible for the supply and installation of below-grade plumbing including a separate valve for each feature.**

Above-grade equipment:

Stainless Steel:

All steel features and supports to be made from 304L stainless steel, unless specified otherwise.

Powder Coat Finish:

All stainless steel will be cleaned and prepped prior to receiving a baked-on Sherwin Williams Powdura RAL Series Super Durable TGIC-Free powder coated finish. Client may select colors from any of Splashtacular's 188 standard RAL color selections.

7. ACCESSORIES

Hardware:

A polyurethane non-shrink compound is installed between all deck joints. All hardware is 316 unless the required hardware is not available in 316. In those instances, we will substitute acceptable grades of 304L or 18-8.

Safety Signage:

One (1) safety rules sign will be supplied for each play unit entrance.

8. INSTALLATION

FULL INSTALLATION SERVICES

Prevailing/union wage rates excluded

We will provide a fully experienced and capable job supervisor, all labor, materials and equipment necessary to complete the installation of the play unit and feature(s) in accordance with the engineered drawings and principles of good workmanship. An additional charge will be assessed should more than one mobilization be required for installation.

INSTALLATION CONSIDERATIONS

- a. Adequate access for installation equipment is required at all times from laydown area to and around the area of the play unit and feature(s) until the work is complete and the installation crew has demobilized. This includes unobstructed access for a man lift and an 8,000 lb. Lull. Depending on the complexity and size of the play unit and feature(s) and at Splashtacular's sole discretion we may also utilize a 25-ton crane.
- b. A fresh water supply to be located within approximately 30 yards of the play unit and feature(s) for cleaning purposes.
- c. A dedicated power supply to be located at the play unit and feature(s) for installation crew to operate small tools.

9. MISCELLANEOUS

Freight:

Includes freight to jobsite.

Commissioning:

One mobilization is included for on-site training, testing, balancing and safety certification by a Splashtacular management representative once the play unit is operable. A minimum of two weeks' advanced notice is required to allow sufficient time to make travel arrangements. Additional costs may be charged for trainings requested with less than two weeks' notice or for rescheduled trainings.

10. EXCLUSIONS

- a. Sales tax, use tax, licenses, permits and fees.
- b. Performance and payment bonds.
- c. Soil reports or surveying.
- d. Notices, inspections or testing of any kind including steel fabrication inspections and material testing.
- e. Demolition and/or repairs to decks, fences and landscaping.
- f. Supply, installation and connection of electrical service and wiring, internet connections, conduit and any other required equipment from the equipment room complete to the play unit and feature(s).
- g. Controls for surge tank fill, rain water valves, UV, pump(s), filtration systems.
- h. Supply and installation of concrete footings, foundations, grouting and grounding wires.
- i. Supply, installation or modification of the pool, decks, drainage systems, deck drains, grating and holding or ballast tanks.
- j. Supply, installation or modification of plumbing, mechanical and electrical equipment including emergency start/stop equipment, piping connections and pipe supports.
- k. Temporary utilities and dumpster.
- l. Coated or painted hardware.
- m. Deck ropes, fences or barriers of any kind.
- n. Rafts or inner tubes.
- o. Any type of theming or rock-scaping.
- p. Prevailing or union wage rates.
- q. Pool deck canopies
- r. Tariffs and all costs of clearance of materials including but not limited to transport from Hastings, Nebraska, and Olathe, Kansas to the construction site.
- s. Any items not specifically stated above.

NOTE: It is agreed that Splashtacular shall be permitted to process our work without interruption or delay. The purchaser hereby agrees that Splashtacular will be reimbursed in full for all costs associated with any delays. These reimbursable include, but are not limited to, re-mobilization costs and equipment rental/delivery fees. This agreement must become a part of the final contracts.

11. PRELIMINARY FOUNDATION INFORMATION

The play unit contained in this proposal should require:

- (1) 12" thickened slab(s) extending 12" beyond the perimeter of the play unit's support system.

The waterslides contained in this proposal should require:

- (3) Type C pier supports

Extra excavation due to poor soil conditions could result in extra costs as well as an increase in footing sizes. Extra costs may be incurred by buyer if soil conditions are worse than anticipated. Owner/Contractor to furnish Splashtacular with a copy of the project soils report.

12. PAYMENT TERMS

- 10% Deposit to initiate contract and prepare shop drawings.
- 10% Due at client's receipt of shop drawings.
- 30% Due at receipt of approved shop drawings and prior to fabrication.
- 40% Due upon completion of fabrication and prior to shipment.
- 10% Due at completion of installation and prior to commissioning. Final payment to be placed in escrow prior to shipment of materials. Escrow location and agreement to be mutually agreed upon and included in contract documents.

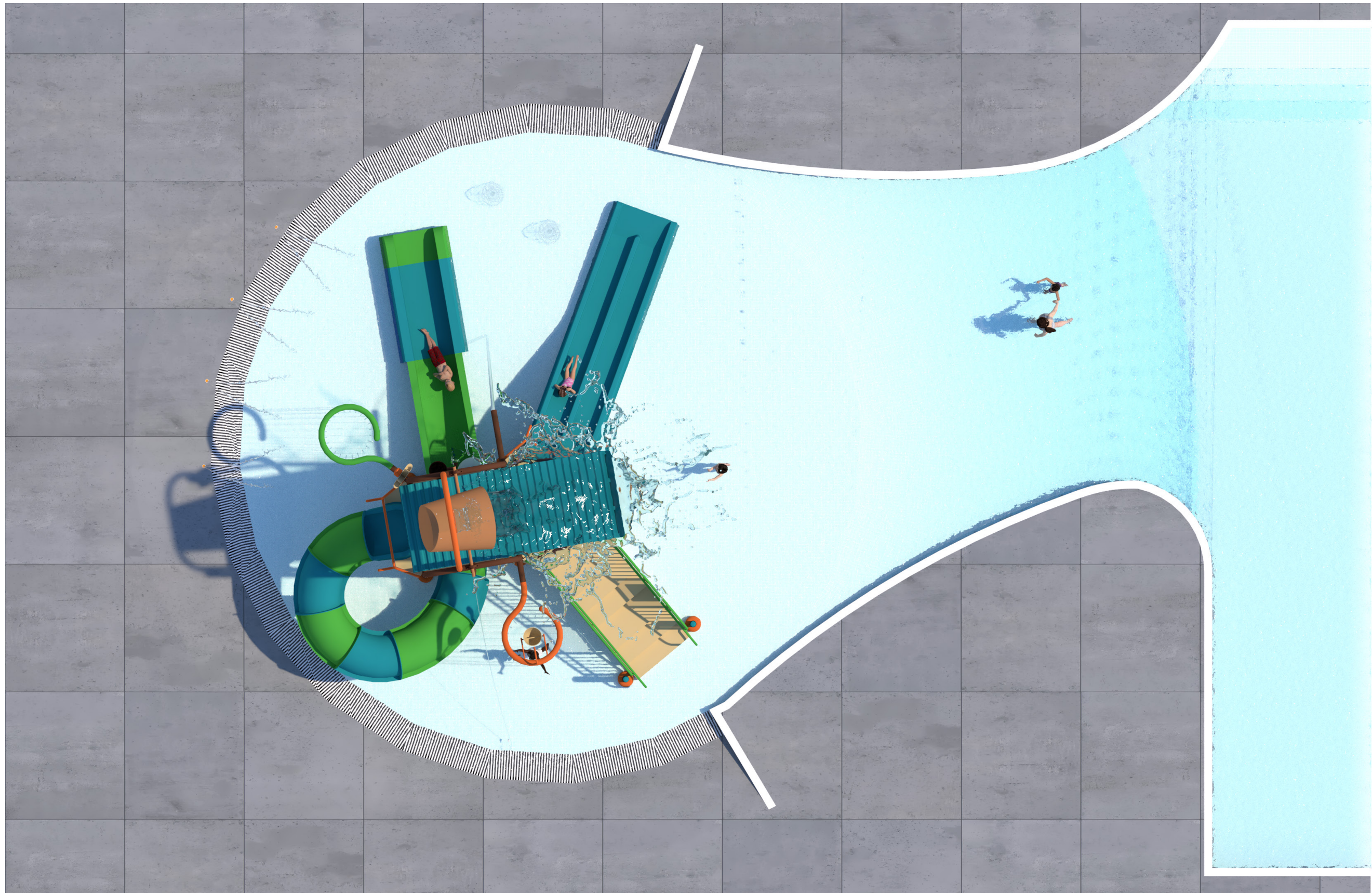
AQUATIC PLAY UNIT - KEY POINTS

- Our unique, modular design allows the play unit to satisfy a variety of needs:
 - ✓ Interactive features can be interchanged or upgraded to keep things new and fresh
 - ✓ Deck design allows patrons to be out of the way when playing with features
 - ✓ Twice as many features per rail than others on the market
 - ✓ Easily expandable with additional phases after initial installation
- Iconic **Tipping Bucket** creates a massive water spill as the focal point of the play unit every 3-5 minutes. An announcement bell is included.
- All steel is 304L stainless (including manifold)
- All columns are stainless steel and are **not** flooded with water to feed play features which dramatically reduces corrosion
- Thickened slabs are utilized whenever possible reducing the need for more costly foundations
- Play unit can be designed for installation on sloped pool floor
- Single column pedestal support allows decks to be mounted on small islands, offering more excitement in the smallest of spaces
- Each play feature is individually adjusted from a surface-mounted manifold for easy and precise balancing
- Flangeless connections provide a cleaner look and fewer catch-points than others on the market
- Column and bollard flanges are covered with color-coordinated fiberglass escutcheon covers
- All waterslides are fiberglass and comply with specifications published by the World Waterpark Association
- Reinforced fiberglass platforms and stairs include an integrated non-skid surface
- Waterslides terminate with run-outs (for flat pool floors) or a pool pad (for sloped pool floors)
- All pool pad slide exits include protective bollard, no-climb netting and 4' x 6' x 2.5" pad
- Acrylic guard panels provide lifeguards and parents with an unobstructed view of the activity on the play unit
- ABS skirting panels include 150dpi high-resolution full color scene prints with UV coating
- All decks and stairs with an exposed underside are covered with colored mesh canvas to block out unsightly steel connections and plumbing
- Custom theming available
- ADA compliant
- All components and assemblies meet ASTM and CPSC Codes

ATTACHMENTS FOR APV







401 N. East St.
Paola, KS 66071

1.800.844.5334

www.splashtacular.com
sales@splashtacular.com

SPLASHTACULAR
Waterslides and Waterpark Attractions

ESCROW AGREEMENT

This Escrow Agreement (this “**Agreement**”) is entered into as of the 23rd day of May, 2022, by and among Splashtacular, LLC, of Paola, Kansas (“**Splashtacular**”), and Mountain Brook Metropolitan District, of Longmont, Colorado (“**Owner**”), and MBC Business Services, Inc., a Missouri corporation (“**Escrow Agent**”) (each a “**Party**”; collectively, the “**Parties**”).

RECITALS

A. Splashtacular and Owner have executed that certain Construction Agreement dated May 23, 2022 (the “**Contract**”), pursuant to which Splashtacular agreed to perform certain Work (as described in the Contract) for the Longmont, CO – Mountain Brook Amenity Center Project.

B. Pursuant to Section 3.a. of the Contract, Splashtacular and Owner are required to enter into an escrow agreement, pursuant to which Owner will deposit \$ 25,961.00 (the “**Funds**”) with Escrow Agent to fund Splashtacular’s construction and completion of all Work on the Project in accordance with the Contract. The Funds shall constitute 10% of the Contract balance due to Splashtacular from Owner.

C. The Parties desire to enter into this Agreement for the purpose of satisfying the escrow obligations under the Contract.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the Parties by their execution hereof, the Parties agree as follows.

1. Recitals. The above Recitals are hereby incorporated into this Agreement in full and form an integral part hereof. Capitalized terms not set forth herein shall have the meaning assigned to them under the Contract.

2. Appointment of Escrow Agent. Splashtacular and Owner hereby appoint Escrow Agent to act as escrow agent hereunder, and Escrow Agent hereby accepts such appointment and agrees to perform the duties of Escrow Agent hereinafter set forth, subject to the terms and conditions of this Agreement. Escrow Agent’s fee will be \$100.00 (which is to be paid by Splashtacular).

3. Escrow Funds. As set forth in Section 3a of the Contract, prior to delivery of materials by Splashtacular, Owner shall deposit the Funds with Escrow Agent which Escrow Agent shall hold in escrow in accordance with the terms and provisions of this Agreement. The escrowed Funds shall be held by the Escrow Agent in a federally insured non-interest bearing trust account in the name of the Escrow Agent for the benefit of Splashtacular in accordance with the terms of this Agreement. Upon deposit of the Funds, Owner shall provide written notice to Splashtacular that the Funds have been deposited with Escrow Agent. Upon Owner’s written request to Escrow Agent, Escrow Agent shall provide written confirmation that the Funds have been received and placed in escrow. Wiring instructions shall be provided by Escrow Agent to Owner. If Owner does not timely deliver the Funds to Escrow Agent, or if the Escrow Agent is not immediately able to obtain good funds in respect of the Funds, Splashtacular may, at its option, terminate this Agreement and no Party shall have any further right or obligation hereunder.

4. Distribution of Escrowed Funds. The Funds shall be disbursed by Escrow Agent as follows:

a. To Splashtacular upon receipt of periodic/final written requests for disbursement of the Funds (or portion thereof) signed by both Splashtacular and Owner for the completion of certain services, the receipt of certain goods and services, or the satisfaction of any other condition or event, as set forth in accordance with the payment terms of the Contract;

b. To Splashtacular and/or Owner as set forth in a written agreement executed by Splashtacular and Owner;

c. To Splashtacular and/or Owner as set forth in Section 5 below in the event of a dispute regarding the Funds;

d. To Splashtacular and/or Owner upon the failure of either party to execute a periodic/final request for payment to release the Funds (or a portion thereof) after the requesting party makes a written request for disbursement to Escrow Agent, with copy to the other party in accordance with the "Notice" requirements of Section 10 below, and the other party fails to respond or object in writing within ten (10) business days of the date on which the other party received a copy of such request for disbursement.

e. To Owner, as set forth below, upon the occurrence of any of the following events of default by Splashtacular:

i. Splashtacular is in default under the terms of the Contract or otherwise cancels the Contract for any reason whatsoever, except as permitted under the terms of the Contract;

then, upon written notice to Splashtacular and the Escrow Agent, Owner shall have the right to collect payment for such costs, damages or expenses as set forth in accordance with the terms of the Contract to the extent the Funds are sufficient therefor and shall be entitled to a disbursement from the Funds by submitting a request for payment for the same, together with accompanying documentation, subject to Sections 4.c. and 4.d. above.

f. To Splashtacular, as set forth below, upon the occurrence of any of the following events of default by Owner:

i. Owner is in default under the terms of the Contract or otherwise cancels the Contract for any reason whatsoever, except as permitted under the terms of the Contract; or

ii. Owner takes or there is taken on its behalf any action for the termination winding up, liquidation, or dissolution of Owner; or

iii. Owner makes a general assignment for the benefit of its creditors, becomes insolvent, or is unable to pay its debts as they mature; or

iv. Owner has a receiver appointed, or files or has filed against it any petition under any existing or future bankruptcy or insolvency;

then, upon written notice to the Owner and the Escrow Agent, Splashtacular shall: (a) have the right to collect payment to date: (i) for all Work and services completed, goods and services received, or the satisfaction of any other condition or event, as set forth in accordance with the terms of the Contract, and (ii) for proven loss with respect to tools, and construction equipment and machinery, including reasonable overhead, profit, and damages, to the extent the Funds are sufficient therefor and shall be entitled to a disbursement from the Funds by submitting an application for payment for the same, together with accompanying documentation, as set forth in Section 4.a. above, subject to Sections 4.c. and 4.d., and (b) have the right (but not the obligation) to cause the remainder of the Work to be completed to the extent the Funds are sufficient therefor and shall be entitled to periodic disbursement from the Funds by submitting applications for payment together with accompanying documentation as set forth in Section 4.a. above, subject to Sections 4.c. and 4.d. In accordance with Splashtacular's rights as set forth hereinabove, any remainder of the Funds not previously disbursed shall be disbursed to the Owner.

5. Distribution Dispute. In the event Owner or Splashtacular notifies Escrow Agent, in writing, of a dispute regarding the disbursement of all or part of the Funds, Escrow Agent shall settle the dispute as follows:

- a. Escrow Agent may disburse that part of the Funds to the requesting Party over which there is no dispute between Owner and Splashtacular, with the remaining Funds over which there is a dispute being held in escrow by Escrow Agent, subject to the provisions of Sections 5(b) through 5(d) below. Notwithstanding the foregoing, the Parties agree and acknowledge that the amount of any such "disputed" Funds to remain in escrow, subject to the provisions of Sections 5(b) through 5(d) below, shall not be more than two (2) times the amount of such Funds in dispute or if applicable, the material cost and labor required by Splashtacular to repair or replace such disputed item(s); or
- b. Escrow Agent may file an action in the District Court of Boulder County, Colorado for a declaratory judgment as to how to disburse the Funds (or such portion thereof), and/or may interplead the Funds into the registry of said Court, with the costs of any action so filed by Escrow Agent, including reasonable attorney's fees, to be deducted from the Funds. Splashtacular and Owner agree to the jurisdiction of said Court over their persons and over the Funds, waive personal service of process, and agree that service of process by certified or registered mail, return receipt requested, to the address set forth herein shall constitute adequate service. To the extent permitted by law, Splashtacular and Owner hereby agree to indemnify and hold the Escrow Agent harmless from any liability or losses occasioned thereby and to pay any and all of Escrow Agent's costs, expenses, and attorneys' fees incurred in any such action and agree that on such declaratory judgment or interpleader action that the Escrow Agent, its servants, agents, employees, attorneys, and officers will be relieved of further liability; or
- c. Escrow Agent may require that Splashtacular and Owner initiate arbitration proceedings to resolve any such dispute pursuant to the arbitration provision set forth in the Contract, with the arbitrator issuing a written decision as to how the Funds (or any portion thereof) should be disbursed; or

- d. In the event of any disagreement or the presentation of adverse claims or demands in connection with the distribution of the escrowed Funds (or portion thereof), Escrow Agent is, at its option, entitled to refuse to comply with any such claims or demands during the continuance of such disagreement and may refrain from distributing any disputed Funds or delivering any other items affected thereby. In so doing, Escrow Agent shall not become liable to the other Parties hereto due to its failure to comply with any such adverse claim or demand. Escrow Agent is entitled to continue, without liability, to refrain and refuse to act: (a) until all rights of the adverse claimants have been finally adjudicated by an arbitrator or court of competent jurisdiction having jurisdiction over the Parties, the disputed Funds, or any other items affected thereby, after which time Escrow Agent is entitled to act in conformity with such adjudication, or (b) until Owner and Splashtacular execute a written agreement indicating that all adverse claims or disputes relating to the disbursement of the Funds (or portion thereof) or the delivery of any other items affected thereby, have been resolved and providing instructions to Escrow Agent as to the disbursement or delivery of the same, at which time Escrow Agent is protected in acting in compliance therewith.

6. Liability and Indemnification of Escrow Agent.

- a. Escrow Agent shall not be liable to Splashtacular or Owner, or any of their successors or permitted assigns, for any action or failure to act by Escrow Agent hereunder, except for Escrow Agent's own gross negligence or willful misconduct. Splashtacular and Owner each agree to jointly and severally indemnify and hold harmless Escrow Agent, and any successor or permitted assign, from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees, arising out of or in connection with this Agreement, except for claims against Escrow Agent based upon gross negligence or willful misconduct.
- b. Escrow Agent is entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that any person purporting to give any notice or receipt or advice or to make any statement or executing any document in connection with the provisions hereof has been duly authorized to so do. If Escrow Agent is in doubt as to what action it should take hereunder, then in accordance with the terms set forth in Section 5.d. above, Escrow Agent shall be entitled to deposit the escrowed Funds (or portion thereof) with a court of competent jurisdiction and interplead the other Parties for a determination of the matter. Escrow Agent shall not undertake such deposit and interpleader unless it has given Splashtacular and Owner a written notice ten (10) days before such deposit and interpleader as to the intentions of Escrow Agent. In the event such Funds are deposited with the Court, then Splashtacular and Owner agree to the jurisdiction of said Court over their persons and over the Funds, waive personal service of process, and agree that service of process by certified or registered mail, return receipt requested, to the address set forth herein shall constitute adequate service. Further, Splashtacular and Owner hereby agree to

indemnify and hold the Escrow Agent harmless from any liability or losses occasioned thereby and to pay any and all of Escrow Agent's costs, expenses, and attorneys' fees incurred in any such action and agree that on such declaratory judgment or interpleader action that the Escrow Agent, its servants, agents, employees, attorneys, and officers will be relieved of further liability.

7. Resignation. Escrow Agent may resign upon giving ten (10) days' prior written notice to Splashtacular and Owner. Splashtacular and Owner shall use good faith efforts to identify a successor escrow agent (the "**Successor**") and cause the appointment of such Successor within ten (10) days following the date of such resignation. Notwithstanding the foregoing, in no event shall this Agreement terminate or Escrow Agent be permitted to resign until such time as a Successor has been appointed. Any appointed Successor must execute, acknowledge, and deliver to its predecessor escrow agent (the "**Predecessor**"), Splashtacular, and Owner an instrument accepting such appointment and agreeing to the terms of this Agreement. The resignation of the Predecessor thereupon becomes effective and the Successor succeeds to the rights and duties of the Predecessor hereunder. The Predecessor will immediately deliver to the Successor the Escrowed Funds and any documents then held by the Predecessor pursuant to this Agreement.

8. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of Colorado.

9. Termination of Agreement. This Agreement (i) shall automatically terminate if and when, but in no event shall it terminate before, all of the Funds shall have been distributed by the Escrow Agent in accordance with the terms of this Agreement or (ii) may be earlier terminated by mutual written agreement of Owner and Splashtacular.

10. Notice. Any notice, requests, claims, demands and other communications permitted or required to be given under this Agreement by any party to another party shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by hand-delivery, by an internationally recognized overnight courier service or by registered or certified mail, return receipt requested, to the party at the address set forth for the party below:

If to Owner: _____

With copy to: _____
Attn: _____

Email: _____

If to Splashtacular: Alex Weidman, President
Splashtacular, LLC
401 N. East Street
Paola, Kansas 66071

With copy to: Rouse Frets White Goss Gentile Rhodes, P.C.
Attn: Ken Snow, Esq.
5250 West 116th Place, Suite 400
Leawood, KS 66211
Email: ksnow@rousepc.com

If to Escrow Agent: MBC Business Services, Inc.
5250 W. 116th Place, Suite 400
Leawood, Kansas 66211
Ph# (913) 647-3200
E-mail: mbcservices@gmail.com

11. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties hereto with respect to the transactions described herein, and supersedes all prior agreements of understandings, written or oral, between the Parties with respect thereto.

12. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

13. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature of any Party delivered by facsimile or transmitted electronically in portable document format shall be deemed an original signature, may be relied upon by others and shall be binding upon the signor for all purposes.

15. Acknowledgement; Waiver of Conflict of Interest. The Parties hereto agree and acknowledge that this Agreement has been negotiated by all the Parties, and no Party shall be deemed to have drafted this Agreement for purposes of construing any ambiguity. The Parties further agree and acknowledge that the Escrow Agent and the law firm of Rouse Frets White Goss Gentile Rhodes, P.C. ("RFWGGR") are affiliated and that RFWGGR is acting as counsel for Splashtacular and Escrow Agent in connection with the Contract and this Agreement. In accordance thereto, each Party hereby waives any and all conflicts of interest that may exist or arise as a result of: (i) RFWGGR's representation of Splashtacular and Escrow Agent on any matter related to the Contract and this Agreement, including any issues that could arise with the respect to claims against the escrow Funds, and (ii) the affiliation of Escrow Agent and RFWGGR.

[Signature Page Follows]

The Parties hereto hereby execute this Agreement as of the day and year first above written.

SPLASHTACULAR, LLC

By: _____

Name: _____

Title: _____

MOUNTAIN BROOK METROPOLITAN DISTRICT

By: _____

Name: _____

Title: _____

MBC BUSINESS SERVICES, INC.

By: _____

Name: _____

Title: _____

PRECONSTRUCTION SERVICES AGREEMENT

THIS PRECONSTRUCTION SERVICES AGREEMENT (“Agreement”) is made and entered into this 2nd day of June, 2022, by and between **MOUNTAIN BROOK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **LANDMARK CONSTRUCTION SOLUTIONS, INC.**, a Colorado corporation d/b/a **LANDMARK HOMES** (“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 preconstruction services in connection with the anticipated construction of the District’s Mountain Brook Amenity Center in Longmont, Colorado (the “Project”); and

WHEREAS, the District solicited qualification documents from qualified contractors for preconstruction and construction manager services for construction of the Project; and

WHEREAS, in response to the District’s solicitation, Contractor submitted qualification documents for both preconstruction and construction manager services; and

WHEREAS, the District desires to proceed only with preconstruction services at this time; and

WHEREAS, the District desires to engage Contractor to render such preconstruction services as are 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. Appointment of Contractor. The District hereby retains Contractor for purposes of performing such services described in Section 2 of this Agreement, subject to the terms and conditions of this Agreement. Contractor hereby agrees to perform the Services pursuant to the terms and conditions set forth herein.

2. Scope of Services. Contractor shall perform the Services for the District as outlined in the Scope of Services in **Exhibit A** attached hereto and incorporated herein by reference (“Services”). 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 Contractor’s compensation, shall be mutually agreed upon by the Parties and set forth in an amendment to this Agreement as provided in Section 16 hereof. No amendment to provide for a change in Services that results in an increase in the Contractor’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 13 hereof. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement. Contractor shall at all times conform to the stated policies established and approved by the District.

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

(1) 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;

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

(3) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Section 7 hereof;

(4) Advise the District of the status of the Services required by this Agreement on a regular basis 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; and

(5) Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District. All obligations incurred by Contractor shall be the obligations of Contractor who shall hold the District harmless therefrom.

B. Compliance with Applicable Law. Contractor shall provide 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. Contractor declares that Contractor 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. Subcontractors. Contractor is solely and fully responsible to the District for the Services to be provided pursuant to this Agreement, including all acts and omissions of

subcontractors and persons employed by them. Contractor will require any subcontractors to obtain the required insurance coverage pursuant to Section 7 hereof and to agree to indemnify the District in the same manner as Contractor pursuant to Section 10 hereof.

D. No Right or Interest in District's Assets. Contractor 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.

3. Compensation. Contractor shall be paid an amount not to exceed Twenty Thousand Dollars (\$20,000) for performance of the Services based on the hourly rates set forth in **Exhibit B** attached hereto and incorporated herein by reference, and in accordance with the procedures set forth in this Section 3, which amount has been budgeted and appropriated by the District for the current year of performance of the Services. Contractor shall not receive additional compensation for any change in Services provided to the District unless the District and Contractor have executed an amendment to this Agreement authorizing the change in Services and the payment of additional compensation to Contractor. Any amendments to this Agreement resulting in additional compensation to be paid by the District to Contractor shall be subject to annual appropriations by the District as set forth in Section 13 hereof. The District is exempt from Colorado sales and use taxes. Contractor shall use reasonable efforts to ensure that costs for Services set forth in Exhibit A and charged to the District do not include sales and use taxes.

A. Monthly Reports and Invoices. Contractor shall submit to the District monthly reports in a form acceptable to the District which describe the work completed to date and the work yet to be performed, and summarize costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District no later than the 3rd day of each month for Services completed in the preceding month. The District shall pay Contractor's invoice within forty-five (45) days from the 3rd day of each month. The District reserves the right to inspect all Services completed and invoiced prior to payment as set forth in Section 3.B. herein. In the event inspected Services are not accepted for payment by the District, the terms of Section 3.B. herein shall apply.

B. Inspection of Services. The District may inspect the Services provided at any time throughout the term of this Agreement and shall notify Contractor if, in the District's discretion, any or all Services are not provided in accordance with this Agreement. Failure by Contractor 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 Contractor. Contractor shall have five (5) days to cure the default unless otherwise agreed to by the Parties. If Contractor fails to cure the default within the time period provided, 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 Contractor, the District may hire a third party to complete the Services and Contractor agrees to pay all additional costs incurred for the completion of the Services by a third party only to the extent the Contractor has been paid for services provided that are not in accordance with this Agreement.

C. Compensation Upon Termination. In the event this Agreement is terminated as provided in Section 5 hereof, the District shall pay Contractor for all of the Services satisfactorily performed prior to the designated termination date. Compensation for 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.

4. Term. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire upon completion of the Services; provided that, in the event the completion of Services occurs in a fiscal year following the effective date of this Agreement, such Services to be performed in the following fiscal year shall be subject to annual appropriations by the District as set forth in Section 13 hereof. This Agreement may be extended in writing upon mutual agreement of the Parties, and such writing shall become an amendment to and part of this Agreement. Any extension of this Agreement shall be subject to annual appropriations by the District as set forth in Section 13 hereof.

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 thereof. Contractor shall be entitled to receive compensation in accordance with Section 3.C. of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to 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. Such notice shall specify the extent of termination and the effective date. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Upon any termination and payment of all undisputed amounts owed to Contractor, Contractor shall transfer title and deliver to the District all Work Product, as defined and described in Section 6 hereof, which shall be deemed from and after the effective date of this Agreement to be the property of the District.

6. Work Product. For purposes of this Agreement, Work Product 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 Work Product, including all associated copyrights and the right of reuse at the discretion of the Contractor. Contractor shall continue to own the Work Product and all associated rights whether or not the Project is completed. The District may make and retain copies of Work Product for information or reference, or any other purpose in connection with the use of the Work Product on the Project. Contractor grants the District a limited license to use the Work Product on the Project, extensions of the Project, 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 Work Product is not intended or represented to be suitable for use on the Project unless completed by the Contractor, or for use or reuse by the District or others on extensions of the Project, 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 Work Product, 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.

7. 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 Section 7(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 |

In addition, unless otherwise marked "No," the following coverage shall be obtained by Contractor, on an occurrence basis:

(1) Performance Bond

Included: Yes No

(2) Builder's Risk Insurance. A blanket builder's risk insurance policy with coverage on an "all risk" basis for the project including but not limited to: (1) coverage for any ensuing loss from faulty workmanship or defective materials; (2) coverage against damage or

loss caused by earth movement, flood, fire, and extended coverage perils, theft, vandalism, and malicious mischief, collapse and false work, including increased cost of construction, architects fees and expenses, soft costs, and operational testing; (3) coverage for removal of debris and demolition; (4) transit coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) policy is to include as insured the District, the Contractor, and all subcontractors; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site of the Services. Such insurance shall be on a "completed value" form insuring probable maximum loss, all on a replacement cost basis.

Included: Yes No

(3) General Professional Liability. Professional Liability insurance with coverage in the amount of One Million Dollars (\$1,000,000) each claim and in the aggregate covering the negligent acts, errors, or omissions of the Contractor and/or its subcontractors in the performance of the Services.

Included: Yes No x

Unless otherwise indicated, 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). The 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.

E. Notice. Contractor 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 Contractor to comply with the notice reporting provisions or other conditions of the insurance policies set forth herein shall not affect the obligation of the Contractor to provide the required coverage to the District and its directors, officers, employees, and agents.

F. Subcontractor Insurance. If Contractor subcontracts any portion(s) of the Services, Contractor shall require that each subcontractor retained by Contractor to acquire and maintain insurance coverage as set forth in this Section 7. Contractor shall require each subcontractor to provide to Contractor insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section 7. The Contractor shall retain all subcontractor

insurance certificates and endorsements for the duration of the Agreement. Contractor shall, upon District request, submit them to the District for review. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

G. Non-limiting. No provision, term or condition contained in this Section 7 of the Agreement shall be construed as limiting in any way the indemnification provision contained in Section 10 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 Contractor may be held responsible for payments of damages to persons or property.

8. Workers Without Authorization.

A. Certification. Prior to the execution of this Agreement, Contractor 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 a worker without authorization who will perform work pursuant to this Agreement and that Contractor 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 Paragraph 8.F. herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

B. Prohibited Acts. Contractor shall not (1) knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement; or (2) enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement.

C. Verification.

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

(2) Contractor 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 Contractor obtains actual knowledge that a subcontractor performing work pursuant to this Agreement knowingly employs or contracts with a worker without authorization, Contractor shall (i) notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and (ii) terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required herein, the subcontractor does not stop employing or contracting with a worker without authorization; except that Contractor 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 a worker without authorization.

D. Duty to Comply With Investigations. Contractor 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 Contractor is complying with this Paragraph 8 of the Agreement.

E. Breach. If Contractor violates a provision of this Paragraph 8, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Paragraph 8 of the Agreement and the District terminates the Agreement.

F. Department Program. If Contractor participates in the Department Program in lieu of the E-Verify Program, Contractor shall notify the Department and the District of such participation. Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that Contractor 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. Contractor shall provide a written, notarized copy of the affirmation to the District.

9. Independent Contractor. Contractor 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 Contractor's employees. Neither the Contractor nor any of Contractor's employees are or shall be deemed employees of the District. Contractor is not, and shall not act as, the agent of the District. The employees who assist Contractor in the performance of the Services shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of the District. Contractor shall pay all wages, salaries, and other amounts due Contractor'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, Contractor has sole authority and responsibility to employ, discharge, and otherwise control Contractor's employees. Contractor has sole authority and responsibility as principal for Contractor's agents, employees, subcontractors and all others Contractor hires to perform or assist in performing the Services.

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. If Contractor is providing architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify or hold harmless the District may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Contractor and the District. The obligations of the indemnifications extended by Contractor to the District under this Section 10 shall survive termination or expiration of this Agreement. Upon execution of this Agreement, Contractor shall provide the District with a copy of Contractor's IRS Form W-9, Request for Taxpayer Identification Number.

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 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. 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.

13. 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 as set forth Section 2 hereof, are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year. Any extension of this Agreement, as set forth in an amendment hereto, shall be subject to annual appropriations by the District.

14. Annual Bidding. The District shall be entitled to bid each calendar year's services pursuant to this Agreement as it deems necessary to comply with current law regarding contracts for such services. Contractor shall have no claim against the District if this Agreement is not extended for any budget year.

15. 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: Mountain Brook Metropolitan District
Attn: Mickey Leyba
c/o Permontes Group
105 S. Sunset Street, Unit H,
Longmont Colorado 80501
Email: mleyba@permontesgroup.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 Contractor: Landmark Homes
Attention: Jason Sherrill
6341 Fairgrounds Avenue, Suite 100
Windsor, CO 80550
Email: jsherrill@mylandmarkhomes.net

16. 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.

17. Assignment. Contractor 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 Contractor from Contractor's obligation to perform all other obligations required to be performed by Contractor 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.

18. 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.

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 Contractor 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.

23. 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.

24. 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.

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

26. 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.

27. 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.

(Remainder of Page Left Intentionally Blank.)

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

MOUNTAIN BROOK METROPOLITAN DISTRICT

Kevin Mulshine

By: _____
Its: _____

LANDMARK CONSTRUCTION SOLUTIONS, INC., a Colorado corporation d/b/a LANDMARK HOMES

[Signature]
By: _____
Its: *President*

EXHIBIT A

DESCRIPTION OF PROJECT AND SCOPE OF SERVICES

General Description:

The Services comprise preconstruction services in connection with the Mountain Brook Amenity Center located in Longmont, Colorado (the “Project”). The Services will be provided in connection with Basham & Lucas Design Group, Inc (the “Project Architect”) during the planning and design phases of the Project to facilitate development of Project plans and specifications.

Preliminary Evaluation:

Contractor will provide an initial evaluation of the District’s Project budget, scope, and schedule requirements.

Consultation:

Contractor will schedule and attend meetings with the District as may be required. Contractor will consult with the District and the Project Architect regarding site planning and the materials, building systems, and equipment required for construction of the Project. Contractor will advise and provide recommendations concerning:

- Construction feasibility;
- Actions designed to minimize adverse effects of labor or materials shortages and price increases;
- Time requirements for procurement, installation, and completion of construction; and
- Factors concerning construction costs, such as estimates for alternative design, materials, and preliminary budgets and potential economies.

Preliminary Project Schedule:

When Project requirements are adequately identified, Contractor will prepare and keep up to date a preliminary Project schedule for review by the Project Architect and the District and for approval by the District. Contractor must obtain the Project Architect’s approval for any portion of the preliminary Project Schedule concerning performance of Project Architect’s services. As the Project design proceeds, the Contractor will keep the preliminary Project schedule updated to reflect the following:

- Proposed activity sequences and durations;
- Milestone dates for receipt and approval of pertinent information;
- Submittal of maximum price estimates;
- Preparation and processing of shop drawings and samples;
- Delivery of materials or equipment requiring long lead times for procurement
- The District’s occupancy requirements; and
- Estimated substantial completion dates

If preliminary Project schedule updates indicate that previously approved schedules may not be met, Contractor will make appropriate recommendations to the District and Project Architect.

Cost Estimates:

When the District has adequately identified the Project requirements and the Project Architect has prepared basic design criteria, Contractor will prepare for review a conceptual cost estimate utilizing area, volume, or similar conceptual estimating techniques to establish a baseline cost estimate for the Project. A trend log will be established along with the preliminary construction schedule.

When schematic design documents have been prepared by the Project Architect and approved by the District, Contractor shall prepare, for the review by the Project Architect and approval of the District, a more detailed estimate with value engineering options for major building components. The trend log and schedule will be revised accordingly.

During the Project's design development, Contractor shall prepare a detailed estimate with supporting data for review by the Project Architect and approval by the District. If desired by the District, a guaranteed maximum price may be determined and long-lead-items procured at this time. The trend log and schedule will reflect all changes. When construction documents are completed, all details and finishes will be finalized and final pricing will be determined. If any estimate submitted to the District exceeds previously approved estimates or the District's budget, Contractor shall make appropriate recommendations to the District and Project Architect.

Subcontractors and Suppliers:

Contractor shall seek to develop subcontractor interest in the Project and shall furnish to the District and Project Architect for informational purposes, per the Contractor's schedule, a list of possible subcontractors, including suppliers that may furnish materials or equipment for the Project and from which proposals may be requested for each principal portion of the work. The District or Project Architect may object to any subcontractor or supplier proposed by Contractor. Failure to object to any subcontractor or supplier by the District or Project Architect shall not be deemed to constitute approval thereof.

Long-Lead-Time Items:

Contractor shall recommend to the District and Project Architect a schedule for procurement of long-lead-time items that will constitute part of the work, as required meeting the Project schedule. If such long-lead-time items are procured by the District, they will be procured on terms and conditions reasonably acceptable to the Contractor. Upon the District's approval of a guaranteed maximum price estimate, all contracts for such items shall be assigned by the District to the Contractor, who shall accept responsibility for such items as if procured by Contractor. Contractor shall expedite the delivery of long-lead-time items.

Extent of Responsibility:

The recommendations and advice of Contractor concerning design alternatives are subject to the review and approval of the District and the District's professional consultants. It is not the Contractor's responsibility to ascertain that the drawings and specifications are in accordance with applicable laws, statutes, and ordinances, building codes, rules or regulations. However, if Contractor recognizes that portions of the drawings and specifications are at variance, Contractor shall promptly notify the Project Architect and the District in writing.

Guaranteed Maximum Price Estimate:

In accordance with the preliminary Project schedule, if desired by the District, Contractor shall prepare and submit to the District in writing a guaranteed maximum price estimate. As the drawings and specifications may not be finished at the time that the guaranteed maximum price estimate is prepared, Contractor shall provide in the guaranteed maximum price estimate for further development of the drawings specifications by the Project Architect that is consistent with the contract documents and reasonably inferable therefrom. Such further development of the guaranteed maximum price estimate shall include:

- a list of the drawings and specifications, including all addenda thereto and the conditions of the construction contract;
- a list of the clarifications and assumptions made by Contractor in the preparation of the guaranteed maximum price estimate to supplement the information contained in the drawings and specifications;
- a statement of the estimated cost of the work organized by trade categories or systems; and
- a statement of the estimated date of commencement of the construction phase and the estimated date of substantial completion, with a schedule of the construction documents issuance dates upon which the estimated date of substantial completion is based.

Contractor shall meet with the District and Project Architect to review the guaranteed maximum price estimate. In the event that the District or Project Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify Contractor, who shall make appropriate adjustments to the guaranteed maximum price estimate. When the guaranteed maximum price estimate is acceptable to the District, the District may approve it in writing.

The District shall authorize and cause the Project Architect to revise the drawings and specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications on which the guaranteed maximum price estimate is based. Such revised drawings and specifications shall be furnished to Contractor in accordance with schedules agreed to by the District, Project Architect and Contractor. Contractor shall promptly notify the Project Architect and the District if such revised drawings and specifications are inconsistent with the agreed-upon assumptions and clarifications.

District Responsibilities:

The District will provide, at its expense, and as may be reasonably required by Contractor, information then-available to the District regarding the Project including: the District's objectives, budgets, time criteria, soils reports, environmental studies, and site surveys.

The District will review and approve the Project scope, schedules and estimates at each design phase in a timely manner in order to meet Project milestones; timely review and accept or reject items requiring the District's approval to maintain the Project schedule; and provide Contractor with regular and timely updates regarding status of planning and design review process.

EXHIBIT B

Labor and Equipment Billing Rates - 2022

April 29, 2022

Landmark Homes Labor:

| | |
|--|---------------|
| Supervision Labor | \$85.00/Hour |
| Assistant Supervision/Project Engineer | \$60.00/Hour |
| Carpentry/Skilled Labor | \$50.00/Hour |
| Common Labor | \$40.00/Hour |
| Accounting Labor | \$50.00/Hour |
| Estimator Labor | \$75.00/Hour |
| Director Labor | \$115.00/Hour |

Landmark Homes Equipment:

| | |
|---------------------------|----------------------------------|
| Superintendent Truck | \$7.50/Superintendent Hour |
| Superintendent Cell Phone | \$0.75/Superintendent Hour |
| Wireless Internet Card | \$100/month |
| Storage Container | \$150.00/month + delivery/pickup |
| Bobcat with operator | \$125.00 per hour |
| Equipment Rental | Cost of Rental Plus 10% |

Weather Protection Unit Prices (Weather Protection has not been included in proposal amount):

| | |
|--|---------------------|
| Labor for snow/water removal | \$40.00/Hour |
| Carpentry Labor for Door/Window Protection | \$50.00/Hour |
| Labor to Cover and Uncover Concrete Systems | \$40.00/Hour |
| 6-Mil Visqueen to Cover Openings (10'x100') | \$95.00/Roll |
| Concrete Blanket Rental | \$10.00/Blanket/Day |
| Water/Trash 1/2HP Pump Rental | \$100.00/Day |
| Mushroom Heater | \$30/Day/Heater |
| 100lb Propane Tank | \$125.00/Each |
| Delivery of Propane Tanks (Max of 4 at a time) | \$100.00/Trip |

Notes:

- Superintendent truck and cell phone apportioned by the relative number of hours a week spent on site.
- Equipment prices do not include operator.

EXHIBIT C

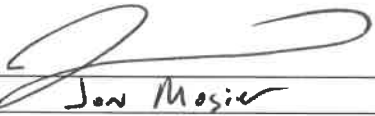
CERTIFICATION REGARDING WORKER WITHOUT AUTHORIZATION

To: MOUNTAIN BROOK METROPOLITAN DISTRICT

I, Jon Mosier, as President of Landmark Construction Solutions, Inc., d/b/a Landmark Homes, the prospective "Contractor" for that certain contract for preconstruction services ("Agreement") to be entered into with Mountain Brook Metropolitan District, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with a worker without authorization who will perform work pursuant to this Agreement and that Contractor 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 pursuant to this Agreement.

Executed on the 2nd of June, 2022.

LANDMARK CONSTRUCTION
SOLUTIONS, INC., a Colorado corporation
d/b/a LANDMARK HOMES

By: 
Its: President

| | |
|--------------------------------|---|
| TITLE | Preconstruction Services Agreement - Mountain Brook |
| FILE NAME | Preconstruction S...ct 2022-06-02.pdf |
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