

MOUNTAIN BROOK METROPOLITAN DISTRICT

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 • 800-741-3254
Fax: 303-987-2032

NOTICE OF A SPECIAL 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 28, 2021*

TIME: *9:00 a.m.*

PLACE: *Due to the threat to health and safety posed by the COVID-19 pandemic, this meeting is being held virtually via teleconferencing/Zoom and can be joined through the directions below: If you experience technical difficulties, email Peggy Ripko at pripko@sdmsi.com.*

Join Zoom Meeting

<https://us02web.zoom.us/j/85810901079?pwd=U1FsajlwYnE1RkMwOE1zcnlydWFIUT09>

Meeting ID: 858 1090 1079

Passcode: 591615

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.

C. Consider authorizing interested Board Members to attend the 2021 Special District Association’s Annual Conference in Keystone on September 14, 15 and 16, 2021.

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 April 26, 2021 Special Meeting (enclosure).
-

III. PUBLIC COMMENTS

A. _____

IV. FINANCIAL MATTERS

A. Review and ratify approval of the payment of claims as follows (to be distributed):

Fund	Period Ending
General	\$
Debt	\$
Capital	\$
Total	\$

B. Review and accept unaudited financial statements through the period ending _____, 2021 (to be distributed).

C. Ratify approval of the preparation, execution and filing of the Application for Exemption from Audit for 2020 (enclosure - copy of application).

D. Consider setting the date for a Public Hearing to adopt the 2022 Budget for October 25, 2021, at 9:00 a.m., to be held at Mountain Brook Partners, LLC, 700 Ken Pratt Blvd, Ste 113, Longmont, CO 80501 or virtually pending COVID-19 restrictions.

C. Update regarding District Accounts.

V. LEGAL MATTERS

- A. Review and ratify approval of the Intergovernmental Agreement between the City of Longmont, Colorado and Mountain Brook Metropolitan District (enclosure).
-

VI. OTHER BUSINESS

- A. _____

- VII. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR AUGUST 23, 2021.**

RECORD OF PROCEEDINGS

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE MOUNTAIN BROOK METROPOLITAN DISTRICT HELD APRIL 26, 2021

The special meeting of the Board of Directors of the Mountain Brook Metropolitan District (referred to hereafter as the “Board”) was convened on Monday, the 26th day of April, 2021, at 9:00 A.M., Due to concerns regarding the spread of the coronavirus (COVID-19) and the benefits to the control of the spread of the virus by limiting in-person contact, the District Board meeting was held by 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.

Alan Pogue, Esq.; Icenogle Seaver Pogue, P.C.

Diane Wheeler; Simmons & Wheeler, P.C.

Ken Guckenberger; Kutak Rock LLP

Mike Sullivan; Piper Sandler & Co.

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Attorney Pogue 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 Pogue requested that the Directors consider whether they had any additional conflicts of interest to disclose. Attorney Pogue 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.

RECORD OF PROCEEDINGS

ADMINISTRATIVE MATTERS

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

Following discussion, upon motion duly made by Director Mulshine, 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 Mulshine, seconded by Director Spencer and, upon vote, unanimously carried, the Board determined that due to concerns regarding the spread of the Coronavirus (Covid-19) and the benefits to the control of the spread of the virus by limiting in-person contact, this District Board Meeting was held by teleconference and via Zoom without any individuals (neither District representatives nor the general public) attending in person. The Board further noted that notice of this meeting format was duly posted and that they have not received any objections to the meeting format or any requests that the meeting format be changed by taxpaying electors within its boundaries.

CONSENT AGENDA

Consent Agenda: The Board considered the following actions:

- Approve the Minutes of the February 22, 2021 Special Meeting.

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

PUBLIC COMMENTS

There were no public comments.

FINANCIAL MATTERS

Engagement of Bond Counsel: The Board discussed the engagement of Bond and Disclosure Counsel.

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Spencer, and upon vote, unanimously carried, the Board authorized the engagement of Kutak Rock LLP as Bond and Disclosure Counsel.

RECORD OF PROCEEDINGS

Engagement of Underwriter: The Board discussed the engagement of Underwriter.

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Smith, and upon vote, unanimously carried, the Board authorized the engagement of Piper Sandler & Co. as Underwriter.

District Accounts: Ms. Wheeler provided the Board an update on the District's Accounts.

**LEGAL
MATTERS**

There were no legal matters to discuss at this time.

OTHER BUSINESS

There were no other matters to discuss at this time.

ADJOURNMENT

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

Respectfully submitted,

By: _____
Secretary for the Meeting

APPLICATION FOR EXEMPTION FROM AUDIT

SHORT FORM

NAME OF GOVERNMENT
ADDRESS

Mountain Brook Metropolitan District
c/o Icenogle Seaver Pogue
4725 South Monaco Street, Suite 360
Denver, CO 80237
Alan Pogue
303-867-3006
apogue@isp-law.com
303-292-9101

For the Year Ended
12/31/20
or fiscal year ended:

CONTACT PERSON
PHONE
EMAIL
FAX

PART 1 - CERTIFICATION OF PREPARER

I certify that I am skilled in governmental accounting and that the information in the application is complete and accurate, to the best of my knowledge.

NAME:
TITLE
FIRM NAME (if applicable)
ADDRESS
PHONE
DATE PREPARED

Diane Wheeler
District Accountant
Simmons & Wheeler, P.C.
304 Inverness Way South, Suite 490, Englewood CO 80112
303-689-0833
3/25/2021

PREPARER (SIGNATURE REQUIRED)

Diane Wheeler

Please indicate whether the following financial information is recorded using Governmental or Proprietary fund types

GOVERNMENTAL
(MODIFIED ACCRUAL BASIS)

PROPRIETARY
(CASH OR BUDGETARY BASIS)

PART 2 - REVENUE

REVENUE: All revenues for all funds must be reflected in this section, including proceeds from the sale of the government's land, building, and equipment, and proceeds from debt or lease transactions. Financial information will not include fund equity information.

Line#	Description	Round to nearest Dollar	
2-1	Taxes: Property (report mills levied in Question 10-6)	\$ -	Please use this space to provide any necessary explanations
2-2	Specific ownership	\$ -	
2-3	Sales and use	\$ -	
2-4	Other (specify):	\$ -	
2-5	Licenses and permits	\$ -	
2-6	Intergovernmental: Grants	\$ -	
2-7	Conservation Trust Funds (Lottery)	\$ -	
2-8	Highway Users Tax Funds (HUTF)	\$ -	
2-9	Other (specify):	\$ -	
2-10	Charges for services	\$ -	
2-11	Fines and forfeits	\$ -	
2-12	Special assessments	\$ -	
2-13	Investment income	\$ -	
2-14	Charges for utility services	\$ -	
2-15	Debt proceeds (should agree with line 4-4, column 2)	\$ -	
2-16	Lease proceeds	\$ -	
2-17	Developer Advances received (should agree with line 4-4)	\$ -	
2-18	Proceeds from sale of capital assets	\$ -	
2-19	Fire and police pension	\$ -	
2-20	Donations	\$ -	
2-21	Other (specify):	\$ -	
2-22		\$ -	
2-23		\$ -	
2-24	(add lines 2-1 through 2-23) TOTAL REVENUE	\$ -	

PART 3 - EXPENDITURES/EXPENSES

EXPENDITURES: All expenditures for all funds must be reflected in this section, including the purchase of capital assets and principal and interest payments on long-term debt. Financial information will not include fund equity information.

Line#	Description	Round to nearest Dollar	
3-1	Administrative	\$ -	Please use this space to provide any necessary explanations
3-2	Salaries	\$ -	
3-3	Payroll taxes	\$ -	
3-4	Contract services	\$ -	
3-5	Employee benefits	\$ -	
3-6	Insurance	\$ -	
3-7	Accounting and legal fees	\$ -	
3-8	Repair and maintenance	\$ -	
3-9	Supplies	\$ -	
3-10	Utilities and telephone	\$ -	
3-11	Fire/Police	\$ -	
3-12	Streets and highways	\$ -	
3-13	Public health	\$ -	
3-14	Capital outlay	\$ -	
3-15	Utility operations	\$ -	
3-16	Culture and recreation	\$ -	
3-17	Debt service principal (should agree with Part 4)	\$ -	
3-18	Debt service interest	\$ -	
3-19	Repayment of Developer Advance Principal (should agree with line 4-4)	\$ -	
3-20	Repayment of Developer Advance Interest	\$ -	
3-21	Contribution to pension plan (should agree to line 7-2)	\$ -	
3-22	Contribution to Fire & Police Pension Assoc. (should agree to line 7-2)	\$ -	
3-23	Other (specify):	\$ -	
3-24		\$ -	
3-25		\$ -	
3-26	(add lines 3-1 through 3-24) TOTAL EXPENDITURES/EXPENSES	\$ -	

If TOTAL REVENUE (Line 2-24) or TOTAL EXPENDITURES (Line 3-26) are GREATER than \$100,000 - STOP. You may not use this form. Please use the "Application for Exemption from Audit - LONG FORM".

PART 4 - DEBT OUTSTANDING, ISSUED, AND RETIRED

Please answer the following questions by marking the appropriate boxes.

		Yes	No
4-1	Does the entity have outstanding debt? If Yes, please attach a copy of the entity's Debt Repayment Schedule.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4-2	Is the debt repayment schedule attached? If no, MUST explain:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
N/A			
4-3	Is the entity current in its debt service payments? If no, MUST explain:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
N/A			
4-4	Please complete the following debt schedule, if applicable: (please only include principal amounts)(enter all amount as positive numbers)	<input type="checkbox"/>	<input type="checkbox"/>
		Outstanding at end of prior year*	Issued during year
		Retired during year	Outstanding at year-end
	General obligation bonds	\$ -	\$ -
	Revenue bonds	\$ -	\$ -
	Notes/Loans	\$ -	\$ -
	Leases	\$ -	\$ -
	Developer Advances	\$ -	\$ -
	Other (specify):	\$ -	\$ -
	TOTAL	\$ -	\$ -

*must tie to prior year ending balance

Please answer the following questions by marking the appropriate boxes.

		Yes	No
4-5	Does the entity have any authorized, but unissued, debt?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes:	How much?		
	\$ 125,000,000.00		
	Date the debt was authorized:		
4-6	Does the entity intend to issue debt within the next calendar year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes:	How much?		
	\$ -		
4-7	Does the entity have debt that has been refinanced that it is still responsible for?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes:	What is the amount outstanding?		
	\$ -		
4-8	Does the entity have any lease agreements?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes:	What is being leased?		
	What is the original date of the lease?		
	Number of years of lease?		
	Is the lease subject to annual appropriation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	What are the annual lease payments?		
	\$ -		

Please use this space to provide any explanations or comments:

PART 5 - CASH AND INVESTMENTS

Please provide the entity's cash deposit and investment balances.

		Amount	Total
5-1	YEAR-END Total of ALL Checking and Savings Accounts	\$ -	
5-2	Certificates of deposit	\$ -	
Total Cash Deposits			\$ -
	Investments (if investment is a mutual fund, please list underlying investments):		
		\$ -	
		\$ -	
5-3		\$ -	
		\$ -	
Total Investments			\$ -
Total Cash and Investments			\$ -

Please answer the following questions by marking in the appropriate boxes

		Yes	No	N/A
5-4	Are the entity's investments legal in accordance with Section 24-75-601, et. seq., C.R.S.?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5-5	Are the entity's deposits in an eligible (Public Deposit Protection Act) public depository (Section 11-10.5-101, et seq. C.R.S.)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If no, MUST use this space to provide any explanations:

PART 6 - CAPITAL ASSETS

Please answer the following questions by marking in the appropriate boxes.

Yes No

- 6-1 Does the entity have capital assets? Yes No
- 6-2 Has the entity performed an annual inventory of capital assets in accordance with Section 29-1-506, C.R.S.,? If no, MUST explain: Yes No

Complete the following capital assets table:	Balance - beginning of the year*	Additions (Must be included in Part 3)	Deletions	Year-End Balance
Land	\$ -	\$ -	\$ -	\$ -
Buildings	\$ -	\$ -	\$ -	\$ -
Machinery and equipment	\$ -	\$ -	\$ -	\$ -
Furniture and fixtures	\$ -	\$ -	\$ -	\$ -
Infrastructure	\$ -	\$ -	\$ -	\$ -
Construction In Progress (CIP)	\$ -	\$ -	\$ -	\$ -
Other (explain):	\$ -	\$ -	\$ -	\$ -
Accumulated Depreciation	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ -	\$ -	\$ -	\$ -

Please use this space to provide any explanations or comments:

PART 7 - PENSION INFORMATION

Please answer the following questions by marking in the appropriate boxes.

Yes No

- 7-1 Does the entity have an "old hire" firemen's pension plan? Yes No
- 7-2 Does the entity have a volunteer firemen's pension plan? Yes No

If yes: Who administers the plan?

Indicate the contributions from:

Tax (property, SO, sales, etc.):	\$ -
State contribution amount:	\$ -
Other (gifts, donations, etc.):	\$ -
TOTAL	\$ -

What is the monthly benefit paid for 20 years of service per retiree as of Jan

Please use this space to provide any explanations or comments:

PART 8 - BUDGET INFORMATION

Please answer the following questions by marking in the appropriate boxes.

Yes No N/A

- 8-1 Did the entity file a budget with the Department of Local Affairs for the current year in accordance with Section 29-1-113 C.R.S.? Yes No N/A

- 8-2 Did the entity pass an appropriations resolution, in accordance with Section 29-1-108 C.R.S.? If no, MUST explain: Yes No N/A

If yes: Please indicate the amount budgeted for each fund for the year reported:

Fund Name	Budgeted Expenditures/Expenses
General Fund	\$ 50,000

PART 9 - TAXPAYER'S BILL OF RIGHTS (TABOR)

Please answer the following question by marking in the appropriate box

		Yes	No
9-1	Is the entity in compliance with all the provisions of TABOR [State Constitution, Article X, Section 20(5)]? <small>Note: An election to exempt the government from the spending limitations of TABOR does not exempt the government from the 3 percent emergency reserve requirement. All governments should determine if they meet this requirement of TABOR.</small>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If no, MUST explain:

PART 10 - GENERAL INFORMATION

Please answer the following questions by marking in the appropriate boxes.

		Yes	No
10-1	Is this application for a newly formed governmental entity?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes:	Date of formation: 5/20/2020		
10-2	Has the entity changed its name in the past or current year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes:	Please list the NEW name & PRIOR name: 		
10-3	Is the entity a metropolitan district?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes:	Please indicate what services the entity provides: Streets, Water, Park and Recreation, Sanitation, Safety Protection		
10-4	Does the entity have an agreement with another government to provide services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes:	List the name of the other governmental entity and the services provided: 		
10-5	Has the district filed a <i>Title 32, Article 1 Special District Notice of Inactive Status</i> during	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes:	Date Filed: 		
10-6	Does the entity have a certified Mill Levy?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes:	Please provide the following <u>mills</u> levied for the year reported (do not report \$ amounts):		

Bond Redemption mills	-
General/Other mills	-
Total mills	-

Please use this space to provide any explanations or comments:

PART 11 - GOVERNING BODY APPROVAL

Please answer the following question by marking in the appropriate box		YES	NO
12-1	If you plan to submit this form electronically, have you read the new Electronic Signature Policy?	<input type="checkbox"/>	<input type="checkbox"/>

Office of the State Auditor — Local Government Division - Exemption Form Electronic Signatures Policy and Procedure

Policy - Requirements

The Office of the State Auditor Local Government Audit Division may accept an electronic submission of an application for exemption from audit that includes governing board signatures obtained through a program such as DocuSign or Echosign. Required elements and safeguards are as follows:

- The preparer of the application is responsible for obtaining board signatures that comply with the requirement in Section 29-1-604 (3), C.R.S., that states the application shall be personally reviewed, approved, and signed by a majority of the members of the governing body.
- The application must be accompanied by the signature history document created by the electronic signature software. The signature history document must show when the document was created and when the document was emailed to the various parties, and include the dates the individual board members signed the document. The signature history must also show the individuals' email addresses and IP address.
- Office of the State Auditor staff will not coordinate obtaining signatures.

The application for exemption from audit form created by our office includes a section for governing body approval. Local governing boards note their approval and submit the application through one of the following three methods:

- 1) Submit the application in hard copy via the US Mail including original signatures.
- 2) Submit the application electronically via email and either,
 - a. Include a copy of an adopted resolution that documents formal approval by the Board, **or**
 - b. Include electronic signatures obtained through a software program such as DocuSign or Echosign in accordance with the requirements noted above.

Print the names of ALL members of current governing body below. A MAJORITY of the members of the governing body must complete and sign in the column below.

Board Member 1	Print Board Member's Name Kevin Mulshine	I <u>Kevin Mulshine</u> , attest I am a duly elected or appointed board member, and that I have personally reviewed and approve this application for exemption from audit. Signed _____ Date: _____ My term Expires: <u>May 2023</u>
Board Member 2	Print Board Member's Name Conley Smith	I <u>Conley Smith</u> , attest I am a duly elected or appointed board member, and that I have personally reviewed and approve this application for exemption from audit. Signed <u>Conley Smith</u> Date: <u>Mar 26, 2021</u> My term Expires: <u>May 2023</u>
Board Member 3	Print Board Member's Name Kenneth Spencer	I <u>Kenneth Spencer</u> , attest I am a duly elected or appointed board member, and that I have personally reviewed and approve this application for exemption from audit. Signed <u>Kenneth Spencer</u> Date: <u>Mar 26, 2021</u> My term Expires: <u>May 2023</u>
Board Member 4	Print Board Member's Name	I _____, attest I am a duly elected or appointed board member, and that I have personally reviewed and approve this application for exemption from audit. Signed _____ Date: _____ My term Expires: _____
Board Member 5	Print Board Member's Name	I _____, attest I am a duly elected or appointed board member, and that I have personally reviewed and approve this application for exemption from audit. Signed _____ Date: _____ My term Expires: _____
Board Member 6	Print Board Member's Name	I _____, attest I am a duly elected or appointed board member, and that I have personally reviewed and approve this application for exemption from audit. Signed _____ Date: _____ My term Expires: _____
Board Member 7	Print Board Member's Name	I _____, attest I am a duly elected or appointed board member, and that I have personally reviewed and approve this application for exemption from audit. Signed _____ Date: _____ My term Expires: _____

Mountain Brook 2020

Interim Agreement Report











2021-03-30


Created:	2021-03-26
By:	Diane Wheeler (diane@simmonswheeler.com)
Status:	Out for Signature
Transaction ID:	CBJCHBCAABAAoTAZ4WgWDMA2HYgImX6jfhNe8ys5DS4y

Agreement History

Agreement history is the list of the events that have impacted the status of the agreement prior to the final signature. A final audit report will be generated when the agreement is complete.

"Mountain Brook 2020" History

-  Document created by Diane Wheeler (diane@simmonswheeler.com)
2021-03-26 - 1:55:26 PM GMT - IP address: 208.187.187.252
-  Document emailed to Diane Wheeler (diane@simmonswheeler.com) for signature
2021-03-26 - 1:56:26 PM GMT
-  Document emailed to Conley Smith (conley.bouldersbestbid@gmail.com) for signature
2021-03-26 - 1:56:26 PM GMT
-  Document emailed to Kenneth Spencer (haintahorse@icloud.com) for signature
2021-03-26 - 1:56:26 PM GMT
-  Document emailed to kevin mulshine (kmulshine@hmsdevelopment.com) for signature
2021-03-26 - 1:56:27 PM GMT
-  Document e-signed by Diane Wheeler (diane@simmonswheeler.com)
Signature Date: 2021-03-26 - 1:56:36 PM GMT - Time Source: server- IP address: 208.187.187.252
-  Email viewed by Conley Smith (conley.bouldersbestbid@gmail.com)
2021-03-26 - 1:57:09 PM GMT - IP address: 66.249.80.65
-  Document e-signed by Conley Smith (conley.bouldersbestbid@gmail.com)
Signature Date: 2021-03-26 - 1:58:30 PM GMT - Time Source: server- IP address: 209.97.232.19
-  Email viewed by kevin mulshine (kmulshine@hmsdevelopment.com)
2021-03-26 - 2:29:50 PM GMT - IP address: 24.9.125.100
-  Email viewed by Kenneth Spencer (haintahorse@icloud.com)
2021-03-26 - 3:48:49 PM GMT - IP address: 75.166.198.16

 Document e-signed by Kenneth Spencer (haintahorse@icloud.com)

Signature Date: 2021-03-26 - 3:50:10 PM GMT - Time Source: server- IP address: 75.166.198.16

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RESOLUTION R-2021-60

A RESOLUTION OF THE LONGMONT CITY COUNCIL APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LONGMONT AND THE MOUNTAIN BROOK METROPOLITAN DISTRICT REGARDING THE MOUNTAIN BROOK DEVELOPMENT

THE COUNCIL OF THE CITY OF LONGMONT, COLORADO, RESOLVES:


Section 1

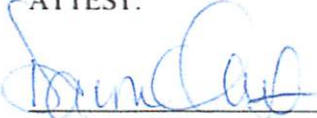
Under section 13.7 of the Longmont Home Rule Charter, the Council approves and authorizes the Mayor to sign the intergovernmental agreement referenced in the title of this resolution in substantially the form now before the Council.

Section 2

The Council repeals all resolutions or parts of resolutions in conflict with this resolution, but only to the extent of such inconsistency.

Passed and adopted this 8th day of June, 2021.


MAYOR

ATTEST:

CITY CLERK

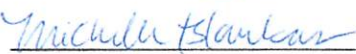


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APPROVED AS TO FORM:


ASSISTANT CITY ATTORNEY

06/02/2021
DATE


PROOFREAD

6/11/2021
DATE

APPROVED AS TO FORM AND SUBSTANCE:


ORIGINATING DEPARTMENT

6/31/2021
DATE

CA File: 21-001198

INTERGOVERNMENTAL AGREEMENT

Between

THE CITY OF LONGMONT, COLORADO

and

MOUNTAIN BROOK METROPOLITAN
DISTRICT

THIS AGREEMENT is made and entered into as of this 9th day of June, 2021, by and between the CITY OF LONGMONT, a home rule municipal corporation of the State of Colorado (the "City") and MOUNTAIN BROOK METROPOLITAN DISTRICT (the "District"), a quasi-municipal corporation and political subdivision of the State of Colorado. The City and District are each a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, the District has been organized as a means of furnishing certain capital facilities and services to and for the benefit of property in the City that is currently being developed under the name "Mountain Brook," which name may change as development progresses (the "Development"), as more fully set forth in the District's Service Plan approved by the City on October 8, 2019 (the "Service Plan"); and

WHEREAS, the Service Plan refers to the execution of an intergovernmental agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents, and property owners to enter into this Intergovernmental Agreement (the "Agreement") to promote the coordinated development of the Development.

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

COVENANTS AND AGREEMENTS

1. **Public Improvements.** The District's power and functions shall be limited to the construction, financing and maintenance of Public Improvements as further set forth in the Service Plan.

a. **Construction by the District.** The obligations of Mountain Brook Partners, LLC (the "Developer") under the City's subdivision and other regulations to construct public improvements for the benefit of the Development may be performed by the District. If constructed by the District, the improvements shall be subject to this Agreement and shall be referred to herein as "Public Improvements."

b. **Ownership, Operation, and Design Standards.** The District will ensure that all Public Improvements constructed by the District are designed and constructed in accordance with the standards and specifications of the City, as set forth in the Longmont Municipal Code (“City Code”), and of other governmental entities as applicable. The District will obtain the City’s approval, in accordance with City Code, of civil engineering plans and will obtain applicable permits for construction and installation of the Public Improvements prior to performing such work.

c. **Dedication to the City.** Those Public Improvements that will be owned by the City as indicated in Exhibit K to the Service Plan will be dedicated to the City, in accordance with City Code. The City shall be under no obligation to accept any Public Improvement that does not conform with all such requirements, and bringing Public Improvements into conformity with the City Code shall be the District’s responsibility.

d. **Landscape Maintenance.** The District will be responsible for the installation, operation, maintenance, repair, and replacement of landscape improvements along public rights-of-way in the District Boundaries, including streets dedicated to the City, in accordance with City Code and any applicable public improvement agreement entered into between the Developer and the City.

2. **Owners Association.** Multiple homeowners’ associations will be established within the Development. One association will be established to serve single-family detached homes, a second will be established to serve townhome product within the Development, and a third, a condominium association, will be established to serve the condominium product within the Development. The townhome and condominium associations will provide enhanced services such as snow removal and exterior maintenance within those areas, while the association for single-family detached homes will primarily provide architectural review and covenant enforcement. All homeowner associations established to serve the Development shall be subject to City Code.

3. **Change in Boundaries.** Any boundary adjustments shall require the prior written approval of the City Council. Such adjustments shall be effected pursuant to Sections 32-1-401, et seq. and 32-1-501, et seq., C.R.S.

4. **Maximum Mill Levy.** The maximum mill levy the District may impose for the repayment of debt and the payment of operations and maintenance costs is fifty (50) mills; provided that if, on or after January 1, 2019, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board of Directors of the District in good faith so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2019, are neither diminished nor enhanced as a result of such changes.

5. **Fees.** The District is permitted to rely upon revenue sources authorized by law and the Service Plan to offset the expenses of District management, operations, and maintenance, including the power to assess fees, rates, tolls penalties, and charges as provided in Title 32, Article 1, C.R.S., as amended. If the District requires the assistance of the City to ensure collection of District fees, the District will work with the City concerning fee collection procedures prior to imposition of such fees by the District.

6. **Dissolution.** In the event there is reason to believe that the purposes for which the District was created have been accomplished, a public hearing shall be conducted before the City Council to determine if the District should be dissolved. Prior written notice of such hearing shall be provided to the Board of Directors of the District. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file a petition in the district court for dissolution. In any event, such dissolution shall not occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations and until the District has made arrangements to satisfy all future operations and maintenance obligations.

7. **Transparency and Notifications.**

a. **Meetings.** A copy of the written notice of every regular or special meeting of the District will be delivered in writing to the City Clerk at least three (3) days prior to such meeting. Delivery by email shall be permitted. Meetings of the District's Board of Directors will be held within the City limits, Boulder County, or within 20 miles of the District's boundary.

b. **Notices.** All notices, demands, requests, or other communications to be sent by one Party to the others hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Mountain Brook Metropolitan District
Icenogle Seaver Pogue, P.C.
4725 S. Monaco Street, Suite 360
Denver, CO 80237
Attn: Alan D. Pogue and Anna C. Wool

To the City: City of Longmont
350 Kimbark Street
Longmont, CO 80501
Attn: City Manager

All notices, demands, requests, or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service for overnight delivery, or three (3) business days after deposit in the United States mail. By giving the other Party at least ten (10) days' written notice thereof in accordance with the provisions hereof, each Party shall have the right from time to time to change its address.

c. **Internet Website.** The District shall be required to create, maintain, and annually update an official website in a form that is readily accessible to the public that contains information relative to the schedule of meetings and staff and board contacts along with all activities pertaining to the District. The website shall be updated on a regular basis as activity is planned or occurs. Meeting notices and any other applicable notices shall be posted to the website in a timely manner as provided for in §7.A above.

8. **Precedence.** Recognizing that full development of the Development may take considerable time, the City approved the Service Plan with sufficient flexibility to accommodate and enable the District to respond to changed conditions over time, while still relying upon the provisions of this Agreement to enable the City to exercise appropriate control and supervision of the District as provided by state law. Accordingly, any conflict or inconsistency between the Service Plan and this Agreement shall be resolved in favor of the provisions of this Agreement.

9. **Integration.** This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

10. **Amendment.** This Agreement may be amended, modified, changed, or terminated in whole or in part only by written agreement duly executed by the Parties and authorized by their respective governing bodies, without necessarily requiring amendment to the Service Plan. The need for formal amendment to the Service Plan shall be determined according to state law then in effect and any applicable express provision of this Agreement or the Service Plan.

11. **Enforcement.** This Agreement may be enforced in law or in equity according to the laws and statutes of the State of Colorado. By executing this Agreement each Party commits itself to perform pursuant to these terms contained herein, and a breach hereof which results in recoverable damages shall not cause the termination of any obligations created by this Agreement unless such termination is declared by the Party not in breach hereof.

12. **Venue: Choice of Law.** Venue for the trial of any action arising out of any dispute hereunder shall be in the district court of the State of Colorado serving Boulder County. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

13. **Scope of Benefits.** Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the named Parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any ways the powers and responsibilities of the City, the District, or any other entity not a Party hereto.

14. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.


15. **Assignment.** No Party shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld, delayed, or conditioned. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual. The rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.


16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

17. **Interpretation.** Paragraph headings are used for convenience of reference only. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

IN WITNESS WHEREOF, the District and the City have caused this Agreement to be duly executed as of the day first above written.

MOUNTAIN BROOK
METROPOLITAN DISTRICT


By: Kevin Mulshine
Its: Chairman


ATTEST:

By: Bobbejean Warner

CITY OF LONGMONT,
a municipal corporation



MAYOR

ATTEST:



CITY CLERK

6/9/2021
DATE

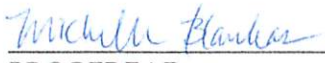


APPROVED AS TO FORM:



ASSISTANT CITY ATTORNEY

06/02/2021
DATE



PROOFREAD

6/1/2021
DATE

APPROVED AS TO FORM AND SUBSTANCE:



ORIGINATING DEPARTMENT

6/3/2021
DATE

CA File: 21-001198