

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 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: May 4, 2022
TIME: 11:00 a.m.
PLACE: 700 Ken Pratt Blvd, Ste 113
Longmont, CO 80501

Join Zoom Meeting

<https://us02web.zoom.us/j/86501449946?pwd=dWxBRUZsMVFBcIRITThPOEh0NDQwQT09>

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 December 8, 2021 Special Meeting (enclosure).
- Ratify approval of Design/Architect Agreement for the Community Center (to be distributed).

- Ratify approval of Agreement between Basham & Lucas Design Group, Inc. and the District for the design of the clubhouse (enclosure).
 - Ratify approval of the engagement of _____ for preparation of 2021 Audit, in the amount of \$ _____ (to be distributed).
-

III. PUBLIC COMMENTS

A. _____

IV. 2021 BOND ISSUANCE

A. Discuss status of the issuance of bond.

V. FINANCIAL MATTERS

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

Fund	Period Ending
General	\$ _____
Debt	\$ -0-
Capital	\$ -0-
Total	\$ _____

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

VI. LEGAL MATTERS

A. _____

VII. CAPITAL IMPROVEMENT MATTERS

A. Review and consider approval of proposals for the amenity center (to be distributed).

B. Review and consider approval of proposal from Permontes Group, Inc. for Engineering Services (enclosure).

VIII. OTHER BUSINESS

A. _____

Mountain Brook Metropolitan District

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IX. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR
JUNE 27, 2021**

RECORD OF PROCEEDINGS

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE MOUNTAIN BROOK METROPOLITAN DISTRICT HELD DECEMBER 8, 2021

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 8th day of December, 2021, at 3:00 p.m. The District Board meeting was held by Zoom and at 700 Ken Pratt Blvd, Ste 113, Longmont, Colorado 80501. 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.

Sydney Burnett; Piper Sandler & Co.

Ken Guckenberger; Kutak Rock LLP

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.

ADMINISTRATIVE MATTERS

Agenda: Ms. Ripko distributed for the Board’s review and approval a proposed Agenda for the District's special 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 at 700 Ken Pratt Blvd, Ste 113, Longmont, CO 80501 and Zoom. 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 June 28, 2021 Special Meeting.

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

PUBLIC COMMENTS There were no public comments.

BOND ISSUANCE **Resolution Approving the Issuance of Mountain Brook Metropolitan District's Limited Tax General Obligation Bonds, Series 2021⁽³⁾, in a maximum aggregate principal amount not to exceed \$15,000,000:** Mr. Guckenberger and Ms. Burnett reviewed with the board the structure of the bonds and an explanation of the various documents.

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board authorized the Resolution Approving the Issuance of Mountain Brook Metropolitan District's Limited Tax General Obligation Bonds, Series 2021⁽³⁾, in a maximum aggregate principal amount not to exceed \$15,000,000, and in connection therewith. The Board further approved the following and authorized the execution of the same: (i) Indenture of Trust with UMB Bank, n.a., (ii) Preliminary Limited Offering Memorandum and Limited Offering Memorandum, (iii) Bond Purchase Agreement with Piper Sandler & Co., (iv)

RECORD OF PROCEEDINGS

Continuing Disclosure Agreement with Mountain Brook Partners, LLC, and UMB Bank, n.a., and (v) All Other Financing Documents Related to the Issuance of the Series 2021⁽³⁾ Bonds.

FINANCIAL MATTERS

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

Fund	Period Ending
General	\$ 19,477.24
Debt	\$ -0-
Capital	\$ -0-
Total	\$ 19,477.24

Following discussion, upon motion duly made by Director Spencer, 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 September 30, 2021.

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 September 30, 2021.

2021 Audit: The Board discussed the requirements for an audit.

Following review and discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Board authorized the solicitation of audit proposals. The Board further authorize Director Mulshine to sign 2021 Audit Engagement letter, subject to legal review.

2021 Budget Amendment Hearing: The President opened the public hearing to consider the Resolution to Amend the 2021 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of a Resolution to Amend the 2021 Budget and the date, time and place of the public hearing was made in a newspaper having general

RECORD OF PROCEEDINGS

circulation within the District. No written objections were received prior to this public hearing. No public comments were received, and the public hearing was closed.

Following review and discussion, Director Spencer moved to adopt the Resolution to Amend 2021 Budget, Director Smith seconded the motion and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-02 to Amend the 2021 Budget. A copy of the adopted Resolution is attached hereto and incorporated herein by this reference.

2022 Budget Hearing: The President opened the public hearing to consider the proposed 2022 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of the 2022 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to this public hearing. No public comments were received and the public hearing was closed.

Ms. Wheeler reviewed the estimated 2021 expenditures and the proposed 2022 expenditures with the Board.

Following discussion, the Board considered the adoption of the Resolution No. 2021-11-03 to Adopt the 2022 Budget and Appropriate Sums of Money and Resolution No. 2021-11-04 to Set Mill Levies, for the General Fund at 50.000 Mills, Debt Service Fund at 0.000 Mills and Other Funds at 0.000 Mills for a total Mill Levy of 50.000. Upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Resolutions were adopted, as discussed, and execution of the Certification of Budget and Certification of Mill Levies was authorized, subject to receipt of final Certification of Assessed Valuation from the county on or before December 10, 2021. Ms. Ripko was authorized to transmit the Certification of Mill Levies to the Board of County Commissioners of Arapahoe County not later than December 15, 2021. Ms. Ripko was also authorized to transmit the Certification of Budget to the Division of Local Government not later than January 30, 2022. Copies of the adopted Resolutions are attached to these minutes and incorporated herein by this reference.

DLG-70 Mill Levy Certification Form: The Board considered authorizing the District Manager to prepare and sign the DLG-70 Mill Levy Certification form for certification to the Board of County Commissioners and other interested parties.

RECORD OF PROCEEDINGS

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Spencer and, upon vote, unanimously carried, the Board authorized the District Manager to prepare and sign the DLG-70 Mill Levy Certification form for certification to the Board of County Commissioners and other interested parties.

2023 Budget Public Hearing: The Board entered into discussion regarding setting the date for a Public Hearing to adopt the 2023 Budget.

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Spencer and, upon vote, unanimously carried, the Board determined to hold the public hearing to consider adoption of the 2023 Budget on October 24, 2022.

LEGAL MATTERS

Resolution No. 2021-12-02; Calling a Regular Election for Directors on May 3, 2023, Appointing the Designating Election Official (“DEO”), and Authorizing the DEO to Perform all Tasks Required for the Conduct of Mail Ballot Election: Attorney Cortese discussed with the Board Resolution No. 2021-12-02; Calling a Regular Election for Directors on May 3, 2023, Appointing the DEO, and Authorizing the DEO to Perform all Tasks Required for the Conduct of Mail Ballot Election.

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Smith and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-02; Calling a Regular Election for Directors on May 3, 2022, Appointing the DEO, and Authorizing the DEO to Perform all Tasks Required for the Conduct of Mail Ballot Election.

Resolution No. 2021-12-03; 2022 Annual Administrative Matters Resolution: The Board reviewed Resolution No. 2021-12-03; 2022 Annual Administrative Matters Resolution.

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-03; 2022 Annual Administrative Matters Resolution.

Resolution No. 2021-12-04; Amended and Restated Meeting Resolution: The Board reviewed Resolution No. 2021-12-04; Amended and Restated Meeting Resolution.

RECORD OF PROCEEDINGS

Following discussion, upon motion duly made by Director Mulshine, seconded by Director Spencer and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-04; Amended and Restated Meeting Resolution.

Resolution No. 2021-12-05; Second Amendment to 2020 Funding and Reimbursement Agreement and Issuance of Subordinate Note: The Board reviewed Resolution No. 2021-12-05; Second Amendment to 2020 Funding and Reimbursement Agreement and Issuance of Subordinate Note.

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-05; Second Amendment to 2020 Funding and Reimbursement Agreement and Issuance of Subordinate Note.

Resolution No. 2021-12-06; Second Amendment to Improvement Acquisition, Advance and Reimbursement Agreement and Issuance of Subordinate Note: The Board reviewed Resolution No. 2021-12-06; Second Amendment to Improvement Acquisition, Advance and Reimbursement Agreement and Issuance of Subordinate Note.

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-06; Second Amendment to Improvement Acquisition, Advance and Reimbursement Agreement and Issuance of Subordinate Note.

OTHER BUSINESS

December 27, 2021 Meeting: Following discussion, the Board determined to cancel the December 27, 2021 meeting.

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 Spencer, and upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: _____
Secretary for the Meeting

BASHAM & LUCAS DESIGN GROUP
AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 11 day of February 2022, by and between MOUNTAIN BROOK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "Client"), and BASHAM & LUCAS DESIGN GROUP, INC. ("BLDG").

1. SCOPE OF WORK

BLDG shall perform the services limited to and specifically defined in the Proposal Outline ("Proposal" or "Scope of Services") attached hereto as Exhibit "A" and shall invoice the Client in accordance with this Agreement. BLDG will provide additional services under this Agreement as requested by the Client in writing subject to acceptance by BLDG. Client will be invoiced for additional services at BLDG's standard rates or as mutually agreed upon, including but not limited to, re-reviews, re-inspections, re-tests, stand-by time, scope changes, services outside normal business hours or services provided beyond the estimated project duration. The Proposal shall be valid for ninety (90) days unless otherwise stated. Once the Proposal is accepted as evidenced by Client's signature to this Agreement, this Agreement shall apply to all services performed.

Notwithstanding any other provision of this Agreement, BLDG shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with work or activities at the project site, for the acts or omissions of any persons performing any construction work or undertaking any related activities at the project site, provided such person is not employed or otherwise engaged by BLDG, or for the failure of any of them to carry out any construction work or perform construction activities in accordance with their contractual obligations, including, but not limited to, the requirements of any drawings, specifications or other documents prepared by BLDG.

The review of contractor submittals (for example, shop drawings or project samples) is not included in BLDG's Scope of Services. If such services are to be provided as additional services agreed to by BLDG and the Client, the review is conducted only for the limited purpose of checking for conformance with information given and the design concept expressed in the construction drawings and specifications prepared by BLDG (or by others if so set forth in the Scope of Services) and is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the contractor, all of which remain the responsibility of the contractor to the extent required by its contract. BLDG's review is not a peer review and shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences, or procedures. BLDG's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the drawings, specifications and other documents applicable to the contractor's obligations, BLDG shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the drawings, specifications and other

documents prepared by BLDG.

Neither site visits for any purpose nor the observation by BLDG of any contractor's work are included in BLDG's scope of services unless specifically set forth in the Proposal. If BLDG is engaged to visit the site and conduct observations of a contractor's work, BLDG shall provide such services at the intervals agreed with Client in writing (including if agreed with Client in writing on a full-time basis) (or if no such interval is agreed upon in writing, then at such intervals as BLDG deems appropriate), subject to any limitations on the number of such visits set forth in writing. The purpose of such observations is to become generally familiar with the progress and quality of the construction work or described in the drawings, specifications or other documents specifically identified by the parties and to determine, in general, if such construction work is proceeding in accordance with such drawings, specifications or other identified documents. BLDG shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such construction work. On the basis of such on-site observations as an architect, BLDG shall keep Client informed of the progress and quality of such construction work and shall endeavor to guard the Client against defects and deficiencies in such work of contractor and has the right to authority to reject work that does not conform to the construction documents. If BLDG's scope of services includes providing such observation services on a full-time basis, BLDG shall endeavor to provide further information to the Client concerning BLDG-observed defects and deficiencies in the work of such contractor, but the furnishing of such full-time services shall not modify the rights, responsibilities or obligations of BLDG as described elsewhere in this Agreement, including this paragraph. If review of a builder's draw requests and certification for payment is within BLDG's Scope of Services, BLDG's certification for payment shall constitute a representation to the Client, based on the BLDG's periodic observations at the site and on the data comprising the contractor's application for payment, that the work has progressed to the point indicated and that, to the best of the BLDG's knowledge, information and belief, is generally in accord with the construction documents. The issuance of a certificate for payment shall further constitute a representation that the contractor is entitled to payment in the amount certified. However, the issuance of a certificate for payment shall not be a representation that the BLDG has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed construction means, methods, techniques, sequences or procedures (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the owner to substantiate the contractor's right to payment or (4) ascertained how or for what purpose the contractor has used money previously paid on account of the contract sum.

2. CLIENT RESPONSIBILITIES

The Client has provided full information regarding requirements for the Project, including the Client's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Client shall establish and update an overall budget for the Project, including the construction cost, the Client's other costs and reasonable contingencies related to all of these costs. If requested by BLDG, the Client shall furnish evidence that it has appropriated funds to fulfill the Client's obligations under this Agreement.

The Client has furnished all information reasonably requested by BLDG including but not

limited to surveys describing physical characteristics, and utility locations for the site of the Project, and a written legal description of the site.

The Client has furnished the services of geotechnical engineers as necessary for BLDG's performance pursuant to this Agreement.

The Client shall furnish chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law, construction documents or when reasonably necessary and requested by BLDG provided such documents are necessary for BLDG's performance pursuant to this Agreement.

The Client shall furnish all publicly available legal documents, including but not limited to, proof of ownership of the Project and authority to execute this Agreement, evidence of appropriation of funds, and relevant insurance documentation as may be required by this Agreement and necessary at any time for the Project.

The services, information, surveys and reports required shall be furnished at the Client's expense, and BLDG shall be entitled to rely upon the accuracy and completeness thereof. Prompt written notice shall be given by the Client to BLDG if the Client becomes aware of any fault or defect in the Project. BLDG will provide prompt written notice to the Client if BLDG becomes aware of any fault or defect in the Project and of any fault or defect in any information or documents provided by Client.

Any proposed language for certificates or certifications requested of BLDG or any of BLDG's consultants shall be submitted to BLDG for review and approval at least fourteen (14) days prior to execution of same. The Client shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

3. RIGHT OF ENTRY

The Client, at its sole cost and expense, will provide for reasonable right of entry of BLDG personnel to perform the scope of work and all necessary equipment to the project site or sites, in order to complete the work.

4. COMPENSATION & INVOICES

BLDG shall be paid an amount not to exceed \$180,000.00, as set forth in Exhibit A attached hereto and incorporated herein by reference, and in accordance with the procedures set forth in this Section. BLDG shall be entitled to receive additional compensation for any change in services provided to the Client provided that BLDG and the Client execute an amendment to this Agreement authorizing the change in services and the payment of additional compensation to BLDG.

BLDG will submit invoices to Client monthly and a final bill upon completion of services. There shall be no retainage. BLDG shall furnish insurance certificates, lien waivers, affidavits or other reasonably available documents as and when requested by Client.

Payment is due within thirty (30) days after the receipt of invoice. Interest charges on unpaid

amounts will start to accrue thirty (30) days from the invoice due date. Client agrees to pay an interest charge equal to one-half percent (1½%) per month on past due amounts. BLDG shall be entitled to recover from Client any and all actual costs incurred, including attorneys' fees ("Collection Costs") in connection with its efforts to collect past due sums.

In the event that the Client disputes any items billed in an invoice for any reason, including, but not limited to BLDG's failure to provide services in accordance with this Agreement, the Client shall notify BLDG in writing within twenty-five (25) days specifying the complaint and, in the meantime, all amounts that Client does not dispute shall be paid as provided herein. Any dispute not raised within such twenty-five (25) day period is waived by the Client, except where Client could not reasonably have become aware of such dispute in that time. The Client's failure to make timely payment due under this Agreement in accordance with the terms of this Agreement shall constitute a material breach of this Agreement and BLDG shall be entitled, upon seven (7) days written notice to Client to terminate this Agreement or, at its option, suspend its performance without liability to Client for such suspension until all sums then due under this Agreement have been paid.

If BLDG is called upon by Client to testify or produce records in an action at law, equity, arbitration, or in a pre-trial hearing or conference, as to any work performed by anyone in connection with the Project, BLDG shall be paid by the Client for all time spent while testifying and preparing therefor and costs incurred in producing such records at a rate of 1.5 times BLDG's standard rates.

5. SAFETY

BLDG is only responsible for the safety on site of its own employees. However, this shall not be construed to relieve the Client or any of its contractors from their responsibilities for maintaining a safe jobsite. Neither the professional activities of BLDG, nor the presence of BLDG's employees and shall be construed to imply BLDG has any responsibility for job safety or any activities on site performed by personnel other than BLDG's employees.

6. STANDARD OF CARE

Any and all services performed by BLDG under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions in the location where the services are to be performed.

7. INSURANCE & GENERAL LIABILITY

(A) Minimum Scope and Limits of Insurance. BLDG 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 to provide protection from claims that may arise out of or result from BLDG's performance or obligations pursuant to this Agreement, whether such performance is by BLDG, by anyone directly or indirectly employed by BLDG, or by anyone who acts on behalf of BLDG, including any subcontractors of BLDG. The minimum insurance coverages and limits to be acquired by BLDG 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

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.

(2) Workmen's Compensation and Employer Liability Insurance

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

- (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 BLDG and/or its subcontractors in the performance of the Services.

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 Client and its directors, officers, employees, and agents.

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

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

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

F. Subcontractor Insurance. If BLDG subcontracts any portion(s) of the Services, BLDG shall require that each subcontractor retained by BLDG to acquire and maintain insurance coverage as set forth in this Section. BLDG shall require each subcontractor to provide to BLDG insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section. BLDG shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. BLDG shall, upon Client request, submit them to the Client 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 shall be construed as limiting in any way the indemnification provision contained in Section 14 (Indemnification) hereof, or any rights, immunities and protections provided to the Client by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., or the extent to which BLDG may be held responsible for payments of damages to persons or property.

8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, shall be governed by and interpreted in accordance with the laws of the State of Colorado.

9. INSPECTION OF SERVICES; TERMINATION

The Client may inspect the services provided at any time throughout the term of this Agreement and shall notify BLDG if, in the Client's reasonable discretion, any or all Services are not provided in accordance with this Agreement. Failure by BLDG to properly provide the services required by this Agreement after written notice and an opportunity to cure shall constitute a default hereunder. In such case, Client shall provide written notice of said default to BLDG. BLDG shall have ten (10) days or such other amount of time specified by Client to cure the default unless otherwise agreed to by the parties. If BLDG fails to cure the default within the time period provided, the Client shall be entitled to pursue all remedies provided by law and in equity, including specific performance, and to recover all costs and reasonable attorneys' fees incurred in any suit or claim brought by Client to enforce the terms of this Agreement.

Client shall have the right to terminate this Agreement, with or without cause, at any time, by providing written notice to BLDG of such termination and specifying the effective date of termination thereof. BLDG shall be entitled to receive compensation in accordance with this Agreement for any satisfactory work performed pursuant to the terms of this Agreement and reasonable fees and costs for demobilization prior to the effective date of termination. BLDG may terminate this Agreement, with cause, by delivery of written notice of termination to the Client at least thirty (30) days prior to the effective date of termination. Such notice shall specify the extent of termination and the effective date. BLDG 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 BLDG, BLDG shall transfer title and deliver to the Client all Work Product, as defined and described herein.. The expenses of termination or suspension shall include all direct costs of BLDG in completing such analyses, records, and reports and shall be due and payable by Client promptly upon invoice from BLDG, together with all reasonable termination costs and expenses.

10. ASSIGNS

This Agreement may not be assigned by either party without the prior written consent of the other party. To the extent consent is required it shall not be unreasonably withheld.

11. OWNERSHIP AND USE OF DOCUMENTS

Any and all Work Product, as such term is defined herein, created, prepared, and/or produced by BLDG pursuant to this Agreement shall become the sole and exclusive property of Client under all circumstances, whether or not BLDG completes the services hereunder or the Agreement is terminated. Upon request by Client, all Work Product shall be delivered to Client in hard copy and in an electronic format compatible to Client's computer applications at BLDG's expense. Upon payment to BLDG for the services hereunder, Client shall have the right to use and re-use all Work Product resulting from BLDG's efforts performed pursuant to this Agreement in any way or manner deemed appropriate by Client. Any modification of the documents, without written verification, completion, or adaptation by BLDG, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to BLDG or to its officers, directors, members, partners, agents, employees, and subcontractors. Client's use of any or all such Work Product for its own purposes shall not be a violation of any patent or copyright thereof. BLDG agrees that the copyright and other intellectual property rights (as are applicable) in and to any component of the Work Product, and to the design and content of the Work Product, are hereby assigned and shall belong exclusively to Client. Upon request by Client, BLDG shall promptly execute whatever legal documents or other materials that Client deems necessary to secure, perfect, or substantiate Client's exclusive rights and interest in any Work Product created pursuant to this Agreement. For purposes of this Agreement, "Work Product" includes, but is not limited to, any and all finished or unfinished design, development and/or construction documents, drawings, reports, writings, data, studies, graphics, maps, plans, specifications, electronic files and other documents, materials and information, in every form and/or format, which BLDG prepared and/or used in connection with this Agreement. All drawings, specifications and other documents prepared by BLDG pursuant to this Agreement are not intended or represented to be suitable for reuse by Client or others on extensions of the work or on any other project. Notwithstanding the foregoing, Client's ownership of the BLDG's Instruments of Service and the rights therein does not include design details developed by BLDG or BLDG's Subconsultants prior to the commencement of this Project and used by BLDG routinely and over time in its design practice (collectively, "Standard Details").

Client agrees that all reports and other work furnished to the Client or its agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose whatsoever. BLDG will retain all pertinent records relating to the services performed for a period of three (3) years following submission of the report, during which period the records will be made available to the Client upon request.

Client understands that any BLDG document or communication transmitted by the Internet or via other electronic means or storage media may not be completely confidential due to the inherent nature of Internet traffic and electronic documents; the final hard copy document from BLDG shall be the definitive document as between the parties and not any electronic version thereof.

In consideration of BLDG's agreement to deliver the BLDG Documents and BLDG Electronic Files, Client agrees to the fullest extent permitted by law to hold harmless and indemnify BLDG from and against any and all claims, liabilities, suits, demands, damages, losses, judgments, payments, awards, and expenses, including but not limited to attorney's fees and costs, arising out of, or in any way connected with, any breach or default in the performance or any obligation

of Client under this Section 11 of the Agreement, including but not limited to, the modification, misinterpretation, use, misuse, or reuse by Client or by others of the BLDG Documents or BLDG Electronic Files provided by BLDG. The foregoing indemnification applies, without limitation, to any use of the BLDG Documents or BLDG Electronic Files on other projects, on the current project, for additions to the current project, or for completion of the current project by others.

To the extent that the Clients uses the BLDG Documents after the completion of BLDG work on the Project or otherwise uses the BLDG Documents without the express consent of BLDG, the Client hereby releases BLDG and any of BLDG's sub-consultant(s) from all claims and causes of action arising from Client's use of the BLDG Documents. Client further agrees to indemnify and hold harmless BLDG and any of its sub-consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Client's use of the BLDG Documents as set forth in this paragraph.

12. FAILURE TO FOLLOW RECOMMENDATIONS

BLDG will not be held liable for any issues, problems or damages that may occur resulting directly from Client's failure to follow BLDG's written recommendations.

13. LIMITATION OF LIABILITY

Client agrees that the work and services created or performed pursuant to this Agreement are for the sole and exclusive use of Client and are not intended for the benefit, guidance or reliance of any third parties. This Agreement and the services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction. Notwithstanding anything to the contrary contained in this Agreement or provided for under any applicable law, neither BLDG nor Client shall be liable to the other party, either in contract or in tort, for any consequential, incidental, indirect, special or punitive damages, including without limitation any delays damages, loss of future revenue, income or profits or any diminution of value, financing costs or costs of lost opportunities relating to this Agreement, the services or the Project, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such other party.

14. INDEMNIFICATION BY BLDG

BLDG, on a comparative fault basis shall indemnify, assume all responsibility for, and hold harmless the Client 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, from the negligent acts or omissions of BLDG or any of its subcontractors, agents or employees, in connection with BLDG's performance, duties, and obligations pursuant to this Agreement; provided, however, that BLDG shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the Client or any third party under the control or supervision of the Client. If BLDG is providing architectural, engineering, surveying, or other design services, then the extent of BLDG's obligation to indemnify or hold harmless the Client may be determined only after BLDG's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between BLDG and the Client.

The obligations of the indemnifications extended by BLDG to the Client under this Section shall survive termination or expiration of this Agreement.

15. NON-COMPETE AND NON-SOLICITATION

Client agrees and acknowledges that BLDG's employees maintain specialized knowledge and relationships that are valuable to BLDG's business operations and that BLDG is entitled to protect its business interests accordingly. As such, Client understands and agrees that it is strictly prohibited from using its unique position and access to BLDG employees, including the information provided by BLDG under this Agreement, to the detriment of BLDG as described in this Section.

Without limiting any other provisions herein, during the term of this Agreement and for a period of twelve (12) months after the termination of this Agreement (for any reason), Client shall not, either directly or indirectly, individually or as an employee, shareholder, agent, independent contractor, partner, officer or director of any entity: (i) solicit or seek to solicit, hire away, or otherwise interfere with the employment of any of BLDG's employees that worked on the Project or any former employee of BLDG that worked on the Project whose employment with BLDG terminated less than 180 days prior to said solicitation, hiring or interference; (ii) enter into, or attempt to enter into, any relationship with BLDG's employees that are assigned to or worked on the Project; or (iii) dissuade or attempt to dissuade any of BLDG's employees from continuing their relationship with BLDG.

- a) Client acknowledges that: (i) the terms contained in this Section are necessary for the reasonable and proper protection of BLDG's business interests; (ii) each and every covenant and restriction contained in this Section is reasonable in respect of such matter; and (iii) BLDG has been induced to enter into this Agreement in part due to Client's representations that it shall abide by and be bound by each of the aforesaid covenants and restrictions.
- b) If any court or tribunal of competent jurisdiction determines that the duration or any other aspect of the provisions of this Section is unenforceable in accordance with its terms in a particular jurisdiction, the provisions of this Section, as the case may be, shall not terminate, but shall be deemed amended to the minimum extent necessary to render them valid and enforceable in such jurisdiction and such court or tribunal is hereby authorized and directed to amend this Section to the least extent necessary to make such Section valid and enforceable in said jurisdiction to the maximum extent permitted by law.
- c) The terms of this Section shall survive the termination of this Agreement (for any reason).

16. HAZARDOUS MATERIALS/ENVIRONMENTAL

It is acknowledged by both parties that BLDG's Scope of Services does not include any services related to asbestos or hazardous or toxic materials unless specifically identified in our Scope of Services. In the event BLDG or any other party encounters asbestos or hazardous materials at the jobsite, or should it become known in any adjacent areas that may affect the performance of BLDG's services, BLDG may, without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultants

or contractors to identify, abate and/or remove the asbestos, hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations. In addition, to the extent permitted by law, the Client shall hold harmless, defend and indemnify BLDG, from and against any and all third party claims arising, in whole or in part, out of the discovery, presence, handling, removal or disposal of, or exposure of persons to, any hazardous materials in any form at the Project site, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB), bacteria, mold, fungi, lead based paints or other similar materials or other toxic substances, infectious materials, or contaminants; provided, however, that Client shall not be liable for any claim, loss, damage, injury or liability caused, directly or indirectly, by the negligence or fault of BLDG.

Further, the parties acknowledge and agree that mold, mildew, moisture and related issues are, to some extent, inherent in all climates. To the maximum extent permitted by law, the parties agree that BLDG shall not be liable for, and Client, to the extent permitted by law, will indemnify and hold BLDG harmless from and against, any third party claims, disputes or liabilities arising from the existence of or formation of mold, mildew or moisture related issues at the Project site and from and against any and all third party claims arising, in whole or in part, out of the discovery, formation or presence, of mold, mildew or moisture related issues at the Project site, provided that such claim, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and further provided, that Client shall not be liable for any claim, loss, damage, injury or liability caused, directly or indirectly, by the negligence or fault of BLDG.

17. DEFINITIONS

As used herein, the following words and their derivative words or phrases have the meanings indicated, unless otherwise specified in the various sections of this Agreement.

AGREEMENT: means the Agreement between the parties, which shall describe and govern Client's engagement of BLDG to provide services in connection with the project or work identified in the proposal (Proposal or Scope of Services), and consists of the Proposal or Scope of Services, this Agreement.

CERTIFY, CERTIFICATION: BLDG's opinions are based on its observation of conditions, knowledge, information and beliefs. It is expressly understood such opinions relieve no other party of any responsibility or obligation he or she has accepted by contract or custom.

ESTIMATE: An opinion of probable cost for services made by BLDG. The accuracy of probable cost for services opinion cannot be guaranteed.

INSPECT, INSPECTION: The visual observation of certain aspects of construction to permit BLDG to render its professional opinion as to whether the contractor is performing the services described in the Proposal/Scope of Services in a manner indicating that, when completed, the services described in the Proposal/Scope of Services will be in general accordance with the approved documents. Such observations do not relieve any party from fulfillment of their customary and contractual responsibilities and obligations.

PROJECT: The project and work identified in the Proposal/Scope of Services.

18. MISCELLANEOUS

AMENDMENT: This Agreement may be amended, modified or supplemented, but only in writing signed by each of the parties hereto.

WAIVERS: The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

SEVERABILITY: If any provision or sub-provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or sub-provisions contained herein shall not be affected thereby.

INTEGRATION: This Agreement represents the entire understanding and agreement among the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and among such parties.

SOVEREIGN 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 Client or BLDG 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. .

CONTROLLING DOCUMENT: The provisions of this Agreement shall be controlling when in conflict with any other contract document.

SURVIVAL: All of Client's and BLDG's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Agreement, will survive final payment, completion, and acceptance of the work or termination or completion of the Agreement or termination of the services of BLDG.

ATTORNEY'S 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.

BINDING AGREEMENT: This Agreement shall inure to and be binding upon the parties hereto and their successors and permitted assigns.

NO THIRD PARTY BENEFICIARIES: Nothing contained in this Agreement shall create a contractual relationship with, a right of reliance in or a cause of action in favor of a third party, including the project owner (if not the Client) and any contractor, subcontractor, vendor or material supplier, against either the Client or BLDG.

APPROPRIATIONS: The Client does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Client's payment obligations hereunder, including for any changes in services authorized pursuant to an amendment to this Agreement are subject to annual appropriations. The Client 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 Client.

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 described in the proposal; 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 Client as set forth above. 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.

19. INDEPENDENT CONTRACTOR

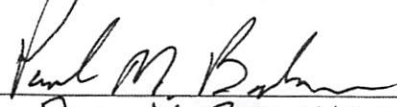
BLDG is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the Client other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the Client and any of BLDG's employees. Neither BLDG nor any of BLDG's employees are or shall be deemed employees of the Client. BLDG is not, and shall not act as, the agent of the Client. The employees who assist BLDG the performance of the services shall at all times be under BLDG's exclusive direction and control and shall be employees of BLDG and not employees of the Client. BLDG shall pay all wages, salaries, and other amounts due BLDG'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, BLDG has sole authority and responsibility to employ, discharge, and otherwise control BLDG's employees. BLDG has sole authority and responsibility as principal for BLDG's agents, employees, subcontractors and all others BLDG hires to perform or assist in performing the services.

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

MOUNTAIN BROOK METROPOLITAN DISTRICT


By: Kevin Mulshine
Its: _____

BASHAM & LUCAS DESIGN GROUP, INC.


By: PAUL M. BASHAM
Its: PRES.

pmB

EXHIBIT A
PROPOSAL/SCOPE OF SERVICES

We intend to provide the architectural construction documents, interior design, structural, mechanical & electrical engineering as well as the landscape architectural concept, hardscape and signage construction documents for the amenity area. Our scope is based on the design concepts we have done to date. Our scope of services is outlined below.

Part 1: \$29,100 _____

Amenity Area Design Development

Based upon the approved Schematic Design as provided previously, we shall commence Design Development to further refine the scope and nature of the project.

- A. We shall incorporate all your comments and changes from the conceptual schematic design with the intent to create a final set of design documents that will be the basis for all the construction documents. These CAD drawings shall include preliminary structural and mechanical engineering, final floor plan configuration layout and preliminary finish specifications.
- B. We shall meet with all the applicable Longmont government agencies including the building department and fire marshal regarding the design of the building to discuss any concerns or comments they may have prior to final submission of architectural and engineering plans for their review and permit.
- C. Deliverables for this scope of work shall include:
 1. Architectural site plan
 2. Floor plan
 3. Exterior elevation(s)
 4. Building Cross Section(s)
 5. Roof Plan
 6. Reflected Ceiling Plan
 7. Hardscape design development drawings

Part 2: \$36,400 _____

Architectural Construction Documents of the Clubhouse

- A. Architectural construction documents to include the following:
 1. Architectural site plan
 2. Floor plan(s)
 3. Exterior elevations
 4. Building cross section(s)
 5. Wall section(s) and details
 6. Window/door schedules

Part 3: \$9,200 _____

Structural Construction Documents as per The International Building Code (CTL/Thompson Inc. Fort Collins, CO)

1. Foundation design, drawing, and details based on the geotechnical investigation report
2. Slab design and provide a slab plan. Our design covers the interior slab and the slab at the covered front porch. All additional slabs are outside of our scope of work.
3. Design roof rafters (where required), roof beams, columns/posts for vertical loads
4. Design of tall wall framing at aerobics studio & main lodge.
5. Design of window & door headers, trimmers and king studs.
6. Design and detail critical framing connections.
7. Design of foundation support for exterior fireplace

FMB

8. Design of shear walls and hold downs to resist design lateral loads.
9. Design specialty shear walls or moment frames where required due to lack of shear walls
10. Material specifications shown on plans

Part 4: \$29,800 _____

Mechanical, Electrical and Plumbing Design (Prof. Engineering Consultants, CO)

1. Power distribution floor plan
2. Electrical meter center plans
3. Schedules/calculations/load and elevations
4. Electrical specifications
5. HVAC floor plan(s), schedule and details
6. Equipment sizing and specifying.
7. Plumbing plans and specifications
8. Product planning and fixture selection in conjunction with our interior designer for decorative interior design.

Part 5: \$28,800 _____

Interior Design Construction Documents (Provide by Lita Dirks Design Studio, Denver CO)

We shall coordinate our design efforts with the interior designer to create a holistic set of drawings.

We shall provide:

1. Develop and draw space programming requirements for the new Clubhouse.
2. Design, draw, and implement "golf smart" layout of interior rooms and spaces.
3. Space planning consultation including operational & flow and efficient design/use of spaces.
4. Interior Architectural Design including spatial and character design elements.
5. Selection and/or design of interior floor finishes including wood, tile, stone, and carpet.
6. Selection and/or design of interior wall finishes including wood, tile, stone, wallcovering, metal, paint, and any other appropriate materials.
7. Selection and/or design of interior ceiling finishes including wood or other cladding, paint, specialty acoustical surfaces (if required) and other appropriate finishes.
8. Selection and/or design of finish materials for applied and attached cabinetry and millwork including stone, leather, specialty glass, mirror, and/or decorative metals.
9. Selection of cabinet and plumbing fixture finish color.
10. Design and detail of interior millwork running trim.
11. Design of interior lighting and selection of decorative light fixtures.
12. Selection of finishes for architectural specified door hardware.

Note: Furniture, Fixture & Equipment selection & procurement has not been included.

Part 6: \$13,800 _____

Amenity Area Hardscape Construction Documents

- A. Pool Area Construction Documents
 1. Coordination with pool engineer for intent of design. Actual design, engineering, and construction documents relative to the construction of the swimming pool will be performed by a registered Colorado pool engineer under separate contract.
 2. Final integration into the pool area site plan.
- B. Final elevations and details of hardscape elements such as:
 1. Shade pavilions, trellis and arbors.
 2. Planters & decks
 3. Screen wall and security fencing details
 4. Pickleball court details
 5. Elevated deck walk details over the basin

PMB

Part 7: \$4,200 _____

Amenity Area Site Electrical Engineering

- A. Product planning and fixture selection for outdoor decorative lighting at the following areas:
 - 1. Swimming pool area (does not include "code" level for legal night swim).
 - 2. Outdoor patio areas
 - 3. Parking lot & landscape areas
 - 4. Pickleball Court lighting
- B. Actual engineering design reflecting feeder sizes and circuitry distribution shall be by our Electrical Engineer.
- C. Site photometric lighting layout denoting light level intensities throughout the lit areas.

Part 8: \$6,500 _____

Amenity Area & Park Landscape Architecture Concept Only

- A. Plant material suggestion
- B. Site Plan concept

Note: Permit code plan and final planting plans for landscape shall be provided by civil engineer.

Soil testing and/or amendments may be required to determine the quality of soil that the landscape will be installed in. If testing is necessary, we have not included any testing within our proposal. Civil engineer is responsible for sub-surface drainage with the intent to prevent building settlement.

Part 9: \$1,800 _____

Lightening Mitigation Diagram

- A. We shall provide a diagrammatic lightening mitigation plan that can be used as a guide for bidding purposes. The intent would be to provide guidance, coverage area and specification for a sub-contractor to prepare their engineered system design for review and approval.

Part 10: \$3,100 _____

Exterior Color /Material Selection for Amenity Area Improvements

- A. Color chart and location drawings
- B. Color chip paint selection
- C. Owner coordination and Contractor distribution

Part 11: \$4,900 _____

Amenity Area Signage

- A. We shall provide the design documents for the following signs:
 - 1. Pool rules
 - 2. Swim club hours
 - 3. Men/Women's restroom sign
 - 4. Resident check in
 - 5. Amenity center entrance sign face, graphic only

Our Schematic Drawings shall denote design intent and descriptive specifications for sign contractor to bid. Sign contractor shall provide detailed shop drawings detailing methods of construction. Vector files are not included in our scope.

Part 12: \$4,900 _____

Color Graphic Perspective Renderings

We intend to provide (3) color graphic perspective renderings of the amenity area. These shall be digital renderings of multiple views based on the current design documents. We shall provide (2) rounds of edits and the completed high resolution digital file. Color prints have not been included.

Part 13: \$7,000 _____ (NTE allowance)

PMB

Reimbursable Expenses

- A. We shall provide (2) sets of drawings at Schematic design, Design Development, 70% review and final review. We shall provide (2) spec books at final review. Additional printing for permit and bidding are at your expense. Each 24" x 36" sheet costs \$1.25 and spec books shall be \$150 each. Contractor shall be furnished with PDF digital format for drawings.
- B. We will also provide a computer file of the plans and specifications after completion of the job.
- C. All expenses such as bulk printing cost, courier, postage, reproduction cost, long distance calls, etc., shall be billed at direct cost plus 15%.
- D. Travel expenses shall include lodging and mileage invoiced at current Federal Rate.

Meetings Summation

- A. We have included all Teams Meetings and meetings in Jacksonville within our scope.
- B. Longmont meetings shall be \$1,800 per day, per design professional for Jax based designers plus travel expenses.
- C. Site meetings by local engineering professionals shall be hourly based on engineer's rate.

END OF SCOPE**Assumptions and Exclusions:**

- 1. Geotechnical services are not included in this proposal although geotechnical data will be required and provided by the owner.
- 2. The proposal does not include utility, site grading, site geometry, or storm water design around the amenity area.
- 3. This proposal does not include any variances if required.
- 4. Building permitting and submittal shall be done by others.
- 5. All components of this project will be designed at one time and presented to the client for approval.
- 6. Construction management or supervision is not included in this contract.
- 7. We shall include (1) set of review prints for review at conceptual phase, 30% review, 70% review and final review. All other printing cost by developer.
- 8. We have included Longmont meetings within our scope to present design development and final drawings (travel expenses are reimbursable).
- 9. Our landscape concept is only to convey intent; final planting plans shall be provided by others under separate contract.
- 10. It is understood that this project will be designed in concert with Landmark Homes and their continual review of the drawings. Any value engineering changes after 70% shall be additional services.
- 11. Building shall be slab on grade construction; no piling design has been included if required.

Not included in our Scope of Services:

- A. Civil, Environmental or Geo-technical Engineering
- B. Materials or construction testing
- C. Shop Drawing Preparation
- D. As-built construction document
- E. Pre-construction cost analysis during document preparation.
- F. Construction Administration including project representation and construction observation on a full-time basis or any site inspections.
- G. Offsite drainage & utilities design, permitting or detailed drainage throughout the site.
- H. Any construction cost
- I. LEED Accreditation
- J. Audio/visual systems, security system design or any low voltage system requirements
- K. Site electrical or sleeving plans

PMB

- L. F.F.& E. selection or procurement
- M. Construction Administration
- N. Expansion Joint dimension plans
- O. Emergency generator back-up design
- P. Swimming Pool Engineering
- Q. Fire Protection Design

PMB

Project Name: Mountain Brook Metro District - Engineering Services
Project No.: 284.001
Date: November 11, 2021

AGREEMENT FOR PROFESSIONAL SERVICES

1. PARTIES. The parties to this AGREEMENT are PERMONTES GROUP, INC. (PG) and Mountain Brook Metropolitan District - Board of Directors
700 Ken Pratt Blvd, Suite #113
Longmont, CO 80501 (Client).

There are no intended third-party beneficiaries to this Agreement.

2. RECITALS AND PURPOSE. Client desires to retain the services of PG. PG agrees to provide and perform services as more fully described by specific proposals to be attached and signed by the Client. The purpose of this AGREEMENT is to set forth the terms and conditions under which each party agrees to perform.

3. DESCRIPTION AND SCOPE OF SERVICES TO BE PROVIDED BY PERMONTES GROUP, INC.

Mountain Brook Metro District Engineering Services

4. SERVICES TO BE PROVIDED BY CLIENT.

By specific proposal.

5. The attached "Standard Provisions of Agreement for Professional Services" is made a part of this AGREEMENT.

6. Services include the following number of meeting hours: (by proposal). Meeting hours in excess of those specified will be charged on an hourly rate basis. Consultant fees for municipal or county government processing are based on one continuous process unless stated otherwise in paragraph 3. In the event the processing schedule is interrupted or repeated, the fees for resulting additional consultant time, are in addition to the fees agreed upon in this AGREEMENT.

7. TIME. It is estimated that the services will be performed and the job completed on or before (by proposal) based on a starting date of (by proposal). PG will put forth its best efforts to complete the services within the time frame set forth herein. However, PG cannot guarantee compliance of the completion date due to unknown conditions or requirements that may exist.

8. FEES.

- 8.1 Client agrees to pay Permontes Group:

() A fixed fee of _____.

(X) On an hourly basis for each and all services rendered in accordance with the attached PG rate schedule. It is estimated that the fee for services rendered, exclusive of out-of-pocket expenses, will be (by proposal). ESTIMATES ARE NOT A GUARANTY AND ARE NOT TO BE CONSTRUED AS AN AGREEMENT TO PERFORM ON A FIXED PRICE BASIS. In the event additional services of PG are required or requested, client shall be advised of the need for such additional services prior to performance of additional services.

() On an hourly basis with a not-to-exceed fee of \$ _____.

- 8.2 Client agrees to the following method of payment: All payments due shall be made within 15 days of Client receiving

Project Name: Mountain Brook Metro District - Engineering Services
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Date: November 11, 2021
Page 2

payment for said services or 30 days of receipt of invoice, whichever is shorter. Payments made after that time shall be assessed an interest rate of 1-1/2% per month.

() An initial retainer of \$_____ with balance due on completion.

() Full payment upon completion of project.

(X) Monthly partial payments.

8.3 Client agrees to pay all direct reimbursable expenses such as travel, communications, printing, deliveries, outside services, and sub-consultant services at cost plus 10% for hourly based services. Mileage shall be reimbursed at the rate of \$0.575 per mile.

9. **TERMINATION.** The Client shall be in default of this AGREEMENT upon the occurrence of any of the following mentioned events:

1. Failure to make any payment within 30 days from the date of the invoice. Should the Client, in good faith, dispute a portion of any invoice, it shall be required to make timely payment of the undisputed amount of the invoice, and give notification of the disputed portion of it. Failure to make payment on the undisputed portion shall constitute a default hereunder.
2. Insolvency or bankruptcy of owner, or the making of any assignment for the benefit of creditors or the filing of any petition for bankruptcy or reorganization by Client.
3. The breach of any provision of this AGREEMENT by Client, other than non-payment of monetary sums due hereunder, and the failure by Client to remedy the same within ten (10) days of the receipt of written notice thereof from PG.
4. The breach of any other agreement between PG and the Client.

10. **RIGHT TO STOP WORK.** In lieu of terminating this AGREEMENT as provided in paragraph 9 above, upon the happening of any event of default above mentioned, PG may stop the performance of its work, or the progress of the work, until such time as the default is remedied by payment, and this right to stop work shall be without prejudice to any other legal remedy or right PG may possess. The election by PG to stop work as herein provided shall not be deemed a waiver of **PG's** right to terminate this AGREEMENT. The stoppage of work by PG under this paragraph, shall not be deemed a default by PG of its obligations under this AGREEMENT.

Project Name: Mountain Brook Metro District - Engineering Services
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11. MISCELLANEOUS.

- 11.1 This AGREEMENT FOR PROFESSIONAL SERVICES represents the entire agreement between the parties and all prior negotiation and agreements, whether written or oral, are merged herein and are null and void.
- 11.2 For a period of one year from the date of performance, PG shall correct any defects, errors or omissions attributable to PG in the performance of this AGREEMENT FOR PROFESSIONAL SERVICES, provided that PERMONTES GROUP, INC. is provided written notice itemizing any defects, errors or omissions. Client hereby releases PG from any and all claims, liabilities, causes of action and demands for consequential damages and agrees to limit actual damages or loss of any kind arising from the performance of this AGREEMENT FOR PROFESSIONAL SERVICES to the amount of the fees paid to PG. PG is not responsible for any delays or acts/omissions of any third parties.
- 11.3 If a Client is a partnership, corporation or other legal entity, Client expressly warrants that the individual signing this AGREEMENT FOR PROFESSIONAL SERVICES is fully authorized to sign on behalf of the Client.
- 11.4 Should any dispute arise from services caused by this AGREEMENT which cannot be settled between Permontes Group, Inc. and the client, the dispute shall be decided by arbitration under the Rules of the American Arbitration Association.

DATED: November 11, 2021

PERMONTES GROUP, INC.

BY: 

Melissa Leyba, President

DATED: _____

BY: _____
Signature of Client

See Attached: **"Standard Provisions of Agreement for Professional Services."**

PERMONTES GROUP, INC.
STANDARD PROVISIONS OF AGREEMENT
FOR PROFESSIONAL SERVICES

The Client and PERMONTES GROUP, INC. (PG) agree that the following provisions shall be part of their Agreement.

1. Neither the Client nor PG shall assign its interest in this Agreement without the written consent of the other.

2. Only the services clearly stated in the "Description and Scope of Services" shall be performed for the fees stated in this Agreement. PG shall notify the client in writing of any additional services and fees required, and shall receive written approval to provide such services for the fee before proceeding.

3. **PG's performance hereunder, is contingent upon the absence of, and** PG shall not be responsible for, or be in default hereof, or be deemed to be in default, by reason of, delays in performance by reason of strikes, lock-outs, accidents, "acts of God," and other delays unavoidable or beyond PG's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of Client or Client's agent to furnish information or to approve or disapprove PG's services promptly or due to late or slow, or faulty performance by Client, other contractors, or governmental agencies, the performance of whose work is precedent to or concurrent with the performance PG's services. In the case of the happening of any such delay, the time of completion shall be extended accordingly.

4. In the event that any changes are made in the plans and specifications by the Client or persons other than PG which affects PG's product of services, any and all liability arising out of such changes is waived as against PG and the Client assumes full responsibility for such changes unless Client has given PG prior notice and received from PG written consent for such changes.

5. PG is not responsible and liability is waived by Client as against PG, for use by the Client or any other person, of the plans or drawings not marked final and signed by PG.

6. All tracings, survey notes, and other original documents are instruments of service and shall remain the property of PG, except where by law or precedent these documents become public property. The client will be provided reproducible copies as required.

7. PG's liability to the Client for injury or damage to persons or property arising out of the work performed for the Client and for which legal liability may be found to rest upon PG, other than for professional negligence, will be limited to \$100,000. For any damage on account of professional negligence PG's liability will be limited to a sum not to exceed \$100,000 or PG's fee, whichever is greater. This limitation on recovery for negligence is a knowing and voluntary limitation made by Client and shall apply to Owners, employees and subconsultants of Permontes Group, Inc., in the aggregate.

8. Client shall be presented an itemized billing monthly as the services progress and the net amounts shall be due at the time of billing.

9. Interest of 1-1/2% per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts not paid within 30 days of the billing date. Payment thereafter will be applied first to accrued interest and then to the principal unpaid amount. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the Client.

10. The Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees,

aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions and all other charges not specifically covered by the terms of the Agreement.

11. In the event that any portion of PG's services contract is suspended, abandoned, or terminated, the Client shall pay PG for the services performed on an hourly basis, not to exceed any maximum contract amount specified herein.

12. Any opinion of the Construction Cost prepared by PG represents its judgement as a professional design firm and is supplied for the general guidance of the Client. It is not intended as a warranty upon which Client may rely. Except as specifically provided herein, PG excludes all other warranties, express or implied. Since PG exercises no control over the cost of labor and material, or over competitive bidding or market conditions, PG does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to Client.

13. The Client agrees that the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours.

14. In the performance of its professional services, PG will use that degree of care and skill ordinarily exercised under similar conditions in similar localities and no other warranties, express or implied, are made or intended in any of PG's proposals, contracts, or reports. The Client agrees to defend, indemnify and hold PG harmless from any and all liability, real or alleged, in connection with the performance of services on this project, excepting liability approximately arising solely from the professional negligence of PG.

15. In the event Client fails to pay PG within thirty (30) days after invoices are rendered, the Client agrees that PG shall have the right to declare a default and seek all remedies set forth in this Agreement, including termination of work or termination of this Agreement. Client expressly agrees to hold PG harmless from any liability arising out of **PG's termination of its services hereunder due to Client's failure to perform and/or pay in accordance with the provisions of this Agreement in the event of termination of this Agreement.** Client shall then promptly pay PG for all fees, and services performed by PG in accordance with the compensation arrangements under this Agreement or on an agreed hourly basis.

16. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

17. Should any provision be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect and to this end the provisions of this Agreement are declared to be severable.

18. Services provided within this Agreement are for the exclusive use of the Client.

19. This Agreement and the performance of PG and Client hereunder shall be governed by the laws of the State of Colorado.