

**NOTICE OF JOINT SPECIAL MEETING & AGENDA OF  
MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NOS. 1 - 8**

Wednesday, March 10, 2021  
3:00 P.M.

*Due to Executive Orders issued by Governor Polis and Public Health Orders implementing the Executive Orders issued by the Colorado Department of Public Health and Environment, and the threat posed by the COVID-19 coronavirus, public attendance will be via teleconferencing. The meeting can be joined through the directions below:*

<https://us02web.zoom.us/j/7636703470>

Meeting ID: 763 670 3470  
Call In Number: 1-720-707-2699

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John Mick, President	District 1 & 3-8 - Term to May 2022 District 2 – Term to May 2023
Lee Merritt, Treasurer	District 1 & 3-8 - Term to May 2023 District 2 – Term to May 2022
Jason Kvols, Secretary	District 1 & 3-8 - Term to May 2022 District 2 – Term to May 2023
VACANT	District 1 & 3-8 - Term to May 2022 District 2 – Term to May 2023
VACANT	District 1 - Term to May 2022 District 2-8 – Term to May 2023

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**1. ADMINISTRATIVE MATTERS**

- a. Call to Order/ Declaration of Quorum/Excusal of Absences if any
- b. Reaffirmation of Disclosures of Potential or Existing Conflicts of Interest
- c. Approval of Agenda

**2. PUBLIC COMMENT** (Items not on the Agenda; Comments limited to three minutes per person)

**3. CONSENT AGENDA ITEMS** (These items are considered to be routine and will be approved by one motion. There will be no separate discussion of these items unless requested, in which event, the item will be removed from the Consent Agenda and considered in the Regular Agenda. **Enclosures included in electronic packets; hard copies available upon request.**)

- a. Approval of Minutes from January 20, 2021 Joint Special Meeting of District Nos. 1 and 2, and Joint Organizational Meeting of District Nos. 3 through 8. (**enclosure**)
- b. Ratify engagement of North Slope Capital Advisors as Municipal Advisors for 2021 Bonds (District Nos. 2-8) (**enclosure**)
- c. Ratify Independent Contractor Agreement for District Management Services with Public Alliance LLC (District Nos. 1-8) (**enclosure**)
- d. Ratify engagement of Collins Cockrel & Cole as Special Counsel (District Nos. 3 - 7) (**enclosure**)
- e. Ratify engagement of Filsinger Energy Partners, Inc. for appraisal of the assets of Ellicott Utility Company (District No. 2) (**enclosure**)
- f. Ratify engagement of John Burns Real Estate Consulting for Market Value Assessment (District No. 2) (**enclosure**)
- g. Approval of Independent Contractor Agreement with Rampart Surveys, LLC for Survey Services with District No. 1 (**to be distributed**)

#### **4. LEGAL MATTERS**

- a. Consider Approval of Mayberry, Colorado Springs Community Authority Establishment Agreement by, between and among Mayberry, Colorado Springs Metropolitan District Nos. 2-8 (**enclosure**)
- b. Discuss Member Appointments for the Authority Board (District Nos. 2-8)

#### **5. FINANCIAL MATTERS**

- a. Discuss Status of Issuance of 2021 Bonds
  - i. Limited General Obligation Bonds
  - ii. Water and Sewer Revenue Bonds
- b. Discuss Developer funding process
- c. Approve payment of claims for the period ending January 31, 2021 (**enclosure**)
- d. Discuss initiating use of Bill.com for invoice approvals and issuance of checks
- e. Review and Consider Acceptance of Unaudited Financial Statements as of December 31, 2020 (**to be distributed**).

#### **6. DEVELOPMENT, ASSET, AND WATER MATTERS**

- a. Discuss status of Mayberry Pump Testing
- b. Discuss Status of District No. 2's conveyance of certain water infrastructure, water rights and sewer infrastructure to the District
- c. Update Regarding Discussions with Cherokee Metropolitan District
  - i. Water and wastewater coordination
  - ii. SCADA alarms for lift stations
- d. Discussion Regarding Development Activities
  - i. Lots 71 and 72 of the Viewpoint Estates subdivision
  - ii. Mayberry Colorado Springs filings, including infrastructure inspection and testing
  - iii. Sunset Village, including wastewater collection, conveyance, and treatment

#### **7. OTHER BUSINESS**

- a. Next Meeting – March 17, 2021

#### **8. ADJOURNMENT**

MINUTES OF A

JOINT SPEICAL MEETING OF THE BOARDS OF DIRECTORS

OF THE

MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NOS. 1 & 2

AND MINUTES OF A

JOINT ORGANIZATIONAL MEETING OF THE BOARDS OF DIRECTORS

OF THE

MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NOS. 3-8

Held: Wednesday, January 20, 2021, at 1:00 P.M.

Due to Executive Orders issued by Governor Polis and Public Health Orders implementing the Executive Orders, issued by the Colorado Department of Health and Environment (CDPHE), and the threat posed by the COVID-19 coronavirus, the meeting was held via teleconference.

**ATTENDANCE**

The meeting was held in accordance with the laws of the State of Colorado. The following directors were in attendance:

Lee Merritt

Also present were: Jennifer Gruber Tanaka, Esq., and Heather L. Hartung, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law, District General Counsel; Carrie Bartow and Seef LeRoux, CliftonLarsonAllen, LLP, District Accountant; Brad Simons, PE, MMI Water Engineers, LLC, District Engineer; Randy Goodson, Foley Development; John Mick and Jason Kvols, eligible electors; and Alan Curtis, Esq., White & Jankowski, LLP, Water Counsel.

**ADMINISTRATIVE MATTERS**

Call to Order

The meeting was called to order.

Declaration of Quorum and Confirmation of Director Qualifications Ms. Tanaka noted that a quorum for each of the Boards was present and that the directors had confirmed their qualification to serve.

Reaffirmation of Disclosures of Potential or Existing Conflicts of Interest Ms. Tanaka advised the Boards that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Tanaka reported that disclosures for those directors with potential or existing conflicts of interest were filed with the Secretary of State's Office and the Boards at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Boards. Ms. Tanaka noted that a quorum was present and inquired into whether members of the Boards had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The Boards determined that the participation of the members present was necessary to obtain a quorum or to otherwise enable the Boards to act.

Combined Meetings The Districts are meeting in a combined Board meeting. Unless otherwise noted below, the matters set forth below shall be deemed to be the actions of the Mayberry, Colorado Springs Metropolitan District Nos. 1-8, inclusive, collectively.

Approval of Agenda Ms. Tanaka presented the Boards with the proposed agenda for the meeting. Upon motion, duly seconded, the Boards unanimously approved the agenda as revised to add consideration of the engagement of D.A. Davidson & Co. as Underwriter for the 2021 Bonds under financial matters.

**PUBLIC COMMENT** None.

**DIRECTORS MATTERS**

Appointment of Directors to Boards Ms. Tanaka noted the vacancies on each of the Boards and noted that Mr. Mick and Mr. Kvols have indicated their interest in serving on the Boards. Ms. Tanaka reported that Mr. Mick and Mr. Kvols have each confirmed their eligibility to serve. Upon motion, duly seconded, the Boards unanimously appointed Mr. Mick and Mr. Kvols to the Boards. Ms. Tanaka reported that her office will file the certificates of appointment and administered oaths of office with the Division of Local Government and the District Court in accordance with Colorado law.

Election of Officers Ms. Tanaka reported the need to elect officers for the Districts. Ms. Tanaka noted that Colorado law requires that each District have a President and Treasurer. She also noted that each District must have a Secretary, which position is not required to be a Board

position. Upon motion, duly seconded, the Boards unanimously elected the following officers for each of the Boards:

President: John Mick  
Secretary: Jason Kvols  
Treasurer: Lee Merritt

## **CONSENT AGENDA**

The Boards were presented with the consent agenda items. Upon motion, duly seconded, the Boards unanimously took the following actions:

- a. Approval of Minutes from the November 12, 2020 Joint Special Meeting (District Nos. 1 & 2)
- b. Adoption of Resolution 2021-01-01: 2021 Joint Annual Administrative Resolution (District Nos. 3-8)
- c. Adoption of Resolution 2021-01-02: Joint Resolution Extending Emergency Procedures and Authorizing Teleconferencing for Regular Meetings (District Nos. 3-8)
- d. Adoption of Resolution 2021-01-03: Joint Resolution Establishing an Electronic Signature (District Nos. 3-8)
- e. Adoption of Joint Resolution No. 2021-01-04: Providing for the Defense and Indemnification of Directors and Employees of the Districts (District Nos. 3-8)
- f. Adoption of Joint Resolution No. 2021-01-05: Adopting Colorado Special District Records Retention Schedule (District Nos. 3-8)
- g. Adoption of Joint Resolution No. 2021-01-06: Adopting Public Records Request Policy (District Nos. 3-8)
- h. Adoption of Joint Resolution No. 2021-01-07: Concerning the Location of Special and Regular Meetings (District Nos. 1-8)
- i. Adoption of Joint Resolution No. 2021-01-08: Designating the Location of Regular and Special Meetings Outside the District Boundaries
- j. Approval of SDA Memberships and Intergovernmental Agreement with Colorado Special Districts Property and Liability Pool (District Nos. 3-8)
- k. Approval of Insurance and Limits for Same (District Nos. 3-8)
- l. Approval of Agency Fee Agreement with T. Charles Wilson for Insurance Broker Services (District Nos. 3-8)
- m. Ratification of Claims (\$32,732.19) (District No. 1)
- n. Acceptance of Unaudited Financial Statements as of December 31, 2020 (District No. 1)
- o. Approval of Transaction Based Consent Letter as between District No. 1 and District Nos. 2-8 (District Nos. 1-8)
- p. Approval of Waiver of Conflict of Interest for Limited

Representation of Ellicott Utilities Commission Related to Benton Well #2 Change Case and Related Matters for White & Jankowski, LLP

**CONSULTANT MATTERS**

Engagement of WHITE BEAR ANKELE TANAKA & WALDRON as General Counsel (District Nos. 3-8)

Ms. Tanaka presented the Boards with an engagement letter with her firm, WHITE BEAR ANKELE TANAKA & WALDRON, as General Counsel for District Nos. 3-8. Upon motion, duly seconded, the Boards unanimously approved the engagement.

Engagement of Spencer Fane, LLP as Special Counsel for Operating Agreement (District Nos. 3-8)

Ms. Tanaka presented the Boards with an engagement letter with Spencer Fane, LLP as Special Counsel for the Operating Agreement for District Nos. 3-8. Upon motion, duly seconded, the Boards unanimously approved the engagement.

Independent Contractor Agreement with MMI Water Engineers, LLC for District Engineer Services (District Nos. 3-8)

Ms. Tanaka presented the Boards with an Independent Contractor Agreement with MMI Water Engineers, LLC for District Engineer Services for District Nos. 3-8. Upon motion, duly seconded, the Boards unanimously approved the agreement.

Engagement Letter with White & Jankowski, LLP, for Water Rights Legal Counsel (District Nos. 3-8)

Ms. Tanaka presented the Boards with an engagement letter with White & Jankowski, LLP, for Water Rights Legal Counsel for District Nos. 3-8. Upon motion, duly seconded, the Boards unanimously approved the engagement.

Engagement Letter with CliftonLarsonAllen, LLP, for Accounting Services (District Nos. 3-8)

Ms. Tanaka presented the Boards with an engagement letter with CliftonLarsonAllen, LLP, for Accounting Services for District Nos. 3-8. Upon motion, duly seconded, the Boards unanimously approved the engagement.

**FINANCIAL MATTERS**

Public Hearings on 2021 Budgets and Adoption of Resolution Nos. 2021-01-09 (District No. 3), 2021-01-10 (District No. 4), 2021-01-11 (District No. 5), 2021-01-12 (District No. 6), 2021-01-13 (District No. 7), 2021-01-14 (District No. 8): Adopting Budget, Imposing Mill Levy and Appropriating Funds

Mr. Merritt opened the public hearings on the 2021 budgets for District Nos. 3-8. Ms. Tanaka reported that notice of the public hearings was provided in accordance with Colorado law and no objections were received prior to the hearings. Ms. Bartow reviewed the budgets with the Boards. There being no public comment, the hearings were closed.

Upon motion, duly seconded, the Boards of District Nos. 3-8 unanimously approved the budgets and adopted Resolution Nos. 2021-01-09 (District No. 3), 2021-01-10 (District No. 4), 2021-01-11 (District No. 5), 2021-01-12 (District No. 6), 2021-01-13 (District No. 7), 2021-01-14 (District No. 8): Adopting Budget, Imposing Mill Levy and Appropriating Funds.

Discuss Issuance of 2021 Bonds The Boards discussed the issuance of bonds in 2021 and noted that the desired closing date is April 2021. Mr. Goodson provided a high-level summary of the proposed structure for the issuance of the bonds.

Engagement of D.A. Davidson & Co. as Underwriter for 2021 Bonds The Boards were presented with an engagement letter from D.A. Davidson & Co. to serve as underwriter for the 2021 bonds. Upon motion, duly seconded, the Boards of District Nos. 3-8 unanimously approved the engagement.

**DEVELOPMENT, ASSET, AND WATER MATTERS**

Review and Discuss Mayberry Pump Testing Proposal and Funding Request Mr. Simons reported that this was discussed by the Boards at the November meeting and is for Colorado Water Well to pull equipment from the two existing wells, conduct video inspection for both and pump testing on one of the wells. The hope is to re-equip these wells so that a third well is not needed. The Boards noted the desire to proceed with the project. Mr. Simons will circulate the updated proposal to the Boards for reference and noted that the Boards previously approved the engagement of Colorado Water Well but the project was on hold pending funding. Mr. Merritt inquired into the timing for the project. Mr. Simons noted they are prepared to start immediately with the project.

Discuss Status of District No. 2's conveyance of certain water infrastructure, water rights and sewer infrastructure to District Mr. Simons reported that he drafted some conveyance documents for the transfer of the assets to the Districts. Mr. Simons will work with Mr. Kvolts to finalize the inventory and to establish a value for the improvements.

Update Regarding Discussions with Cherokee Metropolitan District

Water and wastewater coordination Mr. Simons reported that Cherokee Metropolitan District ("CMD") provides water and sanitary sewer service to areas adjacent to the Districts. Mr. Goodson has coordinated with CMD to discuss the possibility of coordinated services to the communities. Mr. Simons and Mr. Kvolts will continue to coordinate and discuss the various opportunities with CMD.

Chlorine analyzer at the Viewpoint tank site Mr. Simons reported that this project is complete. Mr. Simons was provided an opportunity to review the details for the project and provide comment back to CMD.

SCADA alarms for lift stations

Mr. Simons reported that CMD wanted to get the Ellicott Utilities Company's ("EUC") two sewer lift stations off of its alarm system to avoid possible liability of CMD due to any calls. Mr. Simons reported that there are 2 options available to resolve the issue: 1) with a phone line on site, the equipment cost is approximately \$1,000 per site; and 2) if communications are via cellular service, the equipment cost is approximately \$6,000 per site. Mr. Simons will review the options as more information becomes available and will provide a recommendation to the Boards. Mr. Kvols is working with CenturyLink regarding phone service to each site.

Discussion Regarding  
Development Activities

Lots 71 and 72 of the Viewpoint Estates subdivision

Mr. Simons reported that there are 2 lots north of Highway 94 that are part of the Viewpoint Estates subdivision. They are approximately 12 acres in size each and were intended to be commercial. The owner wants to redevelop these lots and replat them into 7 residential properties consisting of 2.5 acre lots.

Mayberry Colorado Springs filings, including infrastructure inspection and testing

Mr. Simons reported that Al Watson will be inspecting and testing the existing lines from the wells to the tank site and from the tank building onto the property, as well as the gravity sewer line to the wastewater treatment facility to determine their condition and any repair/replacement needs.

Sunset Village, including wastewater collection, conveyance, and treatment

Mr. Simons reported that there is a party interested in developing 40 additional lots. The lots are already platted and part of the 143 lots that CMD will provide water service to and for which the Districts will provide sanitary sewer services to in the future. Mr. Simons will prepare a memorandum addressing how these lots will be served by the Districts.

**OTHER BUSINESS**

Next Joint Regular Meeting

The next joint regular meeting is scheduled for November 11, 2021, at 9:00 A.M.

**ADJOURNMENT**

There being no further business to come before the Boards, upon motion, second and unanimous vote, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

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Secretary for the Districts





## North Slope Capital Advisors

1165 Delaware Street, Suite 140  
Denver, CO 80204  
303-953-4101

[www.northslopecapital.com](http://www.northslopecapital.com)

STEPH CHICHESTER  
steph@northslopecapital.com  
(303) 953-4101

NICK TAYLOR  
nick@northslopecapital.com  
(303) 953-4101

January 29, 2021

Board of Directors  
Mayberry, Colorado Springs Metropolitan District Nos. 2-8  
c/o Jennifer Gruber Tanaka, District Counsel  
White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122

Re: Financial Advisor Scope of Services Engagement Letter

Board of Directors:

The purpose of this letter is to set forth certain matters concerning the services North Slope Capital Advisors ("North Slope") will perform as financial advisor to the Mayberry, Colorado Springs Metropolitan District Nos. 2-8 located in El Paso County, Colorado (the "District"). North Slope is a consulting firm that advises Colorado governmental entities on matters relating to the issuance of securities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities. North Slope is listed as a public finance advisor in the Bond Buyer's Municipal Market Place and is registered with the Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) under the Dodd-Frank Act of 2010 as an *Independent Registered Municipal Advisor*.

North Slope has a fiduciary duty of loyalty and care, including a duty to put the financial interests of the District ahead of its business interests. North Slope's employees are not officers or employees of the District, and North Slope has not otherwise been engaged to provide financial services for the District in connection with the proposed bond issuance.

North Slope will be engaged by the District in accordance with industry best practices to perform the work outlined in the **Scope of Services** section below and shall be compensated for those services as provided in the **Fees** section below. For more information on the municipal advisory practices and protections, the District can access the municipal advisory client brochure on the MSRB's website at [www.msrb.org](http://www.msrb.org).

## NORTH SLOPE CAPITAL ADVISORS

Mayberry, Colorado Springs Metropolitan District Nos. 2-8

January 29, 2021

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### SCOPE OF SERVICES

- 1) Confirm the District's Financing Goals.** North Slope will meet with the District to understand, identify, and prioritize the financing goals for the three proposed bond issuances which may include maximizing proceeds for public infrastructure, reimbursing developer advances at a lower cost of capital, and other objectives. North Slope will also meet with the relevant financing team professionals to determine the credit profile of the District and verify the structuring constraints for the bond issues.
- 2) Plan of Finance Review.** North Slope will independently verify the underwriter's financial models of the proposed financings using development assumptions by product type and year, biennial reassessment, assessment rate, interest rates, and other assumptions supplied by third parties (e.g. market study and price appreciation consultants, accountants, the underwriter, etc.), suggest refinements to the structures if any, document the rationale for selecting a particular financing vehicle, and summarize the benefits and considerations of the proposed plan of finance from the perspective of District taxpayers.
- 3) Documentation Support.** During the documentation phase of the transaction, North Slope will assist the District in reviewing and commenting on each financing document, including the proposed offering documents and will work with the District, district counsel, bond counsel, and underwriter or purchaser to finalize the structure, repayment terms, call feature, sizing and closing date.
- 4) Transaction Support.** North Slope will attend District meetings, document review sessions, and any other financing team meetings as requested and provide general financial advisory support through the financing process as a fiduciary to the District. North Slope will provide board and/or community education on bond financing generally and the transaction specifically as requested. Transaction support will include advising the District during the lead-up to pricing about interest rates on other recent comparable bond financings.
- 5) Pricing Comfort.** Prior to pricing the proposed bond issuances, North Slope will conduct market research in order to provide the District with an opinion that the interest rates, issue structure, redemption provisions, and underwriter discount on the proposed three bond issues are reasonable. If requested, North Slope will review and sign a "Financial Advisor" or "Pricing Certificate" as part of closing documentation for the proposed bond issuance.

### FEES

#### Contingent Fee Proposal

The fee below is payable only when the bond issues have successfully closed. The initial term of this engagement shall be in force from the date hereof and end when all services have been completed.

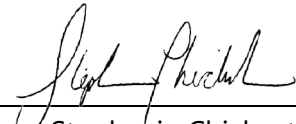
Fee
\$32,500

## NORTH SLOPE CAPITAL ADVISORS


Mayberry, Colorado Springs Metropolitan District Nos. 2-8  
January 29, 2021  
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We look forward to working with you and your team on this engagement. Please do not hesitate to contact us with any questions. Please execute the enclosed copy of this letter and return it to the undersigned via email.

NORTH SLOPE CAPITAL ADVISORS

By   
Name: Stephanie Chichester  
Title: President  
Date: 1/29/2021

ACCEPTED AND AGREED TO:  
MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NOS. 2-8

  
By [Lee Merritt \(Jan 29, 2021 10:01 MST\)](#)  
Name: Lee Merritt  
Title: Director  
Date: 2021-01-29

## **NORTH SLOPE CAPITAL ADVISORS**

Mayberry, Colorado Springs Metropolitan District Nos. 2-8

January 29, 2021

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### **DISCLOSURE STATEMENT**

This Disclosure Statement is provided by North Slope to the District in connection with this engagement letter dated January 29, 2021. This Disclosure Statement provides information regarding conflicts of interest and legal or disciplinary events that North Slope is required to disclose to the District pursuant to MSRB Rule G-42(b) and (c)(ii). At this time, there are no known material conflicts of interest known to North Slope in connection with the Scope of Services under this engagement letter and there are no legal or disciplinary events that are material to the District's evaluation or the integrity of North Slope's management or advisory personnel disclosed, or that should be disclosed, on any "Form MA" or "Form MA-I" filed with the SEC. For reference, North Slope's Form MA and Form MA-I filed with the SEC, most recently updated on March 24, 2020, are available on the SEC's EDGAR system by clicking the following link: [North Slope Capital Advisors Filings](#).

The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by North Slope and North Slope has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the SEC.

As required by MSRB Rule G-42, this Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of the North Slope. North Slope will provide the District with any such supplement or amendment as it becomes available throughout the term of the engagement.






# Mayberry, Colorado Springs MD Nos. 2-8 - Limited Scope New Money Model- North Slope Draft Engagement Letter - 01-29-2021

Final Audit Report

2021-01-29

Created:	2021-01-29
By:	Andie Eckstrum (aeckstrum@wbapc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYByOHACxpROv2fGCj0kJrp8QE--bc6g1

## "Mayberry, Colorado Springs MD Nos. 2-8 - Limited Scope New Money Model- North Slope Draft Engagement Letter - 01-29-2021" History

-  Document created by Andie Eckstrum (aeckstrum@wbapc.com)  
2021-01-29 - 4:52:38 PM GMT- IP address: 50.209.233.181
-  Document emailed to Lee Merritt (lee@blvdbuilders.com) for signature  
2021-01-29 - 4:52:49 PM GMT
-  Email viewed by Lee Merritt (lee@blvdbuilders.com)  
2021-01-29 - 5:01:35 PM GMT- IP address: 67.164.227.38
-  Document e-signed by Lee Merritt (lee@blvdbuilders.com)  
Signature Date: 2021-01-29 - 5:01:46 PM GMT - Time Source: server- IP address: 67.164.227.38
-  Agreement completed.  
2021-01-29 - 5:01:46 PM GMT

**INDEPENDENT CONTRACTOR AGREEMENT**  
**DISTRICT MANAGEMENT SERVICES**

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 29<sup>th</sup> day of January 2021, by and between MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NOS. 1-8, quasi-municipal corporations and political subdivisions of the State of Colorado (each a “**District**,” and collectively, the “**Districts**”), and PUBLIC ALLIANCE, LLC, a Colorado limited liability company (the “**Contractor**” or “**Public Alliance**”). The District and the Contractor are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

WHEREAS, the District was organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the District is empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, the District desires to engage the Contractor to perform certain services as are needed by the District to serve the property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**TERMS AND CONDITIONS**

1. SCOPE OF SERVICES; PERFORMANCE STANDARDS. The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “**Services**”): (a) in a professional manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the District. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the District

in any manner whatsoever, except to the extent specifically provided in this Agreement (including **Exhibit A**) or through other authorization expressly delegated to or authorized by the District through its Board of Directors.

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2021. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the District determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.

3. ADDITIONAL SERVICES. The District may, in writing, request the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the District pursuant to a written service/work order executed by an authorized representative of the District and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the District has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.

4. REPAIRS/CLAIMS. The Contractor shall notify the District immediately of any and all damage caused by the Contractor to District property and that of third parties. The Contractor will promptly repair or, at the District's option, reimburse the District for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the District of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

5. GENERAL PERFORMANCE STANDARDS.

a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the District or any agent of the District and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience

and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the District's request, re-perform the Services not meeting this standard without additional compensation.

b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give prompt notice to the District of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "**Laws**" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, sub-consultant or employee of the District. Review, acceptance or approval by the District of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the District, at the District's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("**Monthly Report**").

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the



District in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the District of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the District with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) ("**W-9**"). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B-1**.

b. Invoices. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> of each month, during the term of this Agreement and shall contain the following information:

- i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the District to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The District shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the District after the 10<sup>th</sup> of each month may be processed the following month.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the District within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The District may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the District to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the District's approved budget. Such payment shall require review and approval of each Monthly Report and invoice by two officers of the District.

9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained. The District shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes),

workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or sub-contractors of the Contractor and will not for any purpose be considered employees or agents of the District. **The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the District, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.**

10. EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in this Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for Services contemplated in this Agreement.

b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated in this Agreement.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

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

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

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.

g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the District may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the District.

#### 11. CONTRACTOR'S INSURANCE.

a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the District, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The District shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.

b. Prior to commencing any work under this Agreement, the Contractor shall provide the District with a certificate or certificates evidencing the policies required by this Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit B-1**. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the District and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the District to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

12. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. Any information deemed confidential by the District and given to the Contractor by the District, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the District deems confidential, or which the District has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the interests of the District. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the District; or (iii) independently developed by the Contractor without use of the District's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the District and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the District shall agree to be bound by the terms of such confidentiality agreement.

b. Personal Identifying Information. During the performance of this Agreement, the District may disclose Personal Identifying Information to the Contractor. **"Personal Identifying Information"** means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

c. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the District, the Contractor agrees to notify the District of conflicts known to the Contractor that impact the Contractor's provision of Services to the District.

13. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the District under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the District's request the Contractor will provide the District with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the District's use and shall provide such copies to the District upon request at no cost.

14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

15. INDEMNIFICATION.

a. The Contractor shall defend, indemnify and hold harmless the District and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "**District Indemnitees**"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "**Claims**"), including reasonable legal expenses and attorneys' fees actually incurred, by the District Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the District Indemnitees for the negligence of the District or the negligence of any other District Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the District of the existence of such Claim, the District may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.

c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth

in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

16. ASSIGNMENT. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the District. Any attempted assignment of this Agreement in whole or in part with respect to which the District has not consented, in writing, shall be null and void and of no effect whatsoever.

17. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the District for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the District's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the District. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the District harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the District in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.

18. TERMINATION. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days prior written notice to the District and by the District by giving the Contractor thirty (30) days prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the District to ensure a timely and efficient transition of all work and work product to the District or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the District.

19. DEFAULT. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting

party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

20. NOTICES. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

District:	Mayberry, Colorado Springs Metropolitan District Nos. 1-8 C/O WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Attention: Jennifer G. Tanaka, Esq. Phone: (303) 858-1800 E-mail: <a href="mailto:jtanaka@wbapc.com">jtanaka@wbapc.com</a>
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Contractor:	Public Alliance, LLC 355 S. Teller St. Lakewood, CO 80226 Attention: AJ Beckman Phone: (303) 877-6284 Email: <a href="mailto:aj@publicalliancellc.com">aj@publicalliancellc.com</a>
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21. AUDITS. The District shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of

this Agreement and to make the same available to the District at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

22. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the District.

23. BINDING AGREEMENT. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

24. NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

25. GOVERNING LAW.

a. Venue. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the District's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the District shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

b. Choice of Law. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

c. Litigation. At the District's request, the Contractor will consent to being joined in litigation between the District and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the District to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.



27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the District's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the District, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the District or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of District funds. The District's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

29. NEGOTIATED PROVISIONS. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

30. SEVERABILITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

31. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

32. OPEN RECORDS. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.

33. STANDARD OF CARE. In providing Services under this Agreement, the Contractor shall perform in a manner consistent with that degree of care and skill ordinarily

exercised by members of the same profession currently practicing under similar circumstances at the same time.

34. TAX EXEMPT STATUS. The District is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the District is exempt shall not be included in any invoices submitted to the District. The District shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

35. COUNTERPART EXECUTION. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

**DISTRICT:**  
MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NOS. 1-8,  
quasi-municipal corporations and political  
subdivisions of the State of Colorado

*John Mick*

John Mick (Feb 11, 2021 08:51 PST)

\_\_\_\_\_  
Officer of the Districts

ATTEST:

*Jason Kvola*

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

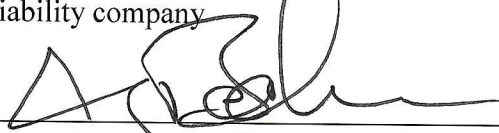
*Heather L. Hay*

\_\_\_\_\_  
General Counsel for the Districts

***Districts' Signature Page to Independent Contractor Agreement for District Management  
Services with Public Alliance, LLC, dated January 29, 2021***

**CONTRACTOR:**

PUBLIC ALLIANCE, LLC, a Colorado limited liability company

  
\_\_\_\_\_

Adam Beckman  
Printed Name

President  
Title

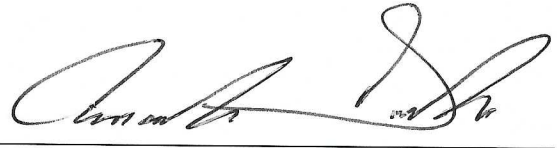
STATE OF COLORADO )

COUNTY OF Jefferson ) ss.

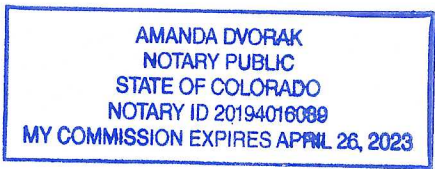
The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of FEBRUARY, 2021, by \_\_\_\_\_, as the \_\_\_\_\_ of Public Alliance, LLC.

Witness my hand and official seal.

My commission expires: April 26, 2023

  
\_\_\_\_\_

Notary Public



*Contractor's Signature Page to Independent Contractor Agreement for District Management Services with Mayberry, Colorado Springs Metropolitan District Nos. 1-8, dated January 29, 2021*

## EXHIBIT A

### SCOPE OF SERVICES/COMPENSATION SCHEDULE

#### Scope of Services

##### Standard Services Provided (include but are not limited to):

- **Board Meetings:** Meeting coordination, filing, publication and posting of all required notices. Establishment of quorum and cancellation when necessary. Preparation and distribution of board meeting agenda and materials one week in advance of board meetings or as directed. Attendance, moderation and scrivener for all regular and special board meetings, work sessions, executive sessions, and public forums. Preparation of meeting minutes and coordination of review with counsel prior to finalization. Tracking of action items and preparation of reports as necessary.
- **Personnel Management:** Staff and vendor oversight, review, and counseling. Maintain updated list of all directors and terms of office, vendors and contract dates, consultants and staff (if applicable). Monitor requirements pertaining to HB 1343 (Illegal Aliens).
- **Contract Management:** Preparation of requests for proposal (RFPs), evaluation, presentation and recommendations for bids received. Monitor compliance with public bidding requirements. Ongoing oversight to ensure contract compliance. Warranty period monitoring and coordination of final acceptance process.
- **Statutory Compliance:** Execution of required filings publications and reports. Coordination with district counsel to ensure accuracy.
- **Liaison:** Primary contact for the public, vendors, public officials, local governments and the press. Official custodian and manager of public records in accordance with Colorado Open Records Act (CORA)
- **Financial Management:** Assist with budget preparation, budget message, and annual filing of budget, budget resolution, and related documents. Assist with and review annual audit. Research options and work with consultants and the board to obtain grants and loans when necessary and available. Track developer reimbursements pursuant to inclusion agreements.
- **Insurance and Risk Management:** Regular and timely reviews of property schedules and insurance coverages, sureties, and bonds. Ongoing evaluation of risks and property inspections as frequently as desired. Regular policy review, filing of insurance claims and following through to collection and resolution of claimed damages. Ongoing monitoring of vendor contracts to ensure proper coverages are in place for all contractors and subcontractors.
- **Elections:** Act as Designated Election Official (DEO) if requested. Coordinate with Counsel, and manage process start to finish.

##### Property Management:

- **24-Hour Emergency Response:** Answering service with 24-hour emergency response.

All emergencies will be responded within one hour or less, and resolved as quickly as possible.

- **Contracting Agent:** Administer annual contracts and mobilize specialty contracts when necessary to ensure that the desired condition of the property is maintained. Preparation of Requests for Proposals (RFPs) as necessary. Solicitation and evaluation of bids received. Tabulation of data and presentation to the board in a clear “apples to apples” manner.
- **Contractor Oversight:** Review quality and thoroughness of work performed by contractors, consulting with the district’s engineer as appropriate. Review invoices and requests for payment, ensure contract requirements and client expectations are met.
- **Property Inspections:** Inspections of the property will be performed as frequently as desired by the board in order to identify and act upon existing, imminent or potential maintenance issues and evaluate the quality of services being provided.

Financial Matters:

- **Accounts Payable:** Invoice review and, and account coding verification.
- **Budgets:** Assist with budget preparation and provide guidance as necessary. And ensure proper filing. Assist with supplemental and/or amended budgets and accompanying documents, if required. Participate in the certification of mill levies.
- **Audits:** Thorough review, and assistance in the preparation and filing of the audit(s) or audit exemption(s) will be provided.

Other Services:

- **Inclusions, Construction and Public Bidding:** Coordinate development referrals and property inclusions. Work with Engineer and other professionals to coordinate and supervise the project process as assigned and approved by the Board.
- **Website Administration:** This is a routine service with which I have many years of experience. Once the required credentials are provided, Public Alliance will prepare and post in an ongoing and timely manner, all website updates whether the website is hosted through the Statewide Internet Portal Authority (SIPA) or a private website hosting service.
- **Other Services and Assignments and Directed by the Board.**

#### Compensation Schedule:

- District Management: \$140 per hour.
- Administrative Support: \$140 per hour.
- Field Work / Site Visits / Property Management; \$70 per hour
- Expenses: Incidental expenses will be passed through without markup. Copies; \$0.05 per page for black and white and \$0.15 per page for color.

**EXHIBIT A-1**

CONTRACTOR'S COMPLETED W-9

# Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>AJ Beckman</b>		
	2 Business name/disregarded entity name, if different from above <b>Public Alliance LLC</b>		
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <small>(Applies to accounts maintained outside the U.S.)</small>
	<input checked="" type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) ▶ _____		
	5 Address (number, street, and apt. or suite no.) See instructions. <b>3159 N. Speer Blvd.</b>		Requester's name and address (optional)
	6 City, state, and ZIP code <b>Denver CO, 80211</b>		
	7 List account number(s) here (optional)		

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

<b>Social security number</b>								
<b>or</b>								
<b>Employer identification number</b>								
8	4	-	1	8	1	1	3	6
5								

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶ <u>3/21/2020</u>
------------------	----------------------------	-------------------------

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
  - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
  - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
  - Form 1099-S (proceeds from real estate transactions)
  - Form 1099-K (merchant card and third party network transactions)
  - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
  - Form 1099-C (canceled debt)
  - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*



## EXHIBIT B

### INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of this Agreement.

1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
2. Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

**This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the District covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
6. Professional liability insurance in the amount of \$2,000,000.00 each occurrence.

**EXHIBIT B-1**

**CERTIFICATE(S) OF INSURANCE**



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/1/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Table with columns for PRODUCER, CONTACT NAME, PHONE, FAX, E-MAIL ADDRESS, INSURER(S) AFFORDING COVERAGE, and NAIC #.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Main table with columns for INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), and LIMITS.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Coverage applies per policy terms and conditions. If required by written agreement, Mayberry Metropolitan District Nos 1-8 are included as additional insured with respects to general liability policy, on a primary and non-contributory basis. A waiver os subrogation applies in favor of the certificate holder.

CERTIFICATE HOLDER CANCELLATION

Table with columns for CERTIFICATE HOLDER (Mayberry Metropolitan Districts Nos 1-8) and CANCELLATION (SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS).

**EXHIBIT C**

**CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE**

OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE OF FACT OF GOOD STANDING**

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Public Alliance LLC

is a

Limited Liability Company

formed or registered on 05/19/2019 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20191413911 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 12/11/2020 that have been posted, and by documents delivered to this office electronically through 12/14/2020 @ 10:41:11 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 12/14/2020 @ 10:41:11 in accordance with applicable law. This certificate is assigned Confirmation Number 12785210 .



A handwritten signature in blue ink that reads "Jena Griswold".

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."*










# Public Alliance, LLC - Agreement for District Management Services, 2021-...

Final Audit Report

2021-02-12

Created:	2021-02-10
By:	Andie Eckstrum (aekstrum@wbapc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAWRIQihXKGGe1wHj5f9sGSJnM9UifmZQh

## "Public Alliance, LLC - Agreement for District Management Services, 2021-..." History

-  Document created by Andie Eckstrum (aekstrum@wbapc.com)  
2021-02-10 - 4:52:34 PM GMT- IP address: 50.209.233.181
-  Document emailed to John Mick (jmick@intelifab.net) for signature  
2021-02-10 - 4:53:15 PM GMT
-  Email viewed by John Mick (jmick@intelifab.net)  
2021-02-10 - 5:27:49 PM GMT- IP address: 209.248.124.251
-  Email viewed by John Mick (jmick@intelifab.net)  
2021-02-11 - 4:48:48 PM GMT- IP address: 209.248.124.251
-  Document e-signed by John Mick (jmick@intelifab.net)  
Signature Date: 2021-02-11 - 4:51:44 PM GMT - Time Source: server- IP address: 209.248.124.251
-  Document emailed to Jason Kvols (jasonkvols@mayberrycoloradosprings.com) for signature  
2021-02-11 - 4:51:46 PM GMT
-  Email viewed by Jason Kvols (jasonkvols@mayberrycoloradosprings.com)  
2021-02-12 - 5:37:00 PM GMT- IP address: 209.248.124.251
-  Document e-signed by Jason Kvols (jasonkvols@mayberrycoloradosprings.com)  
Signature Date: 2021-02-12 - 5:41:14 PM GMT - Time Source: server- IP address: 209.248.124.251
-  Agreement completed.  
2021-02-12 - 5:41:14 PM GMT



SHAREHOLDERS  
Paul R. Cockrel  
Robert G. Cole  
Timothy J. Flynn  
Evan D. Ela  
Linda M. Glesne  
David A. Greher  
Kathryn G. Winn  
Allison C. Ulmer  
Matthew P. Ruhland

OF COUNSEL  
James P. Collins

ASSOCIATES  
Joseph W. Norris  
Bart W. Miller  
Ayshan E. Ibrahim

303.218.7212  
mruhland@cccfirm.com

February 25, 2021

**CONFIDENTIAL**

**VIA E-MAIL**

Mayberry, Colorado Springs Metropolitan District Nos. 3-7  
c/o White, Bear, Ankele, Tanaka & Waldron  
2154 East Commons Avenue, Suite 200  
Centennial, CO 80122

**Re: Letter of Engagement – Mayberry, Colorado Springs Metropolitan District Nos. 3-7**

Dear Board Members:

We understand that the Mayberry, Colorado Springs Metropolitan District Nos. 3-7 (the "**Clients**") desire to engage Collins Cockrel & Cole, a professional corporation (the "**Attorney**"), as the Clients' special counsel pursuant to Section 32-1-1001(1)(i), C.R.S., for certain matters as further described below. This letter is intended to outline the terms governing our representation of the Clients.

1. Scope of Services.

The Attorney will provide legal services related to formation of an authority with the Mayberry, Colorado Springs Metropolitan District Nos. 2 and 8 under Section 29-1-203.5, C.R.S. We do not represent (i) any person or entity (except the Clients); (ii) individual members of the Clients' respective boards of directors; (iii) employees or agents of the Clients; or (iv) any landowner, developer or other person within the Clients (collectively, the "**Other Persons**"), and all services are provided only for the benefit of the Clients and not for the Other Persons. The Attorney owes professional responsibilities only to the Clients themselves. In all matters involving the Clients, such Other Persons should retain their own legal counsel. The Clients agree to this limited representation and acknowledge that they do not rely upon the Attorney for other legal representation or counsel. The Clients shall appoint a representative and spokesperson for purposes of contact and direction of the Attorney's representation of the Clients.

{00812419.DOCX / 2 }

390 Union Blvd, Suite 400, Denver, CO 80228-1556

office 303.986.1551 | toll free 800.354.5941 | fax 303.986.1755 | www.cccfirm.com





2. Potential Conflicts of Interest.

Under this letter the Attorney is simultaneously representing each of the Clients. Each of the Clients share common members on their respective board of directors and shall the common goal of forming the authority. Although we do not believe a conflict of interest currently exists between the individual Clients, the Clients' universal approval of this Letter of Engagement represents the Clients' consent to such potential conflicts of interest. If a dispute were to arise in the future among the individual Clients, the Attorney would likely be unable to represent any of these parties in such matter.

3. Designation of Attorney and Assistants.

I, Matt Ruhland, a Partner with the Attorney, am designated as the attorney primarily responsible for the legal services rendered to the Clients. Other qualified attorneys and paralegals may perform services for the Clients under my supervision in order to most effectively provide a particular service or to minimize costs.

4. Compensation.

The Attorney shall provide to the Clients a monthly billing statement detailing the services rendered and the amount of time spent in performance thereof. The Clients shall pay for the total time of all attorneys, paralegals and clerks at the current rates in effect for the services rendered.

Clerical services are not routinely billed to the Clients, but out-of-the-ordinary use of a clerical person's time may be billed in the Attorney's reasonable discretion. Paralegals and law clerks are utilized when their skills are commensurate with a particular project, so as to minimize the costs billed to the Clients. The Attorney supervises the work product of associates, paralegals and law clerks.

The Clients shall pay for services within 30 days of the date of the invoice. The Attorney shall not be obligated to perform any services if payment of fees is 60 days overdue. If payment for any services or expenses remain unpaid for more than 60 days, unpaid amounts will be charged interest at the rate of 1.5% per month, compounded monthly (19.6% APR). The Clients shall be responsible for any costs of collection incurred by the Attorney, including reasonable attorneys' fees

Although the Mayberry, Colorado Springs Metropolitan District No. 3 is expected to be billed, at least initially, for services for the Clients, an independent attorney-client relationship exists between the Attorney and each of the Clients.

The Attorney's current billing rates are subject to adjustment, but not by more than ten percent collectively at any time without written notice. The Attorney's 2021 Fee Schedule is attached.



5. Expenses.

Expenses for which the Attorney will or will not receive reimbursement are as follows, along with the rates for such reimbursement:

(a) Mileage.

No charge, unless lengthy travel distance.

(b) Out-of-Town Travel.

Expenses at cost without mark-up. Travel time by attorneys and staff will be billed at current billing rates. Trips will be coordinated with other clients, to the extent possible, to minimize travel costs.

(c) Long-Distance Telephone Service.

No charge, unless unusual circumstances exist – such as lengthy time, multiple parties and/or teleconferencing.

(d) Computer Expenses.

No charge, except for computer research, Lexis/Nexis or other special costs; billed at actual cost without mark-up.

(e) Photocopies.

No charge for in-house copying, unless large volume of copying. Outside copying and printing billed at actual cost without mark-up.

(f) Postage.

No charge for usual first class mailings, such as mailings to the Clients, courts, counsel of record and other consultants. Mass mailings, such as election notices, and overnight and special delivery mailings billed at actual cost without mark-up.

(g) Facsimile.

No charge.

(h) Couriers.

Courier service will be used on an as-needed basis with the cost thereof being billed to the Clients without mark-up.

(i) Other Reimbursables.

Other reimbursables include our payment of filing fees, costs for service of process and related services, expert witness fees (only as pre-authorized by the Clients), court reporter fees for transcript of testimony, court reporter appearance fees, county clerk and recorder's fees for recording of documents, title company's fees for reports



of title, publication fees, election materials and other related expenses. All such reimbursables will be billed to the Clients at cost without mark-up.

(j) Other Expenses.

Certain services and expenses not otherwise documented herein (e.g. private investigator, special counsel, etc.) may become necessary under certain circumstances. To the extent that such services are required, the Attorney will first obtain authorization from the Clients before incurring such costs. As such expenses are incurred, they will be billed to the Clients.

It is understood that the Clients are not responsible for any general secretarial support or general office expenses of Attorney.

6. Communications between Attorney and Clients.

Written and oral communication between the Attorney and the Clients on the Clients' matters shall be made using all current forms of technology including mail, express courier, courier, fax, email, land-based telephone, cellular telephone and other electronic means of communication as such technology becomes available. The security of such means of communication, particularly electronic means such as fax, email and cellular telephone cannot be guaranteed, and therefore a risk exists that privileges such as the attorney-client privilege may be waived if a communication is inadvertently received by persons other than the Clients. If the Clients desire to avoid the risk of inadvertent disclosure by any particular means of communication, the Clients must contact the Attorney and instruct the Attorney as to any unacceptable means of communication for Client matters.

7. Disclaimer of Warranties.

There can be no warranties as to the success of any matter undertaken by the Attorney in the representation of the Clients. All expressions made by the Attorney relative thereto are solely matters of the Attorney's opinion.

8. Document Retention/Destruction.

The Clients are advised that the files created and compiled by the Attorney for work on Client matters, including notes, correspondence, pleadings, research and any other documents prepared by the Attorney, will not be retained indefinitely. Upon Clients' request, we will return Clients' files to the Clients or their respective designees once a matter is concluded, so long as the Clients have paid all fees and costs. We may retain copies of all or any portion of the Clients' file duplicated at our expense. If the Clients do not request their files, we will keep the files and information therein for a minimum of thirty days after the conclusion or termination of representation, after which we may retain, destroy or otherwise dispose of them as we deem appropriate, except that we will not destroy (i) original documents entrusted to us for continued representation as part of our services and (ii) any documents that the Clients are obligated by law to retain.



9. Illegal Alien Certification.

Pursuant to the requirements of H.B. 06-1343, the Attorney certifies that the Attorney will comply with the provisions of Section 8-17.5-101 *et seq.*, C.R.S., and the Attorney will not knowingly employ or contract with an illegal alien to perform work for the Clients. The Attorney has verified that the Attorney (i) has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-Verify Program administered by the Department of Labor and Employment; and (ii) otherwise will comply with the requirements of Section 8-17.5-102(1), C.R.S., regarding such verification. The Attorney agrees to comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If we do not comply with any requirement of Section 8-17.5-101 *et seq.*, C.R.S., regarding illegal alien verification, the Clients may immediately terminate the Attorney's services, subject to payment for work performed prior to the termination date as described herein.

10. Entire Agreement.

The terms herein represent the entire agreement of the parties concerning the representation of the Clients by the Attorney. The agreement represented by this letter may not be amended or modified except in writing and signed by both parties hereto.

11. Term.

The agreement represented by this letter shall remain in effect until terminated by written notice of either party.

**Collins Cockrel & Cole,  
a Professional Corporation**

**Mayberry, Colorado Springs  
Metropolitan District No. 3**

DocuSigned by:

*John Mick*

CC2781743D46489...

By: Matthew P. Ruhland, Partner

Name: John Mick

Its: President



**Mayberry, Colorado Springs Metropolitan  
District No. 4**

DocuSigned by:  
*John Mick*  
CC2781743D45489...  
Name: John Mick  
Its: President

**Mayberry, Colorado Springs Metropolitan  
District No. 5**

DocuSigned by:  
*John Mick*  
CC2781743D45489...  
Name: John Mick  
Its: President

**Mayberry, Colorado Springs Metropolitan  
District No. 6**

DocuSigned by:  
*John Mick*  
CC2781743D45489...  
Name: John Mick  
Its: President

**Mayberry, Colorado Springs Metropolitan  
District No. 7**

DocuSigned by:  
*John Mick*  
CC2781743D45489...  
Name: John Mick  
Its: President

**Billing Rates**  
*effective 01/2021*

<u>NAME</u>	<u>2021 RATES</u>
<b>Paralegal Assistant</b>	<b>\$135</b>
<b>Crystal Schott, Paralegal</b>	<b>\$205</b>
<b>Sarah Luetjen, Paralegal</b>	<b>\$205</b>
<b>Peggy Rupp, Paralegal</b>	<b>\$230</b>
<b>Micki Mills, Paralegal</b>	<b>\$250</b>
<b>Ayshah E. Ibrahim, Associate</b>	<b>\$235</b>
<b>Bart W. Miller, Associate</b>	<b>\$295</b>
<b>Joseph W. Norris, Associate</b>	<b>\$285</b>
<b>James P. Collins, Of Counsel</b>	<b>\$450</b>
<b>Matthew P. Ruhland, Partner</b>	<b>\$395</b>
<b>Allison C. Ulmer, Partner</b>	<b>\$380</b>
<b>Kathryn G. Winn, Partner</b>	<b>\$380</b>
<b>David A. Greher, Partner</b>	<b>\$425</b>
<b>Linda M. Glesne, Partner</b>	<b>\$400</b>
<b>Evan D. Ela, Partner</b>	<b>\$400</b>
<b>Timothy J. Flynn, Partner</b>	<b>\$405</b>
<b>Robert G. Cole, Partner</b>	<b>\$390</b>
<b>Paul R. Cockrel, Partner</b>	<b>\$475</b>



**FILSINGER ENERGY**  
P A R T N E R S

February 23, 2021

Mayberry, Colorado Springs Metro District No. 2  
Attention: Board of Directors and John Mick

(via email)

**RE: Engagement Letter between Filsinger Energy Partners Mayberry, Colorado Springs Metro District for an Appraisal of the assets of Ellicott Utility Company**

Dear District Board,

Filsinger Energy Partners (FEP) has developed the following scope of work to provide an appraisal of the assets ("Assets") and business of Ellicott Utility Company ("EUC"). The intended use of the appraisal is for the bond issuance for the purchase of the assets of Ellicott Utility Company. The intended user of the appraisal is Mayberry, Colorado Springs Metro District No. 2 ("the "Client").

We understand that the existing system serves 100 water customers and 100 sewer customers and consists of assets:

1. Contract with Mayberry to provide taps and services
2. Wells and water rights
3. 200,000 gallons of storage capacity in an existing water tank (that is owned by Cherokee Metro District)
4. 500,000-gallon tank
5. Infrastructure

FEP will appraise the assets and business of EUC using standard appraisal approaches as follows:

- Income approach – a DCF analysis based on projected revenues minus expenses + projected tap fees minus system expansion costs.
  - Every input in the DCF must be supported with documentation provided by the Client, including but not limited to, independent engineering studies, feasibility studies, and market projections supporting customer growth, customer consumption, customer rates, and system expansion costs to meet customer demand.
- Cost approach – replacement cost new less depreciation ("RCNLD") for the existing assets.
- Sales comparison approach – analyze whatever comparable sales can be located

[www.filsingerenergy.com](http://www.filsingerenergy.com)

TEL 303.974.5884

90 MADISON ST, STE 500  
DENVER, CO 80206



## **Scope of Work**

This scope of work is outlined below and is subject to change as we work through the assignment or as specifics are identified in the process.

The Assets will be appraised in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The review results will be communicated in an Appraisal Review Report. All three approaches to value (cost, income, and sales comparison) will be considered.

### ***Task 1 – Prepare a Data Request for the Project***

FEP will develop a request for information regarding the Assets. The requested data will generally include a log of existing assets, maintenance plans, capital expenditure plans, existing contracts, historical and projected operations, and historical and projected financials.

### ***Task 2 – Site Visit***

FEP will visit the Assets and meet with the key staff to assess the general condition of the Assets.

### ***Task 3 – Sales comparison Approach***

FEP will consider sales data regarding the transaction value of similar assets, to the extent such data is available. Further, FEP will consider the nature of the sales data to determine whether the sales data represents comparable assets and transactions.

### ***Task 4 – Income Approach***

FEP will prepare a DCF analysis based on projected future cash flows from the for EUC and discount them back to the effective appraisal date. FEP's analysis will include a range of estimates of the weighted average cost of capital ("WACC").

### ***Task 5 – Cost Approach***

FEP prepare a traditional replacement cost new less depreciation ("RCNLD") analysis of the Assets.

### ***Task 6 – Develop the Value Estimates***

After assessing the value under each of the cost, income and sales comparison approaches, FEP will consider the applicability of each of these value estimates for the Assets. FEP will reconcile differences in the value estimates to produce the appraised value.





### ***Task 7 - Produce the Appraisal Report***

FEP will write an Appraisal Report in conformance with the requirements of USPAP. The report will summarize all of FEP's efforts in each of the preceding tasks and will represent the final product of the appraisal, including the measures of value described above.

### **Schedule**

FEP estimates that the time to complete this engagement will be one month from commencement of the work. This estimate is contingent on timely responses to data requests.

### **Commercial Terms**

FEP will conduct the work on a time and materials (T&M) basis with the labor rates shown in the table that follows. FEP estimates fees to be \$65,000 - \$80,000 for this project. FEP will notify the Client when the fees have reached \$65,000 and will not proceed with further work without approval from the Client. Expenses will be billed as incurred. Expenses will include any travel related to site visits and/or meetings. FEP will require a payment of \$30,000 prior to commencing work. Invoices for time exceeding \$30,000 will be issued and due within 30 days. The final signed report will not be issued until payment of all outstanding invoices.

**Rate Table (subject to adjustment biannually)**

<b><u>Title</u></b>	<b><u>Hourly Rate</u></b>
Senior Managing Director	\$1,000
Managing Director	\$740 - \$920
Director	\$660 - \$740
Managing Consultant	\$500 - \$660
Consultant	\$360 - \$500
Analyst and Technical Assistant	\$225 - \$360

### **Additional Terms**

This Engagement Letter, together with the Agreement for Independent Contractor Consulting Services (attached hereto and incorporated herein by reference) make up the entire understanding and agreement between the Parties (collectively, the



“Agreement”) and shall govern the transaction between the Parties. All capitalized terms used but not defined herein shall have the same meaning as set forth in the Agreement for Independent Contractor Consulting Services.

**Summary**

If you agree with this Engagement Letter, please sign and date below. If you have any questions, please do not hesitate to contact me directly at (303) 359-1690.

Sincerely,

Keturah Nelson

Accepted:

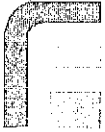
John Mick  
President  
Mayberry, Colorado Springs  
Metro District No. 2

Date: 2/23/2021

Accepted:

Todd Filsinger  
Senior Managing Director  
Filsinger Energy Partners

Date: 2/23/2021



## AGREEMENT FOR INDEPENDENT CONTRACTOR CONSULTING SERVICES

This **AGREEMENT** ("Agreement") is made this 23rd day of February, 2021 by and between: (i) FILSINGER ENERGY PART NERS, INC., a Colorado corporation ("FEP"), and (ii) Mayberry, Colorado Springs Metro District No. 2 ("Company"). Company and FEP are individually referred to herein as a "Party" and together as the "Parties."

Company desires FEP, as an independent contractor, to perform certain work and professional services for Company or supply certain materials to Company (such work, professional services or materials, the "Work") as outlined in the Engagement Letter between the Parties (the "Engagement Letter," which Engagement Letter is attached hereto and incorporated herein by reference).

In consideration of the above recitals and the covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, agree as follows:

1. **BILLING AND PAYMENT.** FEP shall be paid on a time and materials basis as outlined in the Engagement Letter. FEP shall provide Company an itemized invoice for its fees and accrued expenses on a monthly basis. Company will pay FEP each undisputed invoice within 30 days of its receipt of such invoice (the "Payment Period"). If Company disputes an invoice, it will notify FEP in writing within the Payment Period as to the nature of the dispute, and the Parties will then work together to resolve the dispute. If Company does not notify FEP of a disputed invoice within the Payment Period, the invoice will be deemed accepted by Company and Company shall pay such invoice within the Payment Period. Meals and miscellaneous expenses will be billed as incurred at cost.

2. **TERM.** This Agreement shall be effective as of the date first written above, and shall continue in effect thereafter, unless earlier terminated pursuant to the terms of this Section 2. Either Party may terminate this Agreement for any or no reason upon 30 days' advance written notice to the other Party. If either Party breaches any of the terms hereof, or, subject to any restrictions imposed by applicable law, if either Party becomes bankrupt or insolvent, the non-breaching Party may immediately terminate this Agreement upon written notice and such termination shall be effective as of the date of such written notice. Either Party may also terminate, for its convenience, any specific Work hereunder immediately upon notice to the other, in which case FEP shall be entitled to payment for (a) the portion of Work completed hereunder and (b) any expenses incurred, in each case prior to receipt of the notice of termination, as well as any other expenses that FEP is not able to cancel upon such termination, and Company shall be entitled to receive the Work generated by FEP through the termination date. Time is of the essence in this Agreement. If either Party terminates this Agreement, such termination shall not affect FEP's right to receive all amounts owed by Company to FEP, or the accrued rights of Company to receive the Work generated by FEP through the termination date.

3. **CONDUCT OF ACTIVITIES.** The Parties to this Agreement shall, and shall cause their subcontractors (and the employees and agents of any of them) to, conduct their activities hereunder in accordance with all applicable governmental laws, rules, and regulations and good standard industry practices, and in a professional manner in accordance with the terms of this Agreement.

4. **FORECASTS AND RECOMMENDATIONS CONCERNING THE WORK.** All forecasts and recommendations made by FEP as part of the Work are based on the information available to FEP and certain analyses, and will be made in good faith. However, forecasts are not a representation, undertaking or warranty as to any outcome or achievable results and Company hereby acknowledges that (a) FEP is not making any representations or warranties concerning FEP's work (other than as expressly set forth in Section 3 with respect to the conduct of its activities) and (b) FEP is not providing either an expressed or implied warranty



for the Work. In addition, Company acknowledges that FEP is not guaranteeing or promising that certain forecasts or recommendations by FEP with respect to the Work will take place or occur, and Company will not hold FEP to any such guarantees or promises concerning the Work. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 3, FEP HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

5. **CONFIDENTIALITY.** In performing Work hereunder, each Party may have access to, and may provide the other Party with information or documentation that constitutes, confidential information (“Confidential Information”). Confidential Information includes any non-public information about customers or potential customers, regardless of whether it is personally identifiable or anonymous information, business and marketing plans, employee information, systems, manuals, policies and procedures, and products and services, including the disclosure of the engagements covered under this Agreement. Neither Party shall disclose this Agreement to any third party without the written consent of the other Party.

From the date hereof through the date that is three years following the termination of this Agreement, each Party shall hold all such Confidential Information in strict confidence and disclose such Confidential Information only to those officers, directors, employees or agents whose duties reasonably require access to such information. If receiving Party proposes to disclose Confidential Information, including the engagements covered under this Agreement, to a third party in order to perform under the Agreement or otherwise, the receiving Party must first obtain the consent of the disclosing Party to make such disclosure and enter into a confidentiality agreement with such third party under which that third party would be restricted from disclosing, using or duplicating such Confidential Information in a manner consistent with the terms of this Section 5. Receiving Party may use such Confidential Information only in connection with its performance under this Agreement or as otherwise required by applicable law. Receiving Party shall protect such Confidential Information using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use or disclosure of such Confidential Information as receiving Party uses to protect its own confidential information. Confidential Information shall be returned to the disclosing Party or destroyed upon disclosing Party’s request once the Work contemplated by this Agreement has been completed or upon termination of this Agreement.

Receiving Party shall establish and maintain commercially reasonable policies and procedures to ensure compliance with this Section 5. Such policies and procedures shall include administrative, technical, and physical safeguards that are commensurate with the scope of the Work and the sensitivity of the Confidential Information. Receiving Party’s policies will ensure the security and confidentiality of Confidential Information, protect against any anticipated threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to disclosing Party. In the event of any incident of unauthorized access to the Confidential Information or breach of the confidentiality obligations set forth herein, the receiving Party shall solely bear all costs and expenses incurred in notifying persons and entities affected by such breach. For the avoidance of doubt, the receiving Party shall obtain the disclosing Party’s prior written approval of any oral or written notice or other communication proposed to be made to persons and entities affected by such breach.

Receiving Party acknowledges that the unauthorized use or disclosure of any such Confidential Information is likely to cause irreparable injury to disclosing Party for which there is no adequate remedy at law. Accordingly, receiving Party hereby consents to the entry of injunctive relief against it to prevent or remedy any breach of the confidentiality obligation described herein without disclosing Party being required to post bond.

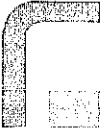


The foregoing restrictions shall not apply to any such Confidential Information that is: (a) known by the receiving Party at the time of disclosure or publicly known or becomes publicly known through no fault of the receiving Party; (b) received from a third party that, to the knowledge of the receiving Party, is free to disclose the information to the receiving Party; (c) independently developed by the receiving Party without the use of information received from the disclosing Party; (d) communicated to a third party with the express prior written consent of the disclosing Party; or (e) either (i) required to be disclosed by law or pursuant to an order of court or other competent government or regulatory authority or (ii) disclosed due to a bona fide settlement, arbitration, or pre-litigation request; provided that in each case that the receiving Party notify the disclosing Party in writing of such disclosure as soon as commercially possible, and the receiving Party must use all commercially reasonable efforts to prevent or limit such disclosure and to ensure that any person to whom the Confidential Information is disclosed is aware of the confidential nature of the information and takes steps to prevent further disclosure of the same. The receiving Party shall indemnify the disclosing Party against any losses arising out of the unauthorized use or redistribution by a person of any Confidential Information provided pursuant to this clause 5(e).

6. **INDEPENDENT CONTRACTOR/NON-EXCLUSIVE NATURE OF AGREEMENT.** FEP shall be deemed to be and shall be an independent contractor. FEP, its subcontractors, and its and their employees are not agents or employees of the Company and have no authority to obligate or bind Company in any way. FEP, its subcontractors, and its and their employees, are not eligible for Company's employee benefit programs. FEP is fully and solely responsible for all taxes, assessments, penalties, fines, and interest relating to wages and benefits paid to FEP's (or its subcontractors') employees under this Agreement, pursuant to all federal, state and local laws, including required withholding from wages of employees, regardless of the characterization of those employees by the Parties, administrative agencies, or the courts. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or similar relationship between the Parties. This Agreement is non-exclusive in nature and FEP may perform other similar work for other entities or groups or individuals, in the sole and absolute discretion of FEP. If FEP is unable to perform any Work contemplated herein by an act beyond FEP's reasonable control, FEP will give notice to the Company as soon as practicable, and such delay in Work shall not be deemed a breach of this Agreement; provided that the foregoing shall not otherwise limit any right of Company to terminate the Agreement or specific Work pursuant to its rights under Section 2 above.

7. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SUBJECT MATTER HEREOF OR THE WORK, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF SUCH LOSSES OR DAMAGES IN ADVANCE AND WHETHER SUCH LIABILITY IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY OR OTHERWISE), AND BOTH PARTIES SPECIFICALLY WAIVE, FOREVER, ANY SUCH CLAIMS. THE PARTIES AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE AGGREGATE LIABILITY OF FEP, ITS PARENT, AFFILIATES AND SUBCONTRACTORS, AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, TO THE COMPENSATION RECEIVED BY FEP FOR THE WORK PERFORMED UNDER THIS AGREEMENT. THIS LIMITATION OF LIABILITY IN FAVOR OF FEP SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS AND DAMAGES OF ANY NATURE, INCLUDING ANY CLAIMED LEGAL FEES AND EXPENSES, ARISING FROM OR RELATED TO THIS AGREEMENT AND WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED.

8. **USE OF THE WORK.** Company shall not assert any claim against FEP for injury, damage or loss sustained by Company arising out of or resulting from Company's use of the Work. All information contained in all forecasts, recommendations, reports and other documentation prepared by FEP with respect to the Work



shall not be disclosed by Company to third parties in any manner that would identify FEP as the source of such information. In the event that (a) Company breaches this confidentiality obligation or otherwise discloses the Work to third parties, and (b) any claims arise as a result of the Work, Company shall indemnify FEP against any and all third-party claims regarding the Work, including attorney's fees and costs.

**9. GENERAL PROVISIONS.**

(a) Governing Law; Venue. THIS AGREEMENT AND ANY CLAIM, COUNTERCLAIM OR DISPUTE OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, WHETHER DIRECT OR INDIRECT ("CLAIM"), SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO. EXCEPT AS SET FORTH BELOW, NO CLAIM MAY BE COMMENCED, PROSECUTED OR CONTINUED IN ANY COURT OTHER THAN THE STATE OR FEDERAL COURTS LOCATED IN DENVER, COLORADO, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF SUCH MATTERS. COMPANY AND FEP HEREBY CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF SUCH COURTS AND PERSONAL SERVICE WITH RESPECT THERETO. EACH OF FEP AND COMPANY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR CLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT.

(b) Entire Agreement; Amendment. Together with each scope of Work and the Engagement Letter, this Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof and may not be modified, altered or amended except in a writing executed by authorized representatives of both Parties. To the extent the terms of any scope of Work, Engagement Letter or, if applicable, Confidentiality Agreement conflict with this Agreement, the terms of this Agreement shall govern. This Agreement is intended solely for the benefit of FEP and Company and their respective successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

(c) Headings. Headings in this Agreement are for convenience only and will not be considered in the interpretation of this Agreement.

(d) Notices. Any notice or communication required or permitted to be given by a Party hereunder will be in writing and made by hand delivery, electronic transmission, facsimile transmission (with confirmation), or overnight delivery with a corresponding email, or at such other addresses as the Party may specify in writing. Any such notice or written communication will be deemed duly received (i) on the date of hand delivery, electronic transmission or transmission by facsimile (unless sent after 5 p.m. Mountain Standard time, in which case on the next business day) or (ii) the next business day after sent by overnight delivery service. All notices or written communications hereunder shall be delivered to the addresses, facsimile numbers or email addresses set forth below:

if to FEP, to:

Filsinger Energy Partners, Inc.



90 Madison Street, Suite 500  
Denver, CO 80206  
Attention: Controller  
Email: accounts@filsingerenergy.com

if to Company, to:

Mayberry Metro District No. 2  
3296 Divine Heights #207  
Colorado Springs, CO 80922  
Attention: Jason Kvols  
Email: jasonkvols@mayberrycoloradosprings.com

(e) Severability/Enforceability. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, then the Parties agree that the remainder of this Agreement shall remain in full force and effect. No delay on the part of any Party in the exercise of any rights or remedies shall operate as a waiver thereof, and no single or partial exercise by any Party of any remedy shall preclude other and further exercise thereof, or the exercise of any other right or remedy. The waiver of any term, provision or condition of this Agreement by either Party shall not constitute a further or continuing waiver of any such term, provision or condition of this Agreement. No waiver shall be valid unless in writing and signed by an authorized officer of FEP in the case of FEP or by Company in the case of Company.

(f) Assignment. Neither Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Party.

(g) Ownership of Information. All reports, recommendations, specifications, data or other information prepared or furnished by FEP to Company hereunder shall be property of Company and may be used by Company as the Company deems appropriate. Company grants to FEP a nonexclusive nontransferable license to such information to the extent necessary for FEP's performance under this Agreement.

(h) Survival of Certain Terms. Sections 1, 2, 4, 5, 7, 8 and 9 shall survive the expiration or termination of this Agreement, including as necessary for their enforcement or for the protection of the Party in whose favor they operate.

(i) Counterparts and Copies. This Agreement may be executed in separate counterparts and upon execution by all Parties such counterparts will constitute one and the same instrument. The Parties further agree that electronic scans, photocopies or faxed copies of this Agreement and the signatures herein shall be as valid and effective as originals.

(j) Interpretation. Unless a clear contrary intention appears, (i) the singular includes the plural and vice versa; (ii) "include" or "including" means including without limiting the generality of the description preceding such term; (iii) the word "or" is not exclusive; (iv) the phrase "this Agreement" and the terms "hereof," "herein," "hereby," and derivatives or similar words refer to this entire Agreement; and (v) reference to any document, law, or policy means such document, law, or policy as amended from time to time.

(Signature Page Follows)

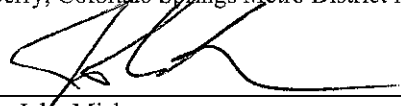


IN WITNESS WHEREOF, the Parties have caused this Agreement for Independent Contractor Consulting Services to be duly executed and delivered as of the date set forth above.

**Filsinger Energy Partners, Inc.**

By:   
Name: Todd Filsinger  
Title: Senior Managing Director

Mayberry, Colorado Springs Metro District No. 2

By:   
Name: John Mick  
Title: President



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9909 Mira Mesa Boulevard. 310 • San Diego, CA 92131 • Tel: (858) 281-7200

February 19, 2021

**MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2**

c/o Jennifer Gruber Tanaka, Esq.  
General Counsel  
White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122

Delivered via e-mail to Brooke Hutchens: [bhutchens@dadco.com](mailto:bhutchens@dadco.com)

Subject: **Market Value Assessment of Mayberry, Colorado Springs Metropolitan District No. 2 in Colorado Springs, CO MSA for the Purpose of a Bond Offering**

Dear Ms. Tanaka:

John Burns Real Estate Consulting, LLC (“JBREC”) is pleased to present this proposal to provide market research consulting services to Mayberry, Colorado Springs Metropolitan District No. 2 (“Mayberry” or “Client”). Our consulting services outlined herein are designed to help you analyze the value of proposed residential and industrial development for a bond offering by providing you with solid information about the market demand and competitive environment for proposed new development.

**Please note that market values JBREC provides in this analysis are not appraisals and cannot be used for bank financing with an FDIC regulated institution. In this Proposal, JBREC discusses methodology for estimating values, but this methodology does not adhere to the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.**

Our Building Market Intelligence™ analysis provides clients with an increased level of confidence in the decisions they are making.

This proposal contains seven sections:

1. Background and Objectives
2. Scope of Work
3. Deliverables and Timing
4. Experience
5. Fee Requirements
6. Terms and Conditions
7. Acceptance

# MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2

c/o Jennifer Gruber Tanaka, Esq.  
 General Counsel  
 White Bear Ankele Tanaka & Waldron  
 February 19, 2021  
 Page 2

## 1. BACKGROUND & OBJECTIVES

Mayberry is offering bonds associated with developing the first 550 homes and three industrial buildings in a new masterplan in the Colorado Springs, CO MSA. This proposed residential and industrial development represents the Subject of this analysis. The Subject is on the south side of Highway 94, between N Ellicott Highway to the east and Peyton Highway to the west. It is approximately 22 miles due east of downtown Colorado Springs and 16 miles due east of Peterson Air Force Base and Colorado Springs Airport.



Mayberry’s emphasis will be on attainable residential pricing and value. To achieve this goal, homes will be prefabricated on an onsite facility. The first 550 residential lots will be in two phases of development. Lots will range from 45’x 112’ to 85’x 120’, or approximately 5,040 to 10,200 square feet. Home plans will range from 1,710 to 3,178 square feet. All five home plans in Phases 1 and 2 will include standard three-car garages. We understand the developer/builder recently released 20 homes for sale and has non-refundable deposits on each.

Approximately 13 acres of the site are designated for industrial land. The Subject includes the first three industrial buildings to be developed. These buildings include Intelifab (the

## **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2**

c/o Jennifer Gruber Tanaka, Esq.

General Counsel

White Bear Ankele Tanaka & Waldron

February 19, 2021

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home fabrication building), Father & Sons (use to be specified by Client), and RV storage. Per the developer/builder, each of the buildings has a Letter of Intent (LOI) for purchase.

The objective of this assignment is to analyze relevant real estate market conditions and to offer conclusions about the most reasonable, market-based build-out strategy for the residential portions Subject bond area within Mayberry that includes 550 homesites. The analysis will provide JBREC's conclusions regarding market appropriate product segmentation, pricing, and absorption for Metropolitan District No. 2. JBREC will also review industrial development as it relates to the bond offering and will offer conclusions regarding the demand for the industrial space and market appropriate sales values for the buildings based on the designated users.

We will analyze for-sale housing to offer pricing and sales conclusions for the Client's planned residential development. The analysis of commercial portions of the master plan will offer insights into reasonable demand for and market sales prices of industrial buildings given their intended users. The end result of this assignment will be a report presenting our key findings, conclusions, and recommendations for the Subject.

Key questions to be addressed for the residential portion include, but would not be limited to:

- What are appropriate market-based price points (base, incentives, options, premiums, and total prices) for the designated residential units within Metropolitan District No. 2?
- What are reasonable per project absorption rates for the targeted residential product lines?
- What is the Subject's overall position within the competitive market?
- What are housing market trends in the Colorado Springs MSA and how do those apply to the specific submarket in which the Subject is located?
- How do dynamics in surrounding MSAs (Denver) influence the Colorado Springs MSA?
- What are the key demographic trends driving the opportunity for housing in the MSA and how do those trends compare to trends in the Subject's submarket (in general)?
- What is the demand for industrial space in the competitive market area?
- Are the market prices the developer is proposing for the industrial buildings reasonable?

**MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2**

c/o Jennifer Gruber Tanaka, Esq.  
General Counsel  
White Bear Ankele Tanaka & Waldron  
February 19, 2021  
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**2. SCOPE OF WORK**

The following is a summary of the analysis that will be required to provide you with the most accurate residential product recommendations and segmentation strategy for the Subject property.

**Step 1: Needs Assessment**

We have discussed your needs with you, and we have documented our understanding of your needs in steps 2 through 5 on the following pages.

**Step 2: Information Collection**

We will review information you provide that can offer insights into the future market potential of the Subject. Documents/information that we would like to review includes:

- Any existing community location maps and/or site plans;
- Plans and prices of the units that were released to-date;
- Any letters-of-intent (prices) associated with any industrial sites on site.
- Any existing land plans for the master plan that would offer insight into future development there;
- Summary of zoning or development restrictions or requirements;
- Assigned schools and designated school sites in the master plan;
- Estimates of HOA fees and total property tax rates (including any district fees); and
- Any other information you believe would be helpful.

**Step 3: Market Analysis**

To meet the objectives of this assignment, we will conduct the following scope of professional services:

**Step 3.1: Residential Analysis**

1. **Site Analysis:** We will visit the site and evaluate attributes of the site that may impact the market viability of future development including: access and visibility, proximity to employment and services, impact of surrounding land uses, school scores, and opportunities created by the location of the Subject.

## MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2

c/o Jennifer Gruber Tanaka, Esq.

General Counsel

White Bear Ankele Tanaka & Waldron

February 19, 2021

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2. **Housing Market Trends:** We will summarize housing market trends in the Colorado Springs MSA. The summary will include perspective on building permit issuance, new home sales, market capture, new and existing home sales by price range, typical prices and price per square foot, and inventory. This information will provide perspective on the appropriateness of conclusions regarding residential development strategy at the Subject.
3. **Economic/Demographic Analysis:** We will compile pertinent demographic data for the Colorado Springs MSA as well as a narrower competitive market area (CMA) on the east side of Colorado Springs and analyze it within the context of future development such as that proposed for the Subject. Data will include population and household growth trends, employment growth and distribution, household income levels, and age distribution.
4. **Competitive Market Analysis, Housing:** We will identify and survey actively selling comparable new home projects on the east side of Colorado Springs. Information for each project will include: location, builder, number of units, lot sizes or density, product, base prices, premiums, home sizes, option & upgrade revenues, incentives, units sold and sales rate, and buyer profiles. We will evaluate information to determine current market parameters and project performance and provide Subject recommendations.

*Per the developer, certain components of the home will be prefabricated, but from a permitting, code, and appraisal standpoint the homes will be considered site built homes. The developer/builder intends to market the homes as site built.*

5. **Resale Analysis:** We will assess relevant resale competition (and units currently listed for sale) in the Subject's CMA. These findings, coupled with our research of the new home market, will help drive our pricing recommendations for the Subject. Our analysis will be focused on "newer" stock (generally built within the last two to three years) and recently sold (within the last 3 to 12 months).
6. **Residential Product Recommendations:** JBREC recommendations will include but are not limited to:
  - Pricing estimates for each proposed residential product types.
  - An absorption estimate for each proposed product type.
  - Influence of the housing concept on pricing and absorption.
  - The future price appreciation or depreciation during the life of each product assuming macro market conditions, submarket conditions, the competitive

## MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2

c/o Jennifer Gruber Tanaka, Esq.  
General Counsel  
White Bear Ankele Tanaka & Waldron  
February 19, 2021  
Page 6

environment, the density of the neighborhood, the positioning of the neighborhood, consumer perceptions and other factors we learned during the course of our work.

### **Step 3.2: Industrial Analysis**

7. **Competitive Survey, Industrial.** We will identify and survey relevant industrial developments surrounding the Subject with a focus on newer projects as available. For active projects we will summarize size, lease rates, and occupancy rates as available.
8. **Industrial Demand.** To determine the potential demand for additional industrial space at the Subject, we will conduct an analysis that is primarily based on job growth projections. We will compare job projections for the next five years with the current existing industrial job bases. The net increase represents potential demand for additional development of the type. *Note: The report will include language that the model is based on traditional industrial space usage and not changes to usage that may result from the current pandemic.*
9. **Industrial Conclusions.** We will summarize the depth of demand for new industrial space in the competitive market and implications for space at the Subject. We will offer insight/conclusions regarding reasonable assessed value.

### **Step 4: Conclusions**

We will summarize key findings used to derive our conclusions, including our view on market conditions. We will translate our research and market assessments into pricing recommendations and absorption projections for homes at the Subject. And we will estimate market values of proposed industrial development.

*The conclusions in this analysis, including pricing/rent recommendations and estimated absorption/lease-up rate(s), are based on data available as of the survey period. Our outlook for the economy and housing market are based on, among others, three material assumptions in these uncertain times of COVID-19. These material assumptions include: 1) 30-year fixed mortgage rates of +/-3.0% for the next few years; 2) a gradual decline in the unemployment rate over several years; and 3) continued government fiscal and monetary stimulus with little economic repercussion. Changes to government stimulus, and/or infections trends, or other unforeseen events could impact JBREC's outlook and the recommendations in this report. We recommend you monitor these indicators closely when making investment decisions.*

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### **Step 5: Decisions**

Our objective is to provide you with the information needed to understand the overall market potential of the Subject. As such, we will review our recommendations with you in a conference call and help you achieve well informed decisions regarding the Subject.

### **3. DELIVERABLES & TIMING**

JBREC will present findings in a PowerPoint style report. This report will include a series of graphs and charts depicting research and conclusions. A working draft version of our report will be distributed in an electronic form – but hard copies can be provided if requested.

**This analysis can be completed within approximately 30 days of authorization.** We will be able to provide results in a phased manner once we have completed fieldwork and throughout our work process.

### **4. EXPERIENCE**

*John Burns Real Estate Consulting is uniquely qualified to assist you with this assignment.* Our highly educated and experienced staff believes in providing the highest quality service possible to our clients, which means completing the analysis you need: quickly, accurately, and cost-effectively.

Our firm is organized to provide the best analytical tools to the home building industry in order to help you maximize your investment opportunity and minimize your risk for both the short and long term. We specialize in assembling a wide array of accurate information into understandable formats that decision makers can use.

**Ken Perlman**, Managing Principal, will manage this project. Mr. Perlman has 15+ years of experience in the Real Estate Industry and has worked extensively in Colorado including in Colorado Springs. Mr. Perlman has directed analyses of residential and commercial projects throughout the United States, including master planned communities, active adult housing, high-rise and urban projects and commercial and retail developments. Prior to joining John Burns Real Estate Consulting, Mr. Perlman was Vice President with Sullivan Group Real Estate Advisors and a Senior Analyst with Hanley Wood Market Intelligence (formerly Meyers Group). He began his career as a residential land broker with Grubb & Ellis. Mr. Perlman graduated with a B.A. in Urban Studies and Planning from UC San

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Diego and has an M.B.A. from the University of San Diego. He is a full member of the Urban Land Institute.

**Annie Radecki**, Vice President, will assist with this project. Ms. Radecki has over 10 years of experience in real estate and urban planning and has worked nationally on residential projects serving all buyer types, from entry level to active adult. Before joining John Burns Real Estate Consulting in 2015, Annie was the Director of Market Intelligence for PulteGroup where she developed local segmentation, acquisition, and operational strategies for the Texas, Pacific Northwest, and Southeast markets. Her team developed Pulte's ongoing Shopper-Rejecter customer insights platform. Annie holds a B.A. in Architecture and Urban Studies from Yale University and a dual MBA/Masters' of Regional Planning from the University of North Carolina at Chapel Hill. She is based in our Portland office and is a member of CREW Portland and the Urban Land Institute.

**Chris Dorociak**, Senior Manager, will participate in this analysis. Chris has 15 years of experience in real estate consulting with a specialty in project feasibility and market analysis. Chris has an extensive background evaluating master-planned developments and has served as an expert witness. Prior to joining John Burns Real Estate Consulting, Chris was the Principal at Peterson Economics, where he covered a broad range of residential property types. Chris holds his Bachelor of Arts degree in Economics from the University of Florida, graduating summa cum laude. Chris earned a Master's degree in Applied Economics from Cornell University.

**Don Walker**, CFO & Managing Principal, will review conclusions and offer market insight. Don worked for 12 years at The Corky McMillin Companies, as head of home building for a 2,000-unit per year home builder. Don's experience as the Director of Finance and the General Manager of McMillin's Homebuilding operations makes him uniquely qualified to help with this analysis. Don honed his skills in strategic planning, acquisitions, and financial forecasting for the home building, land development and commercial lines of business. Prior to that, he worked in consulting at KPMG Peat Marwick, where he learned the art and science of evaluating real estate projects and markets. Don has a Bachelor of Science degree in Finance/Real Estate from San Diego State University and was a founding member of San Diego State's Real Estate Advisory Board.

Additional team members may provide support on various parts of this assignment as needed.

## **5. FEE REQUIREMENTS**



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The professional fees for this analysis will be as follows:

<b>Step</b>	<b>Task</b>	<b>Fee</b>
3.1	Residential Analysis	\$24,400
3.2	Industrial Analysis	\$9,900
<b>TOTAL</b>		<b>\$34,300</b>

We require a 50% deposit of consulting fees to begin work, with the balance due upon completion of the assignment.

If there are additional scenarios run or other changes to the scope of work, we will charge our time at our normal hourly billing rates. Additional billings will not be charged without your verbal approval. A delay or inaccurate information provided by the client that causes additional analysis or additional work that is outside the scope of this engagement, if any, will be billed separately. Further, if for some reason you decide to end this engagement before completion, upon written notification, JBREC will stop work immediately and will only bill for work completed to date.

JBREC reserves the right to charge up to 1.5% interest per month, on any outstanding invoices not paid within 60 days of the invoice date.

**6. TERMS AND CONDITIONS**

Our standard limiting conditions are included as Appendix A. The limiting conditions are intended to discourage litigation of any sort.

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**7. ACCEPTANCE**

We look forward to working with you. The signed proposal may be sent via e-mail to [kperlman@realestateconsulting.com](mailto:kperlman@realestateconsulting.com)

Respectfully,  
**John Burns Real Estate Consulting, LLC**



By: Kenneth S. Perlman, its Managing Principal

**Agreed and Accepted: MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2**

Signature:   
CC2781743D45489...

Print Name: John Mick

Print Name: \_\_\_\_\_

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### APPENDIX A. LIMITING CONDITIONS

1. Projections. The projections regarding the future included in JBREC's reports present the best estimate of JBREC as of the date they are prepared. There can be no assurance that the projections will prove accurate and some of the assumptions used in the projections will inevitably turn out to be incorrect, resulting in material differences between the projected and actual results. Also, unanticipated events and circumstances may occur and change the actual results in material ways. JBREC shall not be responsible with respect to the achievement of any projections included in any communications and will have no liability with respect to the achievement of any projections in any reports.

2. Third Party Use. The information furnished to Client by JBREC is delivered solely for Client's benefit and may not be furnished to, quoted, relied upon or used by any other person or entity or filed with any governmental agency for any purpose without JBREC President's prior written consent, except as may be required by applicable laws or if required by any regulatory or supervisory authority that has jurisdiction over Client. Notwithstanding the foregoing, so long as Client provides the complete report prepared for them by JBREC, then Client shall be permitted to furnish information to sophisticated third party investors pursuant to Client's standard disclosure and confidentiality practices, provided that Client provides such third party a copy of JBREC's limiting conditions and obtains such third party's agreement, in writing, that the delivery of such information is subject to all the provisions of these limiting conditions. Client agrees to indemnify, defend (with counsel of JBREC's choice), and hold harmless JBREC and its officers, directors, shareholders, employees, advisors, consultants, and agents ("Indemnified Parties") from any and all claims, liabilities, damages, costs, injuries, lawsuits, actions or judgments of any kind or nature (including, without limitation, attorneys' fees, expert fees, and litigation costs and expenses) arising out of or related to the information or reports prepared by JBREC or its advisors or consultants, the use thereof by Client, or the delivery or use of such information or reports by any third party to whom the Client delivers such information or report; provided, however, that Client shall have no indemnification obligations with respect to the bad faith, gross negligence, willful misconduct or knowing violation of applicable law by any Indemnified Party.

3. Errors and Omissions: While JBREC will strive to adequately collect all of the data and address all of the issues; JBREC will rely on Client to identify material errors and omissions in the report. Client is responsible for representations about its plans and expectations and for disclosure of significant information that might affect the assumptions utilized by JBREC or the ultimate realization of the projected results. In addition, JBREC is entitled to rely on any information or materials supplied by Client without confirming or assuming any liability for confirming such information provided. In addition, if Client requests that JBREC estimates costs or other matters based on general information or its experience rather than actually studying the specifics of a property, or otherwise requests that JBREC limits its review or studies in any respects, JBREC is not responsible for any inaccuracies that may result there from that might have been corrected by further study or review.

4. Bargained For and Maximum Liability. The provisions of this Agreement pertaining to liability limitation were mutually negotiated and that, but for their inclusion, the fees charged by JBREC to Client would have been greater or JBREC would not have entered into the Agreement. Notwithstanding anything to the contrary in this agreement, JBREC's maximum aggregate liability to Client related to or in connection with this agreement and the provision of information and reports by JBREC and its consultants and advisors, whether under theory of contract, tort (including negligence), professional errors or omissions, strict liability or otherwise; except any liabilities, damages or injuries which are the result of JBREC's or its affiliated staff or employees' bad faith, gross negligence, willful misconduct or knowing violation of law, will be limited to the lesser of: (I) the total amount paid by Client to JBREC pursuant to this agreement to date, or (II) \$2,000.

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In no event will JBREC be liable to Client, any representative, or any third party for any lost revenue, lost profits, incidental, speculative, special, punitive, indirect or consequential damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), professional errors or omissions, strict liability or otherwise.

5. Mediation and Arbitration. Mindful of the high cost of litigation, not only in dollars, but in time and energy as well, the parties intend to and do hereby establish final and binding out of court dispute resolution procedures to be followed in the event any controversy should arise out of or concerning this Agreement. Accordingly, the parties do hereby covenant and agree to mediate, through the American Arbitration Association, any claim or controversy, dispute or claim of whatever nature arising out of or relating to this Agreement, or the breach, interpretation or enforcement thereof (“Dispute”). In the event such Dispute is not resolved through mediation, then such Dispute shall be decided by binding arbitration in accordance with the commercial rules of arbitration of the American Arbitration Association. Client and JBREC agree, unless otherwise expressly agreed by the parties, that any mediation and arbitration pursuant to this agreement shall take place in Orange County, California.

6. Waiver of Jury Trial. JBREC and Client each acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party does hereby expressly and knowingly waive and release all such rights to trial by jury in connection with any Dispute, which will be resolved through the mediation and arbitration processes set forth herein.

7. Disclaimer of Warranties. JBREC grants no warranties, express or implied, by statute or otherwise, to Client regarding services performed or information, reports or other materials supplied, nor their fitness for any purpose, their quality, merchantability, or otherwise.

8. Commencement of Action. Any claim, demand, right, or defense by Client which arises out of or relates to this Agreement or the negotiations that preceded this Agreement or the information or reports provided by JBREC and its advisors and consultants shall be barred unless Client commences an action thereon, or interposes a defense by reason thereof within six (6) months after the date Client became aware of the inaccuracy, inaction, omission, event, or action that gave rise to such claim, demand, right, or defense. Client acknowledges, understands, and agrees that the purpose and effect of this paragraph is to shorten the period Client would otherwise have within which to raise such claims, demands, rights, or defenses under applicable law.

9. Transfer or Assignment of Interest. In the event of any transfer of JBREC’s interest in this Agreement or in the subject matter of this Agreement, JBREC shall be automatically relieved of all further obligations or liability to Client. It is intended that the covenants and obligations contained in this agreement on the part of JBREC shall, subject to the foregoing, be binding on JBREC, its successors and assigns, only during and in respect to their respective successive periods of ownership.

10. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11. Sophistication of Client and Opportunity for Legal Review. Client is a sophisticated professional in real estate transactions and contracts and is aware of the risks in real estate ownership, investment, finance and management. Client has had the opportunity to consult with Client’s own legal counsel about the scope and effect of these limiting conditions.

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12. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

14. Severability Of Provisions. Each provision of this Agreement shall be considered severable, and if for any reason any provision which is not essential to effect the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, then such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

# Mayberry, Colorado Springs MD No. 1

## Check List

All Bank Accounts

January 1, 2021 - January 31, 2021

Check Number	Check Date	Payee	Amount
<b>Vendor Checks</b>			
1025	01/26/21	Bishop Brogden Accociates, Inc	4,118.25
1026	01/26/21	CliftonLarsonAllen, LLP	2,776.15
1027	01/26/21	Colorado Special District P&L Pool	4,052.00
1028	01/26/21	MMI Water Engineers	208.00
1029	01/26/21	T. Charles Wilson	990.00
1030	01/26/21	White, Bear & Ankele PC	19,087.79
		<b>Vendor Check Total</b>	<u>31,232.19</u>
		<b>Check List Total</b>	<u><u>31,232.19</u></u>

Check count = 6

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**MAYBERRY, COLORADO SPRINGS COMMUNITY AUTHORITY**

**ESTABLISHMENT AGREEMENT**

By, between, and among

**MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NOS. 2-8**

Dated as of March 10, 2021

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**MAYBERRY, COLORADO SPRINGS COMMUNITY AUTHORITY  
ESTABLISHMENT AGREEMENT**

**THIS MAYBERRY, COLORADO SPRINGS COMMUNITY AUTHORITY ESTABLISHMENT AGREEMENT** (the “Agreement”), entered into as of the 10<sup>th</sup> day of March, 2021, by and among **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 2”); **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 3** (“District No. 3”) a quasi-municipal corporation and political subdivision of the State of Colorado; **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 4** (“District No. 4”) a quasi-municipal corporation and political subdivision of the State of Colorado; **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 5** (“District No. 5”) a quasi-municipal corporation and political subdivision of the State of Colorado; **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 6** (“District No. 6”) a quasi-municipal corporation and political subdivision of the State of Colorado; **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 7** (“District No. 7”) a quasi-municipal corporation and political subdivision of the State of Colorado and **MAYBERRY, COLORADO SPRINGS METROPOLITAN DISTRICT NO. 8** (“District No. 8”) a quasi-municipal corporation and political subdivision of the State of Colorado (each a “District” and together the “Districts”).

W I T N E S S E T H:

WHEREAS, the Districts are quasi-municipal corporations and political subdivisions of the State of Colorado (the “State”), organized for the purpose, among others, of assisting in the financing and construction of public improvements within certain areas located within El Paso County; and

WHEREAS, in accordance with the Second Amended and Restated Service Plan for Mayberry, Colorado Springs Metropolitan District Nos. 1 & 2 and Consolidated Service Plan for Mayberry, Colorado Springs Metropolitan District Nos. 3-8 (the “Amended and Restated Service

Plan”) and pursuant to Sections 32-1-101, *et seq.*, C.R.S. (the “Special District Act”), the Districts are each authorized to provide certain public facilities, improvements and services; and

WHEREAS, certain public improvements and facilities projects are contemplated, including, but not limited to, certain water, street, traffic and safety controls, park and recreation, drainage, including storm water drainage, sanitary sewer, and related grading that will benefit the Districts, their constituents and the public (collectively, the “Improvements”); and

WHEREAS, as permitted by the Amended and Restated Service Plan and applicable State law, the Districts desire to coordinate with one another for the ongoing financing, planning, designing, acquiring, constructing, installing, relocating and redeveloping of the Improvements, as further set forth in the Amended and Restated Service Plan and herein (collectively, and as may be further supplemented or provided in accordance with this Agreement and applicable law, the “Services”); and

WHEREAS, the Districts, being located in the same general area, desire to develop a collaborative working relationship to more efficiently and effectively carry out their individual responsibilities under the Special District Act and the Amended and Restated Service Plan as it relates to the Services; and;

WHEREAS, the Constitution of the State, Article XIV, Section 18(2)(a), provides that the Constitution shall not be construed to prohibit the state or any of its political subdivisions from cooperating and contracting with each other to provide any function, service, or facility lawfully authorized to each of the cooperating and contracting political subdivisions; and

WHEREAS, the Constitution of the State, Article XIV, Section 18(2)(b), provides that the Constitution shall not be construed to prohibit the authorization by statute of a separate governmental entity as an instrument to be used through voluntary participation by cooperating or contracting political subdivisions; and

WHEREAS, Section 29-1-201, C.R.S., permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments and provides that such statute shall be liberally construed; and

WHEREAS, Section 29-1-203, C.R.S., authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating and contracting units, including the incurring of debt, through the establishment of a separate entity; and

WHEREAS, the Districts have a compelling mutual interest in jointly providing the Services, in the present and future, to promote the public welfare; and

WHEREAS, providing the Services may be substantially different if provided without considering the overall development needs and coordinated construction; and

WHEREAS, provision of the Services in a coordinated manner will better promote the health, safety, prosperity, security and general welfare of the property owners and residents within the Districts as well as the public in general; and

WHEREAS, the Districts desire to enter into this Agreement to establish a separate legal entity as a political subdivision and public corporation of the State in conformity with and subject to Section 29-1-203.5, C.R.S., to provide the Services and for any related functions, or facilities permitted by the Constitution and laws of the State and in accordance with the provisions of this Agreement; and

WHEREAS, the Districts intend by entering into this Agreement, that the Authority hereby created be a political subdivision and public corporation subdivision for federal income tax purposes as well as for state law purposes and with the duties and immunities set forth in Part 1 of Article 10, Title 24, C.R.S., as amended; and

WHEREAS, at elections of the eligible electors of the Districts, duly called and held, in accordance with law and pursuant to due notice, a majority of those eligible to vote and voting at such election, authorized the Districts to enter into this Agreement. To the extent this Agreement is deemed to constitute debt or a multi-fiscal year financial obligation of one or more of the Districts, the same has received voter approval in such election; and

WHEREAS, it is in the best interest of the Districts and for the public health, safety, convenience, and welfare of the residents of the Districts and of the general public that the

Districts enter into this Agreement for the purpose of establishing an authority to provide the Services and incur financial obligations on behalf of the Members (as defined below), as may be identified and agreed upon by the Members, from time to time.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed in this Agreement, it is agreed by and between the Districts, as follows:

## **ARTICLE I**

### **CREATION OF THE AUTHORITY**

**Section 1.01. Creation.** Pursuant to Section 29-1-203, C.R.S., and in conformity with Section 29-1-203.5, C.R.S., and the Amended and Restated Service Plan, as the same may be amended from time to time, upon the mutual execution of this Agreement by the Districts, there is hereby established by this Agreement a separate political subdivision and public corporation of the State to be known as the *Mayberry, Colorado Springs Community Authority* (the “Authority”). The Authority shall be separate and distinct from the Districts and Members, as defined herein.

**Section 1.02. Purpose.** The Authority is organized for the purposes of incurring financial obligations on behalf of the Members and providing any Services, as permitted by the Amended and Restated Service Plan, Constitution and laws of the State and in accordance with the provisions of this Agreement.

**Section 1.03. Boundaries.** The initial area comprising the territory within the Authority shall consist of, and be conterminous with, the combined territory of the Districts, as of the date hereof, and in the future the territory within the Authority shall include territory included within the Districts and exclude territory excluded from the Districts pursuant to the Special District Act.

**Section 1.04. Immunity.** The Authority shall be a political subdivision and public corporation of the State, and, therefore, a “public entity” as defined by the Colorado Governmental Immunity Act, Part 1 of Article 10, Title 24, C.R.S., as amended.

**Section 1.05. Indemnification.** To the extent permitted by law, the Authority shall indemnify, defend, and save harmless the Members, their officers, agents, consultants and employees from and against any and all claims and losses whatsoever occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials, or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any person, firm, or corporation, for damage, injury or death arising out of or connected with the Authority's performance of its obligations under this Agreement.

## **ARTICLE II**

### **MEMBERSHIP/ORGANIZATIONAL STRUCTURE**

**Section 2.01. Members Defined.** A "Member" shall be any special district, city, county or other political subdivision of the State that is (a) lawfully authorized to provide the Services, and (b) approved for membership in the Authority under the terms of this Agreement, as it may be amended from time to time.

**Section 2.02. Initial Members.** The initial Members of the Authority shall be the Districts.

**Section 2.03. Board of Directors.** The Authority shall be governed by a Board of Directors (the "Board"), in which all of the legislative power of the Authority is vested and which shall exercise and perform all the powers, rights and duties vested in and imposed on the Authority by this Agreement and applicable State law. Each Board member (each a "Director") shall serve at the will and pleasure of the Member that appointed the Director. Directors may receive compensation for their services in the maximum amount allowed for the directors of special districts by Section 32-1-902(3), C.R.S., and reasonable expenses related to the exercise of Board functions may be reimbursed by the Authority from funds that may be available for such purpose.

**Section 2.04. Composition of Board.** Each Member shall be entitled to appoint one (1) Director to serve on the Board. Each Director shall have one (1) vote on behalf of the Member for which s/he is appointed to represent and does not have to be an elected/appointed

director of any Member. The Members shall each appoint their respective Directors and establish their terms of office by motion or resolution, which term may not exceed four (4) years, documented in writing, a copy of which shall be provided to the Authority. There shall be no limit on the number of terms a Director may serve. Each Director shall take an oath or affirmation in accordance with Section 24-12-101(1), C.R.S. The oath or affirmation of each Director may be administered consistent with the provisions of Section 24-12-103, C.R.S., and shall be filed with the respective Member and the Authority. Each Director shall serve at the will and pleasure of the Member that appoints such Director. A Director may be removed by the appointing Member, with or without cause, upon written notification of the removal to the respective Director.

**Section 2.05. Vacancies.** A vacancy may arise on the Board through resignation, death, removal by the Member for which such Director is appointed to represent, disability of any such Director, or loss of eligibility to serve on the Board pursuant to applicable law or this Agreement. Vacancies on the Board shall be filled by the Member as to which the vacancy occurs, as set forth above. In the event a vacancy is not filled as described in this Section 2.05, then each vacant seat's vote shall be waived on any matter coming before the Board and the related voting and quorum requirement (as set forth below) is reduced by the number of vacant seats until such time as each vacancy is filled.

**Section 2.06. Addition of New Members.** Additional Members (in addition to the Districts) (each, a "New Member") may be included into the Authority upon (a) unanimous approval of the Board and upon the execution of a written amendment to this Agreement approved in writing by all the Members and (b) prior delivery to the trustee for any Authority Bonds (defined in Section 4.02 below) then outstanding (or to any holder in the event there is no trustee for Authority Bonds outstanding) of an opinion of Bond Counsel (defined below) to the effect that such admission will not adversely affect the excludability of interest on such Authority Bonds from gross income for federal income tax purposes. The term "Bond Counsel" as used in this Agreement means any firm of nationally recognized municipal bond attorneys selected by the Authority and experienced in the issuance of municipal bonds and the exclusion of the interest thereon from gross income for federal income tax purposes. The Board may establish criteria for the addition of a New Member, including fees for joining the Authority,

voting privileges, and Board membership. New Members may be allowed to appoint Directors to the Board as set forth in Section 2.04 of this Agreement.

**Section 2.07. Voting and Quorum.** The Board shall act only upon a duly taken vote of the Directors. A vote of the Board shall be deemed duly taken if approved by a majority vote of a Quorum of the Board (as defined below). Each Director appointed by a Member shall have one vote on behalf of that Member. A quorum of the Board shall consist of a majority of the Directors then appointed (a “Quorum”). No official action may be taken by the Board on any matter unless it occurs at a properly noticed regular or special meeting of the Board where a Quorum is in attendance either in person, by telephone or other electronic means, provided that all persons attending the meeting, including the public, can hear and be heard. A Director may vote by written proxy given to another Director.

**Section 2.08. Meetings.** The Board may hold regular and special meetings at any location that each of the Members are legally entitled to hold regular and special meetings in conformance with Section 32-1-903, C.R.S., as amended. The Board may hold regular meetings at a time and place fixed by the Board and may conduct special meetings at such times and places as the Board may determine to be necessary, provided that notice of the time, place and business of all such meetings shall be provided to the public in accordance with this Agreement. Notices of all meetings shall be the same as meetings for special districts under the Special District Act. All meetings of the Board shall be done in the manner required by the Colorado Open Meetings Act, Sections 24-6-401, *et seq.*, C.R.S., and to the extent the presence of the Directors at any meeting of the Board implicates Section 32-1-903, C.R.S., compliance with the provisions thereof.

**Section 2.09. Officers.** The officers of the Authority shall consist of, at a minimum, a President, Secretary and Treasurer, and may include a Vice President and as many assistant Treasurers and assistant Secretaries as the Board sees fit. All officers shall be appointed from time to time by a vote of the Board. Appointed officers must be Directors, provided the Board may appoint an individual who does not serve as a Director to serve as the Authority Secretary or as an assistant Secretary. In addition to duties designated by the Board from time to time and as required by law, the duties of the officers shall include:



(a) The President shall be authorized to preside at all meetings of the Board and, except as otherwise delegated by the Board or provided in this Agreement, shall execute all legal instruments of the Authority. In the event a Director other than the President is designated to execute any legal instrument, such designation shall be reflected in the minutes of the meeting in which the action was approved.

(b) The Vice-President, if any, shall, in the absence of the President, or in the event of the President's inability or refusal to act, perform the duties of the President and when so acting shall have all the powers of and be subject to all restrictions upon the President.

(c) The Secretary shall maintain the official records of the Authority, including the minutes of the meetings of the Board, and a register of the names and addresses of the Members, Directors, and officers, and shall issue notice of meetings, attest and affix the corporate seal, as applicable, to all documents of the Authority, and perform such other duties as the Board may prescribe from time to time. The Secretary may be a Director, consultant, or other person appointed by the Board.

(d) The Treasurer shall serve as the financial officer of the Authority.

(e) The officers of the Authority shall be elected by a majority vote of a Quorum of the Board.

**Section 2.10. Bylaws and Regulations.** The Authority shall have the power to adopt such bylaws and regulations as are necessary or convenient for the conduct of the Authority so long as such bylaws and regulations are not in conflict with the provisions of this Agreement or law.

**Section 2.11. Withdrawal.** Prior to the approval of the issuance of debt by the Authority, a Member may be released from this Agreement upon written notice to the other Members. So long as the Authority has debt outstanding, no Member that has pledged its Debt Pledged Revenue (as defined below) to the Authority may be released from this Agreement. So long as the Authority has debt outstanding, a Member that has not pledged its Debt Pledged Revenue to the Authority may be released from this Agreement upon written notice to the other

Members. At such time as all debt of the Authority has been repaid, any Member may be released from this Agreement upon written notice to the other Members. Any withdrawal by a Member under this Section 2.11 shall be effective thirty (30) days from notice being properly given pursuant to Section 8.01.

**Section 2.12. Conflict Disclosures.** All Directors shall disclose conflicts of interest in the same manner required of directors of special districts under State law, including Section 24-18-110, C.R.S., Section 18-8-308, C.R.S., and Rule 1.1 of the Colorado Secretary of State's Rules Concerning Conflicts of Interest, as the same may be amended from time to time.

**Section 2.13. No Restriction on Powers of Members.** Except as expressly provided herein, nothing in this Agreement shall be deemed or construed to restrict, prohibit or otherwise limit the power of any Member, and no action of the Authority shall be attributable to the Members.

**Section 2.14. Dissolution of Member; Consolidation of Members.** If a Member is dissolved or otherwise ceases to exist then either (a) the plan for dissolution for such Member shall contain adequate provisions acceptable to the Authority, in the Authority's sole reasonable discretion, for the performance of all such Member's obligations to the Authority; or (b) all such obligations shall be fully paid and performed prior to the effective date of dissolution. If the Members determine to consolidate with one another pursuant to Section 32-1-601, *et seq.*, C.R.S., as amended, then the Members shall jointly agree to terminate this Agreement in accordance with the provisions of Article VI of this Agreement.

**Section 2.15. Advisory Committees.** The Board may establish one (1) or more advisory committees, and the advisory committee members may be any person or persons so designated by the Board. Any committee established by the Board shall serve solely in an advisory capacity to the Board. The members of any advisory committee shall serve at the pleasure of the Board.

**ARTICLE III**  
**POWERS OF THE AUTHORITY**

**Section 3.01. Delegation of Powers, Duties and Responsibilities.** Each of the Members delegates to the Authority the limited power, duty and responsibility to provide the Services, to employ the necessary personnel and do any and all other things necessary or desirable to provide the Services and it to incur financial obligations on behalf of the Members. Notwithstanding the delegations made in the previous sentence, each of the Members reserves and maintains for itself the power to provide the Services and to incur financial obligations consistent with each Member's service plan, so long as such provision of the Services by a Member does not duplicate or interfere with the Authority's provision of the Services and incurrence of financial obligations pursuant to this Agreement. The Districts agree that they shall not provide Services of any kind without the prior written consent of the Board.

**Section 3.02. Plenary Powers.** Except as otherwise limited by this Agreement, the Authority, in its own name and as provided in this Agreement, shall exercise all powers lawfully authorized in Section 29-1-203, C.R.S., and Section 29-1-203.5, C.R.S., as amended, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. The Authority shall act through its Board, its officers, agents, consultants and employees as authorized by the Board pursuant to any action, motion, resolution, bylaws, and regulations of the Authority. The Authority shall not have the power to represent itself as, or act as agent for, or on behalf of, an individual Member without such Member's written consent.

**Section 3.03. Enumerated Powers.** In general, the Authority shall have the power to exercise all powers conferred by law upon a separate legal entity organized pursuant to Sections 29-1-203 and 29-1-203.5, C.R.S., as amended, or essential to the provision of its functions, services, and facilities, and subject to such limitations as are or may be prescribed by law or in this Agreement. In accordance with Section 29-1-203.5(2)(a), C.R.S., the Authority is expressly authorized to exercise any general power of a special district specified in Part 10 of Article 1 of Title 32, C.R.S., so long as each of the Members may lawfully exercise the power; provided, however, that pursuant to Section 29-1-203.5(2)(b), C.R.S., the Authority may not

levy a tax or exercise a power of eminent domain. To the extent permitted by law and subject to the limitations set forth in this Agreement, the Authority's powers shall include, without limitation, the following:

(a) to acquire, operate, manage, own, lease (as lessee or lessor), sell, construct, reconstruct, maintain, or repair, or dispose of real and personal property, buildings, works, improvements, or other facilities necessary to carry out the purposes of this Agreement in the name of the Authority;

(b) to make and enter into contracts, including, without limitation, contracts with local governmental entities, including the Members, and other special districts, authorities, corporations, cities, counties and State or federal agencies, provided, however, that the power shall be limited as provided in Section 32-1-1001, C.R.S., as amended, and other laws applicable to special districts, so long as each of the Members may lawfully exercise such power;

(c) to accept gifts, grants and revenue from any lawful source;

(d) to sue and be sued in the Authority's own name;

(e) to hire and terminate agents, employees, consultants and professionals;

(f) to approve and modify master plans, to provide for the Services; to dedicate property acquired or held by it for public works, improvements, facilities, utilities, and related purposes; and to agree, in connection with any of its contracts, to any conditions that it deems reasonable and appropriate including, but not limited to, conditions attached to federal financial assistance, and to include in any contract made or let in connection with any project of the Authority provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(g) to prepare and approve an annual budget and any necessary amended or supplemental budgets, as set forth in Article IV, herein;

(h) to approve, set, impose, collect, pledge, spend, reserve, and use rates, fees, tolls, charges and penalties for facilities, services and programs furnished or to be furnished by the Authority;

(i) to adopt, modify, and amend bylaws and regulations pursuant to Section 2.10, above;

(j) to enter into agreements for the purpose of securing any necessary professional, administrative, or support services;

(k) to keep and maintain financial books and records to account for all expenditures of funds, and to obtain an annual independent audit (or annual application for audit exemption) by certified public accountants selected by the Board of such records, with all of the same to be made available to the Members at any time upon request;

(l) to accept contributions, grants, or loans from any public or private agency, individual, or the United States or the State any department, instrumentality, or agency thereof, for the purpose of financing its activities;

(m) to adopt financial and investment policies and invest monies remaining in any fund which are available for investment in accordance with the laws of the State including Articles 10.5 and 47 of Title 11, C.R.S., as amended, for the investment of public funds or by public entities;

(n) to contract for real estate, financing, goods or services;

(o) to issue on behalf of the Members bonds, notes or other financial obligations payable solely from revenue derived from one or more of the functions, services, systems, or facilities of the Authority, from money received under contracts entered into by the Authority, or from other available money of the Authority subject to the provisions of Section 29-1-203.5(3)(a), C.R.S., and to finance the Services in accordance with Article IV, herein;

(p) to enter into lease-purchase agreements which may be offered either as whole leases or with certificates of participation in accordance with Sections 29-1-101, *et seq.*, C.R.S., as amended;

(q) to take all actions necessary or appropriate to carry out and implement the provisions of this Agreement;

(r) to have and use a corporate seal;

(s) to control and accept public rights of way;

(t) to furnish covenant enforcement and design control services in accordance with Section 32-1-1001(8), C.R.S., as amended; and

(u) to exercise any general power of a special district or of a metropolitan district specified in part 10 of Article 1 of Title 32, C.R.S., as long as each of the Members may lawfully exercise such power.

**Section 3.04. Limitation on Express and Implied Powers.** In determining the express and implied powers that the Authority has under this Agreement, the Authority shall not have the following powers:

(a) taxation;

(b) imposition of special assessments pursuant to Article 25 of Title 31, and Article 1 of Title 32, C.R.S., as amended;

(c) zoning or other governmental powers over land use;

(d) imposition of building, fire code, public health and safety regulations; and

(e) eminent domain.

**Section 3.05. Spending Authority.** The Authority is limited in its spending powers to the annual total budget approved by a majority of the votes of a Quorum of the Board, as said budget may be amended.

**Section 3.06. No Private Inurement.** No part of the assets or net earnings of the Authority shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the Authority shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make reimbursement in reasonable amounts for expenses actually incurred in exercising the powers or carrying out the purposes of the Authority.

## **ARTICLE IV BUDGETS/FUNDING/DEBT**

**Section 4.01. Annual Budget.** On or before August 31<sup>st</sup> annually, each Member shall provide the Authority with its respective Preliminary Assessed Valuation for the upcoming year. No later than October 15<sup>th</sup> of each year, the Board shall cause a proposed annual budget for the next fiscal year to be prepared and submitted to the Members. On or before November 15<sup>th</sup> annually, the Authority shall approve its budget for the upcoming year, and shall provide the Members a copy of the adopted annual budget. The budget adopted by the Board shall conform to the requirements of Sections 29-1-101, *et seq.*, C.R.S., as amended, and the additional requirements set forth in this Agreement. The Board may amend its annual budget in accordance with Sections 29-1-101, *et seq.*, C.R.S. The Authority shall make available to each of the Members a detailed statement of the final costs and expenses for the prior fiscal year as soon as possible after the close of each fiscal year.

**Section 4.02. Funding.** The Authority may fund the Services from any lawful source allowed by this Agreement and applicable law. The Authority shall be authorized to provide for the Services from the proceeds of revenue bonds, notes or other financial obligations as provided in Section 29-1-203.5(3), C.R.S., as amended, to be issued by the Authority (the “Authority Bonds”), or subject to approval of the Member, may delegate and assign those rights and responsibilities to an individual Member. It is anticipated that the Authority Bonds will be secured by pledged revenues from each of the Members, which will be evidenced through one (1) or more pledge agreements entered into between the Authority and one or more of the Members and will include a pledge of such Member(s) to impose a debt service mill levy, as provided for under the Service Plan, and a pledge from such Member(s) to convey revenues

from such debt service mill levy and such other fees and charges to the Authority (the “Debt Pledged Revenue”) to secure repayment of the Authority Bonds..

**Section 4.03. Operations Costs.** The Members acknowledge that the Authority does not have financial resources to pay for its ongoing operations and administrative costs, such as legal, engineering, architectural, surveying, management, accounting, auditing, insurance, and other costs necessary for continued good standing under applicable law (the “Operations Costs”). Therefore, each Member agrees to pay its “Pro Rata Share” (as defined below) of the Operations Costs each year, as set forth in the Authority’s annual budget adopted in accordance with Section 4.01 above, not to exceed \$25,000 per year per Member (the “Operations Funding Cap”), which Operations Funding Cap shall adjust on January 1 of each subsequent year by 5% to account for inflation and cost of living adjustments. Each Members “Pro Rata Share” shall be calculated by dividing the total Operations Costs by the then current number of Members. The Operations Funding Cap may be exceeded in any given year upon unanimous consent of the Members.

In addition, the Authority may fund operations from rates, fees, tolls, charges or penalties and with any revenues transferred to the Authority by the Members or others.

The Authority shall keep a record of and account for all deposits made by the Members in accordance with generally acceptable accounting principles.

The Members intend that the Authority not be considered a “district” subject to Article X, Section 20 of the Colorado Constitution (“TABOR”) and therefore will not maintain a three percent (3%) emergency reserve as required by paragraph (5) of TABOR. The reserves of each Member, including the Members’ TABOR reserves, shall not be transferred to the Authority but shall remain with the respective individual Members. However, should it be determined that the Authority is a “district” for purposes of TABOR, the emergency reserves of the individual Members shall be available to the Authority should it become necessary to draw on an emergency reserve fund and thus the Authority’s emergency reserve requirement under TABOR would be satisfied.



**Section 4.04. Books and Records.** The Authority shall provide for the keeping of accurate and correct books of account on an accrual basis in accordance with the Local Government Uniform Accounting Law, Part 5 of Article 1, Title 29, C.R.S., as amended. Said books and records shall be open to inspection at all times during normal business hours by any representative of any of the Members or by the accountant or other person authorized by any of the Members to inspect said books or records. The Board shall provide for the auditing of all books and accounts and other financial records of the Authority annually, and in accordance with the Colorado Local Government Audit Law, Part 6 of Article 1, Title 29, C.R.S., as amended. Audits shall be completed and filed annually in a timely manner, as described in Section 29-1-606, C.R.S. All funds received by the Authority shall be invested in accordance with state statutory requirements.

**Section 4.05. Authority Bonds.** The Authority may, from time to time, issue the Authority Bonds on behalf of the Members; provided, such Authority Bonds may only be issued pursuant to a written resolution of the Board and resolutions of the Members to the extent such bonds, notes or other financial obligations are issued on behalf of such Members and shall be payable out of all or a specified portion of the Debt Pledged Revenue and other available revenues of the Authority as designated by the Board. No Member shall be permitted to issue bonds, notes or other financial obligations secured by *ad valorem* property taxes without the prior written consent of the Authority.

**Section 4.06. Remittance of Funds to Authority.** At any time that any Authority Bonds are outstanding, all Debt Pledged Revenue shall be remitted as set forth in the applicable indenture, loan agreement, pledge agreement, or other similar financial instrument executed in connection with the issuance of such Authority Bonds, but in all cases within no less time than within thirty (30) days of receipt of such Member.

## ARTICLE V

### ASSETS OF THE AUTHORITY AND INSURANCE

**Section 5.01. Asset Inventory Schedule.** The Authority shall maintain an asset inventory list for any and all real or personal property acquired by the Authority by lease, purchase, donation or governmental conveyance and either held by it or transferred to others.

This list shall designate how the asset was acquired, the date of acquisition, and the date of any sale or other disposition of any asset transferred by the Authority, together with the amount of consideration received or paid by the Authority.

**Section 5.02. Insurance.** The Authority shall maintain, at a minimum, the following insurance coverages:

(a) General liability coverage protecting the Authority and its officers, directors, and employees against loss, liability, or expense whatsoever from personal injury, death, property damage, or otherwise, arising from or in any way connected with management, administration, or operations in amounts not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, or the maximum amount that may be recovered under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as amended (the “CGIA”), whichever is higher.

(b) Directors and officers liability coverage (errors and omissions) protecting the Authority and its directors and officers against any loss, liability, or expense whatsoever arising from the actions and/or inactions of the Authority and its directors and officers in the performance of their duties.

The Authority may obtain, at its own expense, any further or additional insurance coverage that the Board desires to carry.

## **ARTICLE VI TERMINATION**

**Section 6.01. Termination by Notice.** This Agreement will terminate, after notice has been provided to each Member, by a vote of the Board in accordance with Section 2.07. and provision has been made for (a) the payment of any Authority Bonds or any other debt issued by, and financial obligation of, the Authority or (ii) such Authority bonds or debt has been fully paid or defeased as provided in the applicable instruments governing such Authority Bonds or debt and the pledge of revenues thereto .

**Section 6.02. Wind-Up and Liquidation.** In the event of termination of this Agreement, the Board, or a person or persons appointed by the Board, shall wind-up and liquidate the assets of the Authority, if any. Upon dissolution of the Authority, and in consultation with the Bond Counsel, all of its property will be transferred to: (a) one (1) or more of the Members; (b) an entity that exists as a result of a consolidation of the Members; or (c) other governmental entities approved by the Members of the Authority immediately prior to dissolution. If the Members cannot agree on the disposition of certain assets or property of the Authority, said assets or property shall be subject to an independent appraisal and shall be sold at public auction with the proceeds allocated, to the greatest equitable extent possible, to the Members in the same proportion as the respective contribution of funds by the Members for acquisition of the assets or property. Upon termination of this Agreement, the Members will work in good-faith to determine how best to allocate Authority assets and liabilities between the Members, such that a fair and equitable arrangement can be achieved while continuing to maintain the best possible services for each Member. The Members may memorialize the terms of their accord in a written agreement, if they so choose.

## **ARTICLE VII**

### **DEFAULT**

**Section 7.01. Events of Default.** The occurrence of any one or more of the following events, and/or the existence of any one or more of the following conditions shall constitute an “Event of Default” under this Agreement:

(a) The failure of any Member to make any payment when the same shall become due and payable provided in this Agreement and cure such failure within ten (10) business days of receipt of notice from the Authority or one of the Members of such failure; or

(b) The failure to perform or observe any material, covenant, agreement, or condition in this Agreement on the part of any Member and to cure such failure within thirty (30) days of receipt of notice from one of the other Members or the Authority of such failure unless such default cannot be cured within such thirty (30) day period, in which event the defaulting Member shall have an extended period of time to complete the

cure, provided that action to cure such default is commenced within said thirty (30) day period and the defaulting Member is diligently pursuing the cure to completion.

**Section 7.02. Remedies on Occurrence of Events of Default.** Upon the occurrence of an Event of Default, each of the Members and the Authority (together) shall have the following rights and remedies:

(a) Any non-defaulting Member(s) and/or the Authority may ask a court of competent jurisdiction to enter a writ of mandamus or order any similar or equivalent relief, to compel the board of directors of the defaulting Member to perform its duties under this Agreement, and/or to issue temporary and/or permanent restraining orders, or orders of specific performance, to compel the defaulting Member to perform in accordance with this Agreement.

(b) Any non-defaulting Member(s) and/or the Authority may protect and enforce their rights under this Agreement by such suits, actions, or special proceedings as they shall deem appropriate, including, without limitation, any proceedings for the specific performance of any covenant or agreement contained in this Agreement, for the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages, including attorneys' fees and all other costs and expenses incurred in enforcing this Agreement.

(c) Each of the non-defaulting Member(s) and/or the Authority shall have the right to budget and expend funds as necessary to enforce the terms of this Agreement.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

**Section 8.01. Notices.** Any notice required hereunder shall be given in writing, delivered personally, or sent by registered mail, postage prepaid, and addressed to the Members at the addresses set forth below or at such other address as a Member may hereafter or from time to time designate by written notice to the other Member given in accordance herewith. Notice shall be considered given when personally delivered or mailed, and shall be considered

received in the earlier of the day on which such notice is actually received by the Member to whom it is addressed, or the third day after such notice is mailed.

To District Nos. 2 & 8: Mayberry, Colorado Springs Metropolitan District  
Nos. 2 & 8  
c/o Public Alliance, LLC  
355 S. Teller Street  
Lakewood, CO 80226  
Attention: AJ Beckman, District Manager  
Phone: (303) 877-6284  
Email: [aj@publicalliancecellc.com](mailto:aj@publicalliancecellc.com)

With a copy to: White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122  
Attention: Jennifer Gruber Tanaka, Esq.  
Phone: (303) 858-1800  
Email: [jtanaka@wbapc.com](mailto:jtanaka@wbapc.com)

To District Nos. 3-7: Mayberry, Colorado Springs Metropolitan District Nos. 3-7  
c/o Public Alliance, LLC  
355 S. Teller Street  
Lakewood, CO 80226  
Attention: AJ Beckman, District Manager  
Phone: (303) 877-6284  
Email: [aj@publicalliancecellc.com](mailto:aj@publicalliancecellc.com)

With a copy to: Collins Cockrel & Cole P.C.  
390 Union Blvd., Suite 400  
Denver, CO 80228  
Attention: Matthew P. Ruhland, Esq.  
Phone: (303) 986-1551  
Email: [mruhland@ccfirm.com](mailto:mruhland@ccfirm.com)

To the Authority: Mayberry, Colorado Springs Community Authority  
c/o Public Alliance, LLC  
355 S. Teller Street  
Lakewood, CO 80226  
Attention: AJ Beckman, District Manager  
Phone: (303) 877-6284  
Email: [aj@publicalliancecellc.com](mailto:aj@publicalliancecellc.com)

With a copy to: White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122  
Attention: Jennifer Gruber Tanaka, Esq.

Phone: (303) 858-1800  
Email: [jtanaka@wbapc.com](mailto:jtanaka@wbapc.com)

**Section 8.02. Consent.** Whenever any provision of this Agreement requires consent or approval of the Members hereto, the same shall not be unreasonably withheld.

**Section 8.03. Amendments.** No alterations, amendments or modifications to this Agreement shall be valid unless (a) approved by the Board and all of the Members and executed by an instrument with the same formality as this Agreement and (b) the trustee for any Authority Bonds then outstanding (or any holder in the event there is no trustee) is provided with an opinion of Bond Counsel to the effect that such alterations, amendments or modifications will not adversely affect the excludability of interest on such Authority Bonds from gross income for federal income tax purposes. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by the instrument in writing, and no prior, contemporary, or subsequent oral agreement shall have any validity whatsoever.

**Section 8.04. Severability.** If any clause or provision in this Agreement shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

**Section 8.05. Binding Effect.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Members and to their respective successors and permitted assigns.

**Section 8.06. Assignment and Delegation.** No Member shall assign any of the rights nor delegate any of the duties of this Agreement without a majority vote of the whole membership of the Board. Any attempted assignment or delegation not in conformance with this provision shall be void.

**Section 8.07. Applicable Laws.** This Agreement shall be governed by and construed in accordance with the Constitution and laws of the State. The Members agree not to institute

any legal action or proceeding against the Authority or any of its directors, officers, employees, agents or property concerning any matter arising out of or related to this Agreement in any court other than the El Paso County District Court.

**Section 8.08. Paragraph Headings.** The paragraph headings are inserted in this Agreement only as a matter of convenience and reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

**Section 8.09. Singular and Plural.** Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

**Section 8.10. Negotiated Provisions.** This Agreement shall not be construed more strictly against one Member than against another Member merely by virtue of the fact that it may have been prepared by counsel for one of the Members, it being acknowledged that each Member has contributed substantially and materially to the preparation of this Agreement.

**Section 8.11. No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Members and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Members that any person, other than the Members, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**Section 8.12. Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

**Section 8.13. Governmental Immunity.** Nothing herein shall be construed as a waiver of the rights and privileges of the Members or the Authority pursuant to the CGIA.

**Section 8.14. No Personal Liability.** No elected official, director, officer, agent or employee of the Districts or Members shall be charged personally or held contractually liable by or under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

[Remainder of this page intentionally left blank]



IN WITNESS WHEREOF, the Districts have caused this Agreement to be executed as of the day and year first hereinabove written.

MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NO. 2, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

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

ATTEST:

\_\_\_\_\_

MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NO. 3, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

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

ATTEST:

\_\_\_\_\_

MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NO. 4, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

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

ATTEST:

\_\_\_\_\_

MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NO. 5, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

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

ATTEST:

\_\_\_\_\_

MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NO. 6, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

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

ATTEST:

\_\_\_\_\_

MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NO. 7, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

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

ATTEST:

\_\_\_\_\_

MAYBERRY, COLORADO SPRINGS  
METROPOLITAN DISTRICT NO. 8, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

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

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

\_\_\_\_\_  
General Counsel for the Mayberry, Colorado  
Springs Districts Nos. 2 & 8

APPROVED AS TO FORM:

COLLINS COCKREL & COLE, P.C.  
Attorneys at Law

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Special Counsel to the Mayberry, Colorado  
Springs Metropolitan District Nos. 3-7