MINUTES OF THE MEETING OF MONTROSE MANAGEMENT DISTRICT BOARD OF DIRECTORS

February 13, 2012

Determine quorum; call to order;

The Board of Directors of the Montrose Management District held a meeting on Monday, February 13, 2012, at 12:00 p.m. noon at 401 Branard Street, 2nd Floor, Room 106, Houston, TX 77006, inside the boundaries of the District, and open to the public. Chairman Wynn called the meeting to order at 12:08 p.m., and the roll was called of the duly appointed members of the Board, to wit:

Position 1: Claude Wynn, Chairman	Position 9: Ka	athy Hubbard, Treasurer
Position 2: Vacant	Position 10: M	lichael Grover
Position 3: Randy Mitchmore, Vice Chairman	Position 11: Va	acant
Position 4: Cassie Stinson, Secretary	Position 12: B1	rad Nagar, Ass't Secretary
Position 5: Michael Carter	Position 13: Ta	ammy Manning
Position 6: Vacant	Position 14: Da	avid Robinson
Position 7: Dennis Murland	Position 15: Ra	andall Ellis
Position 8: Robert Jara		

and all of the above were present with the exception of Directors Carter, Ellis and Nagar, thus constituting a quorum. Also present at the meeting were Bill Calderon, Susan Hill, Josh Hawes and Gretchen Larson, Hawes Hill Calderon, L.L.P.; Clark Lord, Bracewell & Giuliani, L.L.P.; Patricia Hall, Equi-Tax, Inc.; and Darrell Hawthorne, Municipal Accounts and Consulting, L.P. Others present at the meeting were Jason Bailey of Perdue, Brandon, Fielder, Collins & Mott, L.L.P.; Caroline Evans, The Examiner; J Daphne Scarbrough, Richmond Avenue Coalition; Jennifer Roeser, Weingarten Realty Investors; and Dana Thorpe, Brightside Properties.

Approve minutes of meeting held January 23, 2012;

Upon a motion duly made by Director Mitchmore and being seconded by Director Stinson, the Board voted unanimously to approve the minutes of its meeting held on January 23, 2012.

Receive public comments;

Mr. Scarbrough inquired about several matters on the Board meeting agenda.

Receive and consider Montrose Management District's monthly financial report and pay invoices;

Mr. Hawthorne reviewed the financial statements included in the Board agenda materials. Upon a motion duly made by Director Hubbard and being seconded by Director Stinson, the Board voted unanimously to approve the Montrose Management District's monthly financial report and pay invoices.

Assignment of Legal Services contract;

Mr. Lord announced that his entire law practice group that serves public entities including management districts has recently moved to Bracewell & Giuliani, L.L.P. from Vinson & Elkins, L.L.P. Mr. Calderon recommended accepting the re-assignment of the legal services contract to Bracewell & Giuliani, noting that the personnel and fee structure would remain the same. Following discussion, and upon a motion duly made by Director Mitchmore and being seconded by Director Stinson, the Board voted unanimously to accept the assignment of the Legal Services contract to Bracewell & Giuliani, L.L. P.

Receive District's Monthly Assessment Collection Reports and Billing and Assessment Summaries, Lawsuit and Arbitration Status Details, and Delinquent Assessment Reports;

Ms. Hall reported that the 2010 assessments are 98% collected and that the 2011 assessments were due as of January 31, 2012. She said that the property values have been certified by the Harris County Appraisal District for all property located within the District. She noted that a status report on delinquent accounts is included in the Board agenda materials.

Mr. Bailey addressed the Board and provided a "Special Delinquent Assessment Report, Montrose Management District," dated February 13, 2012, hereby attached as Exhibit A. Director Grover joined the meeting in progress at 12:19 p.m. Ms. Hall reminded the Board that the District is required by State law to collect both penalties and interest on all delinquent accounts. Director Hubbard said that she is aware that several accounts are making partial payments. No action was taken.

Receive and consider revised Agreement for Bookkeeping Services with Municipal Accounts & Consulting, LP.;

Mr. Calderon explained that the revised agreement is due to the consolidation of the East and West zones into one District, which will result in a consolidation of bookkeeping services. Additionally, he informed the Board that the Bookkeeper has inquired as to whether security patrol officers should be considered as District employees or contract personnel. Director Stinson suggested that an auditor or legal counsel should be consulted for an opinion on the matter. Director Murland agreed and requested that a written, legal opinion should be obtained. Following discussion, and upon a motion duly made by Director Stinson and being seconded by Director Grover, the Board voted unanimously to approve the revised Agreement for Bookkeeping Services with Municipal Accounts & Consulting, LP.

Receive and consider proposals for preparation of FY 2011 audit and financial reports;

Mr. Calderon reviewed the proposals for the FY 2011 audit and financial reports included in the Board agenda materials. He said that the current auditor, McCall Gibson Swedlund and Barfoot, L.L.P., is well-qualified to perform the work and has excellent credentials. He noted that this firm also submitted the proposal with the lowest cost to perform the requested services. Upon a motion duly made by Director Mitchmore and being seconded by Director Murland, the Board voted unanimously to approve McCall Gibson Swedlund and Barfoot, L.L.P., to prepare the FY 2011 audit and financial reports

Consider amendment of Order Responding to Petition to Dissolve the Montrose Management District;.

Mr. Calderon reviewed the proposed amendment, which would include additional factual information regarding the surface area of properties in the District and conclusions of law addressing the effects of the surface area information on the requirements of the Board to dissolve the District. Upon a motion duly made by Director Mitchmore and being seconded by Director Manning, the Board voted unanimously to approve the Amendment of the Order responding to the Petition to Dissolve the Montrose Management District.

Receive and consider recommendations from the Public Safety Committee related to:

a.) Receive and consider recommendations from the Public Safety Committee related to Patrol Activity Report for the month of January;

Mr. Hawes said that the Committee did not meet this month because Committee Chair Nagar was out of town. He said that patrol officers made 55 arrests during January and that a summary of the types of arrests is in the Board agenda materials. No action was taken.

Receive and consider report from the Business and Economic Development Committee;

Ms. Larson briefed the Board. She said the Committee is scheduled to meet later this week and invited everyone present to attend. She said that a postcard mailing is being distributed to District business owners notifying them of the District's graffiti abatement program and its contact information. She added that future postcard mailings will feature additional District projects and programs. She also said that upgrades to the District's website are going well. Chairman Wynn suggested that the web design firm, Primer Gray, should be invited to make a brief presentation to the Board at its next meeting. Ms. Larson said that volunteers are needed to work on three subcommittees in conjunction with plans for a recycling event; a food festival event; and a holiday decorating event. No action was taken.

Receive and consider report from the Mobility and Visual Improvements Committees related to:

Proposal from Walter P. Moore for Montrose Boulevard improvements;

Director Robinson said that the Mobility Committee met on February 8, 2012. He reported on the proposal from Walter P. Moore, included in the Board agenda materials, for additional traffic engineering consulting services specifically for Montrose Boulevard. Mr. Calderon added that the information will be valuable in terms of working with the City regarding future infrastructure improvements. Upon a motion duly made by Director Robinson and being seconded by Director Grover, the Board voted unanimously to approve the proposal from Walter P. Moore for Montrose Boulevard improvements.

Proposal from Kudela & Weinheimer for District-wide identification signs;

Director Robinson said the Visual Improvements Committee has received a proposal from Kudela & Weinheimer for design of District-wide identification signs at key intersections. He distributed copies of the proposed "Agreement Between Client and Landscape Architect Kudela & Weinheimer," dated February 7, 2012, hereby attached as Exhibit B. Following discussion, it was agreed to table the agenda item until the proposal and its terms can be better defined. The Board also will invite representatives of Kudela and Weinheimer to attend the next Board meeting.

Approve FY 2012 Budget;

Mr. Calderon reviewed the proposed FY 2012 budget. He noted that there is a significant budget increase in the areas of Marketing and Public Relations, due to a projected increase in activity in those two budget areas. He also said that the budget includes proposed participation by the District in the Harris County Attorney's "Community Protection Program," which focuses on nuisance abatement issues. Director Jara suggested that the Board should adopt a three-month cycle for budget development in advance of its fiscal year. Upon a motion duly made by Director Stinson and being seconded by Director Manning, the Board voted unanimously to approve the FY 2012 budget.

Receive Executive Director's Monthly Report on Action Initiatives in Support of the Montrose Management District;

Mr. Calderon provided the Board with highlights of the Executive Director's Monthly Report, noting that it is included in the Board agenda materials. No action was taken.

Adjourn.

There being no further business to come before the Board, Chairman Wynn adjourned the meeting at 1:50 p.m.

ANAGEMENT OSTRICT

Secretary, Board of Directors Montrose Management District



Exhibits:

Exhibit A: "Special Delinquent Assessment Report, Montrose Management District," Perdue

Brandon, dated February 13, 2012

Exhibit B: "Agreement Between Client and Landscape Architect Kudela & Weinheimer,"

dated February 7, 2012

Exh. A

PERDUE, BRANDON, FIELDER, COLLINS & MOTT L.L.P. SPECIAL DELINQUENT ASSESSMENT REPORT MONTROSE DISTRICT February 13, 2012

Amounts shown are 2010 base assessment unless indicated. Account numbers and addresses for Montrose District-West Zone are noted in *italics*.

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On 2/9/12, as instructed by the Board, the attached demand letter was sent to the following four property owners advising that suit may be filed if the accounts were not paid by 2/29/12. The letter also explained that the petition to dissolve the District did not meet the required legal standards.

Also attached to this report is a copy of the demand letter sent on 2/9/12 to all other property owners with delinquent accounts. A letter was not sent to property owners who were current on installment agreements.

FAT Property LLC \$3,520.10, 502 W. Alabama St. 710 Colquitt St. & 1901 Richmond Ave-037040000001 0230700000012 & 0571210000012

We have spoken with Cody Lutsch about these accounts but he has not made a commitment to pay. We spoke to Lutsch again on 10/24 and he stated that his attorney told him not to pay the assessments; he said that his attorney told him that the District was unlawfully created and is being dissolved. We left another voice mail message on 1/17 and 1/18 and we sent another demand letter on 1/19 and again on 2/2; we have not received a response. The 2010 county taxes on the 502 W. Alabama and 1901 Richmond Ave. accounts are paid in full. Base tax of \$1,395.40 is due to the county on the 710 Colquitt St. account. They paid the full base tax amount but the payment was made after 1/31/11 so a portion of the payment was applied to penalty and interest.

205 Avondale LLC 09-10 assessments \$1,702.58, 205 Avondale St.-0041360000015

Our demand letter to the HCAD mailing address was returned by the post office. We found an alternate mailing address on Richmond Ave and we sent another letter but we have not received a response. We spoke to the registered agent, Amalia Kazilas; she refused to give out any information about the company or the owners, Alan Rigo de Righi and Neli Da Silva Rigo De Righi. Kazilas stated that she is no longer affiliated with the business and then she went on to say "Don't we pay enough taxes already?" The corporation forfeited its charter on 10/2/09. In October we found new mailing addresses for both owners and we sent demand letters but neither has responded. We called again on 1/18 and left a voice mail message; another demand letter was sent on 1/19. The county taxes are paid in full through tax year 2011.

British Inv. Real Estate LP \$1,236.59, 1622, 1638 & 2006 W. Alabama St.-0522210000015, 0522210000019 & 0260550010002

They committed to pay in full by 8/31 but failed to pay as promised. On 9/28, we spoke to our contact, Shirley Ford, again and we emailed another statement. We spoke to Shirley on 11/17 and again on 11/22; she said she would call us back. We left another voice mail message for her to call us back on 1/17 and another demand letter was sent on

1/18. The county taxes for all three accounts are paid in full through tax year 2011.

Hacienda Del Sol Ltd. Co. \$1,028.65, 310 & 316 W. Clay & 1220 Taft-0570330000022, 0570330000023 & 0570330000020

On 11/16, the property owner asked that we not contact him again unless the District was willing to accept the base assessment amount. The tax office advises that the Board denied their request for waiver of penalty and interest. On 1/24, another statement was sent for the total amount due. The county taxes for all three accounts are paid in full through tax year 2010.



1235 North Loop West, Suite 600 Houston, Texas 77008 TELEPHONE 713-862-1860 FAX 713-862-1429 www.pbfcm.com

February 9, 2012

Dear Sir or Madam:

This law firm represents the Montrose Management District (MMD) in the collection of delinquent property assessments. As you may know, some property owners in the District petitioned the Board to dissolve the MMD. The petition was reviewed for compliance with Texas law. On November 14, 2011, the Board received a report from the administrators of the District and legal counsel who had conducted an exhaustive, detailed examination of the petition and signatures. The finding of facts and law presented in the report indicated that the petition did not meet the required legal standards for dissolution of the District. As a result of the lack of sufficiency of the petition, the MMD will continue to operate and implement its service plan. The Montrose Management District Board of Directors will continue to work hard to advance Montrose as Houston's most desirable destination and invites the community to become involved in the District by volunteering for committees and sharing their ideas.

The assessment account described on the enclosed delinquent assessment statement has been referred to this law firm for legal action. Previous attempts to obtain payment have been unsuccessful.

THIS ACCOUNT HAS BEEN SELECTED FOR SUIT.

Please be advised that a lawsuit may be filed and the property can be sold at the courthouse to satisfy the delinquency if the payment is not received by February 29, 2012.

The assessment years and amounts due are provided on the enclosed statement. You should pay the amount calculated for this month and mail your check to the office address shown on the enclosed statement.

Your prompt attention to this matter will be appreciated.

Sincerely,

Carl O. Sandin

Perdue Brandon Fielder Collins & Mott LLP

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AMARILLO ARLINGTON AUSTIN CONROE HOUSTON LUBBOCK MCALLEN MIDLAND SAN ANTONIO TYLER WICHITA FALLS



1235 North Loop West, Suite 600 Houston, Texas 77008 TELEPHONE 713-862-1860 FAX 713-862-1429 www.pbfcm.com

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The assessment account described on the enclosed delinquent assessment statement has been referred to this law firm for legal action. I am writing to call your attention to the fact that this delinquency exists in the event that your failure to pay was merely an oversight.

The assessment years and amounts due are provided on the enclosed statement. You should pay the amount calculated for this month and mail your check to the office address shown on the enclosed statement.

Your prompt attention to this matter will be appreciated.

Sincerely,

Carl O. Sandin

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Perdue Brandon Fielder Collins & Mott LLP



AGREEMENT BETWEEN CLIENT AND LANDSCAPE ARCHITECT

Page 1

We are pleased to submit this proposal for professional services in connection with the Landscape development of the *Montrose District—District Identity Marker -* Houston, Texas.

This agreement, effective as of *February 8, 2012*, is between Client, *Montrose District* 5020 Montrose, Suite 311, Houston, Texas 77006 c/o Hawes Hill Calderon, LLP, Box 22167, Houston, Texas 77227-2167, and *Landscape Architect*, *Kudela & Weinheimer, L.P., (hereinafter K&W), 7155 Old Katy Road, Suite 270, Houston, Texas 77024.*

Article 1: Landscape Architect's Basic and Additional Services

A. Landscape Architect's Basic Services are:

K&W will provide "Basic Services" as outlined herein. These services shall include Schematic Design, Construction Documentation, and Construction Administration for the Landscape Architectural portion of the *Montrose District—District Identity Marker.*

Schematic Design

During this phase, K&W shall provide hardscape design alternatives in a Schematic Design scheme.

Having gained a firm understanding of the project and its constraints, K&W will begin the production of sketch level drawings which define the essential elements of the Landscape Architectural portion of the project.

During the Schematic Design Phase K&W will:

- Meet with the project team to confirm program information and to establish goals and objectives of the project.
- Acquire site surveys and relevant architectural drawings from all available sources and build a CADD background for the project for use by K&W.
- Visit the site to review and analyze existing conditions, existing vegetation, topography, approach to the site and adjacent land uses which will give K&W a firm understanding of the site and its context.
- Prepare and present Schematic Drawings, which help develop the following:
 - a. District Identity Markers @ approximately 36 Intersections
- Prepare and present Preliminary Cost Estimates of probable construction costs.
- 6. Attend project meetings as required.

Note: Design alternatives will be produced and will include plan views and elevations. Drawing perspectives, bird's eye views will be an additional service.



Construction Documents

Construction Documents will be produced for the landscape architectural portion of the project, which describe the project in greater detail and are suitable for bidding as well as to construct the project. The Construction Documents shall include the following:

- 1. Materials and Layout Plans indicating the various materials as well as horizontal dimensioning used to build the project.
- Hardscape construction details which indicate the means and methods for construction.
- 3. Technical sections of the specifications in the CSI format covering all work shown on the drawings.
- Final construction cost estimates to include unit costs at current construction dollars.
- Reviews with Client as required.
- Drawings complete for Planning Department approval and Public Works and Engineering Department approval for successful completion of the encroachment application.

Construction Administration

Construction Administration services shall include Bidding/ Negotiations and Construction Observation for all portions of the project detailed in the construction documents. These services may include but are not necessarily limited to the following:

- Bidding/ Negotiations: Assist Client in re-leasing plans to Contractors for competitive bidding. Provide clarification's and answer any and all question regarding the drawings, assist in preparing bid Addenda if necessary.
- 2. Construction Observation: Services shall be provided for the work detailed on the Landscape Construction Documents.

K&W shall make periodic visits to the site to become familiar with the progress and quality of the construction underway. K&W shall keep the client informed of the progress of construction. K&W may recommend to the Client the rejection of work failing to conform to the Contract Documents.

In addition to the above K&W shall also provide the following Construction Observation services.

- 1. Review contractor's submittals and shop drawings.
- Review construction Change Orders and Construction Change Directives.



PROPOSAL

- 3. Review plants material sourcing and tag selected materials.
- 4. Conduct final inspection and prepare a punch-list.

K&W shall not be responsible for construction means, methods, techniques, or sequencing employed by the contractor.

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- 1. Review contractor's submittals and shop drawings.
- Review construction Change Orders and Construction Change Directives.
- 3. Review plants material sourcing and tag selected materials.
- 4. Conduct final inspection and prepare a punch-list.

K&W shall not be responsible for construction means, methods, techniques, or sequencing employed by the contractor, except to the extent that Landscape Architect fails to exercise the usual degree of care and judgment of an ordinary, prudent professional engineer in the same or similar circumstances and conditions.

All services shall be of good quality and shall be performed in a professional manner. The standard of care for all professional and related Landscape Architecting services performed or furnished by the Landscape Architect under this Agreement will be the care and skill ordinarily used by members of the Landscape Architect's profession, practicing under similar conditions at the same time and in the same general locality.



PROPOSAL

Article 2: Client's Responsibilities

- A. Client agrees to provide Landscape Architect with all information, surveys, reports, and professional recommendations and any other related items requested by Landscape Architect in order to provide its professional services. Landscape Architect may rely on the accuracy and completeness of these items. K&W assumes no responsibility for the accuracy of such information or services.
- B. Client shall furnish the services of the following consultants as may be needed: Structural Engineer, MEP Engineer and/ or Permit Expediter Services.
- C. Client will obtain and pay for all necessary permits from authorities with jurisdiction over the Project.
- D. Client agrees to provide the items described in Article 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Landscape Architect's services.

Article 3: Estimated Schedule and Project Budget

- A. Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project Schedule.
- B. Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project or construction schedule or budget, or to the Project's scope may require Additional Services of Landscape Architect.

Article 4: Compensation and Payments

A. Basic Services: Compensation for the Basic Landscape Architectural services described above shall be a stipulated sum of \$23,150 and billed monthly on a percentage of completion per the following schedule

Schematic Design	20%
Construction Documentation	62%
Construction Administration	18%

- B. Project Assumptions:
 - This proposal assumes a total of 36 Intersections.
 - This proposal is based on a construction budget of \$311,200. Should this
 amount increase this contract shall be renegotiated.
 - Meetings or presentations not described specifically
 - Extensive drawing, survey, and digital file changes—exceeding five changes
 - Revisions to work after prior approval by Client
 - Changes to scope of work or plans after 100% submission
 - Drawing perspectives, bird's eye views
 - All Structural, MEP, Fountain and Waterproofing engineering will be provided by the Owner or architect.
- C. Additional Services: Services requested by the Client that are not included in the scope of services shall be billed as Additional Services at a rate per the following



PROPOSAL

schedule:

Principal	\$145/ hr
Project Manager	\$95/ hr
Staff Architect	\$85/ hr
Administrative assistant	\$45/ hr

Kudela & Weinheimer shall issue monthly invoices for professional services. Client shall pay amounts that are due not more than **thirty (30)** days after the date of Client's receipt of a valid statement. Amounts properly due yet unpaid after the expiration of **forty-five (45)** days after Client received K&W's valid statement shall bear simple interest at an annual rate of **eight percent (8%)**, unless otherwise limited by law. Each monthly invoice shall include an accounting of:

- The portion of the Basic Compensation earned by K&W during the period covered by the invoice.
- 2. All Reimbursable Expenses incurred by K&W during the period covered by the invoice.
- All Extra Services earned by K&W during the period covered by the invoice.
- C. Reimbursable Expenses: Expenses that are required for the performance of the work shall be billed to the Client on a monthly basis with a 0% markup. These expenses shall include, but are not limited to the following:
 - Prints of drawings as required to perform the work or for the information of the Client and/ or other consultants.
 - Use of reprographic services for enlargements, reductions, or reproduction of drawings.
 - 3. Computer Plotting.
 - 4. Mail, Courier, or Overnight delivery services.
 - 5. Special supplies unique to the performance of this work.
 - 6. Mounting or laminating of drawings.
 - 7. Automobile travel at \$0.58 a mile.
 - 8. Transportation airline tickets, rental cars.

Article 5: Termination

- A. Either Client or Landscape Architect may terminate this Agreement upon seven days written notice.
- B. If terminated, Client agrees to pay Landscape Architect for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination.



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C. Upon not less than seven days written notice, Landscape Architect may suspend the performance of its services if Client fails to pay Landscape Architect in full for services rendered or expenses incurred. Landscape Architect shall have no liability because of such suspension of services or termination due to Client's nonpayment.

- D. Any change of address for Landscape Architect or Client must be updated within ten (10) days to all parties to this Agreement, and receipt of such change of address must be confirmed, either by certified mail, return receipt, or by facsimile confirmation to ensure that the change of address has been received.
- E. All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Landscape Architect at:

Mr. Darin Weinheimer KUDELA & WEINHEIMER, L.P. 7155 Old Katy Road, Ste. 270 Houston, Texas 77024-2195 Facsimile: 713.869.0908

Article 6: Insurance Requirements

To Client at:

Montrose District
°/_o Hawes Hill Calderon, L.L.P.
P.O. Box 22167
Houston, Texas 77227-2167

Attention: David Hawes Facsimile: 713-541-9906

- A. The Landscape Architect shall procure and maintain throughout the term of this Agreement, at its sole cost and expense, insurance of the types and in the minimum amounts set forth below. The Landscape Architect shall furnish certificates of insurance and certified copies of any endorsements required by this Agreement to the Client evidencing compliance with the insurance requirements hereof. Certificates shall list the Landscape Architect, the name of the insurance company, the policy number, the term of coverage, and the limits of coverage. The Landscape Architect shall cause its insurance companies to provide the Client with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or non-renewal of the insurance coverage required under this Agreement. The Landscape Architect shall obtain such insurance from such companies having a Best's rating of B+/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - Worker's Compensation insurance in accordance with the laws of the State
 of Texas, and Employer's Liability coverage with a limit of not less than
 \$500,000 each employee for Occupational Disease; \$500,000 policy limit for
 Occupational Disease; and Employer's Liability of \$500,000 each accident.
 - Commercial General Liability insurance, including coverage for Products/ Completed Operation, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than

\$2,000,000 general aggregate limit
\$1,000,000 each occurrence, combined single limit
\$1,000,000 aggregate Products, combined single limit
\$1,000,000 aggregate Personal Injury/Advertising Liability
\$50,000 Fire Legal Liability
\$5,000 Premises Medical



- 3. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles, with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- Umbrella Excess Liability insurance written as excess of Employer's Liability, with limits not less than \$1,000,000 each occurrence combined single limit.
- 5. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.
- B. The Client and the Client's agents and employees shall be added as additional insureds to all coverage's required under this Agreement, except for worker's compensation insurance and professional liability insurance. All policies written on behalf of the Landscape Architect shall contain a waiver of subrogation in favor of the Client and the Client's agents and employees, with the exception of professional liability insurance. In addition, all of the aforesaid policies shall be endorsed to provide that they are primary coverages and not in excess of any other insurance available to the Client, and without rights of contribution or recovery against the Client or from any such other insurance available to the Client. The Landscape Architect, and not the Client, shall be responsible for paying the premiums and deductibles, if any, that may from time to time be due under all of the insurance policies required of the Landscape Architect.

Article 7: Use and Ownership of Landscape Architect's Documents

A. All documents, including original drawings, estimates, specifications, periodic construction progress notes, and data (collectively, the "Documents") shall be the property of the Client, provided that the Landscape Architect has received full compensation due pursuant to the terms of this Agreement and subject to all of the following terms and conditions. The Landscape Architect agrees that it shall not reuse any portion of the Documents that is unique to the Client's projects or projects for any other client, without the express written consent of the Client, which consent will not be unreasonably withheld. The Landscape Architect may retain a set of reproducible record copies of the Documents, in consideration of which it is mutually agreed that the Client will use such Documents solely in connection with the project covered by the Agreement and for no other purposes, except with the express written consent of the Landscape Architect, which consent will not be unreasonably withheld. Any use of the Documents without the express written consent of the Landscape Architect shall be at the Client's sole risk.

Article 8: Miscellaneous Provisions

- A. This Agreement is governed by the Laws of the State of Texas.
- B. This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and Landscape Architect.
- C. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or inva-



lid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.

- D. Neither Client nor Landscape Architect shall assign this Agreement without the written consent of the other.
- E. Irrespective of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents; except to the extent that Landscape Architect fails to exercise the usual degree of care and judgment of an ordinary, prudent professional engineer in the same or similar circumstances and conditions.
- F. Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.
- G. If this Agreement is not signed and returned to Landscape Architect within ten (10) business days, the offer to perform the described services may, in Landscape Architect's sole discretion, be withdrawn and be null and void.
- H. The relationship between the Landscape Architect and the Client under this Agreement and otherwise shall be that of independent contractor. The Landscape Architect is not by the terms of this Agreement or otherwise, an agent, employee, or representative of the Client.
- I. For purposes of interpretation of the meaning of any clause, phrase or paragraph of this Agreement, both parties to this Agreement acknowledge having had input in the drafting of this agreement. This Agreement shall not therefore be interpreted for or against either party because of that party or its counsel having drafted the Agreement.

INDEMNITY PROVISION

LANDSCAPE ARCHITECT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CLIENT, ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, AND AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, OR CAUSES OF ACTION (AND ALL LOSSES, LIABILITIES, EXPENSES, AND JUDGMENTS INCURRED IN CONNECTION THEREWITH, INCLUDING ATTORNEYS' FEES AND EXPENSES, COURT COSTS, AND OTHER EXPENSES INCURRED IN ENFORCING THIS INDEMNITY PROVISION) BROUGHT BY LANDSCAPE ARCHITECT OR ANY OF LANDSCAPE ARCHITECT'S EMPLOYEES, DIRECTORS, OFFICERS, AGENTS, OUTSIDE ADVISORY OR SUPPORT CONSULTANTS, OR REPRESENTATIVES, OR BY ANY THIRD PARTY, BASED UPON, OR IN CONNECTION WITH, RESULTING FROM, OR ARISING OUT OF, THE NEGLIGENCE, OMISSION, OR MISCONDUCT OF LANDSCAPE ARCHITECT'S EMPLOYEES, DIRECTORS, OFFICERS, AGENTS, OUTSIDE ADVISORY OR SUPPORT CONSULTANTS, OR REPRESENTATIVES.



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ACCEDIEU. MONICOSE DISINO	Accepted: Montrose Disti	rici
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Submitted: Kudela & Weinheimer LP

Signature/Date:	Signature/Date:
<i>Print:</i> Name/Title:	Print: Name/Title: Darin Weinheimer
	Secretary.