

## RECORD OF PROCEEDINGS

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### MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE CONSERVATORY METROPOLITAN DISTRICT HELD JUNE 4, 2012

A Special Meeting of the Board of Directors of the Conservatory Metropolitan District, (referred to hereafter as "Board"), was convened Monday, the 4th day of June, 2012, at 9:00 A.M., at the Conservatory Clubhouse, 2665 South Jebel Way, Aurora, Colorado. The meeting was open to the public.

#### ATTENDANCE

##### Directors In Attendance Were:

Ronald "Dick" R. Dailey  
Laverne Palmer  
Dan Staley  
Jud Davis

Mr. Beckman explained that Director Speaect could not attend the Board meeting due to a work conflict.

Following discussion, upon motion duly made by Director Davis, seconded by Director Staley and, upon vote, unanimously carried, the absence of Rick Speaect was excused.

##### Also In Attendance Were:

AJ Beckman; Special District Management Services, Inc.

Jennifer Tanaka, Esq.; White, Bear & Ankele, P.C.

Georgia Harland; Simmons & Wheeler, P.C.

Pat Bruno; Summit Services, Inc.

Jack 'O Rourke; - Via speakerphone

#### CALL TO ORDER

Director Dailey noted that a quorum of the Board was present and called the meeting to order.

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### DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

**Disclosure of Potential Conflicts of Interest:** Attorney Tanaka advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. The Board reviewed the Agenda for the meeting, following which each Board member confirmed that they had no conflicts of interest in connection with any of the matters listed on the Agenda.

Director Dailey requested that Attorney Tanaka clarify any conflict she may have with representation of the District's Developer, ADM, SAN-7353, LLC ("ADM-SAN"). Attorney Tanaka reported that she has no conflict of interest and has stated so in a letter, dated October 4, 2011 (attached), previously circulated to the Board members. Director Dailey distributed and discussed an email dated December 17, 2008 (attached) regarding the filing of a notice of claim against ADM-SAN, in which Attorney Tanaka advised Director Dailey that her firm would be in conflict in filing the notice of claim since ADM-SAN was the party named. Attorney Tanaka clarified the nature of the conflict explaining that the principals of ADM-SAN were District Board members while her firm represented the District. She further explained that the Developer has its own legal counsel and that her firm's representation is of the District and not the Developer and always has been.

The Board members requested that the disclosure of conflicts of interest section on the agenda be applied to all consultants as well and requested that should any conflicts arise in the future, such conflicts be noted by consultants as well as by directors.

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### ADMINISTRATIVE MATTERS

**Agenda:** Director Dailey reviewed with the Board the proposed Agenda for the District's Special Meeting.

Director Palmer requested that the following changes be made to the order of the Agenda:

1. Remove Manager's report from the Consent Agenda and add to the regular agenda as the first item under Operations and Maintenance;
2. Appointment of Officers be conducted as the second to last item on the Agenda, after Other Business; and
3. Review and discussion of the report from the Management Services Request for Proposal ("RFP") Committee be placed at the end of the agenda and discussed in executive session.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Agenda was approved, as amended.

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**Minutes:** The Board reviewed the Minutes of the March 19, 2012 Regular Meeting.

Following discussion, upon motion duly made by Director Davis, seconded by Director Staley and, upon vote, unanimously carried, the Board approved the minutes of the March 19, 2012 Regular Meeting as presented.

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### **CONSENT AGENDA**

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

- Acknowledge Homeowners' Association ("HOA") Meeting Reports/Updates (if available).
- Acknowledge Director Staley as Board Member on Duty for the month of June and Director Davis as Board Member on Duty for the month of July.

Following discussion, upon motion duly made by Director Davis, seconded by Director Palmer and, upon vote, unanimously carried, the Board acknowledged Director Staley as the Board Member on duty for the month of June and Director Davis as the Board Member on Duty for the month of July. There were no HOA updates for review.

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### **COMMUNITY COMMENTS**

**Community Comments:** There were no members of the community present.

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### **FINANCIAL MATTERS**

**Claims:** Ms. Harland distributed and reviewed with the Board a check register for the period ending April 16, 2012, including check numbers 2139 through 2149, in the amount of \$19,720.35.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board ratified approval of check numbers 2139 through 2149, in the amount of \$19,720.35.

Ms. Harland then presented a second check register for the period ending May 31, 2012, including check numbers 2150 through 2162, totaling \$30,970.45. Ms. Harland clarified that check number 2161 to John J. O'Rourke was held pending Board approval.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board ratified approval of check numbers 2150 through 2160 totaling \$27,190.79.

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Director Palmer explained that she was not comfortable signing check number 2161 since the insurance invoiced to the District by Mr. O'Rourke was broken out as a separate line item. The Board determined to discuss this matter further under Operations and Maintenance with the review of the Manager's Report.

**Financial Statements:** Ms. Harland presented the unaudited financial statements for the period ending April 30, 2012 for the Board's review. She explained that she has set up a separate line item for Project Management.

Following discussion, upon motion duly made by Director Staley, seconded by Director Palmer, and upon vote, unanimously carried, the April 30, 2012 unaudited financial statements were accepted.

**Current Cash Flow Projection:** Ms. Harland reviewed the current cash flow projection through March 2013 with the Board.

**Collections Report:** Attorney Tanaka reviewed the Collections Report with the Board. She noted that \$4,240.00 was collected in April and that the total collected in 2012, through April is \$13,585.84.

Following discussion, upon motion duly made by Director Palmer, seconded by Director Davis and, upon vote, unanimously carried, the Board directed Mr. Beckman to move the Collections Report to the Consent Agenda for future meetings.

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### LANDSCAPING MATTERS

**Summit Services, Inc. ("Summit Services") – Monthly Report:** Mr. Bruno joined the meeting at this time. The Board reviewed the monthly report from Summit Services.

Mr. Bruno reported that the recent temperatures have been unseasonably high, and irrigation consumption is above normal. He discussed the status of irrigation and ongoing improvements to the system and reported that proposals for new upgraded sprinkler nozzles will be forthcoming.

Mr. Bruno reported that the City of Aurora recently adjusted some of the District's flow controls while attempting to turn off a leaking water main which caused disruption in the District's irrigation. Director Palmer inquired as to whether irrigation repairs typically require an Irrigation Technician and laborer. Mr. Bruno reported that the number of workers assigned to a job depends on the work requirements of the specific job. Mr. Bruno discussed the need to meet regularly with the Landscaping Committee going forward. Director Palmer suggested that Summit Services' reports be complete enough

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to avoid having physical presence of Summit Services at the meetings unless it was recommended by the Landscape Committee.

**Bids and Award of Contract for Tract NN Drainage Improvements:** Mr. Beckman reviewed the bid tabulation with the Board. He noted that plan sets were sent to five different landscaping companies, two of which declined to bid on the project. Two bids, from JPL Cares Inc. and Summit Services, were received in time to be included in the meeting packet. Valley Crest committed to preparing a bid prior to the Board meeting but they were unable to meet the deadline of Friday, June 1, 2012. He reported that, of the bids received, Summit Services was the lowest responsible bidder in the amount of \$10,307.00. The Engineer's estimate for the project was \$7,100.00. Mr. Beckman recommended awarding the contract to Summit Services.

**Annual Tree Planting:** Director Staley reported that sixty trees were planted in May along Conservatory Parkway for a total cost of \$19,619. He reported that he would like to replace four dead trees in Tract VV; however, the annual budget for tree planting is \$20,000 with a remaining balance of \$381. He estimates the cost at approximately \$1,200.

### OPERATION AND MAINTENANCE MATTERS

**Manager's Report:** Director Palmer reported that she has some concerns regarding the decision by the Wall Repair Committee to go beyond the prior approval by the Board of Directors for the scope of work for the Project Manager's Contract, which was \$2,400 for 40 hours of work with the requirement that Mr. O'Rourke produce evidence of insurance in accordance with the District's standard agreement. She explained that she was concerned that the invoice submitted by Mr. O'Rourke charges for insurance separately, which, in her opinion, could create a precedent for other contractors. She recommended that the Board discuss and clarify the responsibilities and levels of authority delegated to the Committees. She also noted that the report for the Wall Repair Committee was included with the Manager's Report. She requested that future updates from the Wall Repair Committee be provided by Mr. O'Rourke and not the District Manager.

Mr. Beckman discussed the rationale of the Wall Repair Committee in its decision noting that, similar to the Landscaping Committee, the Wall Repair Committee was working within the budgetary line item for the project, and explained that the Committee's goal was to bring forth a bid tabulation for consideration by the Board at today's meeting; however, in order to do so it would be necessary for the Project Manager to work through the bidding phase of the project which was not covered by the prior scope of work. If the Committee had not authorized the amendment to the Project Manager's contract, the Board would have had to meet to consider approval of the amendment to the Project Manager's contract and then meet again within a

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short period of time to consider award of the contract which would have been contrary to the goal of reducing Board meetings

Director Staley noted that while the Landscaping Committee had also entered into a contract outside of Board meetings for tree replacements, in his opinion, the Landscaping Committee was working within the prior approval via the budgetary line item, and would have requested Board approval for any amounts above the prior approval. Directors Staley and Palmer were in agreement that, in the case of the contract for the Project Manager, the prior approval was for the research phase of the contract only and although there is a budgetary line item related to the wall repair it is not defined in sufficient detail for action outside of Board meetings.

Director Palmer commented that the budgetary line item for landscaping had complementing agreements, and her understanding was that the original agreement for Mr. O'Rourke (40 hours) was the only agreement made by the Board. Authority to use the entire budget or to spend beyond the agreement for this project had not been approved by the board. She also assured the Board that she will not sign checks to pay invoices that extend beyond the approved agreement amounts by the Board.

Director Palmer then discussed the invoice submitted by Mr. O'Rourke and explained that she would not be comfortable voting to approve payment given the separate invoice line item for insurance. She commented that his cost of doing business should be reflected in his hourly rate. The Board discussed the invoice and whether to pay as presented.

Director Dailey made a motion to pay the invoice by Mr. O' Rourke as submitted. Director Davis seconded the motion and additional discussion ensued.

Director Palmer recommended that the District consider approval of a revised rate of \$73.00 per hour which would cover the contract value given 360 total hours and allow for costs of doing business such as insurance to be included in the hourly rate. She further recommended that in order to cover the first billing of \$3,779, that the District pay for 51.77 hours of work with a credit of 11.77 hours toward future work.

Following discussion, upon motion duly made by Director Dailey, seconded by Director Davis and, upon vote, unanimously carried, the Board approved the revised rate as discussed and authorized the release of check No. 2161 to Jack O'Rourke contingent upon receipt of a revised invoice reflecting the rate and hours as described above.

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**Bid Tabulation and Engineer's Recommendation for Stone Monuments, Piers, Walls and Fencing Project:** The Board reviewed the bid tabulation. Director Dailey explained that the project scope was prepared to address top caps and stone replacement as well as, treatment of steel columns and repairs and painting of the wrought iron fence. He further explained that the Wall Repair Committee prioritized the repairs with top caps being the highest priority, wall stones and wall repairs being the next highest priority, and repairs and painting of the wrought iron fence to be addressed if sufficient funding is available following the wall repairs.

Mr. O'Rourke joined the meeting at this point via speakerphone.

Director Palmer inquired as to bid items, specifically the quantity of stone replacement. Mr. O'Rourke clarified that the stone replacement quantity included in the bid documents was based on one hundred "instances" of stone repair as defined in the Project Specifications. She then asked for an explanation of the line item regarding waterproofing steel columns. Mr. O'Rourke explained that this part of the project refers to the metal substructure of the stone wall which will require excavation and waterproofing each of the columns. He further clarified that, in his estimated budget for repairs, this item is included with moisture proofing and landscape repairs for an estimated cost of \$40,000.

Director Palmer questioned the reality of staying within the estimated cost after going out with the second RFP. Director Palmer commented on prior Board discussion about the wrought iron fence as a maintenance project. Directors Palmer and Staley requested that the Wall Committee prioritize repairs with the wall stones and wall repairs, and top caps as the highest priority and repairs and painting of the wrought iron fence to be addressed if sufficient funding is available.

**Painting Mailbox Clusters:** Mr. Beckman reviewed the bid tabulation with the Board. He reported that, based on the bids received, he had the highest level of confidence in the bid provided by Community Painting Specialists, LLC. The Board discussed taking the funds from the Capital Asset Maintenance budget line item.

**Summit Services Estimate No. 611; Flower Beds:** Director Staley reviewed the proposal with the Board and recommended that the District move forward with the flower beds as soon as possible.

**Summit Services Estimate No. 742; Shrub Bed Installation:** Director Staley reported that he has reviewed the scope of work prepared by Summit Services and has directed them to revise and resubmit.

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**Summit Services Estimate No. 743; Tract C and D Irrigation Improvements:** Director Staley discussed the proposal and recommend that the Board authorize the work.

**Proposal for Prairie Dog Control:** Mr. Beckman reviewed the proposal and explained that additional treatments are recommended by Orkin, LLC in the spring and fall. The proposal would be for this spring.

**Level of Authority Designated to Committees:** Director Dailey expressed his understanding that the Committee's purpose is to move projects along within the budget established for that particular purpose. The Board was of consensus that the Landscaping Committee can continue to operate within with delegated authority within the specific budgetary line items per the approved Agreement. With regard to the Wall Repair Committee, the Board determined that the budget is not broken down in sufficient detail in order for the Committee to proceed in this manner. The Committee will therefore be required to obtain specific Board approval to enter into contracts or expend funds.

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### **LEGAL MATTERS**

**Discussions with the City of Aurora Regarding Tree Replacements in Tract JJ:** Attorney Tanaka reported that she has been in contact with the City and they are planning to replace the trees this year and such replacement is for four trees.

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### **BOARD MEMBER INPUT**

**Board Member Input:** Director Palmer requested that Board members provide communication reports through Mr. Beckman for distribution to the Board members. Director Palmer inquired if the Wall Repair Committee would be having fewer conference calls. Mr. Beckman reported that he sees the need to prepare various bid packages but not necessarily have so many conference calls going forward. Director Dailey was in agreement regarding the matter.

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### **NEW BUSINESS**

**New Business:** Director Dailey inquired as to the responsibility for the infrastructure being installed in tracts now being developed. He also questioned the need to make bond payments on unfinished work. Attorney Tanaka reported that the developers of the various areas will be responsible for the construction and financing of the infrastructure serving the specific tracts and that the District has no obligation to construct or finance any additional infrastructure. Attorney Tanaka further reminded the Board of its resolution adopted in January 2012 which puts all developers and builders on notice of the dedication and acceptance procedures for public improvements as well as the District's position that no reimbursements for public



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infrastructure will be approved and that all public improvements will be financed by the developer and/or builder.

### **CONTRACT APPROVALS**

**Landscape Annual Expenditures Matrix:** Mr. Beckman reviewed the matrix with the Board.

**Award of Contract for Stone Monuments, Piers, Walls and Fencing Project:** Mr. Beckman reported that the Project Manager is working with Vertex Inc., the apparent low bidder, to see if they can revise the bid for the masonry work only; however, the project will likely have to rebid in separate bid packages.

**Engagement of Contractor for Painting of Mailbox Clusters:** The Board discussed the engagement of Community Painting Specialists, LLC for the painting of the mailbox clusters.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board approved the engagement of Community Painting Specialists, LLC for the painting of the mailbox clusters. It was noted that funds for the painting of the mailbox clusters will be taken from the Capital Asset Maintenance budget line item.

**First Addendum Independent Contractor Agreement between the District and John J. O'Rourke for Project Management Services:** The Board considered ratifying approval of the First Addendum to the Independent Contractor Agreement between the District and John J. O'Rourke for Project Management Services. It was noted that the scope of the contract is to change the rate of \$73 per hour and the total hours will be 360. Reimbursable expenses will be eliminated from the contract.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board ratified approval of the Independent Contractor Agreement between the District and John J. O'Rourke for Project Management Services with amendments as discussed.

**Independent Contractor Agreement with The Green Spot, Inc. for Tree Replacement Services:** The Board discussed the Independent Contractor Agreement with The Green Spot, Inc. for Tree Replacement Services.

Following discussion, upon motion duly made by Director Palmer, seconded by Director Staley and, upon vote, unanimously carried, the Board approved the Independent Contractor Agreement with The Green Spot, Inc. for Tree Replacement Services.

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Addition of Trees: The Board discussed adding four trees to the contract scope at an estimated cost of \$1,600 to be funded from the Landscaping Projects budget line item.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board authorized the addition of four trees to be funded from the Landscaping Projects budget line item for an amount not to exceed \$1,600.

**Summit Services Estimate No. 611: Flower Beds; First Addendum to the Independent Contractor Agreement with Summit Services for 2012 Landscape Maintenance Services**: The Board discussed the First Addendum to the Independent Contractor Agreement with Summit Services for 2012 Landscape Maintenance Services for flowers beds and planting.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board approved the First Addendum to the Independent Contractor Agreement with Summit Services for 2012 Landscape Maintenance Services for flowers beds and planting.

**Summit Services Estimate No. 742: Shrub Bed Installation**: Discussion was deferred.

**Summit Services Estimate No. 743: Tract C and D Irrigation Improvements; Second Addendum to the Independent Contractor Agreement with Summit Services for 2012 Landscape Maintenance Services**: The Board discussed the Third Addendum to the Independent Contractor Agreement with Summit Services for 2012 Landscape Maintenance Services for Tract C and D irrigation improvements.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board approved the Third Addendum to the Independent Contractor Agreement with Summit Services for 2012 Landscape Maintenance Services for Tract C and D irrigation improvements.

**Third Addendum to the Independent Contractor Agreement with Orkin, LLC**: The Board discussed the Third Addendum to the Independent Contractor Agreement with Orkin, LLC for Pest Control Services.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board approved

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the Third Addendum to the Independent Contractor Agreement with Orkin, LLC for Pest Control Services.

**Summit Services Estimate No. 751: Tract NN Drainage Improvements; Third Addendum to the Independent Contractor Agreement with Summit Services for 2012 Landscape Maintenance Services:** The Board considered the Award of Contract to Summit Services for drainage work on Tract NN.

Following discussion, upon motion duly made by Director Staley, seconded by Director Davis and, upon vote, unanimously carried, the Board approved the Award of Contract to Summit Services for drainage work on Tract NN.

**OTHER BUSINESS**

**Community Outreach:** The Board discussed the following items as information to be included in the June 2012 Community Update:

- 2012 Tree Replacements
- Flower Planting
- Irrigation Season
- 2012 Maintenance Projects
- Mail Kiosks
- Tract NN Drainage
- Pet Waste Disposal

**Appointment of Officers:** Following discussion, upon motion duly made by Director Davis, seconded by Director Staley and, upon vote, unanimously carried, the following slate of officers was appointed:

President	Ronald "Dick" Dailey
Treasurer	Laverne Palmer
Secretary	Dan Staley
Assistant Secretary	Jud Davis
Assistant Secretary	Rick Speaect

**EXECUTIVE SESSION:**

**Requests for Proposal ("RFP") for Consulting Services:** **EXECUTIVE SESSION:** Pursuant to Sections 24-6-402(4) (b) and (e), C.R.S., upon motion duly made by Director Staley, seconded by Director Palmer and, upon an affirmative vote of at least two-thirds of the quorum present, the Board convened in executive session at 12:28 p.m. for the purpose of discussions relating to negotiations with third parties and to receive legal advice as authorized by Sections 24-6-402(4)(b) and (e), C.R.S.

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Furthermore, pursuant to Section 24-6-402(2)(d.5) (II)(B), C.R.S., no record will be kept of those portions of the executive session that, in the opinion of the District's attorney, constitute privileged attorney-client communication pursuant to Section 24-6-402(4)(b), C.R.S.

The Board reconvened in regular session at 12:53 p.m.

Following discussion the Board members had no comments on the RFP procedures to date and directed Directors Palmer and Staley to proceed with RFP process for District Management Services so that any cost adjustment can be incorporated into the District's 2013 budget.

**ADJOURNMENT**

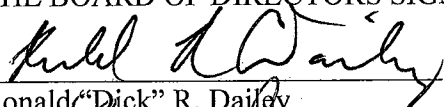
There being no further business to come before the Board at this time, upon motion duly made, seconded and, upon vote, unanimously carried, the meeting was adjourned.

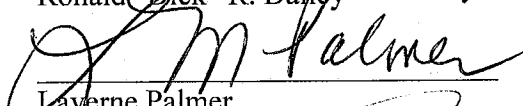
Respectfully submitted,

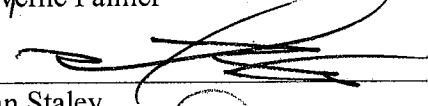
By: 


Secretary for the Meeting


THESE MINUTES WERE APPROVED AS THE OFFICIAL JUNE 4, 2012 MINUTES OF THE CONSERVATORY METROPOLITAN DISTRICT BY THE BOARD OF DIRECTORS SIGNING BELOW:

  
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Ronald "Dick" R. Dailey

  
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Laverne Palmer

  
\_\_\_\_\_  
Dan Staley

  
\_\_\_\_\_  
Jud Davis

  
\_\_\_\_\_  
Rick Speaect

**From:** [Jennifer Gruber Tanaka](mailto:jgruber@tanaka.com)  
**To:** [Dick Dailey @ The Conservatory Metro District](mailto:ddailey@yourcmd.org)  
**Cc:** [Toni Burns](mailto:toni@burns.com)  
**Subject:** RE: claim form ATTORNEY-CLIENT PRIVILEGE (0478.0103)\*  
**Date:** Wednesday, December 17, 2008 10:09:23 AM

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Good morning, Dick.

I spoke with my partners regarding our ability to prepare the notice of intent to file a claim. In reviewing the situation, we feel we would still be in conflict by preparing this notice since the ADM, SAN-7353, LLC entity would need to be named. I think it's best that we have Cass (if he chooses to take us) or our new litigation counsel prepare and file this notice. Also, something Cass may want to consider is the fact that our previous Board did actions that we may want to name in the suit. For example, Marty's issuance of the letter of acceptance to Richmond Homes without Board approval, etc. would be something we should consider. Because the former Board is protected under our defense and indemnification resolution, the District would have an obligation to defend them and we'd have to turn this over to our insurance carrier to defend them. Perhaps once you and Cass have an opportunity to do a site visit we can chat about this with him.

Thanks Dick. J

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**From:** Dick Dailey @ The Conservatory Metro District [<mailto:rdailey@yourcmd.org>]  
**Sent:** Tuesday, December 09, 2008 2:12 PM  
**To:** Jennifer Gruber Tanaka  
**Subject:** claim form

Dick Dailey  
303-690-0715 (Home Office and Fax)  
303-349-3718 (Cell)  
[rdailey@yourcmd.org](mailto:rdailey@yourcmd.org)

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**From:** Cass McKenzie [<mailto:cass@mrhllc.com>]  
**Sent:** Monday, December 08, 2008 12:33 PM  
**To:** 'rdailey@yourcmd.org'  
**Subject:**

Mr. Dailey,

Based upon your request, attached is an example of a Notice that we have used in other cases. As explained, this is only an example for you to review and in no way am I representing that it should be used in your situation, or am I providing you with any legal advice on this matter. As discussed, I strongly encourage you to contact your general counsel for legal advice on this matter. However, this is an example of what your requested.

Also, as we discussed, there a specific statutes that need to be complied with in filing a claim in Colorado. You should consult your counsel on these statutes as well. I look forward to meeting with you in the future. Cass

GARY R. WHITE  
KRISTEN D. BEAR  
WILLIAM P. ANKELE, JR.  
JENNIFER GRUBER TANAKA\*\*  
K. SEAN ALLEN  
GEORGE M. ROWLEY\*

**WHITE • BEAR • ANKELE**  
PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

CLINT C. WALDRON  
NEIL RUTLEDGE  
\*\*\*Robert G. Rogers

October 4, 2011

Board of Directors  
Conservatory Metropolitan District  
141 Union Boulevard, Suite 150  
Lakewood, Colorado 80228

**VIA United States Mail & Electronic Mail**

RE: Legal Counsel Representation and Confirmation of No Conflict of Interest

Dear Directors:

Over the course of the last few years, questions have been raised regarding our Firm's relationship with ADM, SAN-7353, LLC, the original developer of The Conservatory at the Plains subdivision (the "Developer"). The inquiries have generally involved whether our Firm has represented the Developer on real estate and development matters in general and, more specifically, with regards to matters concerning the Conservatory Metropolitan District (the "District").

We are writing this letter in order to confirm that, with the specific exception related to organization of Conservatory Metropolitan District, our Firm does not represent the Developer on a current basis nor in the past on any development issues or in matters or agreements between the Developer and the District. The Developer has its own attorney, which it consults on development matters and who reviews agreements between the District and Developer, on the Developer's behalf. Although Developer representatives served on the District's Board from its inception until mid-2007, these individuals served in the capacity of a director with the fiduciary responsibilities to the Board as any director would have. Our contractual relationship was and continues to be with the District, not the Developer.

We hope that this letter clarifies the lack of relationship between the Developer and our Firm.

Very Truly Yours,  
WHITE, BEAR & ANKELE  
Professional Corporation

*White, Bear & Ankele, P.C.*

cc: Mr. AJ Beckman, District Manager