

**JOINT RESOLUTION OF THE
BOARD OF DIRECTORS OF
THE POWHATON COMMUNITY AUTHORITY
AND
BOARD OF DIRECTORS OF
POWHATON ROAD METROPOLITAN DISTRICT NO. 1**

**ESTABLISHING POLICIES AND PROCEDURES FOR REQUIRING CONNECTION
TO THE UNDERDRAIN IMPROVEMENTS**

WHEREAS, the Powhaton Road Metropolitan District No. 1, City of Aurora, State of Colorado, is a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”); and

WHEREAS, the District has the power to provide certain public infrastructure, improvements and services, as described in Title 32, Article 1, C.R.S. (the “**Special District Act**”), within and without its boundaries (collectively, the “**Public Improvements**”), as authorized and in accordance with the Amended and Restated Consolidate Service Plan for Sand Creek Ranch Metropolitan District Nos. 1-3 and Trails at First Creek Metropolitan District Nos. 1 and 2 and Starfall Metropolitan District Nos. 1 and 2 to be known as Powhaton Road Metropolitan District Nos. 1-7 approved by the City of Aurora on July 22, 2013 (the “**Service Plan**”); and

WHEREAS, in accordance with the Special District Act and the Service Plan, the District has the power to acquire real and personal property, manage, control, and supervise the affairs of the District, including the financing, construction, installation, operation and maintenance of the Public Improvements in accordance with the Service Plan, to hire and retain agents to perform the tasks empowered to the District, and to perform all other necessary and appropriate functions in furtherance of the Service Plan; and

WHEREAS, the Board of Directors of the District, along with the Boards of Directors of Powhaton Road Metropolitan District Nos. 2- 11, have determined it is in their best interest to form the Powhaton Community Authority (the “**Authority**”) pursuant to the Colorado Constitution Article XIV, Sections 18(2)(a) and (b) and Sections 29-1-203 and 29-1-203.5, C.R.S., as amended (the “**Authority Act**”), and have entered into that certain Agreement Establishing the Powhaton Community Authority, dated March 24, 2021 by and among the Districts (the “**Establishment Agreement**”); and

WHEREAS, pursuant to § 32-1-1001(1)(h), C.R.S., the District shall have the management, control, and supervision of all the business and affairs of the District; and

WHEREAS, pursuant to the Authority Act and the Establishment Agreement, the Authority shall have the management, control and supervision of all the business and affairs of the Authority; and

WHEREAS, pursuant to § 32-1-1001(1)(f), C.R.S., the District shall have the authority to acquire, dispose of, and encumber real and personal property, including, without limitation, rights

and interests in property, leases, and easements necessary to the function or operation of the District; and

WHEREAS, pursuant to Section 4.03 of the Establishment Agreement, the Authority has the power to acquire, hold, operate, manage, own, lease (as lessee or lessor), sell, construct, reconstruct, maintain, repair, or dispose of real property or personal property as necessary, facilities, works or improvements to carry out the purposes of the Establishment Agreement; and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., the District is authorized to fix and impose fees, rates, tolls, penalties and charges for services or facilities furnished by the Authority which, until paid, shall constitute a perpetual lien on and against the property served; and

WHEREAS, pursuant to Section 4.03 of the Establishment Agreement, the Authority has the power 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; and

WHEREAS, the developer of the project located within boundaries of the Authority has constructed real property improvements, including but not limited to, certain underdrain mainline collection system improvements generally located in the rights-of-way (collectively, the “**Underdrain Improvements**”); and

WHEREAS, the Underdrain Improvements were constructed upon the findings of an Engineer’s Geotechnical Investigation, and with the intention of there being a connection from the foundation perimeter drains of each individual residential lot to the Underdrain Improvements via a service lateral connection for the purposes of mitigating potential defects and hazards associated with surface water runoff, such as ponding, chronic ice accumulation, and algae formation on sidewalks; and

WHEREAS, connection of each lot’s foundation perimeter drain to the Underdrain Improvements via a service lateral is the responsibility of the homebuilder for each residential lot (collectively, the “**Builder**”); and

WHEREAS, the Authority intends to own, operate and maintain the Underdrain Improvements; and

WHEREAS, in order to protect the Authority’s interests in the Underdrain Improvements, and for the benefit of the District and the Authority’s property owners, taxpayers, residents, and the general public, the District and the Authority desire to mandate connection of each lot’s foundation perimeter drain to the Underdrain Improvements by the Builder at the time of initial home construction; and

WHEREAS, the District and the Authority desire to set policies, procedures and penalties for violations concerning the failure to connect the Underdrain Improvements; and

WHEREAS, the District and the Authority also desire to authorize a designated representative (the “**Designated Representative**”), along with the District Manager, Authority Manager, District Engineer, Authority Engineer, and/or District Legal Counsel, and/or Authority Legal Counsel, as may be necessary, to implement and enforce the policies and procedures as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE DISTRICT AUTHORITY AS FOLLOWS:

1. Intent. This Resolution is adopted for the protection of the health, safety and welfare of the District and the Authority’s property owners, taxpayers, residents, and the general public, to preserve the Underdrain Improvements, and to provide a fair and consistent implementation and enforcement process of these policies and procedures.

2. Compulsory Connection to Underdrain Improvements/Mandate to Connect. The Builder constructing a dwelling unit on a residential lot within the Authority boundaries, as shown in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Boundaries**”), shall install a foundation perimeter drain connected to the Underdrain Improvements via a service lateral line with positive drainage. Ownership, operations, and maintenance of all foundation perimeter drains and service lateral lines shall be the sole responsibility of the lot owner. The District and the Authority shall have no ownership or operations and maintenance responsibilities for the foundation perimeter drain or service lateral lines.

3. Proof of Connection. The Builder shall submit to the District and the Authority as proof of connection, an engineer’s letter regarding inspection of the foundation evidencing connection of the foundation perimeter drain and service lateral lines to the Underdrain Improvements concurrent with submission of the engineer’s letter to the City of Aurora for the certificate of occupancy. The engineer’s letter shall be stamped with the seal of a design professional licensed by the State of Colorado, signed, and dated.

4. Enforcement Policy. The District and the Authority may enforce the policies and procedures set forth in this Resolution through administrative proceedings or judicial action. Any non-compliance by any Builder will be the responsibility of the lot owner of the respective residential lot at the time of issuance of a certificate of occupancy for a dwelling unit (the “**Owner**”). This Resolution is intended to serve as guidance to the Designated Representative, and does not limit or restrict the authority of the District or the Authority. The District or the Authority may intervene at any time with respect to any authority granted to or action undertaken by the Designated Representative.

5. Investigative Procedure. Upon receipt of a complaint alleging a violation of the mandate to connect to the Underdrain Improvements, or through independent audits, inspections or observations of the Designated Representative that a violation of the mandate to connect has occurred, the Designated Representative will conduct an investigation.

6. Enforcement Process. Upon determining that there has been a violation of the mandate to connect, the Designated Representative shall take the following steps.

- a. Advisory Letter. The Designated Representative will send an “**Advisory Letter**” to the Owner by first-class United States mail to the address of the Owner on record according the Arapahoe County Assessor (the “**Owner’s Address**”), notifying the Owner of: (i) the policy and procedure(s) violated and the nature of the violation, (ii) that the Owner must have the violation corrected within 10 calendar days of the date of the Advisory Letter, and (iii) that failure to timely cure the violation may result in potential fines or other sanctions. If, in the discretion of the Designated Representative, the violation requires more than 10 days to cure, the Designated Representative may extend the cure period or require the Owner to commence such cure within 10 days of the date of the Advisory Letter and diligently prosecute the same to completion.
- b. Notice of Compliant and Opportunity to Be Heard. If an Owner fails to cure (or provide adequate proof that he or she is diligently seeking to cure) a violation within 10 days of the date of the Advisory Letter, this shall be considered a second violation for which a fine may be imposed. The Authority shall send a notice of compliant and opportunity to be heard (“**Hearing Notice**”) to the Owner’s Address, notifying the Owner of: (i) the policy and procedure(s) violated and the nature of the violation, and (ii) the potential fines that may be imposed if the violation is not cured. The Hearing Notice shall further state that the Owner is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing by the Owner within 10 days of the date of the Hearing Notice.
- c. Notice of Ongoing Violations.
 - i. If an Owner fails to cure (or provide adequate proof that he or she is diligently seeking to cure) a violation, and has not requested in writing a hearing date within 10 days of the date of the Hearing Notice, this shall be considered a third violation for which a fine may be imposed. The Designated Representative shall send a notice of violation to the Owner’s Address demanding that the Owner cure the violation and that an additional fine has been imposed on the Owner’s account pursuant to the fine schedule set forth in this Resolution (the “**Ongoing Violation Notice**”).
 - ii. If the Owner fails to cure (or provide adequate proof that he or she is diligently seeking to cure) a violation 10 days after the date of the first Ongoing Violation Notice, this shall be considered a fourth violation for which an additional fine may be imposed. A second Ongoing Violation Notice shall be sent to the Owner’s Address demanding that the Owner cure the violation that an additional fine has been imposed on the Owner’s account pursuant to the fine schedule set forth in this Resolution (the “**Second Ongoing Violation Notice**”).

- d. Continuing Violation. In the event that the violation continues to exist uninterrupted 10 days after the date of the Second Ongoing Violation Notice, the Designated Representative may in its discretion, in addition to any other remedy, send the Owner a notice of daily fines (“**Daily Fine Notice**”) and thereafter impose a fine of up to \$100/day for each day that the violation continues to exist.

7. Hearing on Violation. If a hearing is requested by the Owner pursuant to this Resolution, the Designated Representative shall notify the Owner of the date, time and place of the hearing at least 10 days prior the hearing. Hearings shall be conducted by the Board, or a tribunal consisting of persons selected by the Board.

8. Failure to Attend or Request a Hearing. In the event any Owner fails to request a hearing in writing within 10 days of the date of the Hearing Notice, or fails to appear at a requested hearing, the Board or the tribunal conducting the hearing may make a decision with respect to the violation based on the complaint, results of the investigation, and any other available information without the necessity of holding a formal hearing. Failure to request a hearing or to appear at a requested hearing will result in the Owner being deemed to have admitted and acknowledged the violation and the Owner will thereafter be subject to all fines and penalties assessed in connection with the violation.

9. Decision. After the Designated Representative has taken the steps outlined in this Resolution, and upon a finding that an Owner is in violation of these policies and procedures, the Designated Representative shall send a notice of violation to the Owner’s Address (“**Notice of Violation**”). The Authority may revoke or suspend the Owner’s privileges, impose fines in accordance with the fine schedule set forth in this Resolution and take such other actions as it may deem necessary or appropriate to assure compliance with these policies and procedures.

10. Penalty Schedule. The following penalty schedule is adopted for violation of these policies and procedures.

| | Penalty |
|--|------------------------|
| First Violation | Advisory Letter |
| Second Violation (Hearing Notice) | \$100 |
| Third Violation (Ongoing Violation Notice) | \$200 |
| Fourth Violation (Second Ongoing Violation Notice) | \$300 |
| Daily Fine Notice | Up to \$100/day |
| Penalty related to Failure to Connect to Underdrain Improvements | \$10,000 per violation |

11. Payment. Payment for all penalties shall be by check or equivalent form acceptable to the Authority, made payable to “Powhaton Community Authority” and sent to the following address, on or before the due date: Powhaton Community Authority, c/o Simmons & Wheeler, P.C., 304 Inverness Way, Suite 490, Englewood, CO 80112. The Authority may change the payment address from time to time and such change shall not require an amendment to this Resolution.

12. Waiver of Fines and Other Amounts. The District or the Authority may determine enforcement actions on a case by case basis, and take other actions as it may deem necessary or appropriate to assure compliance with these policies and procedures. The District or the Authority may, in its sole discretion, waive all or any portion of any fines and other amounts levied under this Resolution. Additionally, the District or the Authority may condition waiver of any fine or other amount(s), upon the Builder coming into and staying in compliance with these policies and procedures.

13. Other Enforcement Means. The provisions of this Resolution shall be in addition to all other enforcement means which are available to the District or the Authority through these policies and procedures, or by law. Application of this Resolution does not preclude the District or the Authority from using any other enforcement means, including, but not limited to the recording of liens or notices of violation, foreclosure, and any other legal or equitable remedies available to the District or the Authority.

14. Legal Action. Any violation of these policies and procedures, or this Resolution may, in the discretion of the District or the Authority, be turned over to legal counsel to take appropriate legal action either in lieu of, or in addition to, the imposition of any fines or other penalties under this Resolution, and Builders shall be responsible for all attorneys’ fees and costs incurred in enforcing this Resolution and in collecting amounts due and owing to the Authority.

15. Foreclosure of Lien. All amounts imposed pursuant to this Resolution shall, until paid, constitute a statutory, perpetual lien on and against the property served, and any such lien may be foreclosed in the manner provided by the laws of the State of Colorado for the foreclosure of mechanic’s liens, pursuant to § 32-1-1001(1)(j), C.R.S., such lien being a charge imposed for the provision of services and facilities to the property. Said lien may be foreclosed at such time as the District or the Authority in its sole discretion may determine. The lien shall be perpetual in nature (as defined by the laws of the State of Colorado) on the property and shall run with the land.

16. Deviation/Amendment. The District or the Authority may deviate from the procedures set forth in this Resolution if, in their sole discretion, such deviation is reasonable under the circumstances. The District and the Authority expressly reserve the right to amend, revise, redact, and/or repeal this Resolution in whole or in part, at any time, in order to ensure the protection of the health, safety and welfare of the District and the Authority’s property owners, taxpayers, residents, and the general public and to preserve the Underdrain Improvements.

17. No Waiver. No waiver of any provision of this Resolution or these policies and procedures shall be deemed to constitute a waiver of any other provision in this Resolution, nor shall such any waiver constitute a continuing waiver unless otherwise expressly provided.

18. No Guaranty or Reliance. Nothing in this Resolution shall obligate the District or the Authority to approve a connection to the Underdrain Improvements or otherwise authorize work which may impact the Underdrain Improvements or any other property of the District or the Authority. The District and the Authority hereby agree that the Authority has the sole and absolute discretion to approve any connection to the Underdrain Improvements.

19. Term. This Resolution and these policies and procedures shall be effective as of June, 1, 2021.

[Signature Pages Follow.]

ADOPTED this 4th day of April, 2021.

**POWHATON ROAD METROPOLITAN
DISTRICT NO. 1**

By: *James Spehalski*
James Spehalski (May 27, 2021 10:22 MDT)

Officer of the District

Attest:

By: *Roger Hollard*
Roger Hollard (May 27, 2021 09:37 MDT)

**POWHATON COMMUNITY
AUTHORITY**

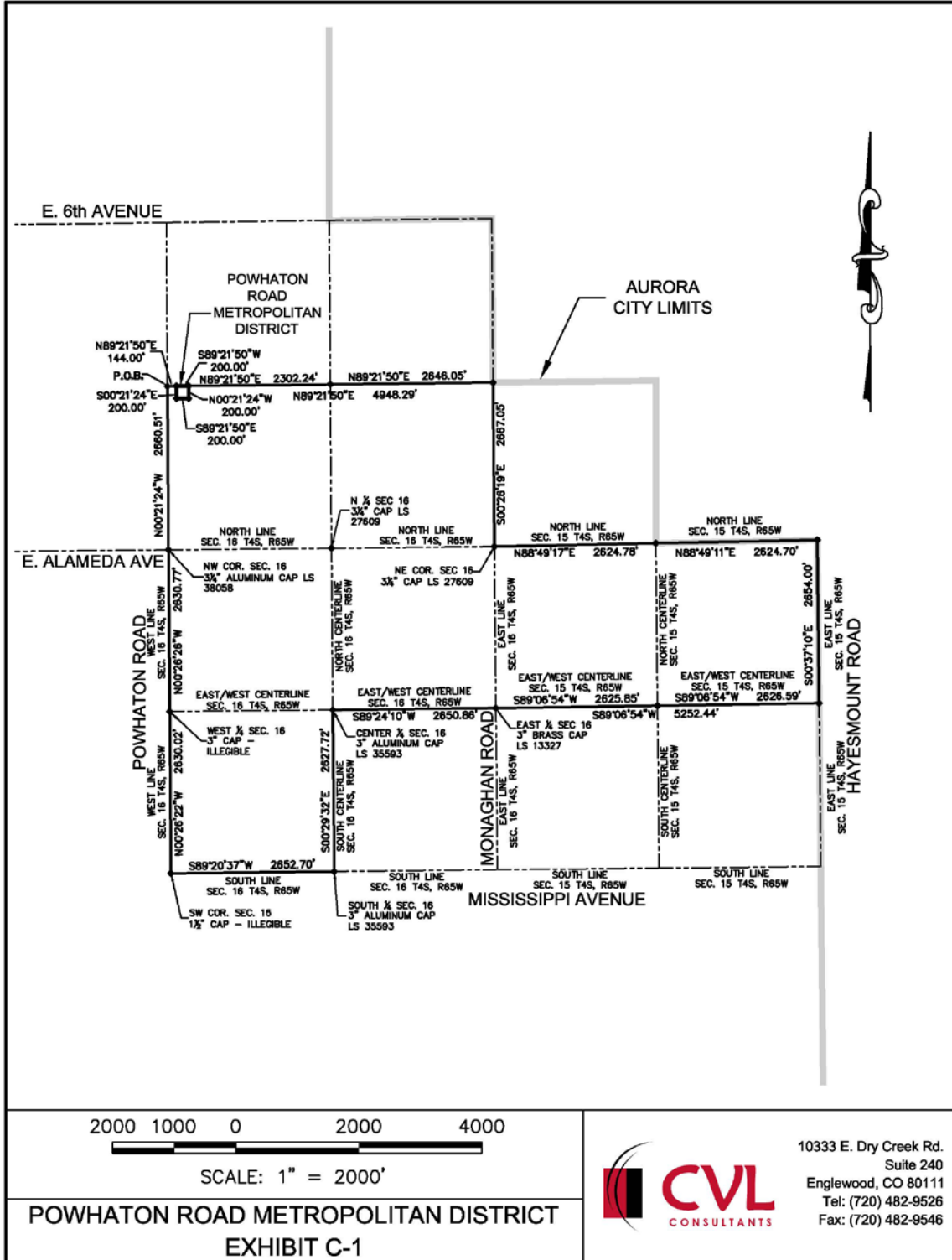
By: *James Spehalski*
James Spehalski (May 27, 2021 10:22 MDT)

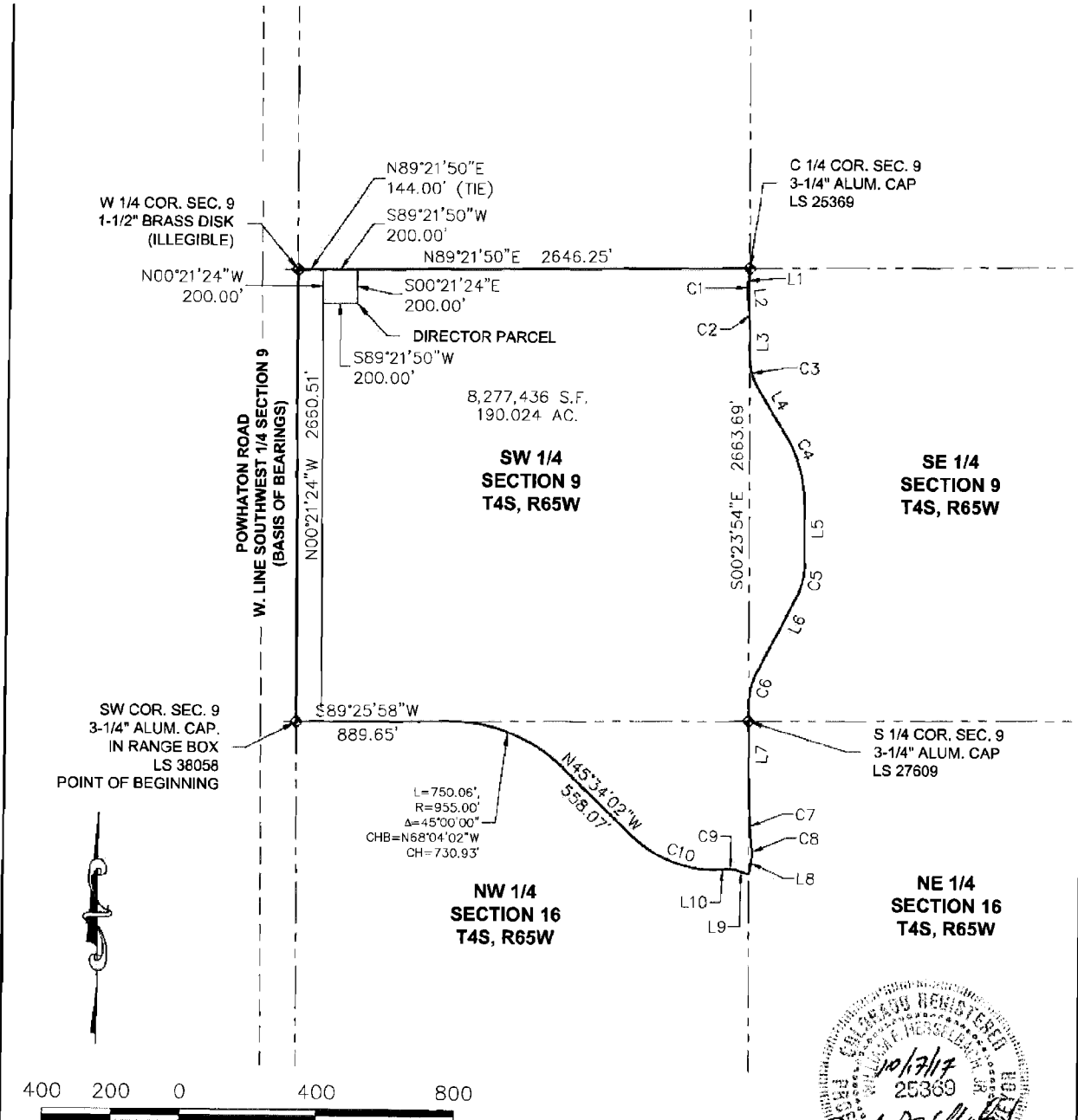
Officer of the Authority

Attest:

By: *Roger Hollard*
Roger Hollard (May 27, 2021 09:37 MDT)

Exhibit A
Boundaries





SCALE: 1" = 800

THE ABOVE DESCRIBED PARCEL CONTAINS 8,277,436 SQUARE FEET OR (190.024 ACRES) MORE OR LESS.

This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.

POWHATON ROAD
METROPOLITAN DISTRICT NO. 2

OCTOBER 16, 2017



10333 E. Dry Creek Rd.
Suite 240
Englewood, CO 80112
Tel: (720) 482-9526
Fax: (720) 482-9546

E. 6th AVENUE

NW1/4
SEC. 9

NE1/4
SEC. 9

POWHATON ROAD
METRO DISTRICT NO. 3
(SEE SHEET 2)

E. 1/4 CORNER, SEC. 9
FND 2-1/2" IRON PIPE
WITH 3-1/4" ALUM. CAP
"LS 27609"

W 1/4 COR. SEC. 9
FND 1-1/2" BRASS DISK
(ILLEGIBLE)

N89°21'50"E 2302.24'

N89°21'49"E 2646.05'

BASIS OF BEARINGS
N00°21'24"W 2660.51'

SW1/4
SEC. 9

SE1/4
SEC. 9

N 1/4 CORNER
SEC. 16

NORTH LINE
SEC. 16 T4S, R65W

NORTH LINE
SEC. 16 T4S, R65W

SW COR. SEC. 9
3-1/4" ALUM. CAP.
IN RANGE BOX
LS 38058

E. ALAMEDA AVE

NW CORNER
SEC. 15

MONAGHAN ROAD

S00°26'19"E 2667.05'

POWHATON ROAD

WEST LINE
SEC. 16 T4S, R65W
N00°26'26"W 2630.77'

NW1/4
SEC. 16

NORTH CENTERLINE
SEC. 16 T4S, R65W

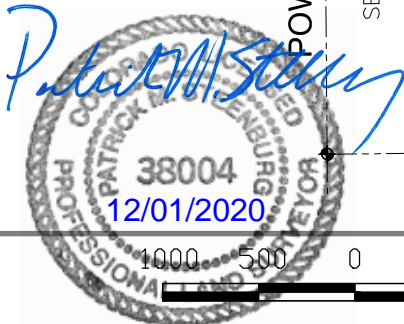
NE1/4
SEC. 16

EAST LINE
SEC. 16 T4S, R65W

EAST/WEST CENTERLINE
SEC. 16 T4S, R65W

EAST/WEST CENTERLINE
SEC. 16 T4S, R65W

S89°24'10"W 2650.86'



1000 500 0 1000 2000

SCALE: 1" = 1000'



10333 E. Dry Creek Rd.
Suite 240
Englewood, CO 80112
Tel: (720) 482-9526
Fax: (720) 482-9546

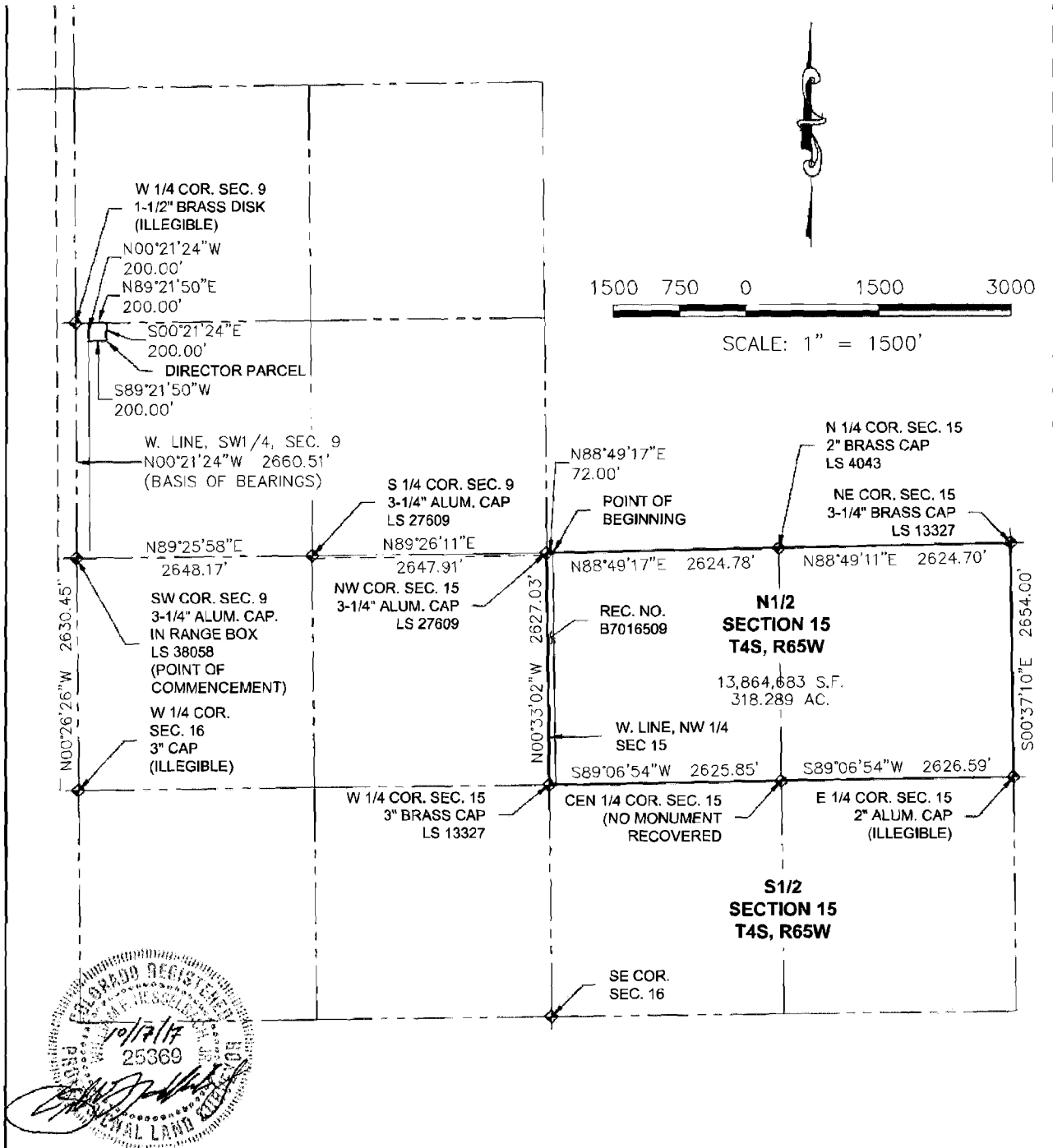
POWHATON ROAD METROPOLITAN DISTRICT
EXHIBIT C-3 (SEC. 9 & 16, T4S, R65W)

SHEET 1 OF 3

LGID #65423

N:\PROJECTS\30715604 SAND CREEK CAD SURVEY\LEGAL\SMETRO DISTRICTS\METRO DISTRICT DIRECTOR PARCELS\HBIT C-3.DWG, M.PELLEGRINI, 11/30/20

LGID: 65381



THE ABOVE DESCRIBED PARCEL CONTAINS 13,864,683 SQUARE FEET OR (318.289 ACRES) MORE OR LESS.

This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.

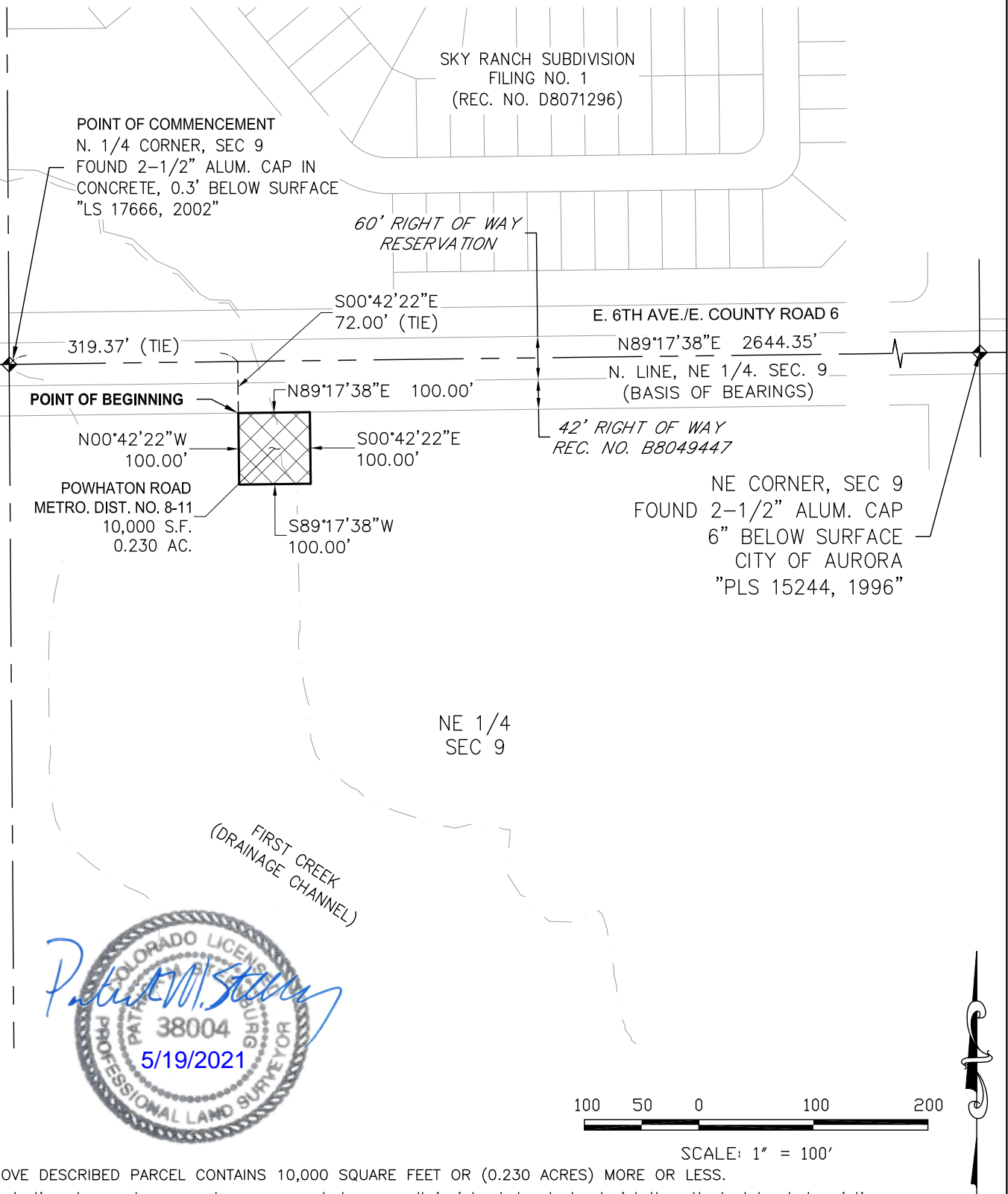
**POWHATON ROAD
METROPOLITAN DISTRICT NO. 7**

OCTOBER 16, 2017



10333 E. Dry Creek Rd.
Suite 240
Englewood, CO 80112
Tel: (720) 482-9526
Fax: (720) 482-9546

POWHATON ROAD METRO. DIST. NO. 8 - 11



THE ABOVE DESCRIBED PARCEL CONTAINS 10,000 SQUARE FEET OR (0.230 ACRES) MORE OR LESS.
This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.

NE 1/4 SECTION 9
T4S, R65W, 6TH P.M.

ARAPAHOE COUNTY, COLORADO



10333 E. Dry Creek Rd.
Suite 240
Englewood, CO 80112
Tel: (720) 482-9526
Fax: (720) 482-9546

SHEET 2 OF 2

DATE: MAY 18, 2021