

**SECOND AMENDED AND RESTATED  
RESOLUTION OF THE  
BOARD OF DIRECTORS OF THE  
POWHATON COMMUNITY AUTHORITY**

**ESTABLISHING POLICIES AND PROCEDURES FOR  
THE ACCEPTANCE OF UNDERDRAIN IMPROVEMENTS**

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WHEREAS, the Powhaton Community Authority, City of Aurora, State of Colorado (the “**Authority**”) was created by virtue of that certain Establishment Agreement by and among Powhaton Road Metropolitan District Nos. 1-11, dated March 24, 2021 (the “**Establishment Agreement**”), pursuant to § 29-1-203, C.R.S., and in conformity with § 29-1-203.5, C.R.S.; and

WHEREAS, in accordance with the Establishment Agreement, the Authority has the power to acquire real and personal property, manage, control, and supervise the affairs of the Authority, including the acquisition, financing, construction, and installation of the Public Infrastructure (collectively, the “**Public Improvements**”), and to perform all other necessary and appropriate functions in furtherance of the Establishment Agreement; and

WHEREAS, the Board of Directors of the Authority (the “**Board**”) recognizes that due to the timing and need for certain Public Improvements, third-party developers or builders (each a “**Developer**” and, collectively the “**Developers**”) may construct all or a portion of the Public Improvements for the benefit of the Authority; and

WHEREAS, the Board desires to adopt a policy whereby it may, in its sole discretion, acquire and accept Public Improvements from Developers more specifically certain mainline underdrain improvements, including all necessary real property, equipment, and appurtenances incident thereto (collectively, the “**Underdrain Improvements**”); and

WHEREAS, the Underdrain Improvements were constructed upon the recommendations of an engineer’s geotechnical investigation, 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 alleviating issues associated with sub-surface water buildup and mitigating potential hazards associated with surface water runoff, such as ponding, chronic ice accumulation, and algae formation on sidewalks absent Underdrain Improvements; and

WHEREAS, this policy is specially limited to acceptance of the mainline Underdrain Improvements and does not apply to service lateral connection to the Underdrain Improvements—the portion of the underdrain pipe that extends from a residential unit into the street, alley, easement, or right-of-way into the mainline underdrain; and

WHEREAS, it is the responsibility of the homebuilder for each residential unit to evaluate and, as appropriate, construct and complete the service lateral connection to the Underdrain Improvements; and

WHEREAS, the City of Aurora (the “City”) has adopted regulations known as the Standards and Specifications Regarding Water, Sanitary Sewer and Storm Drainage Infrastructure, adopted by the City in January 2012 and the Roadway Design & Construction Specifications, adopted by the City in October 2016, and as may be amended from time to time (collectively, the “City Criteria”); and

WHEREAS, the Board previously adopted that certain Resolution of the Board of Directors of the Powhatan Community Authority Establishing Policies and Procedures for the Acceptance of Underdrain Improvements on April 6, 2022, as first amended and restated on June 4, 2024 (the “Former Underdrain Improvements Acceptance Resolution”), which established, among other items, a policy whereby the Authority may acquire certain Underdrain Improvements from Developers, subject to the terms of the Former Underdrain Improvements Acceptance Resolution; and

WHEREAS, the Board desires to adopt a Second Amended and Restated Resolution of the Board of Directors of the Powhatan Community Authority Establishing Policies and Procedures for the Acceptance of Underdrain Improvements (the “Resolution”) and establish an Underdrain Improvements acceptance policy whereby the Authority may, in its sole discretion and in accordance with the Establishment Agreement and the relevant provisions of the City Criteria relating to Underdrain Improvements, acquire certain Underdrain Improvements from Developers, subject to the terms of this Resolution as may be amended from time to time by the Authority.

NOW, THEREFORE, be it resolved by the Board as follows:

1. Amending and Replacing the Former Underdrain Improvements Acceptance Resolution. Upon execution of the Resolution, the Resolution shall amend, restate, supersede, and replace the Former Underdrain Improvements Acceptance Resolution with no further action of the Board.

2. Connection to Underdrain Improvements. If applicable, a homebuilder may construct a foundation perimeter drain on a residential lot within the Authority boundaries. Ownership, operation, and maintenance of all foundation perimeter drains, service lateral lines, and connection points to the Underdrain Improvements shall be the sole responsibility of the lot owner. The Authority shall have no ownership or operations and maintenance responsibilities for the foundation perimeter drain or service lateral lines. To the extent that the Authority owns Underdrain Improvements that are in proximity to a residential lot, the lot owner may connect their service lateral line to the Underdrain Improvements.

3. Notice of Connection to Underdrain Improvements. If applicable, a homebuilder or a lot owner may, in their sole discretion, notify the Authority that a foundation perimeter drain has been constructed on a residential lot within the Authority boundaries and that the foundation perimeter drain has been connected to the Underdrain Improvements.

4. Construction, Maintenance, and Ownership of Underdrain Improvements. The Developer shall be responsible for constructing the Underdrain Improvements in accordance with the approved construction plans and City Criteria and shall thereafter own and be responsible for

all maintenance related to the Underdrain Improvements prior to Initial Acceptance (defined below) by the Authority. Following Initial Acceptance of the Underdrain Improvements, the Authority shall assume ownership, maintenance, and operations responsibilities for mainline Underdrain Improvements.

5. Initial Acceptance of Underdrain Improvements.

a. Initial Inspection Notice. Upon substantial completion of Underdrain Improvements to be acquired by the Authority, and to the extent any such Underdrain Improvements have not been previously inspected and accepted by the Authority, the Developer may request “**Initial Acceptance**” thereof by the Authority. The Developer shall give written notice to the Authority (including such information as is required pursuant to Section 5(b) hereof) identifying the completed Underdrain Improvements the Developer desires the Authority to accept and requesting an inspection of such Underdrain Improvements (“**Initial Inspection Notice**”). On or before the date of the Initial Inspection Notice, construction of the Underdrain Improvements must be completed to a point that the Authority can continuously use the Underdrain Improvements for their intended purpose.

b. Contents of Initial Inspection Notice. In conjunction with the Developer’s submittal to the Authority of an Initial Inspection Notice for Underdrain Improvements (or any portion thereof which, in the reasonable opinion of the Authority, based upon advice from its engineers and legal counsel, constitutes a discrete subsystem or component of a larger improvement or structure that may be separately acquired), the Developer shall submit the following materials to the Authority, in form and substance satisfactory to the Authority;

i. A description of the Underdrain Improvements to be acquired and the proposed eligible costs thereof;

ii. As-built drawings or detailed maps of the Underdrain Improvements, including a set of approved construction plans showing the location of the discharge point(s) and the locations of all cleanouts;

iii. A certificate from the Developer’s engineer or surveyor stating that the location of the discharge point and the locations of all cleanouts are as shown on the as-built drawings or detailed maps;

iv. If the Underdrain Improvements diverge from underneath the sanitary sewer line, a certificate from the Developer’s surveyor stating that all Underdrain Improvements were staked in general conformance with the approved construction plans;

v. A certificate from the Developer’s engineer stating that the Underdrain Improvements have been constructed in general conformance with the approved construction plans and are in general conformance with the City Criteria;

vi. A certificate from the Developer stating which homes have (and have not) been connected to the Underdrain Improvements. If the Developer fail to provide certificate for any home, the Authority will assume that such home is NOT connected to the Underdrain Improvements;

vii. Video surveying recording in DVD or equivalent format with an accompanying written report by the videographer/civil engineering consultant stating that all Underdrain Improvements have been cleaned (to the outlet point or where the mainline daylights) prior to the video recording being made and that a review of the video indicates that:

1. the underdrain mainline is generally clean and unblocked for the entire length to the outlet point or where the mainline daylights; and
2. the underdrain mainline appears to be structurally sound and that no cracks, depressions, debris, roots, concrete, etc., were observed within the underdrain mainline;

If construction of the underdrain mainline is such that it was completed in general conformance with the approved construction plans and City Criteria, but video surveying cannot be accommodated due to reasonable limitations in the system design and industry-standard televising equipment available, then a dye test evidencing that the underdrain mainline is operating in a manner free and clear from blockage may be accepted in lieu of video surveying with approval from the Authority's engineer.

viii. Photographs (digital format required) of the outlet(s) of the underdrain mainline with the date of the photograph;

ix. A drawing showing the location of the underdrain mainline outlet (this can be part of the construction plans) with dimensions to a known physical marker or structure;

x. Assignment of any transferrable warranties or guaranties related to the Underdrain Improvements;

xi. Any operation and maintenance manuals related to the Underdrain Improvements;

xii. An executed bill of sale in form and substance reasonably acceptable to the Authority; and

xiii. Such additional information as the Authority may reasonably require.

c. Initial Acceptance. The Authority's engineer and the Developer shall jointly inspect the Underdrain Improvements within fourteen (14) days after the Authority's receipt of the Initial Inspection Notice, subject to adequate weather conditions, and if the Authority's engineer finds that the Underdrain Improvements have been completed in accordance with the construction plans and City Criteria, then within fourteen (14) days after such inspection, the Authority's engineer shall provide a written recommendation to the Authority to grant initial acceptance of the Underdrain Improvements. Upon receipt of its engineer's recommendation of Initial Acceptance, the Authority may grant Initial Acceptance as evidenced by the Board's adoption of an initial acceptance resolution setting forth certain findings with respect to the Underdrain Improvements

(the “**Initial Acceptance Resolution**”). To the extent that all or any portion of the Underdrain Improvements to be accepted by the Authority are located on any separately platted tracts that the Developer is not otherwise required to dedicate to the City or the Authority, or located within a public right-of-way or established drainage and/or utility easement, the Underdrain Improvements shall include such tracts or easements which the Developer shall convey to the Authority by appropriate instrument, free and clear of all liens and encumbrances, and the Authority shall accept and record such instruments at the time of Initial Acceptance of such Underdrain Improvements.

6. Warranty Period and Final Acceptance. The Developer’s warranty obligations for those Underdrain Improvements subject to the Initial Acceptance, as identified in Section 7 hereof, shall continue for one (1) year from the date of adoption of the Initial Acceptance Resolution, or until the Authority issues a Notice of Final Acceptance (defined below), whichever occurs later (the “**Warranty Period**”). No sooner than sixty (60) days prior to the one-year anniversary of the date of adoption of the Initial Acceptance Resolution, the Developer will give written notice to the Authority requesting an inspection of the Underdrain Improvements in preparation for final acceptance thereof (the “**Final Inspection Notice**”). The Authority’s engineer and the Developer shall jointly conduct the inspection within fourteen (14) days after the Authority’s receipt of the Final Inspection Notice, subject to adequate weather conditions. The Developer shall inspect the Underdrain Improvements system with videography and as necessary shall flush the Underdrain Improvements system for final acceptance by the Authority. The Authority’s engineer and the Developer shall also in good faith prepare a punch list of items requiring remedial action to correct any defects. The Developer shall certify to the Authority in connection with the Final Inspection Notice that all persons and entities having provided labor and/or services in the construction of the Underdrain Improvements have been fully paid subject to such exceptions as may be disclosed to the Authority, and which are acceptable to the Authority. Upon satisfactory completion by the Developer of all punch list items (“**Final Punch List**”), the Authority shall issue a written “**Notice of Final Acceptance**” of the Underdrain Improvements. Such final acceptance shall not be unreasonably withheld, conditioned, or delayed, and after which the Warranty Period shall expire.

7. Warranty of Underdrain Improvements. During the Warranty Period, the Developer will warrant that the Underdrain Improvements subject to the Initial Acceptance Resolution are new, unless otherwise required or permitted, and have been or will be installed in a good and workmanlike manner and in general compliance with the approved construction plans and the City Criteria, and will be substantially free of defects in materials and workmanship. Underdrain Improvements not generally conforming to the approved construction plans and City Criteria may be considered defective.

a. The Authority shall be responsible for operating and maintaining the Underdrain Improvements during the Warranty Period and developing a scope of work for such maintenance and operations agreement to ensure the Underdrain Improvements are appropriately maintained and operated during the Warranty Period. During the Warranty Period, the Developer shall have the right to bring any concerns regarding such maintenance and operations to the Authority for consideration.

b. The Developer shall cause any defects identified in the Final Punch List to be modified, repaired, or replaced, as necessary in order to generally conform to the requirements of the approved construction plans and City Criteria. During the Warranty Period, the Authority

or its maintenance contractor may deliver to the Developer, not more frequently than once every three (3) months (except in an emergency where corrective action is necessary to prevent further damage to the Underdrain Improvements), a written notice of a defect in the Underdrain Improvements. Upon receipt of said notice, the Developer shall commence such work as the Developer deems reasonably necessary to modify, repair, or replace the defect within fifteen (15) business days, which may be deferred if seasonally appropriate and subject to the consent of the Authority, which consent shall not be unreasonably withheld, conditioned, or delayed. If the Developer does not commence such work within fifteen (15) business days (as may be deferred), the Authority may cause the defect to be modified, repaired, or replaced and the Developer shall reimburse the Authority for all reasonable costs associated with such modification, repair, or replacement. Notwithstanding anything contained herein to the contrary, the Authority shall not be required to accept and release from the Warranty Period any Underdrain Improvements that are defective or damaged.

8. Expenses. All expenses and costs incurred by the Authority for reviews, inspections, conveyances, and acceptance of the Underdrain Improvements shall be the responsibility of the Developer, and shall be paid by the Developer when invoiced by the Authority. Any remaining unpaid invoices shall be paid prior to acceptance of the Underdrain Improvements.

9. Subject to Annual Appropriations. This Resolution shall not constitute a multi-fiscal year obligation of the Authority, and any policies of the Authority as provided herein shall be subject to annual appropriation by the Board.

10. No Waiver. No waiver of any of the provisions of this Resolution shall be deemed to constitute a waiver of any other of the provisions of this Resolution, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein.

11. Headings. The headings of paragraphs in this Resolution are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Resolution.

12. No Guaranty or Reliance. Nothing contained herein shall obligate the Authority to accept any Underdrain Improvements for acquisition. The approval or consent of the Authority to any Initial Inspection Notice shall not be deemed to constitute a waiver of any right to hold or deny approval by the Authority as to any other application.

ADOPTED this 1st day of October, 2024.

POWHATON COMMUNITY AUTHORITY

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*James Spehalski*  
DocuSigned By: James Spehalski  
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Officer of the Authority

ATTEST:

Signed by:  
  
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