

**RESOLUTION OF THE
BOARD OF DIRECTORS OF THE
INSPIRATION METROPOLITAN DISTRICT**

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

WHEREAS, the Inspiration Metropolitan District, City of Aurora (the “**City**”), State of Colorado (the “**District**”), is a quasi-municipal corporation and political subdivision of the State of Colorado; 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 Service Plan for the District approved by the City on August 30, 2004 (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 (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 District; and

WHEREAS, the Board desires to adopt a policy whereby it may, in its sole discretion, acquire certain of the Public Improvements from Developers, subject to the availability of District funds for such purpose and subject to the terms of this Resolution; and

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

WHEREAS, 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, in an effort to minimize disparate requirements for acceptance and maintenance of Underdrain Improvements, the District desires to follow, to the extent practicable,

the relevant provisions of of the City Criteria relating to underdrain improvements, as set forth in this Resolution.

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

1. 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 District. Following Initial Acceptance of the Underdrain Improvements, the District shall assume ownership, maintenance, and operations responsibilities therefor.

2. Initial Acceptance of Underdrain Improvements.

a. Initial Inspection and Acceptance. Upon substantial completion of Underdrain Improvements to be acquired by the District, and to the extent any such Underdrain Improvements have not been previously inspected and accepted by the District, the Developer may request “**Initial Acceptance**” thereof by the District in accordance with the following: (i) Developer shall give written notice to the District (including such information as is required pursuant to Section 2(b) hereof) identifying the completed Underdrain Improvements the Developer desires the District to accept and requesting an inspection of such Underdrain Improvements (“**Initial Inspection Notice**”); (ii) the District’s engineer and Developer shall jointly inspect the completed Underdrain Improvements within fourteen (14) days after District’s receipt of the Initial Inspection Notice, subject to adequate weather conditions and if the District’s engineer finds that Underdrain Improvements have been completed generally in accordance with the construction plans and City Criteria, then within fourteen (14) days after such inspection, the District’s engineer shall recommend the District grant initial acceptance thereof; and (iii) upon receipt of its engineer’s recommendation of Initial Acceptance, the District may grant Initial Acceptance as evidenced by the Board’s adopt 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 District are located on any separately platted tracts that the Developer is not otherwise required to dedicate to the City, the District, and HOA or 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 District by appropriate instrument, free and clear of all liens and encumbrances, and the District shall accept and record such instruments at the time of Initial Acceptance of such Underdrain Improvements.

b. Contents of Initial Inspection Notice. In conjunction with the Developer’s submittal to the District of an Initial Inspection Notice for Underdrain Improvements (or any portion thereof which, in the reasonable opinion of the District, 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 District, in form and substance satisfactory to the District. On or before the date of the Initial Inspection Notice, construction of the Underdrain Improvements must be completed to a point that the District can continuously use the improvement or facility for its intended use.

- i. A description of the Underdrain Improvements to be acquired and the proposed eligible costs thereof;
- ii. As-built drawings 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 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;
- 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 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;
- 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;
- 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 District; and

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

3. Warranty Period and Final Acceptance. The Developer's warranty obligations for those Underdrain Improvements subject to the Initial Acceptance, as identified in Section 4 hereof, shall continue for one (1) year from the date of adoption of the Initial Acceptance Resolution, or until the District 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 District requesting an inspection of the Underdrain Improvements in preparation for final acceptance thereof (the "**Final Inspection Notice**"). The District's engineer and the Developer shall jointly conduct the inspection within fourteen (14) days after the District's receipt of the Final Inspection Notice, subject to adequate weather conditions, and shall in good faith prepare a punch list of items requiring remedial action to correct any defects. The Developer shall certify to the District 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 District, and which are acceptable to the District. Upon satisfactory completion by the Developer of all punch list items ("**Final Punch List**"), the District shall issue a written "**Notice of Final Acceptance**" of the Underdrain Improvements, which Final Acceptance shall not be unreasonably withheld, conditioned, or delayed, and after which the Warranty Period shall expire.

4. 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, 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 therefore 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 District 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 District 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 District 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, and, upon receipt of said notice, the Developer shall commence such work as 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 District, 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 District may cause the defect to be modified, repaired, or replaced and the Developer shall reimburse the District for all reasonable costs associated with such modification, repair, or replacement. Notwithstanding anything contained herein to the contrary, the District shall not be required to accept and release from the Warranty Period any Underdrain Improvements that are defective or damaged.


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

6. 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.

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

ADOPTED this 27th day of August, 2018.

INSPIRATION METROPOLITAN DISTRICT



Officer of the District


ATTEST:



Secretary

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel to the District