

RESOLUTION NO. 2020-08-03

**RESOLUTION OF THE AURORA HIGHLANDS COMMUNITY AUTHORITY BOARD
ADOPTING RULES AND REGULATIONS REGARDING DEDICATION AND
ACCEPTANCE OF PUBLIC IMPROVEMENTS**

A. The Aurora Highlands Community Authority Board, (the “**CAB**”) is a political subdivision and public corporation of the State of Colorado, established November 21, 2019 pursuant to Sections 29-1-203 and -203.5, C.R.S., and with the powers and authority of the First Amended and Restated The Aurora Highlands Community Authority Board Establishment Agreement, dated April 16, 2020 (the “**CABEA**”), by and between Aerotropolis Area Coordinating Metropolitan District, The Aurora Highlands Metropolitan District No. 1, The Aurora Highlands Metropolitan District No. 2, The Aurora Highlands Metropolitan District No. 3, ATEC Metropolitan District No. 1, and ATEC Metropolitan District No. 2, each a quasi-municipal corporation and political subdivision of the State of Colorado (individually, a “**District**” and collectively the “**Districts**”).

B. Section 29-1-203.5, C.R.S., authorizes the CAB to “exercise any general power of a special district specified in part 10 of article 1 of title 32, C.R.S., so long as each of the parties to the contract may lawfully exercise the power.”

C. Section 32-1-1001(1)(f), C.R.S, authorizes the CAB to acquire, dispose of, and encumber real and personal property.

D. Pursuant to the authority granted to the CAB by the CABEA, the CAB is authorized to provide for the design, acquisition, construction, installation, perpetual maintenance, and financing of certain water, sanitation, street, safety protection, park and recreation, transportation, television relay and translation, limited fire protection and mosquito control improvements and services (the “**Public Improvements**”) within and without the Districts’ boundaries.

E. The CABEA authorizes the CAB to own, operate and manage the Public Improvements, to cooperate with other governmental entities with respect to the Public Improvements, and to own, operate, and maintain all Public Improvements unless and until any of such Public Improvements are dedicated to the City of Aurora or another appropriate governmental entity for perpetual ownership and maintenance.

F. The CAB desires to establish a policy to clarify the rules and regulations regarding the dedication and acceptance of Public Improvements.

G. The Board of Directors of the CAB (the “**Board**”) wishes to adopt the Rules and Regulations Regarding Dedication and Acceptance of Public Improvements (defined below) as an official policy of the CAB.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE AURORA HIGHLANDS COMMUNITY AUTHORITY BOARD, COUNTY OF ADAMS, COLORADO, AS FOLLOWS:

A. The foregoing Recitals are incorporated into and made a substantive part of this Resolution.

B. The CAB hereby determines that it is in the best interests of the CAB, the Districts, and the property owners, residents, and users of the Public Improvements, for the CAB to promulgate and adopt the Rules and Regulations Regarding Dedication and Acceptance of Public Improvements (defined below). The CAB further reserves the right to approve supplemental rules and regulations as contemplated by the CABEA and Rules and Regulations Regarding Dedication and Acceptance of Public Improvements (defined below), as necessary to serve the CAB, the Districts, and the property owners, residents, and users of Public Improvements.

C. Therefore, the Board of Directors of the CAB hereby adopts The Aurora Highlands Community Authority Board Rules and Regulations Regarding Dedication and Acceptance of Public Improvements as described in **Exhibit A**, attached hereto and incorporated herein by this reference (“**Rules and Regulations Regarding Dedication and Acceptance of Public Improvements**”).

D. The Board of Directors declares that the Rules and Regulations Regarding Dedication and Acceptance of Public Improvements are effective as of June 18, 2020.

E. The Board hereby authorizes and directs the officers of the CAB and CAB staff to take all actions necessary to execute the duties, rights and obligations assigned to the CAB by the Rules and Regulations Regarding Dedication and Acceptance of Public Improvements.

F. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase, or word hereof, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

G. Nothing herein shall be interpreted or construed as limiting the Board’s authority, in its sole and absolute discretion, to supplement or amend this Resolution from time to time.

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGE TO RESOLUTION OF
THE AURORA HIGHLANDS COMMUNITY AUTHORITY BOARD
ADOPTING RULES AND REGULATIONS REGARDING THE DEDICATION AND
ACCEPTANCE OF PUBLIC IMPROVEMENTS]**

APPROVED AND ADOPTED on August 24, 2020.

**THE AURORA HIGHLANDS
COMMUNITY AUTHORITY BOARD**

DocuSigned by:



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President

Attest:

DocuSigned by:



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Secretary

EXHIBIT A

THE AURORA HIGHLANDS
COMMUNITY AUTHORITY BOARD
RULES AND REGULATIONS
REGARDING DEDICATION AND
ACCEPTANCE OF PUBLIC
IMPROVEMENTS

ADOPTED: August 24, 2020

McGeady Becher P.C.

The Aurora Highlands
Community Authority Board
c/o CliftonLarsonAllen LLP
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SECTION I – GENERAL PROVISION

Section 1.1 Authority.

These Rules and Regulations are adopted by The Aurora Highlands Community Authority Board in accordance with the authority contained in Section 29-1-203.5, C.R.S., Title 32, Article 1, Part 10, C.R.S., and The Aurora Highlands Community Authority Board Establishment Agreement dated and effective November 21, 2019.

Section 1.2 Interpretation.

These Rules and Regulations shall be subject to the following rules of interpretation:

(a) The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof”, and any similar terms, refer to these Rules and Regulations as a whole, including all exhibits, addendums, and amendments, and not to any particular article, section, or subdivision of these Rules and Regulations unless otherwise specifically stated to the contrary.

(b) All definitions and terms shall include both the singular and the plural, and all capitalized words or terms shall have the definitions set forth herein.

(c) The captions or headings of these Rules and Regulations are for convenience only and in no way define, limit, or describe the scope or intent of any provision, article, or section of these Rules and Regulations.

(d) The term “and” can mean “or” and the term “or” can mean “and” in any provision, article or section of these Rules and Regulations.

Section 1.3 Amendments.

These Rules and Regulations may be amended by the CAB from time to time in the same manner as the Rules and Regulations herein were adopted.

Section 1.4 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of these Rules and Regulations is for any reason held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, such provision shall not affect the remaining portions of these Rules and Regulations.

Section 1.5 CAB Enforcement.

To the extent any Person fails to perform any act required by these Rules and Regulations, performs any such act in a negligent manner, or performs any act prohibited by these Rules and Regulations, the CAB may, in its sole discretion, correct any problem created thereby. In such event, all costs incurred by the CAB shall be charged and paid by such Person as provided herein.

Section 1.6 Definitions.

- (a) **“Approving Jurisdiction”** means any governmental or quasi-governmental entity with review and approval authority for Public Improvements.
- (b) **“Act”** means Title 32, Article 1, C.R.S., as the same may be amended from time to time.
- (c) **“Actual Cost”** means those costs which are to be incurred in the construction of a given Public Improvement, including but not limited to, design, survey, construction, engineering, administration, construction observation, and plan review and approval.
- (d) **“Board”** means the Board of Directors of the CAB.
- (e) **“CAB”** means The Aurora Highlands Community Authority Board, a political subdivision and public corporation of the State of Colorado.
- (f) **“CABEA”** means The Aurora Highlands Community Authority Board Establishment Agreement dated and effective November 21, 2019, as may be amended from time to time.
- (g) **“City”** means the City of Aurora, Colorado, a home-rule municipality.
- (h) **“County”** means the County of Adams, Colorado.
- (i) **“Developer”** means any owner of real property within the Service Area (as such term is defined in the CABEA) engaging in the development, construction, installation, removal, repair, or reconstruction of Public Improvements.
- (j) **“Development”** means the approximately 3,920-acre development known as The Aurora Highlands and the Aurora Technology and Energy Center, located in the City of Aurora, County of Adams, State of Colorado
- (k) **“Member District”** means each of the metropolitan districts being a party to the CABEA, as the same may be amended, from time to time.
- (l) **“Mile High”** means Urban Drainage and Flood Control District d/b/a Mile High Flood District, a Colorado special district.
- (m) **“Person”** means any individual, firm, company, association, society, corporation, group, special district, governmental agency, or other legal entity other than the CAB and Member Districts.
- (n) **“Public Improvements”** means those improvements and facilities to be financed and constructed as authorized under the Service Plans (as such term is defined in the

CABEA) of each Member District, together with associated real property where applicable, that are necessary for the completion of the Development, which shall include the Regional Transportation System (as such term is defined in the CABEA).

(o) **“Rules and Regulations”** means these Rules and Regulations of the CAB, as may be amended from time to time.

(p) **“Standards and Specifications”** means the rules, regulations, standards, and specifications of the City of Aurora, Colorado, as may be amended from time to time.

SECTION II – DEDICATION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS

Section 2.1 General.

This Section II outlines the requirements for the dedication to and acceptance of all Public Improvements by the CAB. A determination of acceptance of specific Public Improvements shall be made by the CAB pursuant to these Rules and Regulations, and subject to the reasonable discretion of the CAB, after review of due diligence investigations, studies, and reports that may be deemed necessary or advisable by the CAB.

Section 2.2 Form of Dedication.

All dedications of Public Improvements to the CAB shall be made free and clear of all monetary liens or encumbrances. Fee title to real property may be conveyed or granted by Special Warranty Deed or a recorded plat that contains sufficient dedication language and the signed acknowledgement of the CAB. Public Improvements may be conveyed by Bill of Sale.

Section 2.3 Conveyance of Real Property to the CAB.

The CAB may accept the conveyance of real property upon its review and approval of the following (subject in all events to the terms and conditions set forth in these rules and regulations):

(i) **Plat.** A subdivision plat, complying with applicable statutes and recorded in the real property records of the County, correctly identifying the property being conveyed. The CAB will not accept the conveyance of un-platted real property.

(ii) **Survey.** An ALTA/NSPS survey, plat certification, or other depiction of the real property reasonably acceptable to the CAB, dated not more than one (1) year before the date of conveyance.

(iii) **Deed.** A Special Warranty Deed, in a form reasonably acceptable to the CAB, accurately identifying the property as well as any exceptions or reservations of the grantor thereto.

(iv) **Title Commitment.** A title commitment from an underwriter, reasonably acceptable to the CAB, to issue an ALTA Form 2006 extended coverage owner’s policy of title

insurance, insuring title to the subject real property, free from any monetary liens or encumbrances and subject to such exceptions that are reasonably acceptable to the CAB.

(v) Tax Certification. The certification of the County that all ad valorem property taxes through the date of conveyance have been paid.

(vi) Environmental Assessment. A Phase 1 Environmental Site Assessment or other form of substitute site evaluation regarding the environmental risks associated with the property.

(vii) Feasibility Study/Analysis. A study of the land use, building, and construction laws and regulations and economic circumstances that affect the potential use of the property for its intended purpose.

(viii) The location, size, and character of the real property is suitable for the intended purpose, as determined by the CAB in the CAB's reasonable discretion.

The CAB may waive any requirement of Section 2.3(b) if, in the opinion of the CAB's Board of Directors, officers, employees, agents, and consultants, such requirements are unnecessary given the particular circumstances, location, risk, value, or other considerations implicated in the acceptance of the property.

Section 2.4 Acceptance Criteria for Public Improvements.

The CAB will assume responsibility for providing operations and maintenance of Public Improvements not otherwise accepted by an Approving Jurisdiction only upon transfer of such Public Improvements to the CAB by Bill of Sale (and conveyance of the associated real property pursuant to Section 2.3, if applicable), together with all appurtenant facilities and assignment of any necessary easements to the CAB, in accordance with the procedure set forth below. After all items required by the Approving Jurisdiction in an applicable subdivision improvements agreement have been satisfactorily completed, the Developer may request that the CAB preliminarily accept the Public Improvements. The CAB shall preliminarily accept the Public Improvements after review by the appropriate Approving Jurisdiction, and prior to final acceptance by the Approving Jurisdiction, upon, receipt, review, and approval by the CAB's accountant and engineer of the following:

(a) Legal description of the property on which the Public Improvements are constructed.

(b) Drawings of the as-built condition of the Public Improvements to be conveyed by the Developer.

(c) Certification of any Approving Jurisdiction that the Public Improvements have been constructed in conformance with applicable rules, regulations, Standards and Specifications, construction drawings, and any approved subdivision improvements agreement (as applicable).

(d) Lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers, or suppliers have been paid in full, in a form reasonably acceptable to the CAB (and such other documentation, records and verifications as may reasonably be required by the District).

(e) Assignment from the Developer to the CAB of any warranties associated with the Public Improvements, in a form reasonably acceptable to the CAB.; and

(f) Bill of Sale conveying the Public Improvements to the CAB, in a form reasonably acceptable to the CAB.

The CAB may waive any of Section 2.5(a) through 2.5(f) if, in the opinion of the CAB's Board of Directors officers, employees, agents, and consultants, such requirements are unnecessary given the particular circumstances, location, risk, value, or other considerations implicated in the acceptance of the Public Improvements.

Section 2.5 Inspection.

The CAB shall have the right to inspect at all times all Public Improvements connected to or to become connected to the facilities of the CAB. Authorized employees or representatives of the CAB shall be allowed free access at all reasonable hours to any property to ensure compliance with these Rules and Regulations. The CAB shall have the right to assess its costs for inspection, enforcement, and corrective actions undertaken pursuant to these Rules and Regulations and to levy fines and collect tolls, fees, and charges against any property that is not in full compliance with these Rules and Regulations.

Section 2.6 Title Warranty.

The Developer agrees that the Public Improvements shall be transferred to the CAB free and clear of all monetary liens and encumbrances and agrees to warrant and defend the conveyance of said Public Improvements to the CAB, its successors and assigns, against all and every person or persons. Should after the date of acceptance, the CAB determine that title to the real property, Public Improvements, and/or easements has not been effectively conveyed to the CAB, the Developer agrees to do whatever is necessary, at the Developer's sole expense, to insure that the conveyance is properly effected.

Section 2.7 Maintenance and Repairs.

The Developer shall be responsible for correcting all defects in the Public Improvements and for all routine maintenance of the constructed Public Improvements for a period of two years following conveyance of the Public Improvements to the CAB (the "**Warranty Period**").

(a) **Corrective Maintenance.** During the Warranty Period, the Developer shall correct, repair, or replace any part or parts of the constructed Public Improvements which the CAB determines were not constructed in accordance with adopted rules and regulations, Standards and Specifications, or approved plans or construction drawings, or which the CAB determines to be defective or of poor or unworkmanlike quality. In addition, the Developer shall

correct any soil subsidence or erosion problem which the CAB determines occurred in connection with construction.

(b) Routine Maintenance. During the Warranty Period, the Developer shall protect the constructed Public Improvements and shall be responsible for performing all routine maintenance on the constructed Public Improvements so as to keep the Public Improvements in good repair and condition, ordinary wear and tear excepted. The Developer's routine maintenance obligations shall include the obligation to repair and/or replace any part or parts of the Public Improvements damaged or rendered non-operative for any reason as a result of construction activities or usage.

(c) Time of Performance. During the Warranty Period, upon receipt of written notice from the CAB specifying what corrections and/or maintenance should be performed, the Developer shall, at its sole cost and expense, promptly perform such corrections and/or maintenance, or cause a licensed and bonded contractor to do the same. In the event the Developer fails or is unable to perform its obligations hereunder, the CAB, in order to ensure the proper operation of the Public Improvements and without waiving any of its other remedies, may perform said corrections and maintenance and invoice the actual cost thereof to the Developer, to be paid by the Developer within ninety (90) days of the date of such invoice.

(d) Punch List. Prior to the expiration of the Warranty Period, the Developer shall schedule an inspection of the Public Improvements for final acceptance and maintenance by the CAB. The Developer shall correct any deficiencies observed during the final inspection within the time period set by the CAB.

(e) Indemnification; Insurance. During the Warranty Period the Developer shall (i) indemnify, defend, and hold harmless the CAB and its affiliated entities or other persons or entities designed by the CAB from any and all liability for damage resulting from the negligent action or inaction of the Developer taken or not taken in the performance of corrective or routine maintenance in such amount that is represented by the degree or percentage of negligence or fault attributed to the Developer and/or its agents, representatives, subcontractors, or suppliers; and (ii) provide a certification of insurance coverages in forms and policy limits reasonably acceptable to the CAB before undertaking any corrective or routine maintenance.

Section 2.8 Final Acceptance.

All repairs or replacements of Public Improvements shall be satisfactorily completed before the CAB approves final acceptance any Public Improvements the CAB will own, operate, and maintain. Upon satisfactory completion of the Warranty Period, the CAB shall grant final acceptance of the Public Improvements. Upon final acceptance by the CAB of any Public Improvements, the CAB shall provide written documentation of the acceptance to the Developer.