

## RECORD OF PROCEEDINGS

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### MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT HELD MAY 20, 2020

A Special Meeting of the Board of Directors (referred to hereafter as the "Board") of the Aurora High Point at DIA Metropolitan District (referred to hereafter as the "District") was convened on Wednesday, the 20<sup>th</sup> day of May, 2020, at 10:30 a.m. The meeting was open to the public.

**The meeting was held via conference call due to the State of Emergency declared by Governor Polis and Public Health Order 20-23 Implementing Social Distancing Measures, and the threat posed by the COVID-19 coronavirus.**

#### ATTENDANCE

##### Directors In Attendance Were:

Andrew Klein  
Kevin Smith  
Otis Moore, III  
Theodore Laudick

##### Also In Attendance Were:

Ann E. Finn; Special District Management Services, Inc.

Colin B. Mielke, Esq. and Elizabeth Dauer, Esq.; Seter & Vander Wall, P.C.

Debra Sedgeley; CliftonLarsonAllen LLP

#### DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

**Disclosure of Potential Conflicts of Interest:** The Board noted it was in receipt of disclosures of potential conflicts of interest statements for each of the Directors and that the statements had been filed with the Secretary of State at least seventy-two hours in advance of the meeting. Ms. Finn requested that the Directors review the Agenda for the meeting and advised the Board of any new conflicts of interest which had not been previously disclosed. No further disclosures were made by Directors present at the meeting.

#### ADMINISTRATIVE MATTERS

**Agenda:** Ms. Finn distributed for the Board's review and approval a proposed Agenda for the District's Special Meeting.

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Following discussion, upon motion duly made by Director Klein, seconded by Director Smith and, upon vote, unanimously carried, the Agenda was approved, as presented.

**Meeting Location / Posting of Meeting Notices:** The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District's board meeting. The Board determined that, due to concerns regarding the spread of the coronavirus (COVID-19) and the benefits to the control of the spread of the virus by limiting in-person contact, the meeting would be held by telephonic means without any individuals (neither District Representatives nor the General Public) attending in person. Ms. Finn reported that notice was duly posted and that no objections to the telephonic manner of the meeting or any requests that the telephonic manner of the meeting be changed by taxpaying electors within the District boundaries have been received.

**May 5, 2020 Cancelled Election:** Ms. Finn noted for the Board that the May 5, 2020 Directors' Election was cancelled, as allowed under Colorado law, by the Designated Election Official because there were no more candidates than positions available on the Board of Directors. Directors Klein and Smith were each deemed elected to 3-year terms ending in May 2023.

**Appointment of Officers:** Upon motion duly made by Director Smith, seconded by Director Moore and, upon vote, unanimously carried, the following slate of officers was appointed:

President	Andrew Klein
Treasurer	Kevin Smith
Secretary	Ann E. Finn
Assistant Secretary	Otis Moore, III
Assistant Secretary	Theodore Laudick

**Minutes:** The Board reviewed the Minutes of the December 3, 2019 Reconvened Special Meeting and February 10, 2020 Regular Meeting.

Following discussion, upon motion duly made by Director Smith, seconded by Director Laudick and, upon vote, unanimously carried, the Board approved the Minutes of the December 3, 2019 Reconvened Special Meeting and February 10, 2020 Regular Meeting.

**Establishing Regular Meeting Dates, Time and Location, Establishing District Website, and Designating Location for 24-Hour Notices:** It was determined that there was no need for this Resolution because the 2020 Annual Administration Resolution set all relevant designations of this Resolution.

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**SDA Conference:** There was no interest at this time.

**2020 Annual Administrative Resolution:** Attorney Mielke reviewed with the Board an Annual Administrative Resolution.

Following discussion, upon motion duly made by Director Smith, seconded by Director Moore and, upon vote, unanimously carried, the Board adopted the Annual Administrative Resolution. A copy of the Resolution is attached hereto and incorporated herein by this reference.

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### **PUBLIC COMMENT**

There was no public comment.

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### **FINANCIAL MATTERS**

**Claims:** Ms. Sedgeley reviewed with the Board the Cash Position Schedule, dated March 31, 2020, updated as of May 18, 2020, and the payment of claims for the period beginning November 21, 2019 through May 18, 2020.

Following discussion, upon motion duly made by Director Smith, seconded by Director Laudick and, upon vote, unanimously carried, the Board accepted the Cash Position Schedule, dated March 31, 2020, updated as of May 18, 2020, and the payment of claims for the period beginning November 21, 2019 through May 18, 2020, in the amount of \$882,754.44.

**Unaudited Financial Statements:** Ms. Sedgeley reviewed with the Board the unaudited financial statements of the District setting forth the cash deposits, investments, budget analysis, and accounts payable vouchers for the period ending March 31, 2020.

Following discussion, upon motion duly made by Director Smith, seconded by Director Laudick and, upon vote, unanimously carried, the Board accepted the unaudited financial statements for the period ending March 31, 2020.

**2019 Audit:** Ms. Sedgeley reviewed the 2019 draft Audit with the Board.

Following review and discussion, upon motion duly made by Director Smith, seconded by Director Moore and, upon vote, unanimously carried, the Board approved the 2019 Audit and authorized execution of the Audit Representations Letter, subject to final review by General Counsel and receipt of an unmodified opinion letter.

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### **LEGAL MATTERS**

**Colorado International Center Metropolitan District No. 3:** Attorney Mielke reported to the Board that he has a conference call scheduled for May 21, 2020 with

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Legal Counsel for Colorado International Center Metropolitan District No. 3 to identify items to complete for the separation of the District. No action was required by the Board.

### CAPITAL PROJECTS

#### Capital Improvement Projects:

*Hight Point at DIA Neighborhood Park West Civil Infrastructure Project:* Director Laudick reported to the Board that he will be bidding the Parking Lot Project next month.

*Artificial Turf Project:* Director Laudick reported to the Board that the artificial turf project is 100% complete.

*Landscaping:* Director Laudick reported to the Board that he will be bidding the Landscaping Project in July.

Operations Agreement for Artificial Turf Field: The Board entered into discussion regarding a possible operations and maintenance agreement concerning the artificial turf field. No action was taken by the Board at this time.

### OTHER BUSINESS

There was no other business for discussion.

### ADJOURNMENT

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

Respectfully submitted,

By: 

Secretary for the Meeting



WHEREAS, § 32-1-903(2), C.R.S., requires that notice of the time and place designated for all regular meetings shall be posted in accordance with § 24-6-402, C.R.S., on a website or other on-line presence of the District which complies with the statutory criteria, or at a physical posting location as designated by the Board and within the limits of the Special District at least 24 hours prior to said meeting; and

WHEREAS, § 32-1-1001(2)(a), C.R.S., requires that at least thirty (30) days' notice be provided to customers within or outside the District receiving domestic water or sanitary sewer services directly from the District, prior to the District considering at a public meeting the fixing or increasing of any fees, rates, tolls, penalties, or charges for domestic water or sanitary sewer services; and

WHEREAS, in accordance with the Colorado Governmental Immunity Act, the Board is given authority to obtain insurance against liability for injuries for which the District may be liable under the Governmental Immunity Act, pursuant to § 24-10-115, C.R.S.; and

WHEREAS, §§ 32-1-901(2) and 32-1-902(2), C.R.S., require the District to obtain an individual, schedule or blanket surety bond in an amount of no less than \$1,000 per director and \$5,000 for the Board Treasurer, and to file such bond with the District Court and the Division of Local Government; and

WHEREAS, § 32-1-104.8, C.R.S., requires the District to have recorded a special district public disclosure document and a map of the boundaries of the District with the County Clerk and Recorder of each county in which the District is located by December 31, 2014, and at any time thereafter that an order confirming the inclusion of property into the District is recorded; and

WHEREAS, § 32-1-306, C.R.S., requires the District to file a current, accurate map of its boundaries with the Division of Local Government, the Adams County Clerk and Recorder and the County Assessor on or before January 1 of each year; and

WHEREAS, § 32-1-104(2), C.R.S., requires that the District, on or before January 15, notify the Board of County Commissioners, Assessor, Treasurer, Clerk and Recorder, the governing body of any municipality in which the District is located, and the Division of Local Government, the notice as required by § 32-1-809, C.R.S.; and

WHEREAS, § 32-1-809, C.R.S., requires that on or before January 15 of each year the District will provide a notice to the eligible electors of the District containing the information required by § 32-1-809(1), C.R.S. in the manner set forth in § 32-1-809(2), C.R.S.; and

WHEREAS, the Local Government Budget Law of Colorado, §§ 29-1-101, *et seq.*, C.R.S., requires the Board to hold a public hearing on proposed budgets and amendments thereto, to adopt budgets, and to file copies of the budgets and amendments thereto; and

WHEREAS, in accordance with the Public Securities Information Reporting Act, §§ 11-58-101, *et seq.*, C.R.S., issuers of non-rated public securities must file an annual report with the Department of Local Affairs; and

WHEREAS, in accordance with § 29-1-604(1), C.R.S., if expenditures and revenues of the District are not in excess of \$100,000, the District may file an exemption from audit with the State auditor; or, in accordance with § 29-1-604(2), C.R.S., if expenditures and revenues of the District are at least \$100,000 but not more than \$750,000 the District may, with the approval of the State Auditor, file an exemption from audit with the State Auditor, or in accordance with § 29-1-603, C.R.S., the governing body of the District shall cause to be made an annual audit of the financial statements for each fiscal year; and

WHEREAS, the Unclaimed Property Act, §§ 38-13-101, *et seq.*, C.R.S., requires that governmental subdivisions, if applicable, file an annual report listing unclaimed property with the State Treasurer; and

WHEREAS, elections may be held pursuant to the Special District Act and the Uniform Election Code of 1992 for the purpose of 1) electing members of the District's Board of Directors, 2) to present certain ballot issues to the eligible electors of the District as required by Article X, § 20 of the Colorado Constitution, and 3) to present certain ballot questions to the eligible electors of the District; and

WHEREAS, § 1-1-111(2), C.R.S., states that all powers and authority granted to the governing body of a political subdivision may be exercised by the appointed Designated Election Official; and

WHEREAS, §§ 1-11-103 and 32-1-104(1), C.R.S., require the District to notify the Division of Local Government of the results of any elections held by the District, including business address, telephone number and the contact person; and

WHEREAS, § 32-1-1101.5, C.R.S., requires the District to certify results of any election to incur general obligation indebtedness to the board of county commissioners of each county in which the special district is located or to the governing body of the municipality that has adopted a resolution of approval of the District; and

WHEREAS, § 32-1-1604, C.R.S., requires within 30 days of incurring or authorizing general obligation debt that the District shall record a notice of such debt with the County Clerk and Recorder, on a form prescribed by the Division of Local Government; and

WHEREAS, in accordance with §§ 32-1-1101.5(1.5) and (2), C.R.S., either the board of county commissioners of each county in which the special district is located, or the governing body of the municipality that has adopted a resolution of approval of the District, may require the District to file an application for quinquennial finding of reasonable diligence; and

WHEREAS, in accordance with § 32-1-207(3)(c), C.R.S. and the District's Service Plan, an annual report shall be submitted to the City of Aurora within one hundred twenty (120) days

after conclusion of the District's fiscal year on December 31 of each year beginning December 31, 2005, unless waived by the City; and

WHEREAS, special district directors are governed by § 32-1-902(3), C.R.S., which requires such director to disqualify himself or herself from voting on an issue in which he or she has a conflict of interest unless the director has properly disclosed such conflict in compliance with law, and by the provisions of the Colorado Code of Ethics, §§ 24-18-101, *et seq.*, C.R.S., which provide rules of conduct concerning public officials and their fiduciary duties; and

WHEREAS, § 32-1-902, C.R.S., requires the Board to elect officers, including a Chairperson of the Board and President of the District, a Treasurer of the Board and District, and a Secretary, who may be a member of the Board; and

WHEREAS, the Board of Directors desires to identify legal counsel for the District to assist with providing legal services and to assist with the operation of the District; and

WHEREAS, the Board of Directors desires to identify a manager for the District to provide management activities to assist with the operation of the District; and

WHEREAS, the Board of Directors desires to employ the services of an accountant for the District to assist with providing financial services and to assist with the financial operations of the District, and who shall also be designated as the budget officer required to prepare and submit to the Board a proposed District budget by October 15, pursuant to §§ 29-1-104 and 29-1-103(3)(d), C.R.S.; and

WHEREAS, pursuant to § 24-71.3-101, *et seq.*, C.R.S., The Uniform Electronic Transaction Act, parties may agree to conduct transactions by electronic means relating to business, commercial and governmental affairs, and that for all documents covered by the Act, if a law requires a record to be in writing, an electronic record satisfies the law; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT, ADAMS COUNTY, COLORADO, AS FOLLOWS:

1. The Board of Directors of the District determines that each director shall receive, as compensation for services as directors, the sum of \$100 per meeting per district in an amount not to exceed \$2,400 per annum per district, subject to availability of funds.

2. The Board designates the *Aurora Sentinel* as the newspaper of general circulation within the boundaries of the District, or in the vicinity of the District if none is circulated within the District, and directs that all legal notices shall be published in accordance with applicable statutes.

3. The Board designates the northwest corner of the boundaries of the District, which is within the boundaries of the District, as the designated posting place for meeting notices pursuant to § 32-1-903(2) and § 24-6-402(2)(c), C.R.S.



4. The Board determines to hold regular meetings at 10:00 a.m. on February 10, May 11, July 13, and October 26 of 2020. Because there are no suitable locations within the District's boundaries or within twenty miles therefrom, the meetings will be held at 4100 East Mississippi Avenue, Suite 500, Glendale, Colorado 80246.

5. The Board directs the District's manager to obtain and maintain insurance for the District, to insure the Directors acting within the scope of employment by the Board against all or any part of such liability for an injury; to insure against the expense of defending a claim for injury against the District or its Board. Additionally, the Board directs the District's manager to obtain bonds or equivalent insurance coverage as required by §§ 32-1-901(2) and 32-1-902(2), C.R.S., in an amount of no less than \$1,000 per director and \$5,000 for the Board Treasurer, and to file the bond or certificate of insurance with the District Court and the Division of Local Government.

6. The Board designates Karen Steggs as the District's "Primary Representative" and designates Michele Barrasso as the District's "Alternate Representative" to the SDA Insurance Pool so that District insurance coverage may be timely renewed annually and updated as necessary.

7. The Board directs legal counsel to update the Special District Public Disclosure Document and map with Adams County Clerk and Recorder after the initial filing deadline of December 31, 2014, if the District includes additional property and records an Order of Inclusion with the County Clerk and Recorder.

8. The Board directs the District's manager to file an accurate boundary map with the Division of Local Government and the Adams County Assessor, as may be required by statute.

9. The Board directs the District's manager to file a copy of the transparency notice as described in § 32-1-809, C.R.S. with the Adams County Board of County Commissioners, Assessor, Treasurer, Clerk and Recorder, and the Division of Local Government.

10. The Board directs the District's manager to notify the registered electors in the District of certain specified District information by completing the Special District Transparency Notice as detailed in § 32-1-809, C.R.S. and causing it to be posted to the Special District Association website.

11. The Board designates the District's accountant to serve as the budget officer, and to submit a proposed budget to the Board by October 15, and, in cooperation with legal counsel, to schedule a public hearing on the proposed budget; to prepare a final budget, budget resolutions and amendments to the budget, if necessary; to certify the mill levies on or before December 15; and to file the approved budgets and amendments thereto with the proper governmental entities in accordance with the Local Government Budget Law of Colorado.

12. The Board directs legal counsel to prepare and file the annual public securities report for nonrated public securities issued by the District, with the Department of Local Affairs on or before March 1.

13. The Board directs the District's accountant to prepare for filing with the State Auditor either an Audit Exemption and Resolution for approval of Audit Exemption for the prior fiscal year by March 31; or an audit of the financial statements by June 30; further, the Board directs that the Audit be filed with the State Auditor by July 31.

14. The Board directs legal counsel to prepare the Unclaimed Property Act report, as applicable, and forward the report to the State Treasurer by November 1.

15. The Board hereby appoints Michele Barrasso as the "Designated Election Official" of the District for any elections to be held during 2020 and any subsequent year. The Board hereby grants all powers and authority for the proper conduct of the election to the Designated Election Official, including but not limited to appointing election judges, appointing a canvass board and cancellation, if applicable, of the election.

16. The District directs the Designated Election Official to notify the Division of Local Government of the results of any elections held by the District, including business address, telephone number and the contact person.

17. The District directs the Designated Election Official to certify results of any election to incur general obligation indebtedness to the Aurora City Council.

18. Whenever the District authorizes or incurs general obligation debt, the Board directs the Designated Election Official to record a notice of such debt with the Adams County Clerk and Recorder, within 30 days of authorizing or incurring the debt, on a form prescribed by the Division of Local Government.

19. The Board directs legal counsel to prepare and file with the Board of County Commissioners of each County in which the special district is located, or to the governing body of the municipality that has adopted a resolution of approval of the District, if requested, the quinquennial finding of reasonable diligence in accordance with §§ 32-1-1101.5(1.5) and (2), C.R.S.

20. The Board directs legal counsel to prepare and file the special district annual report with the Aurora City Council, the Division of Local Government, the State Auditor and shall further deposit a copy of such report with the County Clerk and Recorder per § 32-1-207(3)(c), C.R.S.

21. The District hereby directs each present and future member of the Board to execute an Affidavit of Qualification of Director, to be retained in the District's files.

22. The District hereby elects the following officers for the District:

President – Andrew Klein  
Treasurer – Kevin Smith  
Asst. Secretary – Otis Moore III  
Asst. Secretary – Theodore Laudick  
Secretary – Ann Finn

23. The Board directs legal counsel to file conflict of interest disclosures provided by Board members with the Secretary of State 72 hours prior to the first meeting of the Board and thereafter as directed by the Board member(s). In addition, written disclosures provided by Board members required to be filed with the governing body in accordance with § 18-8-308, C.R.S., shall be deemed filed with the Board of Directors of the District when filed with the Secretary of State.

24. The Board extends the current indemnification resolution to allow the resolution to continue in effect as written.

25. The Board of Directors appoints the law firm of Seter & Vander Wall, P.C. as legal counsel for the District.

26. The Board of Directors appoints Special District Management Services, Inc. as the District's manager.

27. The Board of Directors appoints CliftonLarsonAllen LLP to serve as the District accountant.

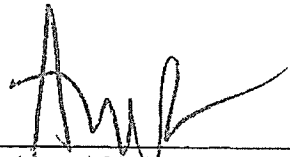
28. The Board authorizes its consultants to conduct transactions by electronic means to the extent allowed by the Uniform Electronic Transactions Act.

Whereupon, the motion was seconded by Director Moore, and upon vote, unanimously carried. The President declared the motion carried and so ordered.

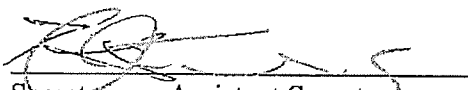
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ADOPTED AND APPROVED THIS 20TH DAY OF MAY, 2020.

AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT

By:   
\_\_\_\_\_  
President / Chairperson

ATTEST:

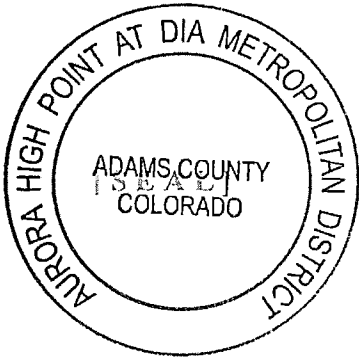
By:   
\_\_\_\_\_  
Secretary or Assistant Secretary

CERTIFICATION

I, Ann Finn, Secretary or Assistant of the Board of the Aurora High Point at DIA Metropolitan District, do hereby certify that the attached and foregoing Resolution is a true copy from the records of the proceedings of the Board of said District, on file with Seter & Vander Wall, P.C., legal counsel to the District.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District, at Adams County, Colorado, this 20th day of May, 2020.

Ann Finn  
Secretary or Assistant Secretary



**RELEASE OF ESCROW AND IMPROVEMENT FUNDING AGREEMENT**

THIS RELEASE OF ESCROW AND IMPROVEMENT FUNDING AGREEMENT (this "Agreement") is made, entered into, and effective this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between **AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT** (the "**District**"), and **ACM HIGH POINT VI LLC**, a Delaware limited liability company, authorized to conduct business in the State of Colorado (the "**Developer**" or the "**Seller**"), and **HIGHPOINT ACQUISITION LLC**, a Minnesota limited liability company, authorized to conduct business in the State of Colorado (the "**Buyer**").

**WITNESSETH:**

- A. Pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated January 17, 2020, as amended (the "**Purchase Agreement**"), Buyer purchased from Developer certain real property located in Aurora, Colorado and as more particularly described in the Purchase Agreement (the "**Property**").
- B. Developer and the District are parties to a Capital Funding and Reimbursement Agreement dated July 20, 2017 and two amendments thereto (collectively, the "**Improvement Agreements**") relative to the funding and construction of certain public improvements and infrastructure throughout the development of the Property ("**Improvements**").
- C. The District was formed to finance the Improvements and the District or affiliated Districts have issued bonds resulting in proceeds sufficient to pay for certain of the Improvements required under the Improvement Agreements.
- D. As a condition of the sale of the Property to Buyer, Seller and Buyer entered into that certain Escrow Agreement dated January 17, 2020, as amended by that certain First Amendment to Escrow Agreement hereafter defined (the "**Escrow Agreement**"), pursuant to which Seller deposited with Pan Am Title (the "**Escrow Agent**") certain security to assure the full and timely completion of a portion of the Improvements defined as "**Seller's Work**" in Exhibit A to the Escrow Agreement. The security provided included, among other things, cash in the amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) (the "**Escrow Funds**").
- E. Developer has requested that the Escrow Funds be released to Developer prior to the completion of Seller's Work, and Buyer agrees on the condition that Buyer is sufficiently assured that funds are available to fully and timely complete Seller's Work as required by the Escrow Agreement.

- F. Contemporaneously with the execution of this Agreement, Buyer, Developer, and Escrow Agent are entering into a “**First Amendment to Escrow Agreement**,” authorizing the release of the Escrow Funds subject to certain conditions, one such condition being the execution of this Agreement. The First Amendment to Escrow Agreement is hereby incorporated into this Agreement by reference.
- G. The parties therefore desire as set forth in this Agreement a mechanism to ensure adequacy of funds available to construct the Improvements and to make other covenants and conditions in connection therewith.

**NOW, THEREFORE**, in consideration of the premises cited hereinabove and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the parties hereto agree as follows:

1. **Availability of Funds.** In consideration of Buyer authorizing the release of the Escrow Funds to Developer, the following process shall be followed to provide a guaranty to Buyer of available funds for completion of Seller’s Work:

A. For each phase of construction of the Improvements, the District and/or the Developer shall provide the Buyer with a scope and cost estimate for Improvements to be constructed (“**Project Improvements**”) including a detailed list of the Improvements to be constructed as Project Improvements, a schedule for completion of the Project Improvements (“**Project Schedule**”), and the anticipated costs associated therewith (“**Project Costs**”). The items in this paragraph shall collectively be referred to as the “**Project Application**.”

B. The Project Application shall also include evidence of funds available to the District sufficient to pay the entirety of the Project Costs identified in the Project Application and an acknowledgement and consent signed by the District that commits the District to holding an amount of funds equal to the Project Costs (“**Project Funds**”), which Project Funds may only be released for payment of Project Costs in accordance with Section 1, subsection A herein.

C. For purposes of this Agreement, the Project Improvements, Project Schedule, and Project Costs for Seller’s Work shall be as set forth in the Escrow Agreement, and shall constitute a Project Application for Seller’s Work under this Agreement. The Project Application for Seller’s Work is hereby approved by the District, Developer, and Buyer, and the District hereby confirms the availability of Project Funds sufficient to complete Seller’s Work in the amount of Fifteen Million One Hundred Ninety-Two Thousand Two Hundred Forty-Three Dollars (\$15,192,243). The parties acknowledge that the District is a public entity and agree that release of any funds must comply with public financing laws, is subject to the District’s legislative authority, and shall be solely for improvements certified as public by an independent engineer and accepted by the District or other public entity for ownership and maintenance.

D. Through the duration of construction of any Project Improvements, in order for Project Funds to be released to pay Project Costs, the Developer and District shall furnish to the Buyer a “**Release Request**” identifying the work performed on the Project Improvements, the costs incurred and sought for release from the Project Funds for payment of Project Costs, a verification from the District’s independent engineer certifying as to the actual costs incurred for

the Project Improvements that are the subject of the Release Request and as to the reasonableness of such Project Costs, and evidence and an accounting of the remaining Project Funds. The Buyer shall have seven (7) calendar days to review a Release Request. If no objection is provided by the Buyer in such seven (7) days, the District shall be authorized to withdraw funds in an amount equal to the amount identified in the Release Request to pay the Project Costs identified in the Release Request. No objection will be made if the Release Request evidences the items above and that sufficient Project Funds will remain to complete the remainder of the Project Improvements.

E. In the event a modification to the scope of the Project Improvements or Project Costs is necessary as a result of unforeseen or changed circumstances, the Developer and District shall notify the Buyer promptly of the need to amend the Project Scope and/or Project Budget (“**Project Amendment**”) and the same processes identified in this Section 1 shall be adhered to relative to the Project Amendment.

F. The Developer acknowledges that there are no outstanding amounts owed by the District to the Developer under the Improvement Agreements as of the effective date of this Agreement, and Developer agrees that the District’s revenues from bond issuances and other sources contemplated under the Improvement Agreements will be applied first to ensure the sufficiency of the Project Funds under this Agreement before being applied to Obligations under the Improvement Agreements.

2. **Incorporation of Recitals.** The parties incorporate the above-stated Recitals into this Agreement as if fully stated therein.

3. **Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Delivery of a signed counterpart by electronic means shall be deemed to be delivery of the original.

4. **Enforcement.** This Agreement shall be legally enforceable against the parties hereto.

5. **Governmental Immunity.** Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded the District or its Board of Directors, officers, employees, servants, agents, or authorized volunteers pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

*[Signature Page Follows.]*



**Signature Page to Release of Escrow and Improvement Funding Agreement**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above-written.

**DISTRICT:**

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**DEVELOPER:**

**ACM HIGH POINT VI LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Andrew R. Klein, Authorized Signatory

**BUYER:**

**HIGHPOINT ACQUISITION LLC,**  
a Minnesota limited liability company

By: \_\_\_\_\_

Paul Hyde, President

GP:4849-7598-8929 v2

**AURORA HIGH POINT AT DIA**

**FINANCIAL STATEMENTS**

**MAY 31, 2020**

**AURORA HIGH POINT AT DIA**  
**BALANCE SHEET - GOVERNMENTAL FUNDS**  
**MAY 31, 2020**

	General	Capital Projects	Total
<b>ASSETS</b>			
Cash - Checking	\$ 60,326	\$ 52,024	\$ 112,350
Due from other districts - CIC 3	88,262	-	88,262
Due from other districts - CIC 4	20,038	27,267	47,305
Due from other districts - CIC 5	66	-	66
Maintenance fees receivable	13,764	-	13,764
Accounts receivable	5,000	-	5,000
Accounts receivable - MSI	19,767	-	19,767
<b>TOTAL ASSETS</b>	<b>\$ 207,223</b>	<b>\$ 79,291</b>	<b>\$ 286,514</b>
<b>LIABILITIES AND FUND BALANCES</b>			
<b>CURRENT LIABILITIES</b>			
Accounts payable	\$ 48,034	\$ 1,083,184	\$ 1,131,218
Prepaid maintenance fees	20,284	-	20,284
Retainage payable	-	91,834	91,834
Total Liabilities	68,318	1,175,018	1,243,336
<b>FUND BALANCES</b>			
Total Fund Balances	138,905	(1,095,727)	(956,822)
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ 207,223</b>	<b>\$ 79,291</b>	<b>\$ 286,514</b>

No assurance is provided on these financial statements. Substantially all required disclosures, the government-wide financial statements, and the statement of revenues, expenditures and changes in fund balances – governmental funds have been omitted.

**AURORA HIGH POINT AT DIA**  
**STATEMENT OF REVENUES, EXPENDITURES AND**  
**CHANGES IN FUND BALANCES - BUDGET AND ACTUAL**  
**FOR THE FIVE MONTHS ENDED MAY 31, 2020**

**GENERAL FUND**

	<u>Annual Budget</u>	<u>Year to Date Actual</u>	<u>Variance</u>
<b>REVENUES</b>			
Intergovernmental - Transfer from CIC 4	\$ 40	\$ 38	\$ (2)
Intergovernmental - Transfer from CIC 5	69	66	(3)
Interest income	-	1	1
Maintenance fees	215,000	99,526	(115,474)
Intergovernmental - Transfer from CIC 3	189,659	117,889	(71,770)
<b>TOTAL REVENUES</b>	<u>404,768</u>	<u>217,520</u>	<u>(187,248)</u>
<b>EXPENDITURES</b>			
Conferences/seminars	2,000	-	2,000
Water	120,000	7,811	112,189
Electricity	2,000	586	1,414
Accounting	75,000	48,215	26,785
Auditing	12,000	7,700	4,300
Directors' fees	5,000	-	5,000
Dues and licenses	1,500	1,429	71
Insurance and bonds	15,000	13,125	1,875
District management	80,000	40,866	39,134
Legal services	70,000	25,760	44,240
Miscellaneous	5,000	1,293	3,707
Payroll taxes	381	-	381
Election expense	1,000	2,120	(1,120)
Repairs and maintenance	15,000	-	15,000
Snow removal	15,000	1,944	13,056
Landscape contract	44,530	13,691	30,839
Landscape enhancements	25,000	-	25,000
Landscape repairs and maintenance	45,000	18,844	26,156
Contingency	11,589	-	11,589
<b>TOTAL EXPENDITURES</b>	<u>545,000</u>	<u>183,384</u>	<u>361,616</u>
<b>EXCESS OF REVENUES OVER (UNDER) EXPENDITURES</b>	(140,232)	34,136	174,368
<b>OTHER FINANCING SOURCES (USES)</b>			
Developer advance	137,000	36,198	(100,802)
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<u>137,000</u>	<u>36,198</u>	<u>(100,802)</u>
<b>NET CHANGE IN FUND BALANCES</b>	(3,232)	70,334	73,566
<b>FUND BALANCES - BEGINNING</b>	51,266	68,570	17,304
<b>FUND BALANCES - ENDING</b>	<u>\$ 48,034</u>	<u>\$ 138,904</u>	<u>\$ 90,870</u>

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## **SUPPLEMENTARY INFORMATION**

**AURORA HIGH POINT AT DIA**  
**SCHEDULE OF REVENUES, EXPENDITURES AND**  
**CHANGES IN FUND BALANCES - BUDGET AND ACTUAL**  
**FOR THE FIVE MONTHS ENDED MAY 31, 2020**

**CAPITAL PROJECTS FUND**

	<u>Annual Budget</u>	<u>Year to Date Actual</u>	<u>Variance</u>
<b>REVENUES</b>			
Intergovernmental - Transfer from CIC4	\$ 22,503,943	\$ 1,423,352	\$ (21,080,591)
<b>TOTAL REVENUES</b>	<u>22,503,943</u>	<u>1,423,352</u>	<u>(21,080,591)</u>
<b>EXPENDITURES</b>			
Construction trailer lease	-	7,715	(7,715)
Accounting	5,000	-	5,000
Streets	6,000,000	308,421	5,691,579
Storm drainage	4,000,000	117,604	3,882,396
Engineering	2,000,000	95,352	1,904,648
Sewer	2,000,000	2,525	1,997,475
Water	2,500,000	13,863	2,486,137
Construction management	1,000,000	81,000	919,000
Grading/Earthwork	1,000,000	1,263,526	(263,526)
Erosion control	1,000,000	62,940	937,060
Dry utilities	1,000,000	-	1,000,000
Parks and recreation	1,500,000	444,793	1,055,207
Contingency	530,727	-	530,727
<b>TOTAL EXPENDITURES</b>	<u>22,535,727</u>	<u>2,397,739</u>	<u>20,137,988</u>
<b>EXCESS OF REVENUES OVER (UNDER) EXPENDITURES</b>	(31,784)	(974,387)	(942,603)
<b>OTHER FINANCING SOURCES (USES)</b>			
Developer advance	5,000	-	(5,000)
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<u>5,000</u>	<u>-</u>	<u>(5,000)</u>
<b>NET CHANGE IN FUND BALANCES</b>	(26,784)	(974,387)	(947,603)
<b>FUND BALANCES - BEGINNING</b>	<u>26,784</u>	<u>(121,340)</u>	<u>(148,124)</u>
<b>FUND BALANCES - ENDING</b>	<u>\$ -</u>	<u>\$ (1,095,727)</u>	<u>\$ (1,095,727)</u>

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**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT  
2020 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Services Provided**

Aurora High Point at DIA Metropolitan District (the "District"), a quasi-municipal corporation is governed pursuant to provisions of the Colorado Special District Act. The District's service area is located in Adams County, Colorado. Concurrently with the formation of the District (the "Management District"), the City of Aurora approved the formation of Colorado International Center Metropolitan District Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 (the "Taxing Districts") (collectively, the "Aurora High Point Districts"). The District was established to provide public streets, traffic and safety, water, sewer, park and recreation, television relay and translation, and mosquito control facilities and improvements for the use and benefit of the inhabitants and taxpayers of the District.

During elections held on November 2, 2004, and May 3, 2016, the District's voter's authorized total general obligation indebtedness of \$10,820,000,000 for the above listed facilities and powers. The elections also approved annual increases in property taxes of up to \$20,000,000, without limitation to rate, to pay the District's operations and maintenance costs. Per the District's service plan, the District is prohibited from issuing debt in excess of \$400,000,000.

The District has no employees and all administrative functions are contracted.

The District prepares its budget on the modified accrual basis of accounting, in accordance with requirements of Colorado Revised Statutes C.R.S. 29-1-105 using its best estimates as of the date of the budget hearing. These estimates are based on expected conditions and its expected course of actions. The assumptions disclosed herein are those that the District believes are significant to the budget. There will usually be differences between the budget and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material.

**Revenues**

**Developer Advances**

A portion of the operational and capital expenditures of the District are anticipated to be funded by the Developer. Developer advances are to be recorded as revenue for budget purposes and may be repaid to the Developer from unpledged revenue in future years.

**Maintenance Fees**

Pursuant to a Facilities Funding, Construction and Operations Agreement, the District and Colorado International Center Metropolitan District No. 3 (CIC No. 3) passed a joint resolution on October 28, 2015, to impose a maintenance fee of \$25.50 per month on all residential units within CIC No. 3. On January 10, 2008, the resolution was amended to impose a fee of \$26.50 per month on all residential units with underdrains. CIC No. 3 has agreed to enforce and collect the fee on behalf of the District, which will be used to operate and maintain capital facilities. In 2011, the fees were increased to \$26.50 and \$27.50 respectively.

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT  
2020 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Revenues (Continued)**

**Intergovernmental Transfers**

On January 21, 2005 and as amended on July 27, 2006, the District entered into an agreement with the Taxing Districts, that as the Management District it will own, operate, maintain, finance and construct facilities that benefit all of the Aurora High Point Districts and that the Taxing Districts will contribute to the costs of construction, operation, and maintenance of such facilities. During 2020 it is anticipated that Colorado International Center Metropolitan District No. 3 (CIC No. 3), Colorado International Center Metropolitan District No. 4 (CIC No. 4), and Colorado International Center Metropolitan District No. 5 (CIC No. 5) will transfer all available funds from the imposition of a mill levy for operations and maintenance to the District in compliance with this agreement.

CIC No. 4 will also transfer project funds from the issuance of its 2019 bonds to fund capital improvements to be constructed by the District.

**Expenditures**

**Administrative Expenditures**

Administrative expenditures have been provided based on estimates of the District's Board of Directors and consultants and include the services necessary to maintain the District's administrative viability such as legal, accounting, managerial, insurance, meeting expense, and other administrative expenses.

**Operations and Maintenance**

Certain street and open space landscaping will be owned and maintained by the District. The estimated cost of repairs and maintenance of these areas are found on page 4 of the budget.

**Capital Outlay**

The District anticipates infrastructure improvements as noted in the Capital Projects fund.

**Debt and Leases**

**Developer Advances**

The District's debt is comprised of developer advances, which are not general obligation debt. As of December 31, 2019, the District had \$3,981,081 in outstanding developer advances and interest accrued at 8%. Repayment of advances is subject to annual appropriation if and when eligible funds become available.

The District has no operating or capital leases.



**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT  
2020 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Reserves**

**Emergency Reserve**

The District has provided for an emergency reserve fund equal to at least 3% of fiscal year spending for 2020, as defined under TABOR.

**Reserve for Underdrains**

The District collects \$1 monthly from those residents with an underdrain, to be used for future maintenance and repairs of the underdrain system.

AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT  
Schedule of Cash Position  
May 31, 2020  
Updated as of July 12, 2020

	General Fund	Capital Projects Fund	Total
<b>1st Bank - Checking Account</b>			
Balance as of 05/31/20	\$ 60,325.61	\$ 52,024.49	\$ 112,350.10
Subsequent activities:			
06/04/20 City of Aurora - Civil Plans Revision - Mass Grading	-	(2,678.00)	(2,678.00)
06/05/20 High Point Master Association Deposit	10,000.00	-	10,000.00
06/10/20 MSI Deposit	19,767.42	-	19,767.42
06/12/20 City of Aurora, EFT	(6,244.23)	-	(6,244.23)
06/16/20 City of Aurora - Mylar Plan Difference	-	(565.00)	(565.00)
06/16/20 Williams Scotsma, EFT	-	(1,643.75)	(1,643.75)
06/19/20 TC Wilson EFT for CIC No. 3	(495.00)	-	(495.00)
06/19/20 Transfer from CIC No. 3	72,702.32	-	72,702.32
06/22/20 Vouchers payable	(48,617.60)	(1,082,423.08)	(1,131,040.68)
Anticipated Requisition No. 11 - A2	-	11,497.50	11,497.50
Anticipated Requisition No. 12 - A1	-	1,076,312.33	1,076,312.33
<i>Anticipated Balance</i>	<i>107,438.52</i>	<i>52,524.49</i>	<i>159,963.01</i>
Reserve for TABOR	(12,100.00)	-	(12,100.00)
Reserve for underdrains (2020)	(35,000.00)	-	(35,000.00)
<i>Anticipated Balance</i>	<i>60,338.52</i>	<i>52,524.49</i>	<i>112,863.01</i>
<b>DEVELOPER ADVANCE REQUEST</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Due from CIC No. 3</b>			
12/31/19 Balance due	\$ 2,639.58		
02/10/20 January taxes	3,526.25		
03/10/20 February taxes	79,890.70		
04/10/20 March taxes	5,703.68		
05/10/20 April taxes	13,632.22		
06/10/20 May taxes	15,559.85		
Less: Banking fees	(474.81)		
Payments:			
02/25/20	(2,039.58)		
03/04/20	(3,998.47)		
04/07/20	(6,301.52)		
04/20/20	(14,347.82)		
05/26/20	(5,578.84)		
06/19/20	(72,702.32)		
<b>Due to AHP</b>	<b>\$ 15,508.92</b>		

## Aurora High Point at DIA

### Check List

All Bank Accounts  
May 19, 2020 - July 2, 2020

Check Number	Check Date	Payee	Amount
<b>Vendor Checks</b>			
6503	05/21/20	All Phase Landscape, Inc.	7,108.91
6504	05/21/20	CliftonLarsonAllen LLP	12,339.09
6505	05/21/20	Ecological Resource Consultants, Inc.	619.50
6506	05/21/20	ESCO Construction Co.	419,080.00
6507	05/21/20	Ground Engineering	13,971.25
6508	05/21/20	Martin/Martin Inc.	127,312.50
6509	05/21/20	McGeady Becher P.C.	877.00
6510	05/21/20	MSI, LLC	1,507.99
6511	05/21/20	Norris Design, Inc.	6,161.25
6512	05/21/20	RLI Surety	500.00
6513	05/21/20	RMTS, Inc.	105,128.90
6514	05/21/20	Seter & Vander Wall, P.C.	3,736.00
6515	05/21/20	Silverbluff Companies, Inc.	34,000.00
6516	05/21/20	Special District Management Services, Inc.	6,324.12
6517	05/21/20	Spencer Fane	4,452.00
6518	05/21/20	SWCA, Incorporated	1,493.79
6519	05/21/20	Utility Notification Center of Colo.	274.16
6520	05/21/20	White Bear Ankele Tanaka & Waldron	2,146.25
6521	05/21/20	Williams Scotsman, Inc.	6,071.31
6522	05/21/20	Xcel Energy	129.69
6523	06/22/20	AE DESIGN, INC.	500.00
6524	06/22/20	All Phase Landscape, Inc.	23,090.91
6525	06/22/20	Aurora Media Group	67.30
6526	06/22/20	CliftonLarsonAllen LLP	9,172.11
6528	06/22/20	ColoSpecialDistr.Proprty&Liab.Pool	291.00
6529	06/22/20	ESCO Construction Co.	655,160.85
6530	06/22/20	Ground Engineering	26,096.25
6531	06/22/20	Hudick Excavating, Inc.	21,936.33
6532	06/22/20	Martin/Martin Inc.	58,241.82
6533	06/22/20	McGeady Becher P.C.	550.00
6534	06/22/20	Norris Design, Inc.	18,023.33
6535	06/22/20	RMTS, Inc.	248,377.50
6536	06/22/20	Schilling & Company, Inc.	7,700.00
6537	06/22/20	Silverbluff Companies, Inc.	45,500.00
6538	06/22/20	Special District Association	302.09
6539	06/22/20	Special District Management Services, Inc.	5,331.67
6540	06/22/20	T2 UES Inc	8,877.00
6541	06/22/20	Utility Notification Center of Colo.	299.49
6542	06/22/20	White Bear Ankele Tanaka & Waldron	1,132.50
6543	06/22/20	Xcel Energy	180.53
ACH	06/16/20	City of Aurora	565.00
ACH	06/22/20	Williams Scotsman, Inc.	1,643.75
ACH	06/10/20	Aurora Water	6,244.23
WIRE	05/20/20	City of Aurora	4,985.91
WIRE	05/29/20	United Site Services, Inc.	1,841.00
WIRE	06/03/20	City of Aurora	2,678.00
<b>Vendor Check Total</b>			<u>1,902,022.28</u>
<b>Check List Total</b>			<u><u>1,902,022.28</u></u>

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