

INTERGOVERNMENTAL AGREEMENT BETWEEN SOUTH ADAMS COUNTY
WATER AND SANITATION DISTRICT AND CITY OF BRIGHTON FOR THE
PURPOSE OF WINDING-UP SERVICE BY THE DISTRICT TO PORTIONS OF
THE CITY

THIS AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2022 by and between the SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, a Colorado Special District, acting by and through its South Adams County Water and Sanitation District Activity Enterprise (“District” or “South Adams”), and the CITY OF BRIGHTON, a Colorado home-rule municipality (“City” or “Brighton”). The District and City may hereinafter be referred to each individually as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, South Adams is a special district organized and existing under and by virtue of the laws of the State of Colorado to provide water and wastewater services, and provides such services by and through its water and sewer enterprise under Article X, Section 20, of the Colorado Constitution, and § 37-45-101.5, et seq., Colorado Revised Statutes.

WHEREAS, Brighton is a home rule municipal corporation organized and existing under the laws of the State of Colorado and its municipal Charter pursuant to Article XX of the Colorado Constitution and provides water and wastewater services to its residents.

WHEREAS, Section 18(2) of Article XIV of the Colorado Constitution and Sections 29-1-201, et seq. and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit.

WHEREAS, the Parties have previously entered into a Settlement Agreement dated June 11, 1997 and an Amendment to Settlement Agreement dated August 17, 2010 (collectively, the “Prior Agreement”) pursuant to which the Parties allocated rights and obligations with regard to South Adams’ provision of water and wastewater service to certain areas within the southern part of Brighton or Brighton’s growth area, which areas are generally outside of, adjacent to, and to the north of South Adams’ service area and referred to herein as the “Extraterritorial Service Area.”

WHEREAS, in the Prior Agreement, the City agreed to provide full service to the Extraterritorial Service Area via extension of its own system by 2015, thus replacing and eliminating the need for further District service to the area. However, the City has not extended its system to some of the areas served by the District and contemplated in the Prior Agreement, and it does not expect to extend its system to some of those areas for a

couple more years. The City now expects to be able to serve these areas by the end of 2025 with the exception of the Singh Sabha Temple.

WHEREAS, the parties intend the provisions of this Agreement to apply to the District's extraterritorial service to the following areas:

- A. Fuller Estates Subdivision;
- B. Shiraba Park;
- C. 27J School District Maintenance Facility; and
- D. Singh Sabha Temple.

WHEREAS, the parties intend this Agreement to terminate and replace the Prior Agreement and provide for winding-up South Adams' service to the Extraterritorial Service Area with the exception of the Singh Sabha Temple, and the Parties desire to set forth clear terms and conditions for Brighton to assume service for its residents and businesses within the Extraterritorial Service Area.

WHEREAS, contemporaneously with this Agreement, the parties, along with the City and County of Denver, a municipal corporation of the State of Colorado, acting by and through its Board of Water Commissioners ("Denver Water") have entered into an Intergovernmental Agreement pursuant to which Denver Water will temporarily lease potable water to Brighton, and convey it through South Adams' water system (the "Temporary Water Lease").

NOW, THEREFORE, in consideration of the premises and the terms and conditions hereinafter set forth, it is agreed by and between the District and City as follows.

AGREEMENT

1. Incorporation of Recitals. The preceding Recitals are incorporated into this Agreement as if fully set forth herein.
2. Service to Fuller Estates. The Parties agree that the following provisions shall apply to the Fuller Estates area depicted in **Exhibit A** attached hereto and incorporated herein by this reference:
 - a. The City is currently constructing a water main in Peoria Street. Immediately upon completion of the main the City shall assume all service to Fuller Estates pursuant to the City's facilities, with the exception of two properties within Fuller Estates along the north side of 112th Avenue and served by an 8" lateral within 112th Avenue. As part of the City's project to construct a main in Peoria Street, the City shall disconnect the lateral located in 114th Avenue from the District's main in Peoria and any direct

taps on the District's main from Fuller Estates, and simultaneously the City shall connect the lateral in 114th Avenue and such direct taps to the City's new main in Peoria. Upon connection of the lateral in 114th Avenue to the City's new main, the District shall convey the 114th Avenue lateral to the City via quitclaim Bill of Sale, in its "as is" condition with no representations or warranties. The work for the disconnection and connection of the 114th Avenue lateral must be completed by December 31, 2022.

- b. The City shall disconnect the two Fuller Estates properties along 112th Avenue from the District's system and connect them to the City's system no later than December 31, 2025. To do this and to enable the District to continue serving property within its service area south of 112th Avenue that is currently served by the 8" lateral, the City shall construct a new 12" water main within 112th Avenue. This new 12" main shall connect with the District's main in Peoria Street on the west and run generally parallel with the current 8" main in 112th Avenue to the eastern terminus of the 8" main. The District is agreeing to the December 31, 2025 completion date to allow additional time for the City to construct an additional line at its expense that will provide looped infrastructure to the entirety of Fuller Estates.
- c. At such time as the new 12" main is completed in 112th Avenue and property within the District, including the property currently owned by Sturgeon Electric and the fire hydrants served by the 8" main, is reconnected by the City to this 12" new line, then the District will convey the 8" main to the City via quitclaim Bill of Sale in its "as is" condition with no representations or warranties. Contemporaneously therewith, the City shall convey the new 12" main to the District and assign its contractor's warranty on the 12" main to the District. In the event the District brings a claim related to the 12" main against the contractor or a related party and the District's ability to bring a claim is contested on the grounds that the warranty is not assignable or the District is not the appropriate party to bring a claim for any other reason, then the City shall cooperate with the District to bring such claim on behalf of the District.
- d. All costs related to Fuller Estates shall be borne by the City; provided, however, that upon conveyance of the 12" main to the District, the District shall reimburse the City for the incremental difference in cost of materials between a new 8" main and a new 12" main in 112th Avenue. In determining the incremental cost difference, mobilization and other general conditions and overhead costs shall be attributed entirely to the cost of

constructing the 8” main and shall not be pro-rated; the District shall reimburse the City only for the difference in cost of materials between an 8” and 12” line.

- e. Prior to award of a contract for the 112th Avenue 12” main, the City will provide the District a timely opportunity to review and comment on plans and specifications for the 12” main and to review and comment on bids for such work.
 - f. Upon the disconnection of the facilities from the District’s system, the City shall become the water service provider for all customers and property within the area shown on Exhibit A and District shall have no further responsibility to serve the area. No wastewater service is or will be provided by the District to any property within Fuller Estates.
3. Service to Shiraba Park. The District is currently providing water and wastewater service to two lots in Shiraba Park at the following addresses: 12045 Moline Street and 12153 Moline Street, Brighton, Colorado by water and sewer laterals depicted in **Exhibit B** attached hereto and incorporated herein by this reference. The City is constructing water and sewer mains that will be able to connect to the laterals depicted in Exhibit B. Promptly upon completion of the water main and promptly upon completion of the sewer main, and, in any event no later than December 31, 2025, the City shall assume all service pursuant to its facilities to the Shiraba Park properties currently served by the District. This will entail disconnecting the laterals shown in Exhibit B from the District’s mains. All work related to Shiraba Park shall be at the City’s expense. Upon completion of the disconnection, the District shall convey the laterals to the City via quitclaim Bill of Sale, in their “as is” condition with no representations or warranties.
4. Service to School District 27J Maintenance Facility. The District is currently providing wastewater service to the District 27J Maintenance Facility located at 11701 Potomac Street (the “Maintenance Facility”) as further depicted in **Exhibit C** attached hereto and incorporated herein by this reference. Upon completion of the sewer facilities no later than December 31, 2024, the City shall assume all service to the Maintenance Facility. This will entail disconnecting the District’s facilities at the point referenced on Exhibit C. The District does not provide and shall not provide water service to this property. All work related to the Maintenance Facility shall be at the City’s expense. Upon completion of the disconnection, the District shall convey the facilities to the City via quitclaim Bill of Sale, in their “as is” condition with no representations or warranties.

5. Service to Singh Sabha Temple. The District is currently providing water and fire hydrant service to the Singh Sabha Temple property pursuant to a Standby Fireline Agreement and an Interim Water Service Agreement dated, respectively, April 16, 2012 and November 12, 2014. The property is depicted in **Exhibit D** attached hereto and incorporated herein by this reference. The District expects that the City will make a reasonable effort to become the provider to this property in a reasonable amount of time; the District does not expect or agree to be the provider to this property in perpetuity. The District shall not be required by this Agreement or otherwise to provide wastewater service to this property. The parties acknowledge that there is no expectation and agree there is no obligation for the District to provide water or wastewater service to any other property in the vicinity of this property.
6. Extraterritorial Service Fee. The District shall begin charging the customers in Fuller Estates, Shiraba Park, the Maintenance Facility, and the Singh Saba Temple the District's standard extraterritorial service fee, as such fee may be modified by the District's Board of Directors from time to time beginning on December 31, 2025 if these entities are not already paying the extraterritorial fees and have not been disconnected from the District's system.
7. Merger of Prior Agreement. The Parties intend and agree that the Prior Agreement is hereby superseded and merged into this Agreement and of no further force or effect.
8. General Service Provisions. The following provisions shall apply to all extraterritorial services provided by the District under this Agreement.
 - a. *Rules and Regulations.* The District's services hereunder shall be subject to all applicable federal and state laws, rules, and regulations and all District rules, regulations, resolutions, rates, fees, charges, policies, standards, and specifications (including without limitation regulations applicable to clean drinking water, industrial pre-treatment, and backflow) as may be amended by the District in its legislative discretion.
 - b. *Standards for Disconnection and Working on District Facilities.* Any work on the District's facilities, including without limitation the work contemplated in this Agreement to construct new facilities for the District and to disconnect various properties from the District's system, shall be at the City's sole cost and shall be only with the prior approval of the District and pursuant to the District's Design and Construction Standards as may be amended from time to time.

- c. *Remedies for Failing to Meet Deadlines.* In the event the City does not disconnect the Fuller Estates, Shiraba Park, and Maintenance Facility properties from the District's system by the deadlines set forth in this Agreement, the District shall have all rights and remedies available to it at law and equity, including without limitations the rights provided under the District's Rules and Regulations and the right to suspend service to or disconnect the properties from the District's system.
- d. *Notification to Customers.* City will coordinate a joint notification to all affected landowners and customers in the Extraterritorial Service Area regarding the provisions of this Agreement, including the change of water service providers.
- e. *Subject to Laws and Permits.* The provisions of this Agreement are subject to all applicable federal and state laws, regulations, and permits, including any applicable urban growth boundary rules, regulations, or contractual covenants and the District's water and wastewater permits.
- f. *Term.* The term of this Agreement shall commence upon the date set forth above and terminate with regard to a particular area referenced above upon (a) the date that the District receives written notice from City that City infrastructure has been completed and is fully operational such that District service is no longer necessary and (b) any related transfers of District assets have been quit claimed to the City. .

9. General Provisions.

- a. *Assignment.* No assignment by the City of any of its rights under this Agreement shall be binding on the District unless the District shall have assented to such assignment with the same formality as employed in the execution of this Agreement.
- b. *Waiver.* No Party shall waive its rights hereunder by failing to exercise its rights; any such failure shall not affect the right of such Party to exercise at some future time the rights not previously exercised.
- c. *Remedies.* None of the remedies provided for under this Agreement need to be exhausted or exercised as a prerequisite to either Party's pursuit of further relief to which it may be entitled. The District retains the right to apply remedies provided in its rules, regulations, and policies, as may be

amended by the District's Board of Directors as well as any rights available at law or equity.

- d. *No Third Party Rights.* The Parties intend and agree that this Agreement confers no rights in any third party, including without limitation any right to seek specific performance or damages.
- e. *Limitation of Liability.* In the event anyone brings a claim under this Agreement or otherwise arising out of the services provided pursuant to this Agreement against the District or the City, anyone claiming under it shall neither seek nor collect damages in excess of then prevailing amounts set forth in the Colorado Governmental Immunity Act, regardless of whether such claim is based on a theory of tort, contract, unjust enrichment, or state or federal law or regulation.
- f. *Headings.* The headings used in this Agreement are for convenience only and shall not be used for the purpose of construction or interpretation. When the context so requires, the singular shall include the plural and vice versa.
- g. *Representatives.*
 - i. The District's representative to accept or give any request, approval, notice or the like provided for by this Agreement shall be District Manager, South Adams County Water and Sanitation District, 6595 East 70th Avenue, Commerce City, Colorado 80022, with a copy to District General Counsel at the same address.
 - ii. City's representative to accept or give any request, approval, notice or the like provided for by this Agreement shall be the Director of Utilities, 4th Floor, 500 South 4th Avenue, Brighton, Colorado 80601 with a copy to the City Attorney at the same address, 6th Floor.
- h. *Notice.* Where written notice is required, such notice shall be given via U.S. Mail overnight delivery or certified first class or with FedEx or other national overnight delivery service. Either Party may change its address and contact information under this Section by providing notice pursuant to this Section.
- i. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Delivery of the counterparts may be effected by means of facsimile or e-mail transmission with the same effect as if the original copies had been delivered.

- j. *Severability.* If any term of this Agreement is found to be invalid, illegal or unenforceable, in whole or in part, by a body of competent jurisdiction, that term shall be deemed severed from this Agreement without effect on any other term of the Agreement.
- k. *Binding Effect.* Subject to the terms of this Agreement, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- l. *Amendments.* This Agreement may only be modified by written amendment signed by both Parties.
- m. *Exhibits.* The Exhibits attached hereto are for purposes of the depicting the Parties' general intent; they are not intended to serve as construction-level design documents and actual locations of connections and other activities are subject to the District's standard infrastructure planning and improvements practices.
- n. *Time is of the Essence.* Time is of the essence of this Agreement.
- o. *Annual Appropriation.* Any financial obligation hereunder is subject to the annual appropriation of funds necessary for the performance thereof by the parties' respective council or board of directors, in such council or board's discretion.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution Date to be effective as of the Effective Date.

SOUTH ADAMS COUNTY
 WATER AND SANITATION
 DISTRICT acting by and through
 its SOUTH ADAMS COUNTY
 WATER AND SANITATION
 DISTRICT ACTIVITY
 ENTERPRISE

President

ATTEST

Secretary

CITY OF BRIGHTON

By: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

By: _____

City Attorney

Exhibit A – Depiction of Fuller Estates Properties Served and Infrastructure

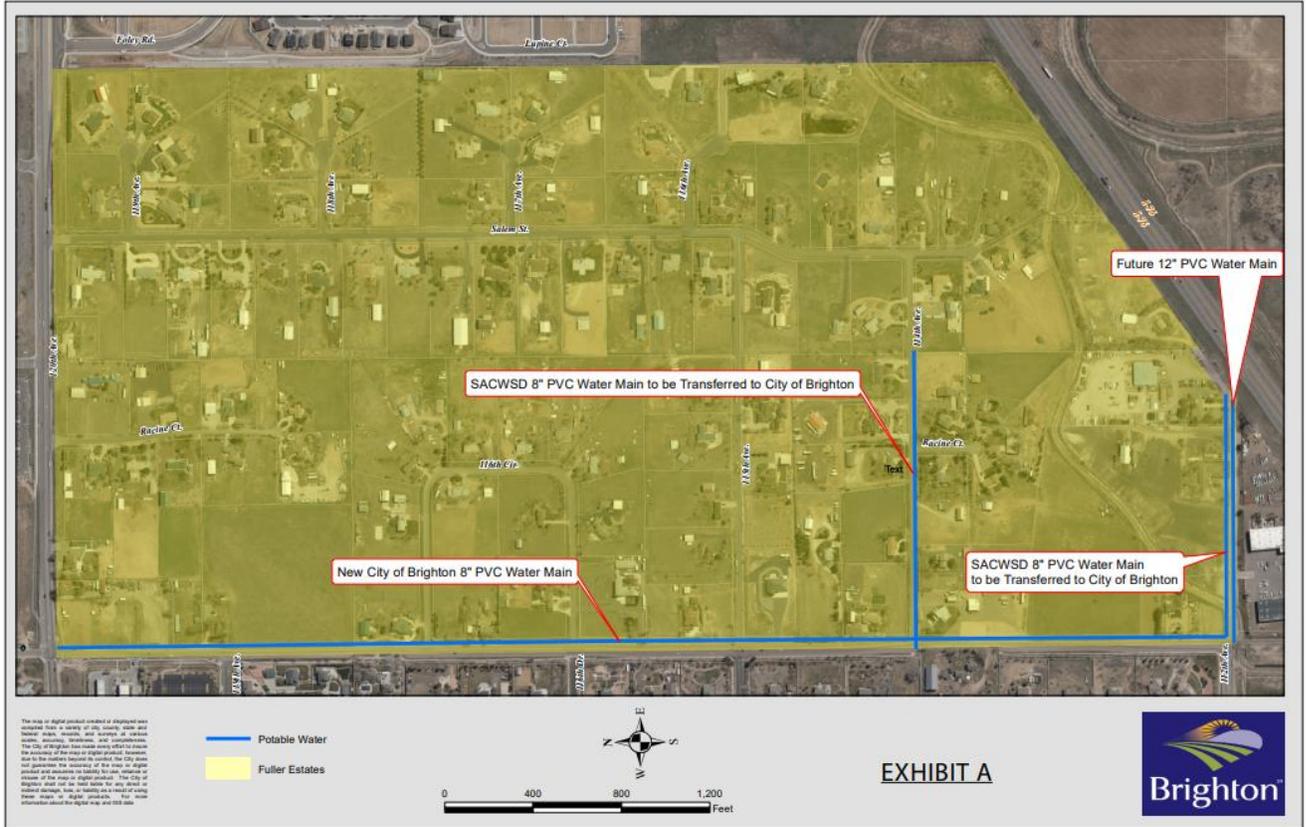


Exhibit B – Depiction of Shiraba Park Properties Served and Infrastructure

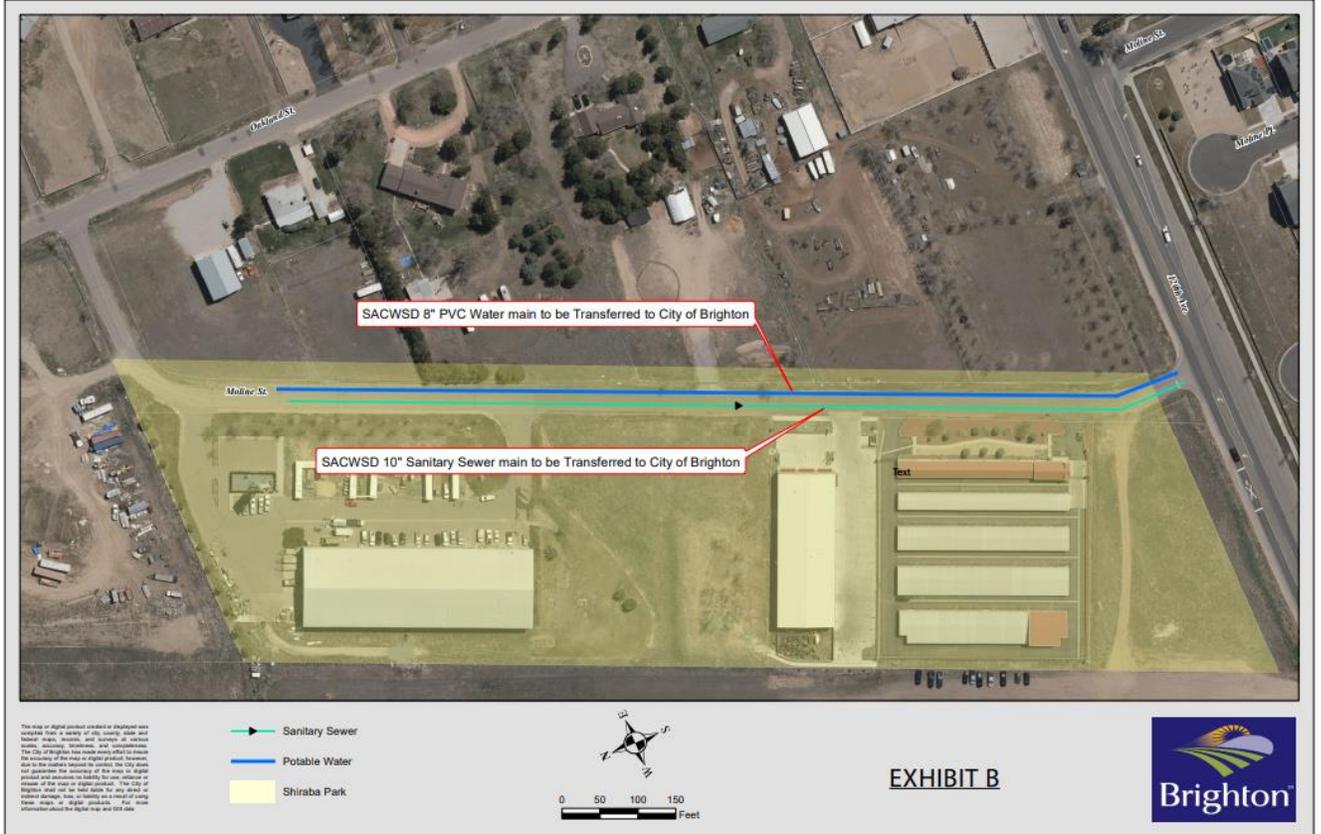


Exhibit C – Depiction of 27J Maintenance Facility and Infrastructure

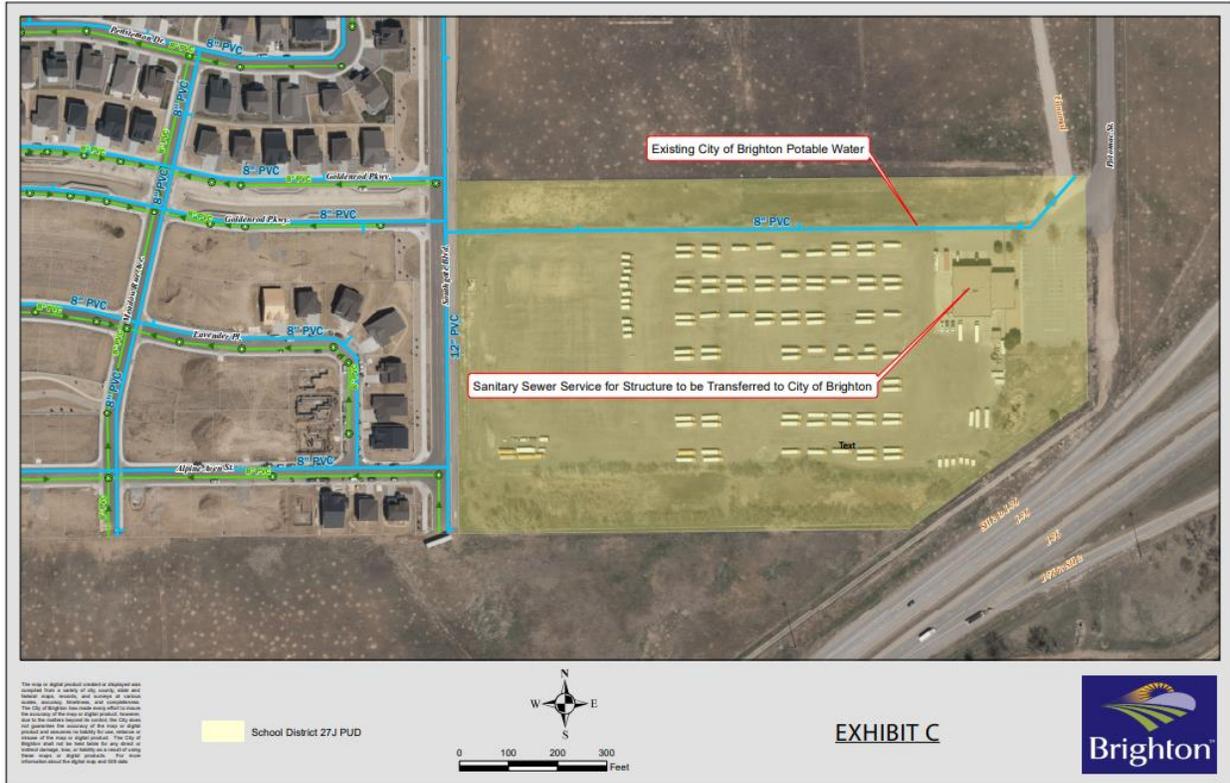


Exhibit D – Depiction of Singh Sabha Property and Infrastructure

