

**MEMORANDUM OF UNDERSTANDING  
REGARDING SHARING OF RESOURCES AND PRIVILEGES**

This MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of the date of final execution set forth below between the CITY OF BRIGHTON (hereafter "City") and the BRIGHTON ECONOMIC DEVELOPMENT CORPORATION (hereafter "EDC"), jointly referred to as the Parties.

WHEREAS, the EDC is a nonprofit membership organization formed to promote the economic development of the Greater Brighton area, to promote and develop industry and businesses, and to promote and assist the growth and development of businesses managed by a Board of Directors; and

WHEREAS, the City is a home rule municipal organization with an interest in economic development in the City of Brighton and includes an Economic Development Department ("Department") under the control and authority of the City Manager; and

WHEREAS, the City Manager and one City Council member are voting members of the Board of Directors of EDC and EDC staff are City employees, signifying and supporting the existence of a close relationship between the two entities to further their mutual goals; and

WHEREAS, the City and EDC entered into an *Affiliation and Management Services Agreement* ("Management Agreement") in April of 2002 and approved a continuation of the Management Agreement in September of 2007 as set forth in Resolution #07-107; and

WHEREAS, the City and EDC desire to set forth their mutual understanding of the responsibilities of each, areas of collaboration and the existence of privileges between and among the legal advisors to each entity and by entering into this MOU supersede and replace the Management Agreement.

NOW THEREFORE, in consideration of the mutual terms, covenants, representations, and agreements set forth herein together with other good and sufficient consideration, the Parties agree as follows:

- I. Recitals. The foregoing recitals are true and correct and are made an integral part of this MOU as though fully set forth and incorporated herein.
- II. City Responsibilities. The City shall provide personnel and office space for the management, administrative and business services necessary and

appropriate for the day-to-day administration of the operations of the EDC.

- a. Personnel. The City will post positions, hire, and evaluate performance for Department personnel, including the Department Director (also known as EDC President/CEO) pursuant to City policies and overseen by the Human Resources Department. In all respects, Department staff will be subject to City policies and the Department Director will be under the direct supervision and control of the City Manager's Office. All EDC personnel shall receive compensation and benefits commensurate with the position and in accordance with the City's compensation plan and shall be part of the Economic Development Department. The EDC Board may be asked for feedback and comment when evaluating the EDC President/Department Director, but any final decision regarding evaluation or termination shall be with the City Manager.
- b. Legal Advice. The City Attorney's Office will provide legal advice and representation to the Department, like all other City departments. Any communication between and among EDC/Department staff and the City Attorney's Office is privileged and confidential. While EDC is entitled to retain its own counsel, the Parties agree the staff are City staff and may receive legal advice from the City Attorney's Office. EDC counsel provides legal advice to the EDC Board and may review agreements entered into as the EDC. The Parties agree there is a mutual interest in agreements and work performed whether on behalf of the EDC or the Department, and as such, there is an attorney-client privilege between and among counsel for the EDC and the City Attorney's Office and EDC/Department staff.

### III. Responsibilities of the EDC.

- a. Policies and Decision-Making. The Board of Directors of the EDC shall be responsible for preparing, in cooperation with the President, a strategic work plan. Such plan shall include, without limitation, the policy directives, strategic initiatives, and other decisions relating to the stated purposes of the EDC which are to be carried out by the President.
- b. Organization. The EDC shall at all times remain legally organized as a tax exempt non-profit organization. EDC shall provide at least 180 days notice prior to making any changes to its tax-exempt status.
- c. Selection of President. The Board of the EDC shall be provided the opportunity to participate in interviewing and recommending candidates to fill the President position.
- d. Annual EDC Budget and Strategic Plan. At least 120 days prior to

the commencement of each fiscal year, the President/CEO shall prepare and deliver to the EDC a proposed budget setting forth the anticipated revenues and expenses of the EDC for the ensuing fiscal year. The President/CEO and EDC shall use their best efforts to manage and administer the operations of the EDC as herein provided so that the actual revenues and expenses of the operation and maintenance of EDC during any applicable period of the fiscal year shall be consistent with the approved EDC budget.

- e. Accounting and Financial Records. EDC shall establish and administer accounting procedures, controls, and systems for the development, preparation, and safekeeping of administrative and financial records and books of account relating to the business and financial affairs of EDC, all of which shall be prepared and maintained in accordance with generally accepted accounting principles consistently applied.
- f. Insurance. Throughout the Term, EDC shall procure and maintain with commercial carriers, through self-insurance or by some combination thereof, appropriate Director's coverage for all Board members of EDC, together with casualty and comprehensive general liability insurance, which shall name the City as an additional insured, on such basis, and upon such commercially reasonable terms and conditions as EDC deems appropriate. EDC shall provide proof of such insurance to the City annually.

#### IV. Mutual Covenants

- a. Meetings. The City Manager and Department Director/President shall attend the monthly meetings of the Board of Directors and report on the operations and financial status of the EDC.
- b. City Manager as Ex-Officio Board Member. City and EDC agree that the City Manager shall be an ex-officio and voting member of the EDCBoard.

#### V. Term

- a. The term of the Agreement shall commence on May 8, 2024 upon approval of the EDC Board and the City Council and shall remain in effect unless terminated by either Party or superseded. Upon termination neither Party shall have any further obligations under this Agreement.
- b. Either Party may terminate without cause upon six months' written notice to the other Party.
- c. This Agreement shall be terminated if the EDC ceases to exist as a non-profit organization or files for bankruptcy.

- d. Any Notice of Termination or any other notice, demand, or required written communication shall be deemed delivered if hand-delivered, emailed, or mailed through the United States first class mail, postage prepaid, registered or certified to those set forth below:

EDC Board Chair Aryn Lallas  
627 East Ridge Street  
Brighton, CO 80601  
[Aryn.lallas@heritagetco.com](mailto:Aryn.lallas@heritagetco.com)

City Manager, City of Brighton  
500 South 4<sup>th</sup> Avenue  
Brighton, CO 80601  
[MPMartinez@brightonco.gov](mailto:MPMartinez@brightonco.gov)

City Attorney, City of Brighton  
500 South 4<sup>th</sup> Avenue  
Brighton, CO 80601  
[ACalderon@brightonco.gov](mailto:ACalderon@brightonco.gov)

## VI. Appropriation

- a. Any payment or obligation of the City pursuant to this Agreement, whether in whole or in part, is and shall be subject to and contingent upon the continuing availability of City funds for the payment thereof and the annual appropriation of said funds by the City for said purpose. In the event said funds, or any part thereof, are not appropriated and/or become unavailable as determined by the City, the City may terminate or amend this Agreement in writing at least ten (10) days prior to such termination or amendment.

## VII. Miscellaneous

- a. Governing Law. This Agreement shall be governed by the laws of the State of Colorado and Adams County.
- b. Effect and Assignment. Except as may specifically be provided in this Agreement to the contrary, this Agreement shall inure to the benefit of and binding upon the Parties and their respective legal representatives, successors, and assigns; provided, however, that neither Party may assign this Agreement to an entity which is not wholly owned or controlled by the Parties or a subsidiary thereof without the written consent of the other party.

- c. Mediation. Prior to filing litigation, the Parties agree to mediate any dispute or disagreement. If either party determines an unresolved dispute exists, such party shall give the other a written notice to mediate. The Parties agree to enter into mediation in good faith in an attempt to resolve the dispute.
- d. Severability. The Parties have negotiated and prepared the terms of this Agreement in good faith and with the intent that every term, covenant, and condition of this Agreement or the application thereof to any person or circumstance shall be adjudged to any extent invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, that provision shall be as narrowly construed as possible, and all the remaining terms and provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- e. Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire agreement between the Parties. No prior written material not specifically incorporated into this Agreement shall be of any force and effect, and no changes to this Agreement shall be recognized unless incorporated by amendment.

**IN WITNESS WHEREOF**, EDC and the City have caused this Agreement to be executed by their duly authorized representatives as of the Effective Dates set forth below.

CITY OF BRIGHTON

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Gregory Mills, Mayor

APPROVED AS TO FORM:

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Alicia Calderón, City Attorney

ATTEST

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Natalie Hoel, City Clerk

BRIGHTON ECONOMIC DEVELOPMENT CORPORATION,  
A Colorado Non-Profit Corporation

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Aryn Lallas  
EDC Chair

ATTEST

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Jessica Jessen  
EDC Secretary

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