

RESOLUTION NO. 2021-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING AMENDMENT NO. 1 TO SERVICE PLAN FOR THE LAKES METROPOLITAN DISTRICT NO. 5; APPROVING AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT IN CONNECTION THEREWITH; AND SETTING FORTH OTHER DETAILS RELATED THERETO

WHEREAS, Section 32-1-204.5, Colorado Revised Statutes (“C.R.S.”), provides that no special district shall be organized if its boundaries are wholly contained within the boundaries of a municipality, except upon adoption of a resolution of approval of the governing body of such municipality; and

WHEREAS, the territory of The Lakes Metropolitan District No. 5 (the “District”) is located wholly within the boundaries of the City of Brighton, Colorado (the “City”); and

WHEREAS, pursuant to Section 32-1-204.5, C.R.S., the City Council of the City (the “City Council”) previously adopted a resolution approving a Service Plan for the District on December 19, 2017 (the “Service Plan”); and

WHEREAS, the District desires to amend certain provisions set forth in the Service Plan to conform the Service Plan to the model service plan that was approved by the City Council on August 17, 2021; and

WHEREAS, the Board of Directors of the District has submitted to the City Council for its consideration Amendment No. 1 to Service Plan for The Lakes Metropolitan District No. 5 (the “Service Plan Amendment”); and

WHEREAS, a copy of the Service Plan Amendment is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, adequate notice has been published of a public hearing of the City Council to review the Service Plan Amendment; and

WHEREAS, the City Council has conducted a public hearing on the Service Plan Amendment and has considered the testimony and evidence presented at the hearing; and

WHEREAS, the City and the District entered into an Intergovernmental Agreement (the “Original IGA”) in connection with the City Council’s approval of the Service Plan; and

WHEREAS, the City and the District have agreed to enter into an Amended and Restated Intergovernmental Agreement (the “Amended and Restated IGA”), in substantially the form attached hereto as Exhibit B, to replace the Original IGA and to address certain additional matters.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO:

Section 1. The notice of the public hearing on the Service Plan Amendment was properly given; the hearing before the City Council was open to the public; all interested parties were heard or had the opportunity to be heard; all relevant testimony and evidence submitted to the City Council was considered; and the City Council has jurisdiction to hear this matter.

Section 2. The City Council hereby makes the following findings:

a. There continues to be sufficient existing and projected need for organized service in the area to be serviced by the District.

b. The existing service in the area to be served by the District continues to be inadequate for present and projected needs.

c. The District is capable of providing economical and sufficient service to the area within its boundaries.

d. The area included in the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. The Service Plan Amendment, in the form attached hereto as Exhibit A, is hereby approved. Nothing herein limits the City's powers with respect to the District, the property within the District, or the improvements, if any, to be constructed by the District. The City's findings are based solely upon the evidence in the Service Plan, other information presented to the City in connection with the Service Plan Amendment, and such other evidence presented at the public hearing or otherwise submitted to the City, and the City has not conducted any independent investigation of such evidence. The City makes no guarantee as to the financial viability of the District or the achievability of the results.

Section 4. The City Council hereby approves the Amended and Restated IGA in substantially the form attached hereto as Exhibit B; however, such Amended and Restated IGA may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution and as the Mayor shall approve; the execution thereof being deemed conclusive approval of any such changes by the City. The Mayor is hereby authorized and directed to execute the Amended and Restated IGA for the City and the City Clerk is hereby authorized and directed to affix the seal of the City to the Amended and Restated IGA and to attest the Amended and Restated IGA.

Section 5. This Resolution shall be filed in the records of the City and a certified copy thereof submitted to the petitioners forthwith.

Section 6. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED this 7th day of September, 2021.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

APPROVED AS TO FORM:

ALICIA CALDERÓN, City Attorney

EXHIBIT A

Service Plan Amendment

(Starts on the next page)

AMENDMENT NO. 1
TO
SERVICE PLAN
FOR
THE LAKES METROPOLITAN DISTRICT NO. 5
CITY OF BRIGHTON, COLORADO

Prepared by

WHITE BEAR ANKELE TANAKA & WALDRON
Professional Corporation
2154 E. Commons Avenue, Suite 2000
Centennial, Colorado 80122

Approved on _____, 2021

I. INTRODUCTION

The Service Plan (the “Service Plan”) for The Lakes Metropolitan District No. 5 (the “District”) was approved by the City Council of the City of Brighton, Colorado (the “City”) on December 19, 2017. The Board of Directors of the District (the “Board”) is seeking to amend certain provisions set forth in the Service Plan pursuant to this Amendment No. 1 to Service Plan for The Lakes Metropolitan District No. 5 (“Amendment No. 1”). These modifications conform the Service Plan to the changes approved by the City to the City’s Model Service Plan on August 17, 2021.

All capitalized terms used and not otherwise defined herein shall have the respective meanings assigned in the Service Plan.

II. AMENDMENT

A. Section IV.A.12 – Section IV.A.12 of the Service Plan is hereby amended and restated in its entirety as follows:

“12. Inclusion and Exclusion Limitation. Except for property within the Inclusion Area Boundaries, the District shall not include any properties into its boundaries without the prior consent of the City Council, which consent shall be evidenced by resolution. The District shall not exclude any property from its boundaries without the prior consent of the City Council, which consent shall be evidenced by resolution.”

B. Section IV.A.13 – Section IV.A.13 of the Service Plan is hereby amended and restated in its entirety as follows:

“13. Overlap Limitation. Without the prior consent of the City Council, which consent shall be evidenced by resolution, the boundaries of the District shall not overlap with any other special district providing the same service unless (a) the City Council consents to such overlapping boundaries, which consent shall be evidenced by resolution, and (b) the other requirements set forth in Section 32-1-107, C.R.S. have been satisfied. Nothing herein shall prevent a special district providing different services from organizing wholly or partly within the boundaries of the District.”

C. Section V.B.1 – Section V.B.1 of the Service Plan is hereby amended and restated in its entirety as follows:

“1. The interest rate on any Debt is expected to be the market rate at the time the Debt is issued; provided that the maximum interest rate on any Debt shall not exceed fifteen percent (15%) per annum. Interest on any Debt of the District, or other District obligations payable in whole or in part from the revenues derived from the Debt Service Mill Levy, may be simple per annum interest or compound interest; provided, however, that any interest accruing on Debt originally issued to (or any other reimbursement obligation of the District payable to) a developer of property within the District shall not compound. To the extent the District enters into any annually appropriated developer reimbursement agreements, interest shall not accrue on any funds expended on behalf

of or advanced directly to the District under such agreements. The maximum underwriting discount shall be five percent (5%). The documents pursuant to which any Debt is issued shall prohibit the acceleration of principal of such Debt as a remedy for an event of default thereunder.”

D. Section V.B.2 – Section V.B.2 of the Service Plan is hereby amended and restated in its entirety as follows:

“2. The maximum term of any Debt issued by any District shall be forty (40) years from the date of issuance. Notwithstanding the term of any Debt issued by the District, any amount of outstanding principal and/or accrued interest that remains unpaid upon the last day of the fortieth year following the year in which the Debt is issued shall be deemed to be forever discharged.”

E. Section V.C.1 - Section V.C.1 of the Service Plan is hereby amended and restated in its entirety as follows:

“1. The District may impose an ad valorem Debt Service Mill Levy (a mill being equal to 1/10th of 1 cent) upon the Taxable Property within the District for the purpose of paying the debt service requirements on District Debt. The Debt Service Mill Levy shall not exceed fifty (50) mills, subject to the Mill Levy Adjustment, without the prior approval of the City Council, which approval shall be evidenced by resolution. In addition, the District may request that the City process a Service Plan Amendment to increase the maximum Debt Service Mill Levy that may be imposed to repay District Debt or to provide that the Debt Service Mill Levy shall be such amount as is necessary to pay the debt service on such Debt, without limitation of rate.

The Debt Service Mill Levy may be imposed by the District for the purpose of paying Debt to finance Public Improvements prior to the approval by the City of the City Approvals. However, proceeds of such Debt may only be utilized to finance those Public Improvements after first obtaining City Approvals for either (a) the phase of development in the Project area where the Public Improvements are located or (b) those specific Public Improvements to be financed by such Debt.

The District shall not impose a Debt Service Mill Levy to pay the debt service requirements on District Debt for more than forty (40) years after the date on which the District imposed the initial Debt Service Mill Levy for the payment of the first issuance of District Debt unless: (a) a majority of the Board imposing the Debt Service Mill Levy is comprised of End Users, and (b) the Board has voted in favor of extending the time that the Debt Service Mill Levy may be imposed for the payment of District Debt.”

F. Section V.C.3 – Section V.C.3 of the Service Plan is hereby amended and restated as follows:

“3. The maximum combined mill levy, including the Debt Service Mill Levy and the Operation and Maintenance Mill Levy (the “Maximum Combined Mill Levy”), shall not exceed sixty (60) mills, subject to the Mill Levy Adjustment, without the prior approval of the City Council, which approval shall be evidenced by resolution.”

G. Section V.D.1 – Section V.D.1 of the Service Plan is hereby amended and restated as follows:

“1. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S., all other requirements of State law and the provisions of this Amended Service Plan. In addition, the District shall not utilize the proceeds of any Debt to finance or refinance the construction of Public Improvements prior to the approval by the City of the City Approvals relating to either (a) the phase of development in the Project area where the Public Improvements are located; or (b) those specific Public Improvements to be financed or refinanced by such Debt.”

H. Section VIII – Section VIII of the Service Plan is hereby amended and restated as follows:

“VIII. All special and regular District meetings shall be open to the public. All meetings of the Board that are held solely at physical locations shall be held at physical locations that are within the boundaries of the District or that are within twenty miles of the District boundaries. The meeting notice of all meetings of the Board that are held telephonically, electronically or by other means not including physical presence must include the method or procedure, including the conference number or link, by which members of the public can attend the meeting, or as otherwise required by Colorado law. The District shall provide annual notice to all eligible electors of the District, in accordance with Section 32-1-809, C.R.S. In addition, the District shall record a District public disclosure document and a map of the District boundaries with the Clerk and Recorder of each County in which District property is located, in accordance with Section 32-1-104.8, C.R.S. The District shall use reasonable efforts to ensure that copies of the annual notice, public disclosure document and map of the District boundaries are provided to potential purchasers of real property within the District as part of the seller's required property disclosures.”

I. All Other Provisions – Except as specifically amended as set forth above, all other provisions of the Service Plan shall remain in full force and effect. To the extent there are any inconsistencies between this Amendment No. 1 and the Service Plan, this Amendment No. 1 shall control.

EXHIBIT B

Amended and Restated IGA

(Starts on the next page)

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the **City of Brighton, Colorado**, a municipal corporation of the State of Colorado (the "City"), and **The Lakes Metropolitan District No. 5**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District").

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the Service Plan dated December 19, 2017, as amended by that Certain Amendment No. 1 to Service Plan approved on September 7, 2021, and as may be further amended from time to time by City approval (the "Service Plan"); and

WHEREAS, the Service Plan requires the execution of an intergovernmental agreement between the City and the District; and

WHEREAS, the City and the District are parties to an Intergovernmental Agreement between the City and the District entered into in 2017; and

WHEREAS, the City and the District have determined it to be in their best interests to enter into this Amended and Restated Intergovernmental Agreement ("Agreement"); and

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Incorporation by Reference. The Service Plan is hereby incorporated in this agreement by this reference. The District agrees to comply with all provisions of the Service Plan, as it may be amended from time to time in accordance with the provisions thereof, and Title 32, Article 1, C.R.S. (the "Special District Act").
2. Maintenance of Public Improvements. The District agrees that it shall maintain the following Public Improvements, as shown by Exhibit A attached hereto and made a part hereof.
3. Parks and Recreation. The District is hereby authorized to operate and maintain public recreation facilities, community centers, and local parks that are smaller than 5 acres in size. It is intended that the District's authority to operate and maintain other Public Improvements, if any, shall be subject to and performed in accordance with City Approvals.
4. Water Rights/Resources. To the extent the City requires a developer of property within the Project to obtain and/or develop water rights or resources for a non-potable water system, the District shall be authorized to accept an assignment of and perform such obligation.

5. Notice to Property Owners. The District agrees that it shall record a Notice of Inclusion in Metropolitan District substantially in the form attached hereto as Exhibit B on all property located within the District's boundaries.

6. Enforcement. The parties agree that this Agreement may be enforced in law, or in equity for specific performance, injunctive, or other appropriate relief. The parties also agree that this Agreement may be enforced pursuant to Section 32-1-207, C.R.S. and other provisions of the Special District Act granting rights to municipalities or counties approving a service plan of a special district.

7. Entire Agreement of the Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral agreements, negotiations, or representations and understandings of the parties with respect to the subject matter contained herein.

8. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the parties hereto.

9. Governing Law; Venue. The internal laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement, without giving effect to choice of law or conflict of law principles. The parties hereby submit to the jurisdiction of and venue in the district court in Adams County, Colorado. In any proceeding brought to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to an award of reasonable attorneys' fees, actual court costs and other expenses incurred.

10. Beneficiaries. Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the named parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties.

11. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, such portion shall be deemed severable and its invalidity or its unenforceability shall not cause the entire agreement to be terminated.

12. Assignability. Neither the City nor the District shall assign their rights or delegate their duties hereunder without the prior written consent of the other party.

13. Successors and Assigns. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**THE LAKES METROPOLITAN DISTRICT
NO. 5**

BY: _____
President

ATTEST:

By: _____
Secretary

CITY OF BRIGHTON, COLORADO

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Exhibit A to Intergovernmental Agreement

Public Improvements to be Maintained by the District

The improvements the District will be authorized to operate and maintain (in addition to those referenced in Paragraphs 3 and 4 of this Intergovernmental Agreement) shall, in accordance with Section IV.A.1 of the Service Plan, be determined in connection with future City Approvals.

Exhibit B to Intergovernmental Agreement
NOTICE OF INCLUSION IN METROPOLITAN
DISTRICT AND POSSIBLE PROPERTY TAX
CONSEQUENCES

Legal description of the property;

See Exhibit A attached hereto and incorporated by reference

This property is located in the following metropolitan district:

_____ Metropolitan District No. ____ (the "District")

In addition to standard property tax identified on the next page, this property is subject to a metropolitan district mill levy (another property tax) of up to:

_____ mills, subject to Mill Levy Adjustment, as described in the
District's Service Plan

Based on the property's inclusion in the metropolitan district, a commercial parcel with a sale price of \$100,000 could result in ADDITIONAL annual property taxes up to:

\$ _____

Based on the property's inclusion in the metropolitan district, a residential parcel with a sale price of \$300,000 could result in ADDITIONAL annual property taxes up to:

\$ _____

The next page provides examples of estimated total annual property taxes that could be due on this property, first if located outside the District and next if located within the District. **Note: property that is not within the District would not pay the ADDITIONAL amount.**

The District's Board of Directors can be reached as follows;

[Address, e-mail address and phone number]

You may wish to consult with: (1) the Adams County Assessor's Office to determine the specific amount of District property taxes currently due on this property; and (2) the District's Board of Directors to determine if the District's Service Plan has been amended.

ESTIMATE OF PROPERTY TAXES

Annual Tax Levied on Commercial Property with \$100,000 Actual Value Without the District Mill Levy

Taxing Entity	Mill Levies (20 **)	Annual Tax Levied
Adams County		
City of Brighton		
Rangeview Library District		
Central Colorado Water Conservancy District		
Brighton Fire District No. 6		
School District No. 27		
Urban Drainage South Platte		
Urban Drainage and Flood Control		
TOTAL		

Annual Tax Levied on Commercial Property with \$100,000 Actual Value With the District Mill Levy (Assuming Maximum District Mill Levy)

Taxing Entity	Mill Levies (20 **)	Annual Tax Levied
Adams County		
City of Brighton		
Rangeview Library District		
Central Colorado Water Conservancy District		
Brighton Fire District No. 6		
School District No. 27		
Urban Drainage South Platte		
Urban Drainage and Flood Control		
Metropolitan District		
TOTAL		

Annual Tax Levied on Residential Property with \$300,000 Actual Value Without the District Mill Levy

Taxing Entity	Mill Levies (20 **)	Annual Tax Levied
Adams County		
City of Brighton		
Rangeview Library District		
Central Colorado Water Conservancy District		
Brighton Fire District No. 6		
School District No. 27		
Urban Drainage South Platte		
Urban Drainage and Flood Control		
TOTAL		

Annual Tax Levied on Residential Property with \$300,000 Actual Value With the District Mill Levy (Assuming Maximum District Mill Levy)

Taxing Entity	Mill Levies (20 **)	Annual Tax Levied
Adams County		
City of Brighton		
Rangeview Library District		
Central Colorado Water Conservancy District		
Brighton Fire District No. 6		
School District No. 27		
Urban Drainage South Platte		
Urban Drainage and Flood Control		
Metropolitan District		
TOTAL		

**This estimate of mill levies is based upon mill levies certified by the Adams County Assessor's Office in December 20__ for collection in 20__ and is intended only to provide approximations of the total overlapping mill levies within the District. The stated mill levies are subject to change and you should contact the Adams County Assessor's Office to obtain accurate and current information.

EXHIBIT A
TO NOTICE OF INCLUSION IN METROPOLITAN DISTRICT
The Property

1611.4600; 1146100

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