

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (“Agreement”) is made and entered into effective January 1, 2021 (“Effective Date”), by and between the **City of Brighton, Colorado**, a Colorado home rule municipality (“City”) and the **Housing Authority of the City of Brighton**, a body both corporate and politic (the “Authority” or “BHA”) created and existing under the Housing Authorities Law, pursuant to C.R.S. 29-4-201 *et seq.* (“Housing Authorities Law”). The City and the Authority may be collectively referred to herein as the Parties.

RECITALS

WHEREAS, the Authority is a body both corporate and politic, exercising public powers and having the powers necessary and convenient to carry out and effectuate the purposes and provisions of the Housing Authorities Law found in Title 29, Article 4, Part 2 of the Colorado Revised Statutes, as the same may be amended from time to time and is authorized to engage or assist in the development or operation of low-income housing pursuant to C.R.S. 29-4-201, *et seq* and under the National Housing Act of 1937, 24 C.F.R. 941.201(b); and

WHEREAS, the Authority’s Board of Commissioners (“Board”) consists of seven members and two alternates, interviewed and nominated by the Board and approved and appointed by the Mayor of the City with the concurrence of the members of the City Council and the Executive Director (“Executive Director”) who is the chief administrative officer of the Authority; and

WHEREAS, the City is a Colorado home rule municipality exercising public powers and having the powers necessary and convenient to carry out and effectuate the purposes and provisions of Article XX, Sec. 6, Colorado Constitution, and the Charter of the City; and

WHEREAS, the chief administrative officer of the City is the City Manager (“City Manager”) appointed by the City Council; and

WHEREAS, the purposes and objectives of the Authority include but are not limited to:

- (1) Providing quality and affordable housing for low-income persons within the City;
- (2) Increasing developed or acquired units to assist in the elimination of unsanitary or unsafe dwellings which lack safe or sanitary dwelling accommodations in which persons of low income are forced to occupy overcrowded and congested dwellings;
- (3) Collaborating with the City to assist with the clearance, re-planning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations on such financial terms that enable persons who now live in unsafe or unsanitary dwelling accommodations or in overcrowded and congested dwelling accommodations to afford to live in safe and sanitary or uncongested dwelling accommodations;

(4) Assisting in the individual growth of existing and eligible participants of the Housing Choice Voucher, HUD funded programs, Development programs and other service programs which might lead to the minimization of an individual's future need of Authority programs;

(5) Taking all appropriate, necessary and proper, advisable or convenient steps for the accomplishment of the purposes set forth above, and to other related actions incidental thereto; and

WHEREAS, the City has the staff, financial resources, and expertise to facilitate and assist the Authority by the provision of human resources and payroll and other coordinated efforts to fulfill the mission of the Authority ("Administrative Services"); and

WHEREAS, the Authority, in order to accomplish its purposes and functions is in need of such Administrative Services and desires to enter into this Agreement with the City to identify such services and set forth the expectations and responsibilities of the City and the Authority in that regard; and

WHEREAS, the Parties believe that the intended relationship will continue to provide measurable benefits to the residents of the City by an increased focus on housing in general, together with increased opportunities for low income citizens of the City, thus providing good and sufficient consideration for the mutual services to be provided hereunder; and

WHEREAS, the City and the Authority mutually desire to enter into this Agreement for the purpose of setting forth their understandings and agreements in regard to the relationship of the Parties as they cooperate both fiscally and otherwise strive to provide quality and affordable housing.

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

1. Recitals.

The foregoing recitals are true and correct and are made an integral part of this Agreement as though fully set forth and incorporated herein.

2. Relationship –City/Executive Director.

2.1 Pursuant to the Bylaws of the Authority, the BHA Board of Commissioners shall employ and oversee a qualified executive director (hereinafter "Executive Director") whose responsibilities shall include, but not be limited to, those duties set forth in Section 3 below. The recruitment and hiring of the Executive Director shall be the final responsibility of the Board, provided, that upon the request of the Board, the City Manager and Human Resources Department of the City may provide such assistance and advice as requested for the preparation of a job description for the Executive Director, interviewing and recruitment. Payment of the Executive Director's compensation and fringe

benefits shall be the sole responsibility of the Authority and shall be determined in finality by engaging the services of a qualified third-party compensation consultant with the counsel and oversight of the Authority's legal counsel.

2.4 The Executive Director shall receive compensation and fringe benefits, as approved by the Board, which shall be commensurate with the Executive Director position as determined by a qualified third-party who is hired by the Authority's legal counsel at the direction and approval of the Board and shall be subject to the procedures and processes related to evaluation and termination conducted by the Board based on the suggested evaluation process of the qualified third party and/or approved Board methodology and practices.

2.5 The Executive Director and the City Manager, or his/her designee, may periodically meet to discuss the collaborative efforts of the Authority and the City toward striving to meet the affordable housing needs of the City. The City Manager may attend regular meetings of the BHA Board to be updated on the operations and financial status of the Authority.

3. Duties of the Executive Director.

3.1 **Budget.** As part of the regular budget process, the Executive Director shall be responsible for the timely preparation and submittal of the Authority's operating and capital budgets. Review and approval of the budgets by the Board will be required. Upon request of the Executive Director, the City Manager may review and comment on these budgets, however, final approval of the budgets remains the responsibility of the Board.

3.2 Assuming the Authority possesses the necessary in-house capacity, the Executive Director will be responsible for directing and managing the following in collaboration with the City Manager: development and evaluation of housing opportunities for the City as a whole which may be mutually beneficial to the Authority and the City.

4. Other Employees of the Authority.

4.1 All employees of the Authority as further defined in Section 4.2, shall be subject to the Authority's Personnel Policies and Procedures as adopted and only be required to perform Authority duties.

4.2 The Executive Director is solely responsible for the hiring or termination of Authority staff and agrees to engage in the qualified determination of appropriate job descriptions for the Authority staff for determination of compensation including fringe benefits. The employees and staff of the Authority shall be subject to the Personnel Policies and Procedures of the Authority as adopted by the Board, including, without limitation, those procedures and processes related to evaluation, discipline, and termination.

4.3 As one of the Administrative Services provided by the City for the Authority, the Human Resources Department of the City, upon request of the Executive Director, will assist the Authority in the recruitment and hiring process for employees and staff of the Authority and make recommendations to the Executive Director in the same manner as City employees and staff are recruited and hired. The City shall provide for the management of the Authority's payroll services. At all times the Authority shall maintain its own payroll system, separate from that of the City and all services shall be performed under the Authority's own Employer Identification Number ("EIN").

4.4 The Authority shall be responsible for funding the compensation and benefits of all employees and staff of the Authority.

5.0 Responsibilities of the City of Brighton.

5.1 During the term of this Agreement, the City shall provide the Administrative Services hereinafter set forth, or as requested by the Executive Director or Board, without further charge or remuneration paid by the Authority, including:

- (1) Human Resources Services,
- (2) Management of Payroll Services, to be maintained and reported using the Authority's own federal and state employer identification number (EIN),
- (3) Phone lines and equipment*,
- (4) Training opportunities,
- (5) Access to benefit pool as a participating agency, provided that the Authority has properly executed all participation agreements as requested or needed by the City and its providers,
- (6) City department rate for computer support*, and
- (7) IT assistance through the City's IT Department for equipment that is on the City's network*

* - So long as the Authority is occupying a City-owned facility.

5.2 The City may provide office space for the management, administrative and business services that are necessary and appropriate for the day-to-day administration of the operations of the Authority, including without limitation those set forth herein, in accordance with applicable law and related rules, regulations and guidelines. If such office space is provided to the Authority, for the calendar year of January 1, 2021 through December 31, 2021 it shall be at a rental rate of \$5.70/sq ft. annually to be paid in equal monthly installments, with such amount to be due and payable on the first day of each month. The parties mutually agree that the rental rate will increase annually at a rate to be negotiated annually by the City Manager and the Executive Director. At the time of the execution of this Agreement the Authority is occupying office space of 2,800 sq ft. and therefore the current monthly rental rate is \$1,330.00 (\$5.70 sq ft. x 2,800 sq ft./12 months). In the event that either the City or the Authority decides to no longer provide or use such office space, written notice shall be provided to the other Party of such intention to discontinue at least three hundred sixty-five (365)

days prior to termination of such arrangement. The Authority's occupation of such office space shall be as provided for in this paragraph and is independent of the term of this MOA. The Authority understands that pursuant to encumbrances on City property it may be necessary to execute a form of a subordination, non-disturbance and attornment agreement to utilize such space.

6.0 Responsibilities of the Authority.

6.1 **Policies and Decision Making.** The Board shall be responsible for reviewing and approving a strategic plan. Such plan shall include, without limitation, policy directives, strategic initiatives and other decisions relating to the stated purposes of the Authority which are to be carried out by the Executive Director and which are required by the U.S. Department of Housing and Urban Development for HUD funded programs and Authority staff will be responsible for preparation of the plan.

6.2 **Organization and Operation.** As a continuing condition of the Parties' obligations under this Agreement, the Authority shall at all times during the Term be and remain legally organized as a housing authority pursuant to the State Housing Authorities Law and as established by City Resolution dated September 17, 1968, authorizing the Authority to function as a separate organization for the purposes of addressing affordable housing needs in the City of Brighton. The Authority shall provide City with thirty (30) days' notice prior to any alteration or amendment to its tax-exempt status. The City will be promptly notified of any formation of a subsidiary of the Authority.

6.3 **Accounting and Financial Records.** The Authority currently administers accounting procedures, controls, and systems for the development, preparation, and safekeeping of administrative or financial records and books of account relating to the business and financial affairs of the Authority, all of which shall be prepared and maintained in accordance with generally accepted accounting principles consistently applied.

6.4 **Insurance.** Throughout the Term, the Authority shall continue to maintain with commercial carriers, through self-insurance or by some combination thereof, appropriate Board coverage for all Board members of the Authority, together with casualty and comprehensive general liability insurance, on such basis, and upon such commercially reasonable terms and conditions as the Authority deems appropriate. Upon request by the City, the Authority shall provide proof of such insurance.

6.5 The Authority shall provide at its sole expense all office furniture, equipment (computers, fax machine, copier), and office supplies, except telephones, necessary for the operation of the Authority. The City may make these items available to the Authority as a donation to the Authority, without further charge or remuneration paid by the Authority.

7.0 Term.

7.1 **Term.** The term of this Agreement shall be for the 2021 calendar year effective January 1, 2021 and terminating on December 31, 2026, provided that it shall automatically renew annually thereafter for five additional one-year terms, unless a shorter Term is caused by termination as provided below.

7.2 Termination.

7.2.1 **Termination Without Cause.** Either party may terminate this Agreement without cause at the end of each annual term or upon one-hundred and eighty day (180) prior written notice to the other party.

7.2.2 **Termination With Cause.** This Agreement may be terminated by either party upon the occurrence of any material default in the terms hereof. If either party shall give a written notice to the other that the other party has substantially defaulted in the performance of any obligation under this Agreement, and the default shall not have been cured within thirty (30) days following the giving of the written notice, the party giving written notice shall have the right to terminate this Agreement at any time following such thirty (30) day period.

7.2.3 **Termination by Agreement.** This Agreement may be terminated at any time and under such terms and conditions as the parties may agree.

7.3 **Effects of Termination.** Upon termination of this Agreement, as herein above provided, neither party shall have any further obligations under this Agreement except for obligations, promises, or covenants set forth in this Agreement that are expressly made to extend beyond the Term, including, without limitation, insurance and indemnity provision, which provisions shall survive the expiration or termination of this Agreement.

8.0 Annual Appropriation/Fund Availability.

Any payment 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 that said funds, or any part thereof, are not appropriated and/or become unavailable as determined by the City, the City may terminate this Agreement or amend it accordingly upon one-hundred and eighty day (180) prior written notice to the Authority.

Any payment obligation of the Authority pursuant to this Agreement, whether in whole or in part, is and shall be subject to and contingent upon the continuing availability of Authority funds for the payment thereof and the annual appropriation of said funds by the Authority for said purpose. In the event that said funds, or any part thereof, are not appropriated and/or become unavailable as determined by the Authority, the Authority may terminate this Agreement or

amend it accordingly upon one-hundred and eighty day (180) prior written notice to the City.

9.0 Indemnification.

9.1 The City shall, to the extent it legally may but without waiver of the rights and protections provided to it by the Colorado Governmental Immunity Act, defend, indemnify, save, and hold harmless the Authority, its commissioners, officers, agents and employees from and against any and all claims liabilities, demands, causes of action, suits, losses, costs, judgments, and damages of any kind or nature, including reasonable attorneys' fees and costs, which the Authority may incur arising out of any negligent or willful act or omission of City or its council members, officers, agents, employees in the performance of its obligations under the terms of this Agreement.

9.2 The Authority shall defend, indemnify, save and hold harmless the City, council member, officers, agents and employees from and against any and all claims, liabilities, demands, causes of action, suits, losses, cost, judgments and damages of any kind or nature, including reasonable attorneys' fees and costs, which City may incur arising out of any negligent or willful acts or omissions of the Authority or its commissioners, officers, agents, and employees in the performance of its obligations under the terms of this Agreement.

10.0 Miscellaneous.

10.1 **Notices.** Any notice, demand, or communication requires, permitted, or desired to given under this Agreement shall be in writing and shall be deemed given if delivered in person or by a reliable overnight delivery, deposited in United States first class mail, postage prepaid, or sent by facsimile with delivery verified, addressed to the parties as set forth opposite their respective names below.

BHA: Chairperson
Brighton Housing Authority
22 South 4th Avenue, Room 202
Brighton, CO 80601

With a copy to: Mark Berry, Esq.
Law Office of Mark Berry
1 Wren
Littleton, CO 80127

CITY: City Manager
City of Brighton
500 South 4th Avenue
Brighton, CO 80601

With a copy to: City Attorney

City of Brighton
500 South 4th Avenue
Brighton, CO 80601

or to another address, or to the attention of another person or officer, that either party may designate by written notice. Unless otherwise stated herein, any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been given when delivered personally to the party to whom it is directed, or when it is received if such notice is sent by a reliable overnight delivery service or by U.S. mail, with postage prepaid, or by facsimile and addressed to the last known address of the party to whom the notice is directed.

10.2 **Governing Law.** This Agreement shall be governed by the laws of the State of Colorado and shall be enforceable in the State of Colorado and venue shall be proper in the Adams County District Court.

10.3 **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to constitute a waiver of any subsequent breach of the same or another provision.

10.4 **Mediation.** Prior to filing litigation or requesting binding arbitration, the parties agree to mediate any dispute or disagreement in accordance with the procedure outlined in this section. When a party determines an unresolved dispute exists, such Party shall give the other Party a written notice to mediate ("Notice to Mediate") such unresolved dispute. The mediation shall be before an independent third party and shall be non-binding with final approval authority remaining with the Parties. In the event the Party cannot agree upon a mediator within ten (10) days after delivery of the Notice to Mediate, then either Party may apply to the presiding judge of the District Court of Adams County for the appointment of a mediator. The parties agree to enter into mediation in good faith in an attempt to resolve the dispute. In the event the parties fail to resolve the dispute by mediation within thirty (30) days following delivery of a Notice to Mediate, a Party may take such other action as may be permitted by law or in equity.

10.5 **Enforcement.** If either party resorts to legal actions to enforce or interpret any provision of this Agreement, the substantially prevailing party shall be entitled to recover the cost and expense of the action, including without limitation, reasonable attorneys' fees.

10.6 **Additional Assurances.** Except as may be specifically provided in this Agreement to the contrary, the provision of this Agreement shall be self-operative and either party shall upon the request of the other party execute any additional instruments and take any additional acts that are reasonable and that the requesting party may deem necessary to effectuate this Agreement.

10.7 **Consents, Approvals, and Exercise of Discretion.** Except as specifically stated otherwise herein, whenever this Agreement requires any consent or approval to be given by either party or either party must or may exercise discretion, the parties agree that the consent or approval shall not be unreasonably withheld or delayed and that the discretion shall be reasonably exercised.

10.8 **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, provisions, promises, covenants, and conditions of this Agreement or their application to other persons or circumstance shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. To the extent this Agreement is in violation of applicable law, the parties agree to negotiate in good faith to amend the Agreement to the extent possible to remain consistent with its purposes and to conform to applicable law.

10.9 **Division and Headings.** The division of this Agreement into articles, sections, and subsections and the use of captions and headings in connection therewith is solely for convenience and shall not affect in any way the meaning or interpretation of this Agreement.

10.10 **Amendments and Agreement Execution.** The Agreement and its amendments, if any, shall be in writing and may be executed in multiple copies on behalf of the Authority by its duly authorized officer and on behalf of City by its duly authorized officer. Each multiple copy shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

10.11 **Entire Agreement.** With respect to the subject matter of this Agreement, this Agreement supersedes all previous contracts and constitutes the entire agreement between the parties. Neither party shall be entitled to benefits other than those specified in this Agreement. No prior written material not specifically incorporated into this Agreement shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized unless incorporated by amendment as provided in this Agreement, such amendment(s) to become effective on the date stipulated in the amendment(s). The Parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements in this Agreement and upon no others.

10.12 **Authority of Parties.** By the signatures of the parties below, the City and the Authority warrant and represent that each has the authority to enter into this Agreement and has fully complied with all legal requirements related thereto.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Housing Authority of the City of Brighton and City of Brighton have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY OF BRIGHTON, COLORADO

By: _____
Greg Mills, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Jack Bajorek, City Attorney

HOUSING AUTHORITY OF THE CITY OF BRIGHTON, COLORADO

By: _____
Michelle Miller, Chairperson

ATTEST:

Joseph A. Espinosa, Executive Director & Secretary