

**INTERGOVERNMENTAL AGREEMENT CONCERNING FAIR CONTRIBUTIONS
FOR PUBLIC SCHOOL SITES BETWEEN THE CITY OF BRIGHTON AND 27J
SCHOOLS**

THIS AGREEMENT is entered into by and between the City of Brighton ("City"), a Colorado municipal corporation, and 27J Schools ("School District"), a political subdivision of the State of Colorado, to be effective as of the ____ day of _____, 2021.

RECITALS

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to C.R.S. § 29-20-105, for the purpose of planning or regulating the development of land, including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.

B. C.R.S. § 22-54-102(3)(a) authorizes local governments to cooperate with school districts through intergovernmental agreements to fund, construct, maintain, or manage capital construction projects, or other facilities as set forth in section 22-45-103(1)(c)(I)(A) or (1)(c)(I)(D), provided that funding for such projects is provided solely from a source of local government revenue that is otherwise authorized by law except impact fees or other similar development charges or fees.

C. The School District and the City wish to continue and improve close cooperation with respect to managing the orderly growth of the community by identifying potential public school site locations.

D. Growth in residential land development and the construction of new residential dwellings in the City necessitates the acquisition of additional public school sites to accommodate the corresponding increases in the student population.

E. Requiring land dedication or conveyance for public school sites or cash in lieu of land dedication or conveyance for public school sites (hereinafter collectively referred to as "Fair Contribution for Public School Sites") will provide a portion of the land to meet such demand.

F. Requiring Fair Contribution for Public School Sites for new residential construction and development is reasonable and necessary to protect, enhance, and preserve the public health, safety, and welfare of the City's citizens.

G. The City and School District, upon consideration of the impacts of new residential construction and residential land development on the ability of the School District to provide school facilities in the City, agree that it is in the best interests of the citizens of the City to mutually enter into an intergovernmental agreement for the purposes of providing for Fair Contribution for Public School Sites, as provided in this Agreement.

H. The City and School District have agreed to enter into an intergovernmental agreement to define the rights and obligations of each entity with respect to the planning, collection, and use of Fair Contribution for Public School Sites in accordance with the provisions

of the Brighton Land Use and Development Code, Article 3. Subdivision Standards, Section 3.05 Community Facilities and Fees, F. Schools, as the same may be amended from time to time.

AGREEMENT

NOW, THEREFORE, in consideration of the objectives and policies expressed in the recitals and the mutual promises contained in this Agreement, the City and School District agree as follows:

1. School Site Coordination and Development Referrals

a. The School District agrees to locate future public school sites in conformity with approved plans of the City which designate such sites (including without limitation, zoning maps, PUD's and final plats), to coordinate with developers regarding the location of such sites, and insofar as is feasible, to consult with and advise the City in writing in advance of public school facility acquisition and site development.

b. The City shall refer to the School District all residential land development applications for review and comment concerning the impact of the development on the School District and the adequacy of public school sites and facilities. The City will consider the School District's comments in conjunction with the review and processing of each individual residential development application, and will implement land dedication for public school sites or payments of cash in lieu of land dedication for public school sites consistent with this Agreement and the municipal code then in effect. If a nonresidential land development application is filed with the City that will materially influence or affect property owned by or activities conducted by the School District, the City shall also refer information pertaining to that application to the School District for review and comment. The School District agrees to promptly review the referred development application(s) and promptly submit its written comments, recommendations, and requests to the City.

2. Methodology

a. The School District has adopted a methodology to determine Fair Contribution for Public School Sites for five categories of dwelling units. The Parties agree the Methodology has been developed in a manner so as to fairly apportion the cost of acquiring public school sites made necessary by new residential development.

b. As part of the Methodology, the School District has adopted planning standards related to facility enrollment capacities, public school site acreage requirements, and student yields for each of five types of residential dwellings (single family homes, duplexes/triplexes, multi-family units, condos/townhomes, and mobile homes). The Methodology shall be the basis for computing Fair Contribution for Public School Sites for new residential construction.

c. The Methodology and its supplementary background materials shall include, but shall not be limited to, the following factors:

(1) School planning standards which establish the student yields and technical and educational specifications for facilities for each category of school facility (elementary, middle, and high school levels), consistent with the policy of the School District;

(2) The capacity demand of each category of school facility resulting from each category of residential dwelling (single family detached units, single family attached units, and multifamily units);

(3) The means for determining the per acre fair market value of land shall be established by an appraisal commissioned by the District for the property being developed. The appraisal shall be conducted at the applicant's expense to be completed at least thirty (30) days prior to the estimated date of final plat approval; and,

(4) The procedure for calculating Fair Contribution for Public School Sites required and applicable to each type of residential dwelling.

d. The City and School District agree that the framework and bases for the development and implementation of the Methodology is reasonable and that the then-current Methodology adopted by the School District shall apply to new residential development within the City.

e. The Methodology shall be updated periodically by the School District as conditions warrant, and a copy shall be furnished to the City within thirty (30) days after its adoption by the School District.

3. Fair Contribution for Public School Sites Requirements

a. As Fair Contribution for Public School Sites, any person or entity, as part of an applicable land development application shall dedicate or convey land for a public school site to the School District, or in the event the dedication of land is not deemed feasible or in the best interests of the School District as determined by the Superintendent or designee, the School District may require a payment of cash in lieu of land dedication or conveyance to the School District. The manner and amount of either type of Fair Contribution for Public School Sites shall be as determined by the School District, consistent with this Agreement and the adopted Methodology.

b. If the Fair Contribution for Public School Sites includes payment of cash in lieu of dedication of land according to paragraph 3.a. above, such dedication shall be made prior to the recording of the final plat, and the City agrees to require proof in the form of a letter from the School District superintendent that the School District has received payment of cash in lieu of land dedication before the issuance of the first residential building permit for the applicable final plat.

c. If the Fair Contribution for Public School includes the dedication of land, according to paragraph 3.a. above, such dedication shall be made prior to the recording of the final plat, and the City agrees to require proof in the form of a letter from the School District superintendent that the dedication has been made to the School District before the issuance of the first residential building permit for the applicable final plat.

4. Use of Fair Contribution for Public School Sites

a. The School District shall hold or deposit in trust for public school sites all funds it receives as Fair Contribution for Public School Sites, and all funds it may receive from the sale of land dedicated or conveyed as Fair Contribution for Public School Sites. The School District shall meet all requirements of C.R.S. 29-1-801 to -803, as applicable. The School District shall be responsible for each Fair Contribution for Public School Sites it receives. No Fair Contribution for Public School Sites shall constitute revenue of the City under the provisions of Article X, Section 20 of the Colorado Constitution.

b. The School District shall use all funds it receives as Fair Contribution for Public School Sites solely for the acquisition, development, or expansion of public school sites or for capital facilities planning, site acquisition, or capital outlay purposes. Subject to the limitations of this Agreement, the time for, nature, method and extent of such planning, acquisition, development or outlay shall be at the discretion of the School District, subject to written notice to the City describing with particularity the use to which such funds will be dedicated.

c. Except as otherwise provided in this Agreement, any funds received as Fair Contribution for Public School Sites the School District has not used for acquisition or development of public school sites within ten years of collection it shall tender for refund, with interest earned and credited according to C.R.S. Section 29-1-803, to the person who made the Fair Contribution for Public School Sites. The School District shall give written notice by first-class mail to the person who made the Fair Contribution for Public School Sites at the address as reflected in the records maintained by the School District. If the person does not file a written claim for refund of the funds with the School District within ninety (90) days of the mailing of such notice, the Fair Contribution for Public School Sites refund shall be forfeited and revert to the School District to be utilized for capital facilities or improvements that will benefit the resident for which the Fair Contribution for Public School Sites funds were paid.

d. The School District may request the City to extend the ten-year period of time upon a showing of good cause.

5. Exemptions From Fair Contribution for Public School Sites

a. The following uses within the City’s boundaries shall be excepted from Fair Contribution for Public School Sites:

- (1) Construction of any nonresidential building or structure;
- (2) Alteration, replacement, or expansion of any legally existing building or structure with a comparable new building or structure which does not increase the number of residential dwelling units;
- (3) Construction of any building or structure for limited term stay or for long-term assisted living, including, but not limited to, bed and breakfast establishments, boarding or rooming houses, family-care homes, group-care homes, halfway houses, hotels, motels, nursing homes, or hospices; and,

(4) Construction of any residential building or structure classified as housing for older persons, pursuant to the Federal Fair Housing Act then in effect.

6. Annual Report, Accounting and Audit

a. The School District shall submit an annual report on or before March 1 of each year to the City describing the School District's use of the Fair Contribution for Public School Sites funds during the preceding fiscal year.

b. The School District shall establish and maintain a separate accounting system to ensure that all Fair Contribution for Public School Sites funds are used according to this Agreement.

7. The School District shall cause an audit to be performed annually of the Fair Contribution for Public School Sites funds it receives, uses or expends under this Agreement and a copy furnished to the City no later than March 30 of the succeeding year.

8. Term of Agreement

a. The term of this Agreement shall commence on the Effective Date, and continue for a period of ten (10) years thereafter unless renewed, or extended by the mutual consent of the City and the School District. However, either party may terminate this Agreement, at any time and for any reason, upon one (1) year's written notice to the other party.

9. Other Agreement Provisions

a. **Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or served by facsimile. Notice shall also be sufficient if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below. Such notice shall be deemed to have been given when received by the other party.

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

27J Schools
Attention: Superintendent
18551 E 160th Avenue
Brighton, CO 80601

b. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought only in the County of Adams, State of Colorado.

c. **Severability.** If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be invalid or unconstitutional for any reason, such decision shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

d. **Recording.** The School District and the City may record this Agreement, and both parties shall receive a copy of the recorded Agreement in such event.

e. **Compliance with Law.** This Agreement shall be administered consistent with all current and future laws, rules, ordinances, and regulations concerning land dedication or conveyance for public school sites, or payment of cash in lieu of land dedication or conveyance for public school sites.

f. **No Third Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities only as to the parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.

g. **Financial Obligations.** This Agreement shall not be deemed a pledge of the credit of the City or the School District, or a collection of payment of guarantee by the City to the School District. Nothing in this Agreement shall be construed to create a multiple-fiscal year direct or indirect municipal debt or municipal financial obligation.

h. **Amendments.** This Agreement may be amended only by mutual agreement of the parties and shall be evidenced by a written instrument authorized and executed with the same formality as according in this Agreement.

i. **Waiver.** A waiver by any party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

j. **Execution.** This Agreement shall not be binding upon any party hereto unless and until the governing entities of each party have formally approved this Agreement as required by law and caused the Agreement to be signed in a manner and by authorized persons consistent with applicable statute, policy, ordinance or resolution.

k. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which shall be in full force and effect the day and year first above written.

CITY OF BRIGHTON

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

APPROVED AS TO LEGAL FORM:

LENA McCLELLAND, Acting City Attorney

27J SCHOOLS

President, Board of Education

ATTEST:

Secretary

APPROVED AS TO LEGAL FORM:

School District Attorney