MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF BRIGHTON
AND
BRIGHTON SCHOOL DISTRICT 27J
REGARDING
NON-POTABLE IRRIGATION CONNECTION AND SERVICE

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of the ___ day of July, 2015, by and between the CITY OF BRIGHTON, a Colorado home rule municipality whose principal address is 500 South 4th Avenue, Brighton, CO 80601 ("City"), and BRIGHTON SCHOOL DISTRICT 27J, a Colorado School District and political subdivision of the State of Colorado whose principal address is 18551 East 160th Avenue, Brighton, Colorado 80601 ("District"), as follows:

WHEREAS, the City provides potable and non-potable water utility services to its municipal customers, including the District; and

WHEREAS, the District owns and operates certain school properties and related District facilities located within the City (the "District Properties") which properties and facilities currently receive municipal water service from the City; and

WHEREAS, the parties desire to cooperate in the conversion and provision of water services to certain District Properties, over time, from potable service to non-potable service, for the outdoor irrigation of school grounds, common areas, ball-fields, and the like, using non-potable water; and

WHEREAS, the parties have agreed in good faith to enter this MOU in order to establish the parties' respective rights and obligations related to such conversion and provision of municipal water services, from potable to non-potable service, for the District Properties identified herein; and

WHEREAS, the City finds that it is in the public interest, and in furtherance of the general public health, safety and welfare, to efficiently use its municipal water resources, and to utilize when practicable non-potable water resources for outdoor irrigation purposes; and

WHEREAS, the District also finds that it is in the District's interest to convert its outdoor irrigation systems from potable to non-potable water resources, such that the District can, over time, preserve its financial resources and efficiently utilize water resources for the public good.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual agreements herein contained, and for other good and valuable consideration, the parties agree as follows:

1. District Properties; Service Locations. The following District Properties currently utilize potable water for outdoor irrigation purposes. The parties to this MOU desire and intend that the outdoor irrigation systems for these District Properties should be converted from potable to non-potable water service: (a) 801 Southern Street; (b) 950 Southern Street; (c) 1690 Skeel Street; and (d) 350 South 10th Avenue. The District may request that additional District properties and facilities be included in this MOU, subject to the parties' mutual agreement and joint written modification of this MOU.

2. Non-Potable Service Connections. Brighton shall cause the requisite water connections to occur at the District Properties (including taps, meters, and vaults), such that the affected irrigation systems are converted from potable to non-potable within a commercially reasonable time after the parties execute this MOU. The parties reasonably anticipate that potable water outdoor irrigation systems can be

disconnected, and non-potable systems connected, during the summer months prior to the 2015-2016 school year. Both parties acknowledge that it is environmentally and economically responsible, desirable, beneficial and prudent for the District Properties to utilize non-potable water for outdoor irrigation purposes, and that the conversion contemplated by this MOU will advance the public good and result in the efficient use of valuable public resources.

3. Tap Fees; Meters and Vaults; Water Service Rates. The parties acknowledge that the District previously provided tap fees for existing service connections. As consideration for the non-potable conversion, which is intended to promote conservation of the City's water resources, the City agrees to provide non-potable taps at no additional charge, and shall install the requisite meter and vault improvements needed to accommodate the non-potable connections. The District hereby grants to the City such reasonable and customary rights of access to the District Properties for purposes of making all connections contemplated by this MOU. On a monthly basis commencing on the date of completion of said project and continuing for sixty (60) months thereafter, the District shall pay the City's established volume-based rate for water services, currently set by Ordinance No. 2185, Section 2, part (f) subpart 1(c) *Commercial, Industrial, Mixed Use – Outdoor Irrigation Uses*, as the same may be amended by the City from time to time, and as directed by the Office of the Director of Utilities. In 2015 this rate is currently $8.10/1,000 gallons of usage. At the end of the 60 month period, the District shall pay the City's then-established volume-based rate for water services, currently set by Ordinance No. 2185, Section 2, part (f) subpart 1(f) *Non-Potable Irrigation*, as the same may be amended by the City from time to time, and as directed by the Office of the Director of Utilities. In 2015 this rate is currently $3.00/1,000 gallons usage.

4. General Provisions.

a. No Partnership or Agency. Nothing in this MOU shall be deemed to create a partnership, joint venture or agency relationship.

b. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this MOU and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the parties hereto shall be deemed to be only an incidental beneficiary under this MOU.

c. No Waiver. The waiver of any breach of a term, provision or requirement of this MOU shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this MOU.

d. Governing Law and Venue; Recovery of Costs. This MOU shall be governed by the laws of the State of Colorado. Venue for any dispute shall be in Adams County, Colorado. In the event legal action is brought to resolve any dispute among the parties related to this MOU, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the other party.

e. Governmental Immunity. No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq.

f. Entire Agreement; Binding Effect. This MOU contains the entire agreement of the parties relating to the specific subject matter hereof and, except as provided herein, this MOU may not be modified or amended except by written agreement of the parties. This MOU shall be

binding upon, and shall inure to the benefit of, the parties and their respective personal representatives, successors and assigns.

g. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this MOU on behalf of the parties and to bind the parties to its terms.

h. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

i. Headings. Paragraph headings used in this MOU are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this IGA.

j. Severability. In the event a court of competent jurisdiction holds any provision of this MOU invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this MOU.

IN WITNESS WHEREOF, the City and the District have executed this MOU as of the date first written above.

CITY OF BRIGHTON

_____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

Approved as to form:

_____
Margaret R. Brubaker, City Attorney

BRIGHTON SCHOOL DISTRICT 27J

_____
Dr. Chris Fiedler, Superintendent

ATTEST:

_____
Secretary