

**INTERGOVERNMENTAL AGREEMENT
REGARDING REIMBURSEMENT OF PARK IMPACT FEES FOR THE
CONSTRUCTION OF VENTURE PARK**

THIS INTERGOVERNMENTAL AGREEMENT (this “**IGA**”) is made and entered into this ____ day of _____ 2024, by and among THE CITY OF BRIGHTON, COLORADO, a home rule municipal corporation (the “**City**”); BROOKFIELD RESIDENTIAL (COLORADO), LLC, a Nevada limited liability company (“**Brookfield**”); BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 4, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District No. 4**”); BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 6, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District No. 6**”); and THE BRIGHTON CROSSINGS OPERATIONS BOARD, a contractual authority and political subdivision of the State of Colorado (the “**Operations Board**”). The City, Brookfield, District No. 4, District No. 6, and the Operations Board may be referred to herein each as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, on June 4, 1985, The Brighton Company, a predecessor in interest to BROOKFIELD RESIDENTIAL (COLORADO), LLC, a Nevada limited liability company (“**Brookfield**”), entered into that certain Annexation Agreement with the City, recorded on July 31, 1985, at Reception Number B589624 in the real property records of Adams County, Colorado (the “**Records**”), as was subsequently amended on December 16, 1986, November 11, 1994, May 28, 1996, and November 4, 1997 (collectively as amended, the “**Annexation Agreement**”), which discuss responsibilities regarding various public improvements in what is now known as the Brighton Crossings development; and

WHEREAS, the City, CARMA Colorado, Inc., Brookfield’s predecessor in interest, and Bromley Park Metropolitan District Nos. 1-4 entered into that certain Development Agreement for Brighton Crossing Filing No. 2 dated December 17, 2002 (the “**Development Agreement**”), which addresses the construction of public improvements, including community parks, within Brighton Crossings; and

WHEREAS, pursuant to an Order entered by the District Court of Adams County (the “**Court**”) on April 29, 2003, Bromley Park Metropolitan District No. 4 legally changed its name to Brighton Crossing Metropolitan District No. 4; and

WHEREAS, on October 20, 2015, the City, Brookfield, and District No. 4 entered into the First Amendment to the Development Agreement (the “**First Amendment to Development Agreement**”), which addresses construction and maintenance of parks within the District and provides that the City and District No. 4 will enter into an agreement addressing issues related to park development and fees related to the community park to be located within portions of Tract W and Tract WWW, Brighton Crossing Filing No. 2 (“**Venture Park**”); and

WHEREAS, the City, Brookfield, and District No. 4 entered into that certain Brighton Crossing Filing No. 2, 4th Amendment Development Agreement dated September 19, 2017 (the “**Fourth Amendment Development Agreement**” and together with the Annexation Agreement,

Development Agreement, and First Amendment to Development Agreement, the “**Prior Agreements**”); and

WHEREAS, the property has been platted through a series of plans approved by the City, namely Brighton Crossing Filing No. 1, recorded on December 20, 2001, at Reception Number C0902984 in the Records; Brighton Crossing Filing No. 2, recorded on December 31, 2002, at Reception Number C1074039 in the Records; Brighton Crossing Filing No. 2, First Amendment, recorded on December 31, 2002, at Reception Number C1074114 in the Records; Brighton Crossing Filing No. 2, Second Amendment, recorded on July 22, 2013, at Reception Number 2013000063032 in the Records; Brighton Crossing Filing No. 2, Third Amendment, recorded on November 10, 2015, at Reception Number 2015000094404 in the Records; Brighton Crossing Filing No. 2, Fourth Amendment, recorded on October 13, 2017 at Reception Number 2017000089857 in the Records; Brighton Crossing Filing No. 3, recorded on January 30, 2004, at Reception Number C1271524 in the Records; Brighton Crossing Filing No. 3, Second Amendment, recorded on December 13, 2013, at Reception Number 2013000104329 in the Records; Brighton Crossing Filing No. 3, Third Amendment, recorded on January 26, 2015, at Reception Number 2015000005580 in the Records; Brighton Crossing Filing No. 3, Fourth Amendment, recorded on October 22, 2015, at Reception Number 2015000088645 in the Records; and Brighton Crossing Filing No. 6, recorded on November 14, 2023 at Reception Number 2023000063864 (together, the “**Development**”); and

WHEREAS, the Parties desire to enter into this IGA to clarify and establish each Party’s respective rights and obligations related to the construction of Venture Park.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. Effect of Prior Agreements. In the event of any conflict between the terms set forth in this IGA and the terms set forth in any of the Prior Agreements, the terms of this IGA shall govern. To the extent there is no conflict between the terms set forth in this IGA and the terms set forth in any of the Prior Agreements, the terms and provisions of the Prior Agreements shall remain in full force and effect.

2. Assignment from District No. 4 to District No. 6. District No. 4 assigns, transfers, and conveys to District No. 6 all its outstanding right, title, and interest in the Prior Agreements, the contents of which are incorporated herein by this reference. District No. 6 accepts said assignment from District No. 4, District No. 6 shall be hereby substituted in place of District No. 4 in the Prior Agreements, District No. 6 shall be entitled to the benefit of the covenants under the Prior Agreements, and District No. 6 shall assume all remaining duties and obligations of District No. 4 under the Easement Agreement. The City and Brookfield hereby consent to the assignment from District No. 4 to District No. 6.

a. Ability to Assign Rights and Obligations to Operations Board. District No. 6 may in the future determine to assign all or a portion of its rights and obligations to the Operations

Board. The Operations Board, District No. 4, the City, and Brookfield hereby consent to any such future assignment. In the event of such assignment, District No. 6 shall provide a copy of the assignment agreement to the City.

3. Construction, Ownership, and Maintenance of Community Parks.

a. Construction of Community Parks. District No. 6 and Brookfield has caused or will cause the construction of the park improvements (the “**Park Improvements**”) in Tracts A, B, C, and E in Brighton Crossing Filing No. 1; Tracts C, Q, W, and WW in Brighton Crossing Filing No. 2; Tract F Brighton Crossing Filing No. 2, 3rd Amendment; and Tract Q in Brighton Crossing Filing No. 3 (the “**Parks**”). In the event that District No. 6 constructs any of the Park Improvements to be dedicated to the City, District No. 6 shall be responsible for obtaining acceptance of such Park Improvements by the City, subject to such relevant governmental entity’s requirements, policies, and procedures for the acceptance of public improvements. To the extent that District No. 6 does not construct required Park Improvements on any of the Parks, Brookfield shall construct such required Park Improvements. In the event that Brookfield constructs any of the Park Improvements, Brookfield shall be responsible for obtaining acceptance of such Park Improvements by the City, District No. 6, or another governmental entity, if applicable, subject to such relevant governmental entity’s requirements, policies, and procedures for the acceptance of public improvements.

b. Ownership of Parks.

i. **City Parks.** The Parties hereby acknowledge that the City currently owns Tract W in Brighton Crossing Filing No. 2, and, following construction of the Park Improvements on Tract W (the “**City Parks**”), all such Park Improvements on Tract W will also be dedicated to the City subject to the City’s policies and procedures for dedication and acceptance of improvements. The City hereby authorizes Brookfield and District No. 6 all access necessary to Tract W to construct the Parks Improvements thereon.

ii. **District Parks.** Tracts A, B, C, and E in Brighton Crossing Filing No. 1; Tracts C, Q and WW in Brighton Crossing Filing No. 2, and Tract F Brighton Crossing Filing No. 2, 3rd Amendment (the “**District Parks**”), and all Park Improvements thereon, have been or shall be dedicated to District No. 6 or the Operations Board for ownership, pursuant to the requirements, policies, and procedures for acceptance of improvements, including compliance with all relevant agreements between Brookfield and District No. 6 or the Operations Board regarding acquisition of improvements.

c. Maintenance of Parks.

i. During Construction and Warranty Period. To the extent that Brookfield constructs park improvements in the District Parks, following construction and during the applicable warranty period prior to acceptance by District No. 6 or the Operations Board, Brookfield shall be responsible for the maintenance of such Park Improvements. Notwithstanding the foregoing, nothing herein shall prevent Brookfield or District No. 6 from entering into a maintenance agreement with the Operations Board for maintenance of the Park Improvements.

ii. After Final Acceptance. Following dedication of the City Parks to the City, acceptance by the City of the City Parks, and the expiration of any applicable warranty period, the City shall be responsible for maintaining the City Parks at its sole cost. Following dedication of the District Parks to District No. 6, acceptance by District No. 6 of the District Parks, District No. 6 shall be responsible for maintaining the District Parks.

d. Irrigation Water. The City shall allow connection from the Parks irrigation system to the City's potable water distribution system, with all costs to be borne by Brookfield. If a non-potable system is available following Initial Acceptance to serve Venture Park, the City shall be responsible for, but not obligated to, connect to the non-potable system.

4. Collection and Reimbursement of Fees.

a. Definitions of Fees.

i. **"Fee-in-Lieu of Water Dedication"** shall mean any fee charged by the City for water rights acquisition, plus reasonable related engineering fees, legal fees, and court costs, related to the City's provision of water service to the Parks.

ii. **"Park Development Fee"** shall mean the fee charged by the City at the time of issuance of a building permit within the Development for the construction and development of Parks.

iii. **"Water Plant Investment Fee"** shall mean the fee charged by City the City to reimburse the City for its costs in providing water and water system improvements for the property for which the fee is assessed.

b. Distribution of Fees for Development.

i. Park Development Fees.

(1) Collection of Park Development Fees. The City has caused or shall cause collection of the Park Development Fee within the Development at the time of building permit issuance, in the amount as set from time to time by the City, from entities that have applied for residential building permits for property within the Development and shall remit all said fees collected to District No. 6 pursuant to the terms of this IGA. Collection of the Park Development Fee pursuant to this IGA shall be made not later than the time of building permit issuance.

(2) Prior Park Development Fees Collected. As of the date of this IGA, the City has caused collection of Park Development Fees for the Development in the amount of \$1,446,055.00 (the **"Collected PD Fees"**). As of the date of this IGA, no Collected PD Fees have been remitted to Brookfield, District No. 4, or District No. 6.

(3) Remittance of Park Development Fees. Within 30 days of Initial Acceptance of the Parks, the City shall remit the Collected PD Fees to District No. 6. Following Initial Acceptance of Venture Park, District No. 6 shall request remittance of the Park Development Fees from the City, with such request supported by applicable invoices. The City

shall remit all outstanding Park Development Fees collected related to building permits within the Development to District No. 6 four (4) times per calendar year, not later than the thirtieth (30th) day after the end of every fiscal calendar quarter (i.e., by the end of every April, July, October, and January), until all Park Development Fees have been collected and remitted hereunder.

(4) Appropriation of Park Development Fees by District No. 6.

District No. 6 shall only apply the remitted Park Development Fees to the following approved eligible costs: (1) design and construction of Park Improvements on or related to Venture Park; (2) reimbursement of Brookfield for design and construction of Venture Park, after certification of the same in accordance with District No. 6's policies and procedures; (3) reimbursement of Brookfield for Fee-in-Lieu of Water Dedication for Venture Park; and (4) reimbursement of Brookfield for the Water Plant Investment Fee for Venture Park (the "**Eligible Costs**").

(a) Accounting of Appropriated Park Development Fees. No later than October 31st of each year, District No. 6 shall remit a sufficiently detailed accounting to the City documenting the appropriation of the Park Development Fees to Eligible Costs (the "**Accounting**"). If the City disputes the appropriation of Park Development Fees, the City shall notify District No. 6 of such dispute in writing within thirty (30) days of City's receipt of the Accounting (the "**Dispute**"). District No. 6 shall have thirty (30) days of receipt of the Dispute to respond to the City in writing. If the Dispute is not resolved by District No. 6's response, then the City and District No. 6 shall submit the dispute to an independent engineering firm mutually agreeable to the City and District No. 6 (the "**Engineering Firm**"), whose findings shall be binding on the City and District No. 6. The fees and expenses of the Engineering Firm shall be split equally between the City and District No. 6, unless otherwise agreed.

5. General Provisions.

a. Assignment. Except as provided in Section 2, the Parties shall not assign this IGA, parts thereof, or their respective duties, without the express written consent of each Party. Any attempted assignment of this IGA in whole or in part with respect to which the Parties have not consented, in writing, shall be null and void and of no effect whatsoever.

b. Default. If any Party fails to perform in accordance with the terms, covenants and conditions of this IGA, or is otherwise in default of any of the terms of this IGA, any non-defaulting Party shall deliver written notice to the defaulting Party of the default, at the address specified in Section 5.d. below, and the defaulting Party will have thirty (30) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such thirty (30)-day period and the defaulting Party gives written notice to the non-defaulting Parties within such thirty (30)-day period that it is actively and diligently pursuing a cure, the defaulting Party will have a reasonable period of time given the nature of the default following the end of the thirty (30)-day period to cure the default, provided that the defaulting Party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this IGA is not cured as described above, the non-defaulting Parties will, in addition to any other legal or equitable remedy, have the right to terminate this IGA and enforce the defaulting Party's obligations pursuant to this IGA by an action for injunction or specific performance.

c. Termination. The City, Brookfield, or District No. 6 may terminate this IGA for cause at any time upon written notice to the other Parties setting forth the cause for termination and the notified defaulting Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 5.b.

d. Notices. Any notice or communication required under this IGA must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the Party to whom it is addressed. Any Party hereto may at any time, by giving written notice to the other Party hereto as provided in this Section 5.d. of this IGA, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

City:	City of Brighton City Manager 500 South 4 th Avenue Brighton, CO 80601
With a Copy to:	City of Brighton City Attorney 500 South 4 th Avenue Brighton CO, 80601
Brookfield:	Brookfield Residential (Colorado), LLC Attn: Ashley Tarufelli 6465 S. Greenwood Plaza Blvd., Suite 700 Englewood, CO 80112
With a Copy to:	David Wm. Foster Foster Graham Milstein & Calisher, LLP 360 South Garfield St., Suite 600 Denver, CO 80209
District No. 6:	Brighton Crossing Metropolitan District No. 6 c/o Pinnacle Consulting Group, Inc. 550 W. Eisenhower Blvd. Loveland, CO 80537
With a Copy to:	WHITE BEAR ANKELE TANAKA & WALDRON

2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Attention: Blair M. Dickhoner, Esq.

District No. 4: Brighton Crossing Metropolitan District No. 4
c/o Pinnacle Consulting Group, Inc.
550 W. Eisenhower Blvd.
Loveland, CO 80537

With a Copy to: WHITE BEAR ANKELE TANAKA & WALDRON
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Attention: Blair M. Dickhoner, Esq.

Operations Board: Brighton Crossings Operations Board
c/o Pinnacle Consulting Group, Inc.
550 W. Eisenhower Blvd.
Loveland, CO 80537

With a Copy to: WHITE BEAR ANKELE TANAKA & WALDRON
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Attention: Blair M. Dickhoner, Esq.

e. Binding Agreement. This IGA shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

f. No Waiver. No waiver of any of the provisions of this IGA shall be deemed to constitute a waiver of any other of the provisions of this IGA, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this IGA, nor shall the waiver of any default be deemed a waiver of any subsequent default.

g. Governing Law.

i. Venue. Venue for all actions arising from this IGA shall be in the District Court in and for Adams County. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, forum non-conveniens or otherwise.

ii. Choice of Law. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

h. Good Faith of Parties. In the performance of this IGA, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold,

condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this IGA.

i. Governmental Immunity. Nothing in this IGA shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the City, District No. 4, District No. 6, their respective officials, employees, contractors, or agents, or any other person acting on behalf of the City, District No. 4, or District No. 6, and, in particular, governmental immunity afforded or available to the City, District No. 4, or District No. 6 pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.

j. Severability. If any portion of this IGA is declared by any court of competent jurisdiction to be invalid, void, or unenforceable, such decision shall not affect the validity of any other portion of this IGA which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

k. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this IGA shall give or allow any such claim or right of action by any other third party on such IGA. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this IGA shall be deemed to be an incidental beneficiary only.

l. Counterpart Execution. This IGA may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this IGA on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this IGA.

THE CITY:
CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Yasmina Gibbons, Deputy City Attorney

[Signatures continue on following page]

IN WITNESS WHEREOF, the Parties have executed this IGA on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this IGA.

DISTRICT NO. 4:

BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 4, a quasi-municipal corporation and political subdivision of the State of Colorado



John Strider (Mar 26, 2024 13:01 MDT)

Officer of District No. 4

ATTEST:



Jeffrey Schum (Mar 23, 2024 07:17 MDT)

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel for District No. 4

[Signatures continue on following page]

IN WITNESS WHEREOF, the Parties have executed this IGA on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this IGA.

DISTRICT NO. 6:

BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 6, a quasi-municipal corporation and political subdivision of the State of Colorado

Matt Haley

Matt Haley (Mar 28, 2024 13:23 MDT)

Officer of District No. 6

ATTEST:

Lyndsey Paavilainen

Lyndsey Paavilainen (Mar 25, 2024 13:43 MDT)

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

Bob Dh

General Counsel for District No. 6

[Signatures continue on following page]

IN WITNESS WHEREOF, the Parties have executed this IGA on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this IGA.

OPERATIONS BOARD:

BRIGHTON CROSSINGS OPERATIONS BOARD, a contractual Authority and political subdivision of the State of Colorado

Christopher Bremner

Christopher Bremner (Mar 25, 2024 18:07 MDT)

Officer of Operations Board

ATTEST:

Matt Haley

Matt Haley (Mar 28, 2024 13:23 MDT)

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel for Operations Board

[Signatures continue on following page]

IN WITNESS WHEREOF, the Parties have executed this IGA on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this IGA.

BROOKFIELD:

BROOKFIELD RESIDENTIAL
(COLORADO), LLC, a Nevada limited liability
company

SC Thomas

Printed Name **Sandra C. Thomas**
Senior Vice President

Title _____

AND

[Signature]

Printed Name **Peter Lauener**
President

Title _____

STATE OF COLORADO)
) ss.
COUNTY OF *Arapahoe*)

The foregoing instrument was acknowledged before me this *21* day of *March*,
2024, by *Sandi Thomas*, as the *Senior Vice President* and , by
Peter Lauener, as the *President* of Brookfield Residential (Colorado),
LLC.

Witness my hand and official seal.

My commission expires: *8-31-2024*



Janelle Kelley
Notary Public