

INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES

This INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES ("**Agreement**") is entered into by and between the City of Brighton ("**City**") and the Greater Brighton Fire Protection District ("**District**"). The City and the District are referred to collectively as the "**Parties**" or individually as a "**Party**".

RECITALS

WHEREAS, the City is a home rule municipality of the State of Colorado ("**State**"), and the District is a political subdivision of the State organized pursuant to the Special District Act, C.R.S. § 32-1-101, *et seq.*;

WHEREAS, the District was organized to provide fire protection, rescue, and emergency services (collectively, "**Emergency Services**"), as well as other services including fire suppression, public education, hazardous materials, emergency medical, and ambulance services, to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction, either directly or through third-party providers;

WHEREAS, pursuant to §32-1-1002(1)(d.5), the District has authority to receive and spend impact fees or other similar development charges imposed pursuant to the provisions described in §29-20-104.5, C.R.S.;

WHEREAS, the District obtained an Impact Fee Study dated [REDACTED], 2017 to evaluate the nexus between new development within the District's jurisdictional boundaries and the projected impact that such development has on the District's Capital Facilities ("**Nexus Study**"). The Nexus Study recommended an Impact Fee schedule for both residential and non-residential development at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities ("**Impact Fee Schedule**");

WHEREAS, on [REDACTED], 2017, the District's Board of Directors ("**Board**") adopted a Resolution approving the Impact Fee Schedule recommended by the Nexus Study. A copy of the approved Impact Fee Schedule is attached as **Attachment 1**; and,

WHEREAS, in accordance with C.R.S. § 29-20-104.5(2)(c), the Parties desire to enter into this Agreement to define the District Impact Fee, and the details of assessment, collection, and remittance, all in accordance with the requirements of C.R.S. § 29-20-104.5 ("**Act**").

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Definitions. In addition to the definitions provided elsewhere in this Agreement, the terms "**Development Permit**" and "**Capital Facility(ies)**" shall be defined as provided in Sections 29-20-103(1) and 29-20-104.5(4), C.R.S., respectively, including any amendments thereto.

2. Establishment of District Impact Fee.

a. The City agrees to impose an impact fee on new development that currently is located within both the City and the District, or that in the future becomes located within the City and the District, in accordance with the Impact Fee Schedule attached as **Attachment 1**, subject to inflation as set forth herein ("**District Impact Fee**"). The District Impact Fee shall be imposed on all new development for which a development application is submitted to the City on or after [REDACTED], 2017. On December 31 of each year to be

effective for any District Impact Fees collected beginning on January 1 of the following year, the fees set forth in the attached Impact Fee Schedule (or any Updated Impact Fee Schedule as defined below) shall automatically be adjusted by the increase, if any, in the Denver-Boulder-Greeley Consumer Price Index for All Urban Consumers (CPI-U) over the preceding year.

b. The District will update the Nexus Study no less frequently than every seven years ("**Updated Nexus Study**"). If the Updated Nexus Study recommends any changes to the Impact Fee Schedule, then by September 1 of the then-current calendar year, the District Board shall, after considering such recommendations, adopt a Resolution approving an updated Impact Fee Schedule at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities ("**Updated Impact Fee Schedule**"). On or before September 10 of the then-current calendar year, the District shall submit to the City a copy of: (i) the Updated Impact Fee Schedule; (ii) the Resolution approving the Updated Impact Fee Schedule; and, (iii) the Updated Nexus Study. Unless the City objects to the Updated Impact Fee Schedule in accordance with Section 5 below, a copy of the Updated Impact Fee Schedule shall be effective January 1 of the following calendar year.

3. Procedures for Assessment, Collection, and Remittance.

a. At the time the City issues a schedule of the various estimated fees to a developer, it shall include the applicable District Impact Fee, with the statement that the developer may confer with the District as to whether the parties agree an In-Kind Contribution by the developer can be made in lieu of paying the District Impact Fee. If the developer chooses to confer with the District and the District agrees to accept an In-Kind Contribution, the District shall give the City written notice of that fact before the City issues the final Building Permit Invoice to the developer. If the City receives such notice, it shall remove the District Impact Fee from the final Building Permit Invoice it issues to the developer. Unless the City timely receives written notice from the District that it has agreed to accept an In-Kind Contribution, the City shall include the District Impact Fee in the final Building Permit Invoice it issues to the developer.

b. Unless the Parties mutually agree in writing to another procedure, the City shall collect any District Impact Fee owed by the developer at the same time the City collects all other fees from the developer. The City shall direct the developer to pay the District Impact Fee by separate check made out to the District. The City shall promptly deliver the check to the District. The City shall not issue a building permit in connection with the new development until it has received the developer's check for the District Impact Fee.

c. No developer shall be required to provide any site-specific dedication or improvement to meet the same need for Capital Facilities for which the District Impact Fee is imposed, and no District Impact Fee shall be imposed on a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily contributed money for such other Capital Facility.

d. The District shall account for all District Impact Fees in accordance with Part 8 of Article 1 of Title 29, Colorado Revised Statutes.

e. Nothing contained in this Agreement shall invalidate any existing agreement for impact fees or development charges between the District and a developer to pay for Capital Facilities.

f. Notwithstanding any provision in this Agreement to contrary, the City may waive or reduce a District Impact Fee on the development of low- or moderate- income housing or affordable employee housing, as defined by the City ("**Low Income/Affordable Housing Development**"), or on any other development, if the City is waiving or reducing all other development-related fees the City otherwise would assess on the development. In the case of a reduction in a District Impact Fee, the City may only reduce the

amount of a District Impact Fee in the same proportion that the City is reducing all other development-related fees the City assesses on the development.

4. Effective Date and Term. This Agreement is effective as of the date the last Party signs this Agreement, and shall continue in effect until terminated in accordance with its terms.

5. Termination.

- a. The Parties may at any time mutually agree in writing to terminate this Agreement.
- b. The District may at any time terminate this Agreement upon 30 calendar days prior written notice to the City.
- c. Within 30 calendar days of receiving an Updated Impact Fee Schedule and an Updated Nexus Study, the City may send the District written notice that it objects to the Updated Impact Fee Schedule. The Parties shall promptly meet to determine if they can agree upon a mutually acceptable Updated Impact Fee Schedule, or to continue the then-current Impact Fee Schedule. If the Parties are unable to agree upon a mutually acceptable Updated Impact Fee Schedule, or to continue the then-current Impact Fee Schedule, the City may terminate this Agreement upon 30 calendar days prior written notice to the District, and the City shall cease imposing the District Impact Fee as of the effective date this Agreement is terminated.

6. Default. If either Party defaults in its performance under this Agreement, the non-defaulting Party shall notify the defaulting Party of the default. The defaulting Party shall have the right to cure, or to make substantial efforts to cure, the default within 10 calendar days after the non-defaulting Party's notice of default is given. If the defaulting Party fails to cure, or to make substantial efforts to cure, the default within the 10 day period, the non-defaulting Party, at its option, may immediately terminate this Agreement or may elect to treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, then the non-defaulting Party shall have the right to bring an action for any remedy available to such Party in equity or at law.

7. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

8. Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the matters covered by it, and supersedes any prior understanding or agreements, oral or written, with respect thereto.

9. Notices and Requests. Any notice permitted or required by this Agreement shall be in writing and shall be hand-delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the following addresses. Notices are effective upon receipt.

City of Brighton

Attn: [REDACTED]

[REDACTED]
[REDACTED]

Greater Brighton Fire Protection District

Attn: Fire Chief

[REDACTED]
[REDACTED]

10. Miscellaneous. Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the Adams City District Court. This Agreement may be amended only by a document signed by the Parties. Course

of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives and successors. Neither Party shall assign this Agreement. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF BRIGHTON, a Home Rule
Municipality of the State of Colorado

**GREATER BRIGHTON FIRE PROTECTION
DISTRICT**, a political subdivision of the State of
Colorado

By: _____
Name Title

By: _____
_____, Board President

Date: _____

Date: _____

ATTESTED:

ATTESTED:

_____, City Clerk

_____, Board Secretary

GREATER BRIGHTON FIRE PROTECTION DISTRICT
EMERGENCY SERVICES IMPACT FEE SCHEDULE
Effective , 2017

Residential	
Unit Type	Fee Per Dwelling Unit
Single Family	\$_____
Multifamily	\$_____

Nonresidential (Commercial, Industrial, etc.)	
Fee Per Square Foot	\$_____

No individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed pursuant to this schedule.