

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Agreement") is made and entered into effective January 1, 2013 ("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, appointed by the Mayor of the City with the concurrence of the members of the City Council and the chief administrative officer of the Authority is the Executive Director ("Executive Director"); 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) Eliminating 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) Partnering with the City for 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 future participants of the Housing Choice, Public Housing and Development programs;

(5) Benefiting the residents of the City by providing programs and residences free from crime, violence and drug use as described in the program policy regulations; and .

(6) Doing everything necessary and proper, advisable or convenient for the accomplishment of the purposes set forth above, and to do all other things incidental thereto; and

WHEREAS, the City has the staff, financial resources, and expertise to facilitate and assist the Authority by the provision of general management, business advice, program performance, administrative, fiscal, and accounting services (“Management and Administrative Services”); and

WHEREAS, the Authority, in order to accomplish its purposes and functions is in need of such Management and 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 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 to provide quality and affordable housing for all citizens within the City.

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 shall provide such assistance and advice as requested for the preparation of a job description for the Executive Director, interviewing, recruitment, suggested compensation, fringe benefits and other terms of employment as may be appropriate. Payment of the Executive Director's compensation and fringe benefits shall be the sole responsibility of the Authority.

2.2 The City Manager may offer comments and recommendations to the BHA Board of Commissioners regarding hiring, evaluation, direction, discipline and/or termination of the Executive Director.

2.3 At such time as the Board adopts a job description, compensation, and fringe benefits payable to the Executive Director, it agrees to consider the then current Personnel Policies of the City, and the City's Compensation Plan including fringe benefits available to other City Department Directors, for adoption by the Board. The Authority agrees that the City's provision of Management and Administrative Services as required by the Agreement will be facilitated by the Board's adoption of the City's Compensation Plan and that should the same not be adopted by the Board, the City, in consultation with the Authority, may charge an additional reasonable fee to the Authority, as agreed to by the Authority, for such services or discontinue or limit the Management and Administrative Services provided by the City as set forth herein.

2.4 The Board has adopted the Personnel Policies and Procedures of the City. The Executive Director shall receive compensation and fringe benefits, as approved by the Board, which shall be commensurate with the position as a department director reflected in the City's Compensation Plan and shall be subject to the procedures and processes related to evaluation and termination conducted by the Board.

2.5 The Executive Director shall update the City Manager periodically regarding the functions, financial practices and operations of the Authority and provide such information and reports evidencing the effective control over and accountability for all funds, property, and other assets used and/or attained by the Authority as overseen by the BHA Board of Commissioners. Either the City Manager or the Executive Director may request a special meeting regarding this. Pursuant to the BHA Bylaws, the BHA Board of Commissioners will meet with the Executive Director at the regular monthly Authority meetings to review the functions and operations of the Authority and conduct business.

3. Duties of the Executive Director.

3.1 The Executive Director shall attend the monthly meetings of the BHA Board of Commissioners and report on the operations and financial status of the Authority.

3.2 The Executive Director will be responsible for directing and managing all activities and operations of the Authority, with oversight from the BHA Board of Commissioners and guidance from the City Manager, including without limitation:

- (1) The administration of the strategic work plan;
- (2) Oversight of Public Housing and Housing Choice Voucher Plan;
- (3) Oversight of future housing programs;
- (4) Development and acquisition of affordable housing projects;
- (5) Supervision of the Authority's personnel and staff;
- (6) Preparation and administration of Authority's budgets;
- (7) Preparation of all requisite HUD, governmental, grant and other reports;
- (8) Arrange for the preparation of all appropriate reports and audits required of the Authority, using such professionals including an accountant as may be necessary, retained, paid and approved in advance by the Authority; and
- (9) Employ and/or enter into consultant contracts with all persons who perform compensated services on behalf of the Authority, on such terms and conditions as are consistent with the Authority's budget and other requirements of its funds.

3.3 **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. While the City Manager may review and comment on these budgets, final approval of the budgets remains the responsibility of the Board.

3.4 **Annual Budget and Strategic Plan.** At least thirty (30) days prior to the scheduled adoption of the budgets by the Board, the Executive Director shall prepare and deliver to the City Manager and the BHA Board the proposed operating and capital budgets in the format mandated by HUD and/or other parties for whom the Authority prepares such information, setting forth the anticipated revenues and expenses of the Authority for the ensuing fiscal year and such approval of said budgets is to be solely given by the BHA Board. The Executive Director and the BHA Board of Commissioners shall use their best efforts to manage and administer the operations of the Authority as herein provided so that the actual revenues and expenses of the operation and maintenance of the Authority during any applicable period of the fiscal year shall be consistent with the approved budgets.

3.5 The Executive Director will be responsible for directing and managing the following with oversight from the City Manager, including without limitation:

- (1) Development and evaluate of housing opportunities for the City of Brighton as a whole which may be mutually beneficial to the Authority.
- (2) Provide quarterly reports to the City Manager.

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 At such time as the Board adopts Personnel Policies, job descriptions, compensation, and fringe benefits payable to its employees, it agrees to consider the then current Personnel Policies and job descriptions of the City, and the City's Compensation Plan including fringe benefits available to the City's employees, for adoption by the Board. The Authority agrees that the City's provision of Management and Administrative Services as required by the Agreement will be facilitated by the Board's adoption of the City's job descriptions and Compensation Plan and that should the same not be adopted by the Board, the City, in consultation with the Authority, may charge an additional reasonable fee to the Authority, as agreed to by the Authority, for such services or discontinue or limit the Management and Administrative Services provided by the City as set forth herein.

4.3 As one of the Management and 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 Executive Director will provide job descriptions, compensation information and terms of employment to the Board for review and approval for use in the recruitment and interviewing of prospective employees. Unless otherwise agreed, based on the recommendation of the Human Resources Department, the Executive Director shall make the final hiring decision as to the Authority's employees. Unless otherwise directed by the Executive Director, employees and staff of the Authority shall receive compensation commensurate with the position and as reflected in the City's Compensation Plan as adopted by the Authority, including fringe benefits available to City employees and staff. The employees of the Authority shall be included in the City's payroll system as adopted by the Authority, including the issuance of checks and accounting for 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 as more fully set forth in 4.2 above, including, without limitation, those procedures and processes related to evaluation, discipline, and termination.

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 Management and 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) Payroll Services,
- (3) Phone lines and equipment*,
- (4) Training opportunities,
- (5) Access to benefit pool as a participating agency,
- (6) City department rate for computer support,
- (7) Office space and utilities*, and
- (8) IT assistance through the City's IT Department that is on the City's network

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

5.2 During the Term of this Agreement, City shall provide office space at no charge 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.

6.0 Responsibilities of the Authority.

6.1 **Policies and Decision Making.** The Board of the Authority shall be responsible for reviewing and approving an annual/5-year plan. Such plan shall include, without limitation, all of the 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 Public Housing and 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. 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 shall establish and administer 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 procure and maintain with commercial carriers, through self-insurance or by some combination thereof, appropriate Commissioner's coverage for all Commissioners 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.

7.0 Term.

7.1 **Term.** The original term of this Agreement shall be for the 2013 calendar year, terminating on December 31, 2013, 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 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 notice, the party giving 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 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.

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| BHA: | Chairperson |
| | Brighton Housing Authority |
| | 22 South 4 th 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 of Brighton
22 South 4th Avenue
Brighton, CO 80601
Attn: Manuel Esquibel, City Manager

With a copy to: Margaret R. Brubaker, Esq.
Mehaffy, Brubaker & Ernst, LLC
21 N. 1st Avenue, Suite 290
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.

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


CITY OF BRIGHTON, COLORADO

By: 
Richard N. McLean, Mayor

ATTEST:


Natalie Hoel, City Clerk


APPROVED AS TO FORM:


Margaret R. Brubaker, City Attorney

HOUSING AUTHORITY OF THE CITY OF BRIGHTON, COLORADO

By: 
Jessica Ford, Chairperson

ATTEST:


Manuel Esquibel, Secretary