

**INTERGOVERNMENTAL AGREEMENT CONCERNING NORTH 40<sup>TH</sup> AVENUE  
CONSTRUCTION, REGIONAL DETENTION POND CONSTRUCTION, EASEMENTS,  
AND MAINTENANCE OBLIGATIONS**

**THIS INTERGOVERNMENTAL AGREEMENT** (the “**Agreement**”) is made and entered into effective this ~~May 21, 2016~~ Nov. 21, 2016 the “**Effective Date**”), by and between the City of Brighton, a Colorado home rule municipality of the Counties of Adams and Weld, State of Colorado (the “**City**”), and the School District 27J, a political subdivision of the State of Colorado (the “**School District**”). The City and the School District may each be referred to herein as a “**Party**” and, collectively, as the “**Parties**.”

**Recitals**

WHEREAS, the School District owns certain real property located at 88 North 40<sup>th</sup> Avenue, Brighton, Colorado 80601 (the “**District Property**”); and

WHEREAS, the City wishes to construct portions of North 40<sup>th</sup> Avenue adjacent to the District Property (“**Project**”); and

WHEREAS, the Parties have a shared interest in the construction of a regional detention pond (“**Detention Pond**”) on the District Property, as delineated as easement DE-1 in Exhibit A, to allow stormwater runoff from the Project and District Property to be appropriately managed; and

WHEREAS, the Parties have agreed that the City will provide the necessary labor and materials for construction of the Project and Detention Pond; and

WHEREAS, in exchange for the City providing the labor and materials for construction of the Project and Detention Pond, the School District has agreed to convey to the City certain property interests as agreed to herein and collectively shown in Exhibit A; and

WHEREAS, the Parties wish to set forth maintenance responsibilities for the Detention Pond following construction; and

WHEREAS, the School District has agreed to allow stormwater drainage from the Project to discharge into the Detention Pond; and

WHEREAS, the Parties further seek to set forth their respective understandings and obligations regarding the maintenance of the tree lawn and sidewalk to be located on the District Property and adjacent to the future 40<sup>th</sup> Avenue roadway.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **Agreement**

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated as if fully set forth herein.
2. Responsibilities of the City. The City shall provide the necessary labor and materials to:
  - a. Design and construct any and all improvements required to completely drain the existing pond located on the District Property, as depicted in Exhibit C attached hereto (the "Existing Pond"), to the Detention Pond in accordance with the construction plans to be approved at a later date between the City and the School District. If the Parties do not mutually approve construction plans within five (5) years of the Effective Date, this Agreement shall terminate;
  - b. Construct the Detention Pond in accordance with the construction plans to be approved at a later date between the City and the School District;
  - c. Regrade the District Property in accordance with the construction plans to be approved at a later date between the City and the School District;
  - d. Remove the mixture of dirt and broken concrete piles adjacent to the northeast corner of the Existing Pond, which were observed during the site inspection held on February 26, 2026, between the City and the School District;
  - e. Utilize the material excavated from the construction of the Detention Pond to backfill portions of the Existing Pond in accordance with construction plans to be approved at a later date between the City and the School District. Activities shall not include excavation of existing materials within the Existing Pond, excavated materials from the Detention Pond shall be placed directly overtop of the Existing Pond as it sits at the time of construction;
  - f. Take responsibility to ensure that the design and construction plans of the improvements will convey the existing stormwater held in the Existing Pond to the new Detention Pond without requiring the School District to construct any additional improvements until the District's Property is further developed creating additional net impervious area;
  - g. Ensure that the construction plans include requirements for the contractor to maintain continuous access along a designated segment of 40<sup>th</sup> Avenue throughout the construction period, allowing access for school buses and other vehicles serving the bus parking facility; and
  - h. Following construction and activities, the City shall use reasonable efforts to restore and repair any damage caused to the any adjoining premises to the Existing and Detention Pond or the School District's remainder property and the improvements thereon. City shall ensure that the grading does negatively impact the drainage patterns on School District's property or contiguous lands, nor cause unreasonable pooling, runoff, or diversion in areas unrelated to the Detention Pond.

3. School District Conveyance Obligations. The School District shall convey to the City the following rights-of-way and easements, collectively shown in Exhibit A and incorporated herein, within ninety (90) days of the parties' mutual approval of the construction plans, as evidenced by the City Development Review Committee and School District's Board of Education approval:
  - a. A permanent drainage easement to access and use the Detention Pond to be constructed by the City;
  - b. A permanent 10' width utility easement located on the District Property and adjacent to the future 40<sup>th</sup> Avenue roadway;
  - c. A permanent right-of-way for the construction and maintenance of the 40<sup>th</sup> Avenue roadway and the construction and maintenance of associated appurtenances; and
  - d. Temporary easements in and around the District Property for activities associated with the construction of the 40<sup>th</sup> Avenue Roadway.
4. Remedy for Non-Conveyance. If the School District fails to convey, by separate documents, the rights-of-way and easements listed in Section 3 of this Agreement within ninety (90) days of City approval and Board of Education Approval of the construction plans, as evidenced by the City Development Review Committee approval and resolution of the Board of Education, the City shall not be responsible for performing its obligations under this Agreement.
5. Remedy for Non-Construction. If the City fails to construct the Project, including the Detention Pond, within five (5) years of the conveyance of the rights-of-way and easements specified in Section 3 of this Agreement, the City shall pay for the fair market value of the easements granted as determined by a mutually selected professional appraiser licensed in the State of Colorado.
6. Notification of Construction Completion and Final Acceptance Letter. Within thirty (30) days of the City notifying the School District in writing that construction of the Project and Detention Pond has been completed ("**Notification of Construction Completion**"), the School District shall either provide a letter accepting the Detention Pond ("**Final Acceptance Letter**"), or issue a punch list of any deficiencies which deviate from the approved plans ("**Punch List**"). The City shall correct any Punch List items and issue a new Notification of Construction Completion. The School District shall have fifteen (15) days to review the corrected Punch List work and issue a Final Acceptance Letter or notify the City of any outstanding Punch List items. If the School District fails to respond to the Notification of Construction Completion, or issues a Final Acceptance Letter, the work associated with the Project and Detention Pond shall be deemed accepted.
7. City Maintenance Obligations.

- a. Detention Pond. The City shall maintain the Detention Pond, at its sole cost and expense, in accordance with the Stormwater Facilities Maintenance Agreement attached hereto as Exhibit B, for five years from the date of the Final Acceptance Letter ("**City Maintenance Period**"), except for routine mowing and weed control activities, as further described in Section 8(a) below.
- b. If the School District develops the District Property in any way which creates any additional net impervious area of the District Property during the City Maintenance Period, the City shall be relieved of its obligations under Section 7(a) of this Agreement. Any future development by the School District of the District Property shall require a new Stormwater Facilities Maintenance Agreement that will replace the Stormwater Facilities Maintenance Agreement attached hereto as Exhibit B.
  - i. If the City is relieved of its maintenance obligations, the School District shall maintain the Detention Pond, at its sole cost and expense, in accordance with the operative Stormwater Facilities Maintenance Agreement.
- c. Notwithstanding the foregoing, the City will remain responsible in perpetuity for the maintenance and repair for the inlet structures for stormwater discharged from the City's 40<sup>th</sup> Avenue improvements and as depicted on Exhibit B2 in the Stormwater Facilities Maintenance Agreement which specifically notes the pipe that will be maintained by the City.
- d. Furthermore, notwithstanding anything herein to the contrary, should the Detention Pond need to be dredged to maintain the designed capacity, the Parties agree to pay a proportional share of those costs based upon the City's Engineer's calculations. The shared costs will be divided so that School District pays 86 percent of the total dredging costs, while the City of Brighton covers the remaining 14 percent.

8. School District Maintenance Obligations.

- a. Detention Pond. The School District shall be responsible for routine mowing and weed control, at its sole cost and expense, in and around the Detention Pond permanent drainage easement, in accordance with City ordinances, rules, and regulations.
- b. Following the City Maintenance Period, the School District shall take sole responsibility for Detention Pond maintenance in accordance with the Stormwater Facilities Maintenance Agreement, attached hereto as Exhibit B, if not already required by Section 7(b) and excepting Sections 7(c) and 7(d) of this Agreement.
  - i. Prior to the transfer of any maintenance responsibilities, the Parties shall inspect the Detention Pond and agree in writing that the City's maintenance responsibilities have been fulfilled. If the maintenance responsibilities have not been fulfilled, any maintenance items will be corrected by the City prior to the responsibility transfer to the School District.

- c. Existing Pond and Conveyance Features. The area outside of the permanent drainage easement specified in Section 3 of this Agreement shall remain the ongoing maintenance responsibility of the School District. The School District shall maintain, at its sole cost and expense, the conveyance features that will be constructed by the City, per the plans to be approved by the City and School District, to drain the existing pond to the proposed Detention Pond.
  - d. Tree Lawn and Sidewalk. The School District shall maintain the tree lawn and sidewalk, located adjacent to the future 40<sup>th</sup> Avenue roadway on the District Property, in accordance with City ordinances, rules, and regulations, as may be amended from time to time.
  - e. The obligations set forth in this Section 8 and Section 7(b)(i) shall survive termination of this Agreement.
9. Governmental Immunity. Each Party acknowledges and agrees that both Parties are governmental entities of the State of Colorado whose liability in tort is at all times strictly limited and controlled by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as such may be amended from time to time, and that nothing herein is intended as a waiver of such immunity. Without waiving such immunity, each Party shall be solely responsible, to the extent authorized by law, for its own negligence and the negligence of its employees and agents acting within the scope of their authority under this Agreement.
10. Binding Effect, Assignment, and Delegation. This Agreement shall be binding on and inure for the benefit of the Parties hereto, and their respective successors and assigns. Neither Party shall assign any of the rights, nor delegate any of the duties created by this Agreement without the prior written consent of the other Party.
11. Notice. All notices under this Agreement shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective Party to whom it is directed, or when deposited by registered or certified mail, with postage and charges prepaid, addressed to the Party at the address set forth below. Email notice is permissible and is effective upon transmission.

*If to the City:*

City of Brighton  
Attn: City Manager  
500 S. 4<sup>th</sup> Avenue  
Brighton, CO 80601  
citymanager@brightonco.gov

*If to the School District:*

Adams and Weld Counties School  
District 27-J  
Attn: Superintendent  
88 N. 40<sup>th</sup> Avenue, Building A  
Brighton, CO 80601  
wpierce@sd27j.net

*With a copy to:*

City of Brighton  
Attn: City Attorney  
500 S. 4<sup>th</sup> Avenue

Brighton, CO 80601  
JGallagher@brightonco.gov

12. Relationship of the Parties. Nothing contained in this Agreement shall imply any partnership, joint venture, or other association between the City and the School District. Neither Party shall use the other's name or logo to suggest co-sponsorship or endorsement of any activity without the other's prior written consent. All employees assigned by the City to perform services under this Agreement shall at all times remain employees of the City, and nothing in this Agreement shall be construed to create any employment relationship between such employees and the School District.
13. 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. Each Party shall be responsible for their own costs related to this Agreement, including, but not limited to, inspections, title reports, and surveys. To the extent any payment obligation of the School District is ever owed to the City, such amounts due are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period ending upon the next succeeding June 30. Financial obligations payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the School District, as applicable, and other applicable law. Upon the District's failure to appropriate such funds, this Agreement shall automatically terminate.
14. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
15. No Third-Party Beneficiaries. It is expressly understood and agreed that the enforcement of all terms and conditions of this Agreement and all rights and actions relating thereto shall be strictly reserved to the Parties hereto, and nothing herein shall give or allow any claim or right of action to or by any other third-party to this Agreement.
16. Waiver. Waiver of the enforcement of any breach of this Agreement by either Party shall not constitute a continuing waiver or any subsequent breach by that Party of the same or any other provision of this Agreement.
17. Headings. The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
18. Amendment. 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 this Agreement.

19. Governing Law. This Agreement shall be construed and governed by the laws of the State of Colorado. Any dispute arising out of or related to this Agreement shall be resolved and adjudicated in the District Court of Adams County, Colorado.

20. Entire Agreement. This Agreement, together with all exhibits thereto, constitutes the entire agreement between the Parties. This Agreement may be amended only by the mutual consent of both Parties in writing.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument.

22. Authority. Each party warrants that it has the authority to enter into this Agreement and that its signatory is authorized to bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**City of Brighton, Colorado**

\_\_\_\_\_  
Michael Martinez, City Manager

ATTEST:

\_\_\_\_\_  
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
James Gallagher, Assistant City Attorney

**School District 27J:**

By:   
William J. Pierce, Superintendent

STATE OF COLORADO )  
 ) ss.  
COUNTY OF adams

The foregoing instrument was acknowledged before me this 27th day of May, 2026, by William J. Pierce on behalf of School District 27J.

WITNESS my hand and official seal.

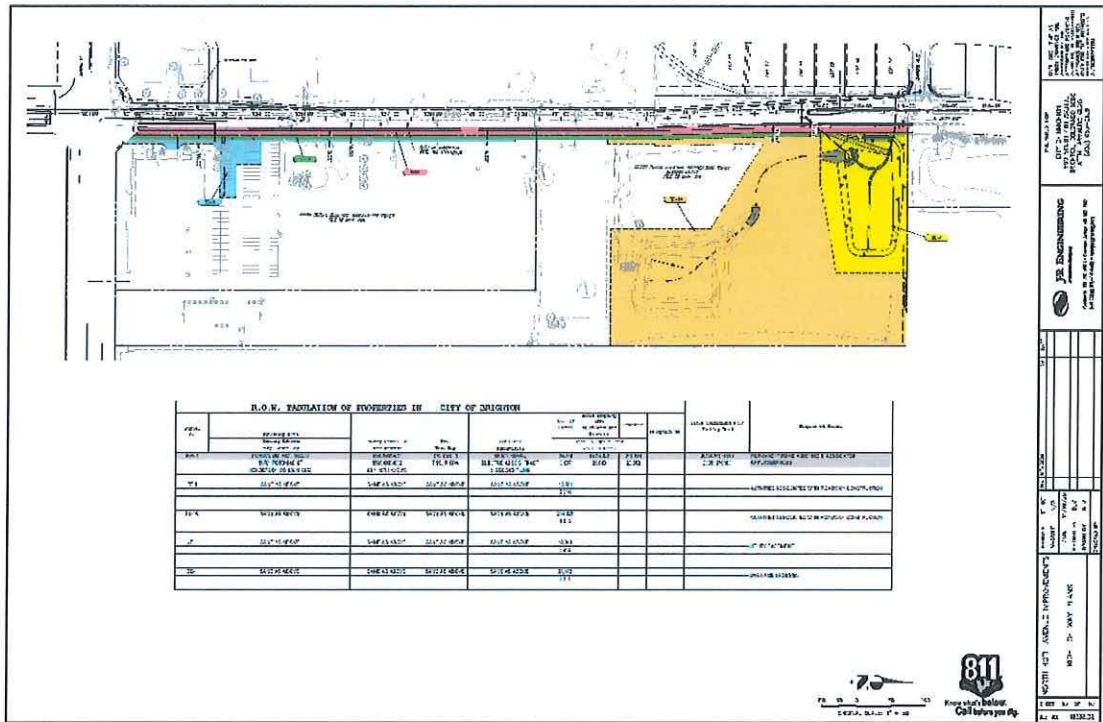
  
Notary Public

My commission expires: 21-21-30





# **Exhibit A** **Rights-of-Way and Easements**



**Exhibit B**  
**Form of Stormwater Facilities Maintenance Agreement**

**STORMWATER FACILITIES MAINTENANCE AGREEMENT**

THIS STORMWATER FACILITIES MAINTENANCE AGREEMENT (this “Agreement”) is made this 27<sup>th</sup> day of May, 2020, between Adams and Weld Counties School District 27-J, a political subdivision of the State of Colorado, (“Owner”) and the City of Brighton, a Colorado home rule municipality (“City”). Owner and City may each be referred to herein as a “Party” and, collectively, as the “Parties.”

**Recitals**

WHEREAS, the ordinances and regulations of the City require that stormwater treatment and drainage facilities located on property not otherwise owned by the City shall be operated, maintained, repaired, and replaced as necessary by the Owner, or its successors and assigns as agreed to by the City; and

WHEREAS, this Agreement specifies the stormwater facilities management requirements necessary for the operation, maintenance, repair, or replacement of stormwater treatment and drainage facilities in accordance with Chapter 14, “Storm Drainage”, of the Brighton Municipal Code and City standards and specifications, as may be amended; and

WHEREAS, the Parties desire to provide for the continued operation, maintenance, repair, and replacement, as necessary, by the Owner and Owner’s successors and assigns, of the stormwater treatment and drainage facilities located on the property described in Exhibit 1, attached hereto and incorporated herein (the “Property”).

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. *Incorporation.* The foregoing Recitals are hereby incorporated as if fully set forth herein.
2. *Property.* The Property on which the stormwater treatment and drainage facilities to be operated, maintained, repaired or replaced is located is more fully described in Exhibit 1.
3. *Facilities.* The stormwater treatment and drainage facilities to be operated, maintained, repaired or replaced are more fully depicted in Exhibit 2, attached hereto and incorporated herein (the “Facilities”). Facilities include, but are not limited to, storm sewer inlets, pipes, culverts, channels, ditches, hydraulic structures, rip-rap, detention basins, micro-pools, spillways, water quality facilities and on-site control measure(s) to minimize pollutants in urban runoff.

4. *Obligations of Parties.* The Parties hereby agree to the following:

- a. City, Owner, and Owner's successors in interest, shall operate, maintain, repair, and replace, as necessary, all Facilities, including routine and non-routine maintenance of said Facilities for the durations as described in Section 7 and Section 8 of the Intergovernmental Agreement Concerning North 40<sup>th</sup> Avenue Construction, Regional Detention Pond Construction, Easement, and Maintenance Obligations (the "IGA"). All Facilities shall be maintained to meet erosion control, groundwater recharge, and stormwater runoff quantity and quality standards of Chapter 14, "Storm Drainage" of the Brighton Municipal Code, City of Brighton standards and specifications, and Mile High Flood District Urban Storm Drainage Criteria Manual, as the same may be amended. As used herein, "routine maintenance procedures" includes, but is not limited to, inspections, engineering evaluation, debris and litter control, mechanical components maintenance, repair, and replacement. Further, as used herein, "non-routine maintenance procedures" includes, but is not limited to, removing accumulated sediments from stormwater quality facilities, restoration of eroded areas, restoration of vegetation, and structural repair, maintenance, and replacement. The parties shall allocate and split the costs of the non-routine maintenance procedures as detailed in Section 7d of the IGA.
- b. Any detention, retention or infiltration area within the Property must comply with C.R.S. § 37-92-602 (8), as amended. In the event that either Party learns of a violation of C.R.S. § 37-92-602 (8), the Facility shall be brought into compliance with C.R.S. § 37-92-602 (8) by the party responsible for maintenance as determined by Section 7 and Section 8 of the IGA.

5. *Remediation.* Owner hereby acknowledges, understands, and agrees that in the event that Owner, or Owner's successor's in interest, fails to comply with the obligations of this Agreement or with the requirements of the Brighton Municipal Code, City shall have the right, but not the obligation, to remediate such failures, as set forth in Article 14-8 of the City of Brighton Municipal Code, as may be amended.

6. *Agreement Runs with the Land.* This Agreement shall run with land and be binding for the benefit and in favor of, and be enforceable by, the City, its successors and assigns, against Owner, its successor and assigns, and every successor in interest to the Property.

7. *Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

8. *Governing Law.* This Agreement shall be construed and governed by the laws of the State of Colorado. Any dispute arising out of or related to this Agreement shall be resolved

and adjudicated in the District Court of Adams County, Colorado, irrespective of any conflicts of law.

9. *No Joint Venture or Partnership.* Nothing herein shall be interpreted or construed as creating a joint venture or partnership between the Parties. Neither Party shall have the right under this Agreement to create any obligation or incur any debt on behalf of the other Party.

10. *No Third-Party Beneficiaries.* It is expressly understood and agreed that the enforcement of all terms and conditions of this Agreement and all rights and actions relating thereto shall be strictly reserved to the Parties hereto, and nothing herein shall give or allow any claim or right of action to or by any other third party to this Agreement.

11. *Waiver.* Waiver of the enforcement of any breach of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by that Party of the same or any other provision of this Agreement.

12. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument.

13. *Authority.* Each party warrants that it has the authority to enter into this Agreement and that its signatory is authorized to bind the Party hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date:

**SCHOOL DISTRICT 27J**

By: [Signature]  
Name: William J. Pierce  
Title: Superintendent

STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF ADAMS     )

The foregoing Stormwater Facilities Maintenance Agreement was acknowledged before me this 27th day of May, 2026 by William J. Pierce, in his/her capacity as Superintendent of [Owner]. School District 27J

Witness my hand and official seal:



[Signature]  
Notary Public  
My commission expires: 2-21-30

**CITY OF BRIGHTON, COLORADO**

\_\_\_\_\_  
Scott Olsen, Director of Utilities

ATTEST:

\_\_\_\_\_  
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
James Gallagher, Assistant City Attorney

**EXHIBIT 1**  
**Property Description**

UNION RURAL ELECTRIC ASSOCIATION TRACT RECORDED IN FILE 12 AT MAP 268 AND THE UNION RURAL ELECTRIC ASSOCIATION TRACT SECOND FILING RECORDED IN FILE 12 AT MAP 318 ALL IN THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH P.M., CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

## DISTRICT STORMWATER FACILITIES MAINTENANCE AGREEMENT EXHIBIT

N 40TH AVENUE  
CITY OF BRIGHTON  
ADAMS COUNTY, STATE OF COLORADO





# Exhibit C Existing Detention Pond

