



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 September 8, 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 September 25, 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 following definitions shall apply to this Agreement:

“**Capital Facility(ies)**” shall be defined as provided in Section 29-20- 104,5(4), C.R.S., including any amendments thereto. The definition of “Capital Facility(ies)” is intended to include fire stations, training facilities, fleet maintenance facilities, fire and rescue apparatus and vehicles, and any other capital items necessary for the District to provide Emergency Services.

“**New Development**” shall mean improvements to real property, including construction of new structures and substantial improvement to existing structures, for which an application is required to be submitted to the City for any approval, permit, land use, development or other action or decision pursuant to the City’s Land (Use and Development Code, as it may be amended from time to time by the City, and for

which the City will impose a development impact fee.

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** ("***District Impact Fee***"). The District Impact Fee shall be imposed on all New Development for which an application is submitted to the City on or after January 1, 2018. The District expressly understands and agrees that the City is not agreeing to or endorsing the reasonableness of the fees set forth in the Impact Fee Schedule, and that the District shall be solely responsible for the reasonableness of the fees set forth in the Nexus Study and the Impact Fee Schedule. No District Impact Fee shall be imposed to remedy any deficiency in Capital Facilities that exists without regard to the proposed development. Notwithstanding anything in this Agreement to the contrary, no District Impact Fee shall be imposed on any New Development for which an economic incentive agreement with the City has been approved by the City Council on or before October 17, 2017.
- 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 for New Development, 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 of the New Development. 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 for New Development.
- b. The District shall be solely responsible for collecting the District Impact Fee. The City shall not issue a building permit until it has received a written receipt from the District confirming that the developer has paid the District Impact Fee. If the City has not received a written receipt from the District confirming that the developer has paid the District Impact Fee within 48 hours of when the District has received the District Impact Fee from the developer, the City may proceed to issue the Building Permit.
- 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 for the New Development, 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. In addition, on or before February 1, 2019, and on or before February 1 of each year thereafter, the District shall provide the City with a written report outlining: (i) the amount of District Impact Fees collected, by land use; (ii) for what Capital Facilities the District Impact Fees were used; and (iii) how the Capital Facilities support New Development within the District's jurisdiction.
 - 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 determined by the City ("**Low Income/Affordable Housing Development**"), or on any other development, if pursuant to a City Council approved agreement the City is waiving or reducing one or more other impact fees the City otherwise would assess on the New 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 any other impact fees the City assesses on the New Development. If the City's waiver or reduction includes varying percentages for certain impact fees, the District shall waive or reduce its District Impact Fee at the average percentage rate.
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 thirty (30) calendar days' prior written notice to the City.
 - c. The City may at any time give the District written notice that the City is considering terminating this Agreement. The Parties shall promptly meet to discuss the reason(s) the City is considering terminating this Agreement and the District shall be afforded an opportunity to address the City's concerns. If, within thirty (30) days of the date of said written notice to the District, the City in good faith believes the District has not been able to adequately address the City's concerns, the City may, in its sole discretion, terminate this Agreement upon three hundred sixty-five (365) calendar days' prior written notice to the District.
 - d. Within thirty (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 thirty (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: City Manager
500 South 4th Avenue
Brighton, CO 80601

Greater Brighton Fire Protection District
Attn: Fire Chief
500 S. 4th Ave, 3rd Floor Brighton, CO 80601

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

By: Richard N. McLean
Richard N. McLean, Mayor

Date: October 24, 2017

ATTEST:

Natalie Hoel
Natalie Hoel, City Clerk

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

By:
Dean Morris, Board President

Date:

ATTESTED:

Arlin Riggi, Board Secretary

APPROVED AS TO FORM:



Margaret R. Brubaker, City Attorney

APPROVED AS TO FORM:

Dino Ross, Attorney for the District

ATTACHMENT 1
GREATER BRIGHTON FIRE PROTECTION DISTRICT EMERGENCY SERVICES IMPACT FEE
SCHEDULE
Effective January 1, 2018

Residential

| Unit Type | Fee Per Dwelling Unit |
|---------------|-----------------------|
| Single Family | \$688.00 |
| Multifamily | \$550.00 |

Nonresidential

| Type | Fee Per Square Foot |
|----------------------------|---------------------|
| Commercial/Retail/Business | \$0.46 |
| Industrial/Warehouse | \$0.06 |

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.