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**BRIGHTON CROSSINGS  
AUTHORITY  
ESTABLISHMENT AGREEMENT**

by and among

**BRIGHTON CROSSING METROPOLITAN DISTRICT NOS. 4-8**

Dated as of April 15, 2019

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**BRIGHTON CROSSINGS AUTHORITY  
ESTABLISHMENT AGREEMENT**

THIS BRIGHTON CROSSINGS AUTHORITY ESTABLISHMENT AGREEMENT (this “Agreement”), is entered into as of the 15th day of April, 2019, by and among 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. 5, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 5”), BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 6, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 6”), BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 7, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 7”), and BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 8, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 8”) (each a “District” and, collectively, the “Districts”).

**WITNESSETH:**

WHEREAS, the Districts are quasi-municipal corporations and political subdivisions of the State of Colorado, organized for the purpose, among others, of assisting in the financing and construction of public improvements within certain areas located within the City of Brighton (the “City”); and

WHEREAS, in accordance with their respective service plans and pursuant to Sections 32-1-101, *et seq.*, C.R.S., as each may be amended from time to time, the Districts are each authorized to provide public improvements and services; and

WHEREAS, as permitted by their respective service plans and applicable Colorado law, as each may be amended from time to time, the Districts desire to coordinate with one another for the limited purpose of providing for the joint operation, maintenance, and repair of public improvements and provision of services, including but not limited to covenant enforcement and design control services in accordance with Section 32-1-1004(8), C.R.S., as amended, as further

set forth herein (collectively, and as may be further supplemented or provided in accordance with this Agreement and applicable law, the “Services”); and

WHEREAS, the Districts, being located in the same general area, desire to develop a collaborative working relationship to more efficiently and effectively carry out their individual responsibilities under C.R.S. Title 32; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(a), provides that the Constitution shall not be interpreted to prohibit the state or any of its political subdivisions from making the most efficient and effective use of their powers by cooperating and contracting with each other; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(b), provides that the Constitution shall not be interpreted to prohibit the enactment of a statute authorizing political subdivisions to establish a separate entity to provide any function, service, or facility lawfully authorized to each of the contracting political subdivisions; and

WHEREAS, Section 29-1-201, C.R.S., as amended, permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, Section 29-1-203, C.R.S., as amended, authorizes governments to contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units through the establishment of a separate entity; and

WHEREAS, the Districts have a compelling mutual interest in jointly providing the Services, in the present and future, to promote the public welfare; and

WHEREAS, the Districts desire to enter into this Agreement to establish an authority as a separate legal entity, political subdivision and public corporation of the State in conformity with and subject to Section 29-1-203.5, C.R.S., as amended, to provide the Services and for any related functions, services, or facilities permitted by the Constitution and laws of Colorado and in accordance with the provisions of this Agreement; and

WHEREAS, at a mutually agreed-upon date in the future, the Districts may seek to consolidate into one special district in accordance with the provisions of Sections 32-1-601, *et seq.*, C.R.S., as amended (as may be finalized, a “Consolidation”), and, unless and until such Consolidation occurs, the authority established hereby will be authorized to provide the Services on the Districts’ behalf as set forth herein; and

WHEREAS, the Districts intend by entering into this Agreement that the authority hereby created be a political subdivision with the duties and immunities set forth in Part 1 of Article 10, Title 24, C.R.S., as amended; and

WHEREAS, it is in the best interest of the Districts and for the public health, safety, convenience, and welfare of the residents of the Districts and of the general public that the Districts enter into this Agreement for the purpose of establishing an authority to provide the functions and services necessary to provide the Services as may be identified and agreed upon by the Districts, or Members (as defined below), from time to time.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed in this Agreement, it is agreed by and between the Districts, as follows:

## **ARTICLE I**

### **CREATION OF THE AUTHORITY**

**Section 1.01. Creation.** Pursuant to Section 29-1-203, C.R.S., and in conformity with Section 29-1-203.5, C.R.S., and the respective service plans of the Districts, as the same may be amended from time to time, upon the mutual execution of this Agreement by the Districts, there is hereby established by this Agreement a separate political subdivision of the State of Colorado to be known as the Brighton Crossings Authority (the “Authority”). The Authority shall be separate and distinct from the Districts and Members (as defined herein).

**Section 1.02. Purpose.** The Authority is organized for the general purpose of providing the Services and any related functions, services, or facilities permitted by the Constitution and laws of Colorado and in accordance with the provisions of this Agreement.

**Section 1.03. Boundaries.** The initial area comprising the territory within the Authority shall consist of, and be conterminous with, the combined territory of the Districts, as of the date hereof, and in the future the territory within the Authority shall include territory included within the Districts and exclude territory excluded from the Districts pursuant to Section 32-1-101, *et seq.*, C.R.S., as amended.

**Section 1.04. Immunity.** The Authority shall be a political subdivision of the State of Colorado and therefore a “public entity” as defined by the Colorado Governmental Immunity Act, Part 1 of Article 10, Title 24, C.R.S., as amended.

**Section 1.05. Indemnification.** To the extent permitted by law, the Authority shall indemnify, defend, and save harmless the Members, their officers, agents, consultants and employees from and against any and all claims and losses whatsoever occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials, or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any person, firm, or corporation, for damage, injury or death arising out of or connected with the Authority’s performance of its authorized activities, powers and obligations under this Agreement.

## ARTICLE II

### MEMBERSHIP/ORGANIZATIONAL STRUCTURE

**Section 2.01. Members Defined.** A “Member” shall be each of the Districts.

**Section 2.02. Board of Directors.** The Authority shall be governed by a 5-member Board of Directors of the Authority (the “Board”), in which all of the legislative power of the Authority is vested and which shall exercise and perform all the powers, rights and duties vested in and imposed on the Authority by this Agreement and applicable law. Each Board member (each a “Director”) shall serve at the will and pleasure of the Member that appoints such Director. A Director may be removed by the appointing Member, with or without cause, upon written notification of the removal to the respective Director. Directors may receive compensation for their services in the maximum amount allowed for the directors of special

districts by Section 32-1-902(3), C.R.S., as amended, and reasonable expenses related to the exercise of Board functions may be reimbursed by the Authority from funds that may be available for such purpose.

**Section 2.03. Composition of Board.** Each Member shall be entitled to appoint one (1) Director to serve on the Board. Each Director shall have one (1) vote on behalf of the Member for which he or she is appointed to represent and must be an elected/appointed director of at least one of the Members. The Members shall appoint their respective Directors and establish their terms of office by motion or resolution, documented in writing, a copy of which shall be provided to the Authority. A Director shall no longer be qualified to serve as a Director at such time as the Director ceases to be an elected/appointed director of at least one of the Members. Each Director shall take an oath or affirmation in accordance with Section 24-12-101(1), C.R.S., as amended. The oath or affirmation of each Director may be administered consistent with the provisions of Section 24-12-103, C.R.S., as amended, and shall be filed with the respective Member and the Authority, as well as with the Adams County Clerk consistent with Section 24-12-101(3), as amended.

**Section 2.04. Vacancies.** A vacancy may arise on the Board through resignation, death, removal by the Member for which such Director is appointed to represent, disability of any such Director, or loss of eligibility to serve on the Board pursuant to applicable law or this Agreement. Vacancies on the Board shall be filled within a reasonable time by the Member as to which the vacancy occurs. If, within sixty (60) days of the occurrence of any vacancy, the appointing Member fails, neglects, or refuses to appoint a Director from the pool of any duly qualified, willing candidates, the remaining Members may upon unanimous agreement appoint a Director to fill such vacancy; however, such Director must be an elected/appointed director of at least one of the Members, and any Director appointed pursuant this Section 2.04 shall serve at the will and pleasure of the Member for which he or she is appointed to represent. The appointing Member shall not lose its authority to make an appointment to fill any vacancy unless and until the remaining Members have actually made an appointment to fill that vacancy. The remaining Members shall not make such an appointment unless they provide thirty (30) days' written notice of their intention to make such appointment to the relevant Member and the vacancy remains open at the time the remaining Members make their appointment.



**Section 2.05. Voting and Quorum.** The Board shall act only upon a duly-taken vote of the Directors. A vote of the Board shall be deemed duly-taken if approved by a majority vote of a Quorum of the Board (as defined below). Each Director appointed by a Member shall have one vote on behalf of that Member. A quorum of the Board shall consist of at least three (3) Directors participating at an Authority meeting (a “Quorum”). No official action may be taken by the Board on any matter unless it occurs at a properly noticed regular or special meeting of the Board where a Quorum is in attendance in person.

**Section 2.06. Meetings.** All meetings of the Board shall be conducted in the manner required by the Colorado Open Meetings Act, Sections 24-6-401, *et seq.*, C.R.S., as amended. The Board shall annually designate, at its first regular or special meeting of each calendar year, a designated posting location within the boundaries of the Authority for providing full and timely notice to the public of all regular and special meetings. Notice of all regular or special meetings shall be provided to all of the Directors and posted at least seventy-two (72) hours prior to such meetings in no less than one (1) location within the boundaries of each of the Members, including the Authority’s designated posting location; provided, in all circumstances, such notice must be posted in no less than three (3) locations within the Authority’s boundaries, and with the clerk and recorder’s office for Adams County, and, when possible, shall include specific agenda information in accordance with Section 24-6-402(2)(c), C.R.S., as amended. The Board may hold regular and special meetings at any location that each of the Members are legally entitled to hold regular and special meetings in conformance with Section 32-1-903, C.R.S., as amended. The Board may hold regular meetings at a time and place fixed by the Board and may conduct special meetings at such times and places as the Board may determine to be necessary, provided that notice of the time, place and business of all such meetings shall be provided to the public in accordance with this Agreement.

**Section 2.07. Officers.** The officers of the Authority shall consist of, at a minimum, a President, Secretary and Treasurer, and may include a Vice President and as many assistant Treasurers and assistant Secretaries as the Board sees fit. All officers shall be appointed from time to time by a vote of the Board. Appointed officers must be Directors, provided the Board may appoint an individual who does not serve as a Director to serve as the Authority Secretary or

as an assistant Secretary. The duties of all officers shall include such duties as are required by law and as may be directed by the Board from time to time.

**Section 2.08. Bylaws and Regulations.** The Authority shall have the power to adopt such bylaws and regulations as are necessary or convenient for the conduct of the Authority so long as such bylaws and regulations are not in conflict with the provisions of this Agreement or applicable law.

**Section 2.09. Withdrawal.** Prior to the issuance of debt by the Authority, a Member may be released from this Agreement upon written notice to the other Members. Upon approval of the issuance of debt by the Authority, a Member may be released from this Agreement only upon: (a) a unanimous vote of a Quorum of the Board approving a plan for either: (i) dissolution of the Authority, if the Districts are the only Members of the Authority, (ii) Consolidation of the Members, if the Districts constitute the only Members of the Authority, or (iii) withdrawal of a Member, if there will be at least two Members of the Authority remaining upon the withdrawal of a Member; and (b) receipt of an opinion from bond counsel that said withdrawal will not jeopardize the tax-exempt status of any Authority debt then-outstanding.

**Section 2.10. Conflict Disclosures.** Directors shall prepare and disclose conflicts of interest in the same manner normally required of directors of special districts under applicable Colorado law, as the same may be amended from time to time.

**Section 2.11. No Restriction on Powers of Members.** Except as expressly provided herein, nothing in this Agreement shall be deemed or construed to restrict, prohibit or otherwise limit the power of any Member, and no action of the Authority shall be attributable to the Members.

**Section 2.12. Dissolution of Member; Consolidation of Members.** If a Member is dissolved or otherwise ceases to exist then either: (a) the plan for dissolution for such Member shall contain adequate provisions acceptable to the Authority, in the Authority's sole reasonable discretion, for the performance of all such Member's obligations to the Authority; or (b) all such obligations shall be fully paid and performed prior to the effective date of dissolution. If the Members determine to consolidate with one another pursuant to Sections 32-1-601, *et seq.*,

C.R.S., as amended, then the Members shall jointly agree to terminate this Agreement in accordance with the provisions of Article VI, herein.

**Section 2.13. Advisory Committees.** The Board may establish one (1) or more advisory committees, and the advisory committee members may be any person or persons so designated by the Board. Any committee established by the Board shall serve solely in an advisory capacity to the Board. The members of any advisory committee shall serve at the pleasure of the Board.

### **ARTICLE III POWERS OF THE AUTHORITY**

**Section 3.01. Delegation of Powers, Duties and Responsibilities.** Each of the Members delegates to the Authority the limited power, duty and responsibility to provide the Services and to employ the necessary personnel and do any and all other things necessary or desirable to provide continued efficient and economical Services to all persons and property within the respective territorial limits of the Members, which area shall be considered the jurisdiction of the Authority. Notwithstanding the delegations made in the previous sentence, each of the Members reserves and maintains for itself the power to provide the Services consistent with each Member's service plan, so long as such provision of Services by a Member does not duplicate or interfere with the Authority's provision of Services pursuant to this Agreement.

**Section 3.02. Plenary Powers.** Except as otherwise limited by this Agreement, the Authority, in its own name and as provided in this Agreement, shall exercise all powers lawfully authorized in Sections 29-1-203 and 29-1-203.5, C.R.S., as amended, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. The Authority shall act through its Board, its officers, agents, consultants and employees as authorized by the Board pursuant to any action, motion, resolution, bylaws, and regulations of the Authority. The Authority shall not have the power to represent itself as, or act as agent for, or on behalf of, an individual Member without such Member's express written consent.

**Section 3.03. Enumerated Powers.** The Authority's powers shall include the following:

(a) to acquire, operate, manage, own, lease (as lessee or lessor), sell, construct, reconstruct, maintain, or repair, or dispose of real and personal property, buildings, works, improvements, or other facilities necessary to carry out the purposes of this Agreement in the name of the Authority;

(b) to make and enter into contracts, including, without limitation, contracts with local governmental entities, including the Members, and other special districts, authorities, corporations, cities, counties and state or federal agencies, provided, however, that the power shall be limited as provided in Section 32-1-1001, C.R.S., as amended, and other laws applicable to special districts;

(c) to accept gifts, grants, and revenue from any lawful source;

(d) to sue and be sued in the Authority's own name;

(e) to hire and terminate agents, employees, consultants and professionals;

(f) to approve and modify master plans to provide for the Services; to dedicate property acquired or held by it for public works, improvements, facilities, utilities, and related purposes; and to agree, in connection with any of its contracts, to any conditions that it deems reasonable and appropriate including, but not limited to, conditions attached to federal financial assistance, and to include in any contract made or let in connection with any project of the Authority provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(g) to prepare and approve an annual budget and any necessary amended or supplemental budgets, as set forth in Article 4, herein;

(h) to approve, set, impose, collect, pledge, spend, reserve, and use rates, fees, tolls, charges and penalties for facilities, services, and programs furnished or to be furnished by the Authority;

(i) to adopt, modify, and amend bylaws and regulations pursuant to Section 2.08, above;

(j) to enter into agreements for the purpose of securing any necessary professional, administrative, or support services;

(k) to keep and maintain financial books and records to account for all expenditures of funds, and to obtain an annual independent audit (or annual application for audit exemption) by certified public accountants selected by the Board of such records, with all of the same to be made available to the Members at any time upon request;

(l) to accept contributions, grants, or loans from any public or private agency, individual, or the United States or the State of Colorado or any department, instrumentality, or agency thereof, for the purpose of financing its activities;

(m) to adopt financial and investment policies and invest monies remaining in any fund which are available for investment in accordance with the laws of the State of Colorado including Articles 10.5 and 47 of Title 11, C.R.S., as amended, for the investment of public funds or by public entities;

(n) to contract for real estate, financing, goods or services;

(o) to issue revenue bonds, notes or other obligations subject to the provisions of Section 29-1-203.5(3)(a) C.R.S., as amended, and to finance the Services in accordance with Article 4, herein;

(p) to enter into lease-purchase agreements which may be offered either as whole leases or with certificates of participation in accordance with Sections 29-1-101, *et seq.*, C.R.S., as amended;

(q) to take all actions necessary or appropriate to carry out and implement the provisions of this Agreement;

(r) to have and use a corporate seal;

- (s) to control and accept public rights-of-way;
- (t) to furnish covenant enforcement and design control services in accordance with Section 32-1-1001(8), C.R.S., as amended; and
- (u) to exercise any general power of a special district or of a metropolitan district specified in part 10 of Article 1 of Title 32, C.R.S., as amended, as long as each of the Members may lawfully exercise such power.

**Section 3.04. Limitation on Express and Implied Powers.** In determining the express and implied powers that the Authority has under this Agreement, the Authority shall not have the following powers:

- (a) taxation;
- (b) issuance of general obligation bonds, notes or other obligations on behalf of the Authority or any of the Members;
- (c) imposition of special assessments pursuant to Article 25 of Title 31, and Article 1 of Title 32, C.R.S., as amended;
- (d) zoning or other governmental powers over land use;
- (e) imposition of building, fire code, public health and safety regulations; and
- (f) eminent domain.

**Section 3.05. Spending Authority.** The Authority is limited in its spending powers to the annual total budget approved by a majority of the votes of a Quorum of the Board, as said budget may be amended from time to time.

**Section 3.06. No Private Inurement.** No part of the assets or net earnings of the Authority shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the Authority shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make reimbursement in reasonable amounts

for expenses actually incurred in exercising the powers or carrying out the purposes of the Authority.

#### **ARTICLE IV**

#### **BUDGETS/FUNDING/DEBT**

**Section 4.01. Annual Budget.** Unless otherwise determined by the Members, no later than September 15 of each year, the Board shall cause a proposed annual budget for the next fiscal year to be prepared and shall submit a copy of the proposed annual budget to the Members. As part of the proposed annual budget the Authority shall determine the proportionate share of the Authority's upcoming year's proposed expenses that shall be the obligation of each of the Members. In the event a Member disagrees with its proposed proportionate share of the Authority's upcoming year's expenses, such Member shall notify the Authority and the other Members of its objection and the Members shall meet in good faith to resolve such issues no later than October 15. In the event the Members are unable to resolve the issues, each Member's proposed proportionate share of the Authority's upcoming year's expenses shall remain consistent with the then-current year's proportionate share. Annual budgets adopted by the Board shall conform to the requirements of Sections 29-1-101, *et seq.*, C.R.S., as amended, and the additional requirements set forth in this Agreement. The Board may amend its annual budgets in accordance with Sections 29-1-101, *et seq.*, C.R.S., as amended. The Authority shall make available to each of the Members a detailed statement of the final costs and expenses for the prior fiscal year allocated in the same manner as estimated expenses were allocated, as soon as possible after the close of each fiscal year.

**Section 4.02. Funding.** The Authority may fund the Services from any lawful source allowed by this Agreement and applicable law. It is the express intent of the Members that the Authority's administrative, operational and maintenance expenses are to be funded through revenues generated by the imposition of a mill levy and/or fees charged by each of the Members, subject to annual appropriation and budget approval by the Members, and only to the extent that such revenues are not otherwise required by the individual Members for their own respective annual operational and administrative costs, and debt service obligations; the Members hereby agree that they shall jointly act in good faith on an on-going basis to take all reasonable actions

necessary to adequately fund the Authority's provision of the Services on the Members' behalf to the greatest extent available. Members may make loans or grants to the Authority provided such loans or grants do not result in the loss of any applicable enterprise status of the Authority that may exist under Colo. Const. Art. X. Sec. 20 unless approved by the Authority and all of the Members and loss of enterprise status does not adversely affect any outstanding debt of the Authority as determined by the Authority's bond counsel. All funding appropriations described herein shall occur on an annual basis, at the discretion of each Member's Board of Directors, and therefore are not intended to constitute multiple-fiscal year indebtedness or financial obligations of the Members subject to the requirements of Article X, Section 20 of the Colorado Constitution. In addition, it is anticipated the Authority may, from time to time, impose rates, fees, tolls, charges and penalties for facilities, services, and programs furnished or to be furnished by the Authority, including but not limited to an operations fee and landscape fee. Any such rates, fees, tolls, charges and penalties imposed by the Authority shall be imposed consistently across all of the Members.

**Section 4.03. Operations Costs.** The Authority may fund its operations from rates, fees, tolls, charges or penalties and with any revenues transferred to the Authority by the Members or others. The amount of money necessary to fund the operations of the Authority shall be determined each year as a part of the budget process. The Members intend that the Authority not be considered a "district" subject to Article X, Section 20 of the Colorado Constitution ("TABOR") and therefore will not maintain a three percent (3%) emergency reserve as required by paragraph (5) of TABOR. The reserves of each Member, including the Members' TABOR reserves, shall not be transferred to the Authority but shall remain with the respective individual Members. However, should it be determined that the Authority is a "district" for purposes of TABOR, the emergency reserves of the individual Members shall be available to the Authority should it become necessary to draw on an emergency reserve fund and thus the Authority's emergency reserve requirement under TABOR would be satisfied.

**Section 4.04. Books and Records.** The Authority shall provide for the keeping of accurate and correct books of account on an accrual basis in accordance with the Local Government Uniform Accounting Law, Part 5 of Article 1, Title 29, C.R.S., as amended. Said books and records shall be open to inspection at all times during normal business hours by any



representative of any of the Members or by the accountant or other person authorized by any of the Members to inspect said books or records. The Board shall provide for the auditing of all books and accounts and other financial records of the Authority annually, and in accordance with the Colorado Local Government Audit Law, Part 6 of Article 1, Title 29, C.R.S., as amended. Audits shall be completed and filed annually in a timely manner, as described in Section 29-1-606, C.R.S. All funds received by the Authority shall be invested in accordance with state statutory requirements.

**Section 4.05. Revenue Bonds.** The Authority may, from time to time, issue revenue bonds, notes or other financial obligations for any of its purposes as provided in Section 29-1-203.5(3), C.R.S., as amended; provided, such bonds, notes or other financial obligations may only be issued pursuant to a written resolution approved by a unanimous vote of a Quorum of the Board and shall be payable solely out of all or a specified portion of the revenues of the Authority as designated by the Board. No debt or other financial obligations of the Authority shall constitute the debt or financial obligation or become the responsibility of the Members.

## **ARTICLE V**

### **ASSETS OF THE AUTHORITY**

**Section 5.01. Asset Inventory Schedule.** The Authority shall maintain an asset inventory list for any and all real or personal property acquired by the Authority by lease, purchase, donation or governmental conveyance and either held by it or transferred to others. This list shall designate how the asset was acquired, the date of acquisition, and the date of any sale or other disposition of any asset transferred by the Authority, together with the amount of consideration received or paid by the Authority.

**Section 5.02. Insurance.** The Authority shall maintain, at a minimum, the following insurance coverages:

- (a) General liability coverage protecting the Authority and its officers, directors, and employees against loss, liability, or expense whatsoever from personal injury, death, property damage, or otherwise, arising from or in any way connected with

management, administration, or operations in amounts not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate.

(b) Directors and officers liability coverage (errors and omissions) protecting the Authority and its directors and officers against any loss, liability, or expense whatsoever arising from the actions and/or inactions of the Authority and its directors and officers in the performance of their duties.

The Authority may obtain, at its own expense, any further or additional insurance coverage that the Board desires to carry.

## **ARTICLE VI TERMINATION**

**Section 6.01. Termination By Notice.** This Agreement will terminate, after notice has been provided to each Member and provision has been made for the discharge of any debt issued by, and financial obligation of, the Authority, by a vote of the Board in accordance with Section 2.06. The effective date of termination shall be on December 31 of any calendar year in which written notice of termination is provided.

**Section 6.02. Wind-Up and Liquidation.** In the event of termination of this Agreement, the Board, or a person or persons appointed by the Board, shall wind-up and liquidate the assets of the Authority, if any. Upon dissolution of the Authority, and in consultation with the Authority's bond counsel, all of its property, if any, will be transferred to: (a) one or more of the Members; (b) an entity that exists as a result of a Consolidation of the Members; or (c) other governmental entities approved by the Members of the Authority immediately prior to dissolution. If the Members cannot agree on the disposition of certain assets or property of the Authority, said assets or property shall be subject to an independent appraisal and shall be sold at public auction with the proceeds allocated, to the greatest equitable extent possible, to the Members in the same proportion as the respective contribution of funds by the Members for acquisition of the assets or property. Upon termination of this Agreement, the Members will work in good-faith to determine how best to allocate Authority assets and

liabilities between the Members, such that a fair and equitable arrangement can be achieved while continuing to maintain the best possible Services for each Member. The Members may memorialize the terms of their accord in a written agreement, if they so choose.

## **ARTICLE VII**

### **DEFAULT**

**Section 7.01. Events of Default.** The occurrence of any one or more of the following events and/or the existence of any one or more of the following conditions shall constitute an “Event of Default” under this Agreement:

(a) The failure to perform or observe any material covenant, agreement, or condition in this Agreement on the part of any Member and to cure such failure within thirty (30) days of receipt of notice from one of the other Members or the Authority of such failure unless such default cannot be cured within such thirty (30) day period, in which event the defaulting Member shall have an extended period of time to complete the cure, provided that action to cure such default is commenced within said thirty (30) day period and the defaulting Member is diligently pursuing the cure to completion.

**Section 7.02. Remedies on Occurrence of Events of Default.** Upon the occurrence of an Event of Default, each of the Members and the Authority (together) shall have the following rights and remedies:

(a) Any non-defaulting Member(s) and/or the Authority may ask a court of competent jurisdiction to enter a writ of mandamus to compel the board of directors of the defaulting Member to perform its duties under this Agreement, and/or to issue temporary and/or permanent restraining orders, or orders of specific performance, to compel the defaulting Member to perform in accordance with this Agreement.

(b) Any non-defaulting Member(s) and/or the Authority may protect and enforce their rights under this Agreement by such suits, actions, or special proceedings as they shall deem appropriate, including, without limitation, any proceedings for the

specific performance of any covenant or agreement contained in this Agreement, for the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages, including attorneys' fees and all other costs and expenses incurred in enforcing this Agreement.

(c) The non-defaulting Member(s) and/or the Authority shall have the right to budget and expend funds as necessary to enforce the terms of this Agreement.

## ARTICLE VIII MISCELLANEOUS PROVISIONS

**Section 8.01. Notices.** Any notice required hereunder shall be given in writing, delivered personally, or sent by registered mail, postage prepaid, and addressed to the Members at the addresses set forth below or at such other address as a Member may hereafter or from time to time designate by written notice to the other Member given in accordance herewith. Notice shall be considered given when personally delivered or mailed, and shall be considered received in the earlier of the day on which such notice is actually received by the Member to whom it is addressed, or the third day after such notice is mailed.

to District No. 4:       Brighton Crossing Metropolitan District No. 4  
                                  c/o Pinnacle Consulting Group, Inc.  
                                  550 W. Eisenhower Blvd.  
                                  Loveland, Colorado 80537  
                                  Attn: Chelsey Green  
                                  chelseyg@pinnacleconsultinggroupinc.com

with a copy to:       Brighton Crossing Metropolitan District No. 4  
                                  c/o White Bear Ankele Tanaka & Waldron  
                                  2154 E. Commons Avenue, Suite 2000  
                                  Centennial, CO 80122  
                                  Attn: Blair Dickhoner

bdickhoner@wbapc.com

to District No. 5: Brighton Crossing Metropolitan District No. 5  
c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Blvd.  
Loveland, Colorado 80537  
Attn: Chelsey Green  
chelseyg@pinnacleconsultinggroupinc.com

with a copy to: Brighton Crossing Metropolitan District No. 5  
c/o White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122  
Attn: Blair Dickhoner  
bdickhoner@wbapc.com

to District No. 6: Brighton Crossing Metropolitan District No. 6  
c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Blvd.  
Loveland, Colorado 80537  
Attn: Chelsey Green  
chelseyg@pinnacleconsultinggroupinc.com

with a copy to: Brighton Crossing Metropolitan District No. 6  
c/o White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122  
Attn: Blair Dickhoner  
bdickhoner@wbapc.com

to District No. 7: Brighton Crossing Metropolitan District No. 7

c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Blvd.  
Loveland, Colorado 80537  
Attn: Chelsey Green  
chelseyg@pinnacleconsultinggroupinc.com

with a copy to: Brighton Crossing Metropolitan District No. 7  
c/o White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122  
Attn: Blair Dickhoner  
bdickhoner@wbapc.com

to District No. 8: Brighton Crossing Metropolitan District No. 8  
c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Blvd.  
Loveland, Colorado 80537  
Attn: Chelsey Green  
chelseyg@pinnacleconsultinggroupinc.com

with a copy to: Brighton Crossing Metropolitan District No. 8  
c/o White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122  
Attn: Blair Dickhoner  
bdickhoner@wbapc.com

to the Authority: Brighton Crossings Authority  
c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Blvd.  
Loveland, Colorado 80537

Attn: Chelsey Green  
chelseyg@pinnacleconsultinggroupinc.com

with a copy to: Brighton Crossings Authority  
c/o White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122  
Attn: Blair Dickhoner  
bdickhoner@wbapc.com

**Section 8.02. Consent.** Whenever any provision of this Agreement requires consent or approval of the Members hereto, the same shall not be unreasonably withheld.

**Section 8.03. Amendments.** No alterations, amendments or modifications hereof shall be valid unless approved by the Board and all of the Members and executed by an instrument with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by the instrument in writing, and no prior, contemporary, or subsequent oral agreement shall have any validity whatsoever.

**Section 8.04. Severability.** If any clause or provision in this Agreement contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

**Section 8.05. Binding Effect.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Members and to their respective successors and permitted assigns.

**Section 8.06. Assignment and Delegation.** No Member shall assign any of the rights nor delegate any of the duties of this Agreement without a majority vote of the whole membership of the Board. Any attempted assignment or delegation not in conformance with this provision shall be void.

**Section 8.07. Applicable Laws.** This Agreement shall be governed by and construed in accordance with the Constitution and laws of the State of Colorado. The Members agree not to institute any legal action or proceeding against the Authority or any of its directors, officers, employees, agents or property concerning any matter arising out of or related to this Agreement in any court other than the Adams County District Court.

**Section 8.08. Paragraph Headings.** The paragraph headings are inserted in this Agreement only as a matter of convenience and reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

**Section 8.09. Singular and Plural.** Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

**Section 8.10. Negotiated Provisions.** This Agreement shall not be construed more strictly against one Member than against another Member merely by virtue of the fact that it may have been prepared by counsel for one of the Members, it being acknowledged that each Member has contributed substantially and materially to the preparation of this Agreement.

**Section 8.11. No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Members and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third Party. It is the express intention of the Members that any person, other than the Members, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**Section 8.12. Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, but 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, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.



**Section 8.13. Governmental Immunity.** Nothing herein shall be construed as a waiver of the rights and privileges of the Members or the Authority pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., as amended from time to time.

**Section 8.14. Annual Appropriation.** The Authority and the Members do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Members and the Authority pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Authority's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Authority, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Authority or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Authority funds. The Authority's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

**Section 8.15. No Personal Liability.** No elected official, director, officer, agent or employee of the Districts shall be charged personally or held contractually liable by or under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Districts have caused this Agreement to be executed as of the day and year first hereinabove written.

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

By \_\_\_\_\_  
President



ATTEST:

\_\_\_\_\_  
*Camryn [unclear]*

APPROVED AS TO FORM:

SPENCER FANE LLP  
Attorneys at Law

\_\_\_\_\_  
*Spencer Fane*  
Special Counsel to District No. 4

BRIGHTON CROSSING METROPOLITAN  
DISTRICT NO. 5, a quasi-municipal  
corporation and political subdivision of the State  
of Colorado

By W.S. Robbins  
President

ATTEST:

Carney Sampson

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

By W.S. Robbins  
President

ATTEST:

Carney Sampson

BRIGHTON CROSSING METROPOLITAN  
DISTRICT NO. 7, a quasi-municipal  
corporation and political subdivision of the State  
of Colorado

By W.S. Robbins  
President

ATTEST:

Carly Meyer

BRIGHTON CROSSING METROPOLITAN  
DISTRICT NO. 8, a quasi-municipal  
corporation and political subdivision of the State  
of Colorado

By W.S. Robbins  
President

ATTEST:

Carly Meyer

APPROVED AS TO FORM:

COLLINS COCKREL & COLE P.C.  
Attorneys at Law

[Signature]  
Special Counsel to District Nos. 5-8