

**SECOND AMENDED AND RESTATED
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
BRIGHTON CROSSINGS OPERATIONS BOARD**

Establishing Guidelines for the Processing and Collection of Delinquent Fees and Charges

WHEREAS, Brighton Crossings Metropolitan District Nos. 4-8 are each quasi-municipal corporation and political subdivision of the State of Colorado (the “**Districts**”); and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., the Districts are authorized to fix and from time to time increase or decrease, fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the Districts (collectively, the “**Fees**”) to properties within and without (each property individually referred to herein as the “**Property**”) the Districts’ boundaries; and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., until paid, the Fees shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the State of Colorado for the foreclosure of mechanics’ liens; and

WHEREAS, pursuant to their service plans and § 29-1-203, C.R.S., the Districts may coordinate or contract with one another to provide any function, service or facility that they may be authorized to provide individually; and

WHEREAS, on April 15, 2019, the Districts entered into the Brighton Crossings Authority Establishment Agreement (the “**Agreement**”) to establish the Brighton Crossings Operations Board (the “**Operations Board**”), a contractual authority and political subdivision the State of Colorado; and

WHEREAS, pursuant to the Agreement and § 29-1-203, C.R.S., the Operations Board has the power, duty and responsibility to provide services and the power to fix and collect the Fees which, until paid, constitute a perpetual lien on and against the property serviced that may be foreclosed upon by the Operations Board; and

WHEREAS, on December 4, 2019, the Board of Directors of the Operations Board (the “**Board**”) adopted that certain Amended and Restated Resolution Establishing Guidelines for the Processing and Collection of Delinquent Fees and Charges (the “**Prior Policy**”) and the Board desires to adopt this Resolution to amend and restate the Prior Policy in its entirety.

NOW, THEREFORE, the Board hereby RESOLVES:

1. **Statement of Lien Guidelines:**

a. ***Perpetual Lien.*** Pursuant to § 32-1-1001(1)(j)(I), C.R.S., all unpaid and/or delinquent Fees imposed by the Operations Board, together with any and all Late Fees, Interest, Penalties and Costs of Collections (each defined separately in this Resolution), (collectively, the “**Delinquent Fees and Charges**”) shall constitute a perpetual lien on and against the Property served (the “**Lien**”). All such Liens shall, to the fullest extent permitted by law, have priority over all other liens of record affecting the Property and shall run with the Property and remain in effect until paid in full. All Liens contemplated herein may be foreclosed as authorized by law at such time as the Operations Board, in its sole discretion, may determine.

i. Notwithstanding the foregoing, the guidelines set forth in this Resolution are intended to create orderly and fair procedures for the processing and collection of Delinquent Fees and Charges and to provide additional notice to interested parties, including, but not limited to, title companies and the Property owner. In the event any or all of the guidelines set forth in this Resolution are not followed, such deviation shall not affect the status of the Lien in any way. Further, the Board may waive any guidelines set forth in this Resolution and may amend them from time to time as it deems necessary.

b. ***Operations Board’s Manager Procedures.*** The Operations Board Manager, Accountant or Billing Agent (any of which are referred to herein as the “**Manager**”) is responsible for collecting Fees imposed by the Operations Board against the Property. In the event payment of Fees is delinquent, the Manager may perform the procedures listed below. The Fees are considered delinquent when they have not been paid by their corresponding due date (the “**Delinquent Account**”):

i. ***One (1) Calendar Day Past Due:*** A delinquent payment “Reminder Email” may be sent to the email address of the Property owner requesting prompt payment. If the Manager does not have an email address on file for the Property owner and/or the email is returned as undeliverable, the Manager shall not be required to locate a valid email address for the Property owner.

ii. ***Thirty (30) Calendar Days Past Due:*** A delinquent payment “Reminder Letter” may be sent to the address of the last known Property owner or occupant of the Property according to the Manager’s records. In the event the above mailing is returned as undeliverable, the Manager may send a second copy of the Reminder Letter to: (1) the Property; and (2) the address of the last known owner of the Property as found in the real property records of the County Assessor’s Office (the “**Assessor**”) for the County in which the Operations Board is located (collectively, the “**Property Address**”). Said Reminder Letter may: (1) request prompt payment; (2) notify the Property owner that a Reminder Letter Fee, and a Late Fee in the amounts set forth in this Resolution have been assessed; and (3) reference the url address of the Operations Board’s webpage where this Resolution is displayed, if available and requested by the Board.

iii. ***Thirty (30) Calendar Days from the Postmark Date of the Reminder Letter:*** A “Warning Letter” may be sent to the Property Address: (1) requesting prompt payment; (2) warning of further legal action should the Property owner fail to pay the total amount due and owing; and (3) referencing the url address of the Operations Board’s webpage where this Resolution is displayed, if available. Along with the Warning Letter, a copy of the most recent

account ledger reflecting the total amount due and owing to the Operations Board according to the records of the Manager may also be sent.

iv. *Delinquent Accounts Post Warning Letter:* The Manager shall continue to monitor the delinquent account until either: (i) the amount of the Fees owing on such Delinquent Account are equal to or greater than the amount that would be collected under the current rate for such Fees over a one (1) year period; or (ii) the account is more than six months past due, regardless of whether the Manager has performed the tasks outlined in this Section 1(b) of this Resolution, the Manager may refer the Delinquent Account to the Operations Board's special counsel for collections and covenant enforcement legal services ("**Special Counsel**"). At the time of such referral, the Manager may be requested to provide Special Counsel with copies of all notices and letters sent pursuant to Section 1(b), if any, as well as a copy of the most recent ledger for the Delinquent Account.

c. *Special Counsel Procedures.* Upon referral of a Delinquent Account from the Manager, Special Counsel may perform the following:

i. *Upon Referral of the Delinquent Account From the Manager:* A "Demand Letter" may be sent to the Property Address, notifying the Property owner that the Property has been referred to Special Counsel for further collections enforcement, including the filing of a statement of lien against the Property. Along with the Demand Letter, a copy of the most recent account ledger reflecting the total amount due and owing the Operations Board according to the records of the Manager may also be sent.

ii. *No Sooner than Thirty (30) Calendar Days from the Postmark Date of the Demand Letter:* A Notice of Intent to File a Statement of Lien, along with a copy of the statement of lien to be filed, may be sent to the Property Address of the Delinquent Account notifying the Property owner that a statement of lien will be recorded with the clerk and recorder of the County where the Property is located (the "**Clerk and Recorder**") within no sooner than ten (10) days from the postmark date of the Notice of Intent to File a Statement of Lien.

iii. *No Sooner than Ten (10) Calendar Days from the Postmark Date of the Notice of Intent to File a Statement of Lien:* A Statement of Lien for the total amount due and owing as of the date of the Statement of Lien may be recorded against the Property with the Clerk and Recorder no sooner than ten (10) days from the postmark date of the Notice of Intent to File a Statement of Lien is sent to the Property. Notwithstanding the amount due and owing reflected on the Statement of Lien, all Delinquent Fees and Charges will continue to accrue on the Delinquent Account and will run with the Property until the total amount due and owing the Operations Board is paid in full.

d. *Foreclosure or Bankruptcy.* In circumstances where the Property is being foreclosed upon or where the owner of the Property has declared or is declaring bankruptcy and notice of such bankruptcy action has been provided to the Operations Board, the Manager may be permitted, in his or her discretion, to refer the Delinquent Account directly to Special Counsel in order to avoid unnecessary, costly and time consuming procedures. Upon referral of the Delinquent Account to Special Counsel, Special Counsel may, in his or her discretion, immediately file a Statement of Lien on the Property. Further, when a Delinquent Account has a balance of

\$1,500.00 or greater, Special Counsel is authorized to commence foreclosure action against the Property.

2. **Late Fees:**

a. **“Late Fees”** are assessed on the Property for failure to make timely payments of Fees. Late Fees are applied, regardless of whether the Fees are assessed on a one-time, monthly, quarterly, semi-annual, annual, or any other basis.

b. Late Fees are assessed on the Property **Thirty (30) calendar days from the payment due date**. Pursuant to § 29-1-1102, C.R.S., such Late Fee may be charged by either of the following two methods, whichever is greater:

i. One Late Fee of Fifteen Dollars (\$15.00) may be assessed on the Property per each assessment or installment of Fees not fully paid prior to the Thirtieth (30th) calendar day following the payment due date; or

ii. In lieu of Section 2(b)(i) above, a Late Fee of Five Percent (5%) per month, commencing on the Thirtieth (30) calendar day following the payment due date, and each month thereafter, may be charged on unpaid Fees until the Late Fee equals Twenty Five Percent (25%) of all outstanding Fees.

c. Partial payment of any outstanding Delinquent Fees and Charges will not prevent the imposition of Late Fees pursuant to this Section 2.

d. Payments received will be applied to the balance due in the following order of priority: (1) Late Fees; (2) Interest; (3) Costs of Collections; (4) Legal Fees and Costs; (5) the earliest imposed and unpaid Fees; (6) any successive unpaid Fees in chronological order from the earliest unpaid Fees to the most recently imposed Fees.

e. No penalty will be assessed on the Property for a credit balance resulting from the prepayment and/or overpayment of Fees. Such credit balances will be carried forward on the account with all subsequent Fees and Delinquent Fees and Charges being deducted until such time as the credit balance is depleted. A Property carrying a credit balance may be assessed Late Fees as provided herein at such time as the credit balance is insufficient to pay the entire amount of Fees due and owing the Operations Board.

3. **Penalties:** May be charged on Delinquent Accounts at a rate determined by the Board and may include, but are not limited to, pro-rated costs associated with collection efforts on behalf of the Operations Board for all Delinquent Accounts combined.

4. **Costs of Collections:**

a. Include, but are not limited to, attorneys’ fees and all costs, fees and charges associated with the processing and/or collection of Delinquent Fees and Charges, including the following:

i. *Attorney Hourly Fees and Costs.* Upon transfer of a Delinquent Account to Special Counsel, all hourly attorneys' fees and costs, including, but not limited to, litigation and expert witness fees and costs, litigation guarantees, service of process and/or publications incurred by the Operations Board to collect or defend the Delinquent Fees and Charges are assessed to the Delinquent Account and become part of the perpetual Lien on the Property. All such hourly attorneys' fees and costs shall be reasonable.

ii. *Recovery of Costs of Collections.* In accordance with § 29-1-1102(8), C.R.S., nothing in this Resolution shall be construed to prohibit the Operations Board from recovering all Costs of Collections whether or not outlined above.

5. Waiver of Late Fees, Interest and Costs of Collections:

a. The Manager and Special Counsel each have authority and discretion to waive or reduce portions of the Delinquent Account attributable to Late Fees and Interest. Such action is permitted if either the Manager or Special Counsel, in its discretion, determines that such waiver or reduction will facilitate the payment of Delinquent Fees and Charges. Notwithstanding the foregoing, neither the Manager nor Special Counsel shall have the authority to waive Late Fees and Interest which, in the aggregate, exceeds One Thousand Dollars (\$1,000.00). In such case, the person or entity owing in excess of One Thousand Dollars (\$1,000.00) in Late Fees and Interest combined and requesting such a waiver shall first submit a request, in writing, to the Board, and the Board may make the determination in its sole discretion.

b. Neither the Manager nor Special Counsel is authorized to waive any portion of the Fees or Costs of Collections. Should the Property owner desire a waiver of such Fees and/or Costs of Collections, s/he may submit a written request to the Board and the Board may make the determination in its sole discretion.

c. Any waiver or reduction of Late Fees or Interest granted pursuant to Sections 6(a) or (b) hereof shall not be construed as a waiver or reduction of future Late Fees and Interest, or as the promise to waive or reduce future Late Fees or Interest. Nor shall any such waiver or reduction be deemed to bind, limit, or direct the future decision making power of the Board, Manager, or Special Counsel, whether related to the Property in question or other properties within the Operations Board.

6. Payment Plans: The Manager and Special Counsel each have the authority to enter into or establish payment plans for the repayment of a Delinquent Account. Should the Manager or Special Counsel elect not to enter into a payment plan with the Property owner, the Property owner may submit a written request to the Board and the Board may make the determination in its sole discretion.

7. Acceleration and Decelerations of Fees: The Operations Board reserves the right to accelerate and call due an entire unpaid annual Fee on any delinquent account. Such acceleration shall result in the entire unpaid annual Fee being due to the Operations Board immediately. The Operations Board also reserves the right to decelerate any accelerated Fee.

8. Ratification of Past Actions: All acts, omissions, waivers and/or payment plans heretofor undertaken by the Manager or Special Counsel that would otherwise have been

authorized by or not required by this Resolution are hereby affirmed, ratified and made effective as of the date said acts, omissions, waivers and/or payment plans occurred.

9. **Additional Actions:** The Board directs its officers, staff and consultants to take such additional actions and execute such additional documents as are necessary to give full effect to the intention of this Resolution.

10. **Deviations:** The Operations Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.

11. **Supersedes Prior Resolutions:** This Resolution shall supersede and replace in their entirety all prior resolutions addressing the processing and/or collection of Delinquent Fees and Charges, including the Prior Policy. To the extent that any term or provision in this Resolution conflicts with any term or provision in a previously enacted and valid resolution of Brighton Crossing Metropolitan No. 4 and/or the Operations Board, the term or provision in this Resolution shall prevail.

12. **Severability:** If any term, condition or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, condition or provision shall not affect any other provision contained in this Resolution, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Resolution a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

13. **Prior Amounts Owed:** To the extent outstanding and unpaid, all fees, tolls, penalties, liens, charges and/or amounts due and owing under any prior resolution enacted by the Operations Board and/or the Brighton Crossing Metropolitan District No. 4 and assigned to the Operations Board shall remain in effect until fully paid and shall not be eliminated hereby.

14. **Savings Provision:** The failure to comply with the procedures set forth herein shall not affect the status of the Delinquent Fees and Charges as a perpetual Lien subject to foreclosure in accordance with law. Failure by the Manager, Special Counsel or other authorized representative to take any action in accordance with the guidelines provided herein shall not invalidate subsequent efforts to collect the Delinquent Fees and Charges.

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ADOPTED this 6th day of December, 2021.

BRIGHTON CROSSINGS OPERATIONS
BOARD, a political subdivision of the State of
Colorado

DocuSigned by:
Ashley Tarufelli
877F68A78EFD419

Officer of the Operations Board

ATTEST:

DocuSigned by:
John Strider
1724843AF25E4DF...

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

DocuSigned by:
Eve Velasco
3582C030FFC44E4...

General Counsel to the Operations Board

*Signature Page to Second Amended and Restated Resolution Establishing Guidelines for the
Processing and Collection of Delinquent Fees and Charges*