

SECOND AMENDED AND RESTATED DISTRICT FACILITIES
CONSTRUCTION, FUNDING AND SERVICE AGREEMENT

THIS SECOND AMENDED AND RESTATED DISTRICT FACILITIES CONSTRUCTION, FUNDING AND SERVICE AGREEMENT (the "Agreement") is entered into effective as of the 1st day of November, 2018, by and between TOWN CENTER METROPOLITAN DISTRICT ("Town") and the EBERT METROPOLITAN DISTRICT ("Ebert") both quasi-municipal corporations and political subdivisions of the State of Colorado (collectively hereinafter referred to as the "Districts" or the "Parties").

RECITALS

WHEREAS, the purposes for which each of the Districts were formed are provision of water, sanitation, street, safety, park and recreation, and transportation facilities, programs, and services; and

WHEREAS, pursuant to Colorado Constitution Article XIV, Section 18(2)(a), and Section 29-1-203, C.R.S., the Districts may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt; and

WHEREAS, each District has, pursuant to Section 32-1-205 C.R.S., prepared a Service Plan ("Service Plan"), submitted in accordance with Part 2 of the Special District Act (§ 32-1-201, et seq., C.R.S.), and have received all required governmental approvals therefor; and

WHEREAS, the Service Plan discloses and establishes the necessity for and desirability of an intergovernmental agreement concerning the construction, operation, and maintenance of certain regional facilities and the provision of services; and

WHEREAS, each District was organized with the approval of the City and County of Denver, State of Colorado, ("City") and with the approval of their respective electors, fully contemplating cooperation between the Districts as provided in their Service Plans; and

WHEREAS, at an election of the qualified electors of the Districts duly called and held on November 2, 1999, in accordance with law and pursuant to due notice, a majority of the those qualified to vote and voting at such election voted in favor of incurring indebtedness in an aggregate amount not to exceed \$33 million for the purpose of entering into an intergovernmental agreement; and

WHEREAS, at an election of the qualified electors of the Districts duly called and held on November 7, 2000, in accordance with law and pursuant to due notice, a majority of the those qualified to vote and voting at such election voted in favor of incurring indebtedness in an aggregate amount not to exceed \$66 million for the purpose of entering into an intergovernmental agreement; and

WHEREAS, the November 2, 1999 Election and the November 7, 2000 election and hereafter referred to as the "Elections;" and

WHEREAS, pursuant to the Elections the Districts previously entered into two essentially identical Regional Facilities Construction Agreements dated as of December 1, 1999, and April 28, 2005, as well as an Amended and Restated District Facilities Construction, Funding and Service Agreement dated as of January 1, 2016 (“Prior Agreements”) pursuant to which previously estimated service costs were to be paid by Ebert to Town, and Town was to construct, own or transfer, and operate and maintain public facilities and services of benefit to both Districts; and

WHEREAS, pursuant to the Prior Agreements, of the \$99 million in electoral authorization, there remains \$16,947,741 as voted authorization to be applied according to the terms and conditions of this Agreement (the “Maximum Service Amount”); and

WHEREAS, the Parties acknowledge and agree that the obligations under the Prior Agreements have been fully funded, and that the facilities to be constructed or acquired or the services to be provided under the Prior Agreements have been completed in accordance with the Prior Agreements and to the satisfaction of the Parties; and

WHEREAS, Ebert and Town acknowledge the need to enter into this new Agreement which will replace the Prior Agreements and (1) specify how the Districts will complete the infrastructure necessary to complete the build out of the development within the Districts (“District Facilities”); (2) set forth the intent of Ebert to issue a final indebtedness to fund the same; (3) state the agreement of the parties regarding certain fee assessments and collections; and (4) continue the agreements of the Prior Agreements to fund and coordinate the provision by Town of future operation, maintenance and administrative services of benefit to both Districts; and

WHEREAS, the Districts agree that the District Facilities are needed by the Districts and that the District Facilities will benefit the residents and property owners in both Districts in terms of cost, quality and level of service; and

WHEREAS, Ebert is in the process of refinancing that certain 2016 Loan Agreements by and between Ebert, U.S. Bank National Association, a national banking association and BBVA COMPASS, a national banking association through the issuance of its Limited Tax General Obligation Refunding Bonds, Series 2018A-1 and Series 2018A-2 (the “Bonds”) and that a portion of the revenues generated by Series 2018A-2 Bonds shall be deposited into a Capital Improvement and Repair Fund to implement the Improvement Project consisting of the construction and acquisition of District Facilities ; and

WHEREAS, in order to satisfy Ebert’s obligations under this Agreement to fund the Total Actual Service Costs (as defined below) the Districts desire to provide in this Agreement for (1) the levy by Ebert of the Minimum Service Levy (as defined below), and (2) for the administration of said funds and the Service Fund Account, the Capital Repair and Maintenance Fund, and the Capital Repair and Replacement Fund by Town and Ebert, as more specifically set forth below; and

WHEREAS, this Agreement serves a valid and important governmental purpose, and is necessary and is in the best interests of the Districts and their taxpayers; and

C O V E N A N T S

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants and stipulations herein, the Districts agree as follows:

ARTICLE I PURPOSE AND TERM OF AGREEMENT

1.1 Term. This Agreement shall become effective on and as of the date first written above and shall remain in full force and effect unless terminated in accordance with its terms.

1.3 Authorization. In accordance with the Constitution of the State of Colorado,; Article 32, Title 1, C.R.S.; the Supplemental Public Securities Act, being Title 11, Article 57, Part 2, C.R.S.; and all other laws of the State of Colorado thereunto enabling, the Districts have entered into this Agreement for the purpose of permitting the Districts to provide for (1) the construction and operation of the District Facilities and the provision by Town of the services contemplated hereby, and (2) paying any costs associated with the same. The Districts have determined that this Agreement, in conformance with Interpretative Order No. 06-JN-001 as issued by the Division of Securities, Department of Regulatory Agencies on March 27, 2006, is exempt from the registration requirements of the Colorado Municipal Bond Supervision Act.

ARTICLE 2 DEFINITIONS

2.1 As used throughout this Agreement, and except as otherwise defined herein the following terms are defined as follows:

- a. "Actual Service Costs": all operations, maintenance, and administration costs incurred by Town in the performance of the duties and services required by this Agreement.
- b. "Board" or "Boards"": the lawfully organized Boards of Directors of the Districts.
- c. "Loan Agreement": (defined above).
- d. "Authorizing Resolution": means the resolution adopted by the Board on November 14, 2018 authorizing the District to issue the Bonds.
- e. "Budget Year": the year immediately following the Planning Year, during which Actual Service Costs are to be incurred.
- f. "Capital Repair and Maintenance Bond Fund" or "Bond Fund": that account or accounts, interest bearing if possible, established by Ebert for the purpose of depositing all project funds sums generated by the Bonds for the purpose of implementing the Improvement Project.
- g. "Capital Repair and Replacement Fund" or "CRRF": that account or accounts, interest bearing if possible, established by Ebert for the purpose of depositing all that portion of the

proceeds generated by imposition by Ebert of the Minimum Service Levy and dedicated to the CRRF as described in this Agreement.

h. "District Facilities" or "Facilities": those various facilities and improvements that either have been or will be constructed as identified from time to time by Ebert in consultation with Town, in the exercise of its reasonable discretion, to address such matters as changes in the path or timing of development; new or different requirements of the City and County of Denver or other jurisdictions having authority over the District Facilities; changing methods or procedures for the completion of District Facilities; elimination for any reason of the need to provide any District Facilities; and generally consisting of water, sanitary sewer, drainage, roadways, fencing, open space, park and landscaping-related improvements.

i. "Emergency Repair": any repair or replacement of District Facilities which, in the opinion of Town, requires immediate action in order to avoid damage to the District Facilities or danger to the Districts' residents.

j. "Estimated Service Costs": the estimated costs for operation, maintenance, and administration of the Districts and District Facilities for the Budget Year.

k. "Final Plans and Specifications": the plans and specifications for construction of a specific portion or portions of the District Facilities as identified and prepared by Town's engineer.

l. "Maximum Service Amount": \$16,947,741.00

m. "Minimum Service Levy": a levy of not less than eighteen (18) mills imposed by Ebert against all taxable property within its boundaries, adjusted to account for constitutional and legislative changes, including new exemptions, in the manner, method or base percentage calculation for the computation of assessed values of taxable property, provided that the levy shall never exceed fifty (50) mills.

n. "Planning Year": the year immediately preceding the corresponding Budget Year and during which Town prepares Preliminary Budget Documents related to the Estimated Service Costs.

o. "Preliminary Budget Documents": those documents prepared by Town for submission to Ebert during the Planning Year consisting of Estimated Service Costs for the Budget Year.

p. "Prior Agreements": defined above.

q. "Service Fund Account": that account, owned and established by Town, into which Ebert shall deposit annually, or cause to be deposited as described herein, the amount generated through the imposition of the Minimum Service Levy, less that amount to be deposited into the CRRF, plus any additional revenues, including but not limited to specific ownership taxes and Conservation Trust Fund moneys, generated by Town and Ebert as a result, indirect or direct, of the their existence or their imposition of a mill levy, but excepting revenues pledged to the Bonds.

s. "Service Plans": the Service Plans for the Town Metropolitan District and Ebert Metropolitan District, as approved by the City, and as the same may be amended from time to time.

t. "Total Actual Service Costs" shall be that amount of revenue generated annually through the imposition of the Minimum Service Levy, or such greater amount as the Districts may agree in any Budget Year. In no event shall the aggregate Total Actual Service Costs paid by Ebert to Town during the term of this Agreement exceed \$16,947,741.00 without the agreement of Ebert (constituted through Ebert's appropriation of excess revenues to the Service Fund Account from time to time).

ARTICLE 3
FINANCING OF FACILITIES AND
OPERATIONS, MAINTENANCE AND ADMINISTRATIVE SERVICES
GENERAL TERMS

3.1 No Additional Electoral Approval Required. Because the authorization and issuance of debt, fiscal year spending, revenues and other constitutional matters requiring voter approval for purposes of this Agreement, including the construction of the District Facilities and the provision of operation, maintenance and administrative services pursuant to the terms hereof were approved by the Prior Elections, the performance of the terms of this Agreement requires no further electoral approval of debt, spending, tax levies or revenue generation.

3.2 Payments for Capital Costs. The Parties acknowledge and agree that the capital costs of the District Facilities have been funded by Ebert upon and through (a) the execution of this Agreement, and (b) the closing on the Bonds.

a. On and after the date of closing of the Bonds with the prior written consent and at the direction of Ebert Town may withdraw the proceeds of the Bonds from the Bond Fund which funds will be used exclusively for funding the construction or acquisition of those District Facilities authorized by Ebert to be constructed or acquired. Town shall make no payment from the Bond Fund until Town has inspected the work for which payment is to be made, certified the progress and quality of such work to be in substantial compliance with the requirements of this Agreement, and provided such certification to Ebert in writing.

b. The Parties acknowledge and agree that Town's efforts to complete the District Facilities is dependent upon not only the proceeds of the Bonds but also various sources of revenue, including ad valorem property taxes, specific ownership taxes, facilities access fees, and user charges, together with interest earnings on retained amounts. From and after the date of this Agreement it shall be the sole right and obligation of Town to assess and collect within Ebert and elsewhere, and subsequently spend what the Parties have historically termed "System Development Fees," which are fees assessed to and collected from builders of commercial and residential properties within the Districts for the privilege of commencing the use of public improvements within the Districts which were constructed by the Districts. System Development Fees may be collected and spent by Town in its discretion for any lawful purpose.

The Parties acknowledge and agree that the assessment by Ebert of similar systems development fees or other “impact related fees”, rates, tolls, penalties or charges without prior written approval by Town will be detrimental to the progress of development intended in part to provide the revenues necessary to retire the Bonds, and at the election of Town will be a breach of this Agreement.

c. All funds deposited into the Bond Fund shall be deemed to be part of the fiscal year spending of Ebert pursuant to Const. Colo. Article X, Section 20 at the time of deposit. Funds expended from the Bond Fund shall not be part of the fiscal year spending of Town, which operates as an enterprise for purposes of Const. Colo. Art. X, Sec. 20.

3.2.5 Payments from Capital Repair and Replacement Fund.

a. The Districts agree that the Minimum Service Levy is hereby reduced from that required by the Prior Agreements by the amount of one (1.000) mill to eighteen (18) mills. The Districts further understand and agree that the revenues generated in 2019 and thereafter by the application of one (1) mill of the Minimum Service Levy shall be reserved for the purpose of establishing and funding a Capital Repair and Replacement Fund to be expended for the limited purpose of repairing, replacing and/or maintaining public improvements, and for creating reserves for those purposes, all at the direction of the Ebert Board acting in its discretion. The balance of the revenues generated by the Minimum Service Levy shall be collected, deposited into the Service Fund Account and expended by Town for the benefit of the Districts as described in this Agreement.

b. Town agrees, in addition to the district services to be provided by Town as described herein, subject to funding provided by Ebert from the CRRF, to repair replace and/or maintain public improvements in consultation with or as requested by the Ebert Board. Commencing in tax collection year 2019, upon Ebert’s prior written consent which may withheld or denied in the exercise of the Ebert Board’s discretion Town may withdraw funds from the Bond Fund which funds will be used exclusively for funding the repair, replacement and/or maintenance of public improvements.

c. All funds deposited into the CRRF shall be deemed to be part of the fiscal year spending of Ebert pursuant to Const. Colo. Article X, Section 20 at the time of deposit. Funds expended from the CCRRF shall not be part of the fiscal year spending of Town, which operates as an enterprise for purposes of Const. Colo. Art. X, Sec. 20.

3.3 Pledge of Security for Payment. The financial obligations of Ebert undertaken hereunder, and as more specifically described below, shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which Ebert may have against Town, including, without limitation, any defense based on the failure of any nonapplication or misapplication of the proceeds of the Bonds or hereunder, and irrespective of the legality, validity, regularity or enforceability of all or any of the document associated with the Bonds. The financial obligations shall be general obligations of Ebert, and shall be payable from ad valorem taxes generated as a result of the certification by Ebert of the Minimum Service Levy, except as they may actually be paid from other revenues. The full faith and credit of Ebert, as limited hereby, is hereby pledged to the punctual payment of all amounts to be paid

hereunder. The amounts to be deposited and/or paid hereunder shall, to the extent necessary, be paid out of the general revenues of Ebert or out of any funds available for that purpose. For the purpose of reimbursing such general revenues, and for the purpose of providing the necessary funds to pay the amounts to be paid hereunder as the same become due, the Ebert Board shall annually determine, fix and certify the Minimum Service Levy to the City. Ebert covenants to levy the Minimum Service Levy to pay the amounts to be paid hereunder until the earlier of (a) termination of this Agreement or (b) payment by Ebert hereunder in the aggregate amount equaling the Maximum Service Amount. Excepting those revenues to be deposited into the CRRF, Ebert covenants to cause all tax revenues generated by the Minimum Service Levy over the life of this Agreement to be transferred immediately upon receipt by the Ebert to the Service Fund Account, to direct its employees, agents, consultants, and/or accountants, as applicable, to effectuate such transfer, and to use the same solely for the purpose set forth in this Agreement

3.4 Effectuation of Pledge of Security Current Appropriation. The sums herein provided to pay the amounts to be paid hereunder, including those sums paid into the Capital Construction Account by Town, are hereby appropriated for that purpose, and said amounts for each year shall be included in the annual budget and the appropriation resolution or measures to be adopted or passed by the Ebert Board in each year respectively while any of the obligations herein authorized are outstanding and unpaid. No provision of any constitution, statute, resolution or other order or measure enacted after the execution of this Agreement shall in any manner be construed as limiting or impairing the obligation of Ebert to levy ad valorem taxes, or as limiting or impairing the obligation of Ebert to levy, administer, enforce and collect the ad valorem taxes as provided herein for the payment of the obligations hereunder.

It shall be the duty of the Ebert Board annually at the time and in the manner provided by law for the levying of Ebert taxes, if such action shall be necessary to effectuate the provisions of this Agreement, to ratify and carry out the provisions hereof with reference to the levy and collection of the ad valorem taxes herein specified, and to require the officers of Ebert to cause the appropriate officials of the City, to levy, extend and collect said taxes in the manner provided by law for the purpose of providing funds for the payment of the amounts to be paid hereunder promptly as the same, respectively, become due. Said tax, when collected, shall be applied only to the payment of the amounts to be paid hereunder and other general obligation indebtedness of Ebert, as herein specified.

3.5 Exemption Protection. Town covenants that it will not take any action or omit to take any action with respect to the Bonds, the facilities financed with the proceeds of the Bonds, or any other funds of Town or Ebert if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Tax Code"), (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except to the extent such interest is required to be included in the adjusted current earnings adjustments applicable to corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds, until the date on

which all obligations of Town in fulfilling the above covenant under the Tax Code and Colorado law have been met.

3.6 Agreement Irrepealable. This Agreement and the actions taken to approve its adoption shall constitute a contract between the Districts, and shall be and remain irrepealable unless and until terminated in accordance with their terms. All acts, orders, bylaws and resolutions of the Districts, or parts thereof, inconsistent or in conflict with this Agreement, are hereby repealed to the extent only of such inconsistency or conflict.

ARTICLE 4 CONSTRUCTION OF DISTRICT FACILITIES

4.1 Town to Construct and Acquire Improvements.

a. Town will, on behalf of itself and Ebert, contract for and supervise the construction and acquisition of the District Facilities in such manner as Town shall reasonably determine to be in the best interests of both Districts.

b. Ebert will review the District Facilities from time to time and as it deems appropriate and will make recommendations to, and consult with, Town regarding any recommended additions, deletions, or revisions that Ebert deems in the best interest of Ebert and Town.

c. Pursuant to this Agreement, Ebert and Town shall schedule, phase, and configure the District Facilities to accurately and adequately provide for the needs of Ebert and Town as reflected in development plans for the community, as the same may be revised officially from time to time and as development demands require.

d. All construction shall be subject to receipt of all necessary governmental approvals, and shall be contracted for in accordance with Colorado and any other applicable laws, rules, regulations and orders.

4.2 Construction and Acquisition. Subject to the continuing availability of funds, as provided for herein, Town shall cause the acquisition and maintenance of the District Facilities. The District Facilities shall be installed and constructed in accordance with this Article 4, and maintained to standards and specifications acceptable to Town and Ebert, subject to funds available pursuant hereto.

4.3 Ownership, Operation, Maintenance and Replacement Costs. It is intended and anticipated that some, but not all of the District Facilities may be dedicated to and maintained by the City. Until said dedication and acceptance by the City, and unless agreed otherwise, the operation, maintenance and replacement of the District Facilities shall be performed by Town and the cost of such operation, maintenance and replacement for the service area of Ebert shall be paid from the Service Fund Account in accordance with Article 5. Town may contract with the City or any other service provider to provide all or any portion of maintenance services required for the District Facilities.

4.4 Final Plans and Specifications. Prior to the construction and/or acquisition of any specific portion of the District Facilities, Town shall prepare and submit to Ebert the Final Plans and Specifications for those specific portions of District Facilities.

a. If no objection to the Final Plans and Specifications is received within fifteen (15) days from the date of submittal, Final Plans and Specifications shall be deemed approved.

b. If, within fifteen (15) days from the date of submittal of the Final Plans and Specifications, Ebert provides written notice to Town of objections to the Final Plans and Specifications, Town and Ebert shall meet to resolve and arrive at an agreement with regard to those objections.

c. Objections to and revisions to the Final Plans and Specifications, as submitted by Town, may only be made if the objection alleges one or more of the following:

1. The Final Plans and Specifications are not in substantial compliance with generally accepted architectural and/or engineering standards.

2. The Final Plans and Specifications are not in substantial compliance with any final plat as approved by the City or other regulatory agency having approval authority over a final plat of property within Ebert or Town.

3. The Final Plans and Specifications are not in substantial compliance with the design standards of the City or any other regulatory agency having jurisdiction over the matters concerned in the Final Plans and Specifications.

d. If an agreement is not reached within fifteen (15) days from the date of notice of objection as provided herein, the matter shall be submitted to a professional engineer of Town's choosing or, as appropriate a representative of the City who shall review the Final Plans and Specifications for compliance with regard to the standards set forth in subparagraphs c.1, c.2, and c.3 of this Section, and whose decision regarding compliance, or regarding adjustments to accomplish compliance, shall be final.

4.5 Construction Contracts.

a. Town shall cause construction to be commenced on a timely basis subject to receipt of all necessary governmental approvals and the terms of this Agreement.

b. Upon request Town shall make available to Ebert copies of any and all construction contracts and related documents concerning the District Facilities.

c. Town shall diligently and continuously prosecute to completion the construction of the District Facilities.

d. Approval of any change orders for which funds are or may be made available pursuant hereto shall be in the sole discretion of Town provided that in no event shall Town be entitled to exceed the proceeds of the Bonds.

4.6 Completion of Construction. Prior to the final acceptance of any portion of the District Facilities Town shall confirm that construction has been accomplished in compliance with the conditions and terms of the construction contract involved, in accordance with generally accepted principles of engineering and construction review, and in accordance with any and all applicable laws rules, regulations and codes of the City or any other regulatory agency having jurisdiction.

4.7 Construction Claims. Town agrees that it shall assert against any contractor involved in constructing any portion of the District Facilities which are contemplated by this Agreement any claim that Town may have against the contractor according to the terms of any construction contract, construction guarantee and/or warranty, to the extent that each such claim is, in the good-faith estimation of Town, reasonable and capable of being pursued to resolution cost-effectively. Town specifically agrees that it will enforce all guarantees, promises and warranties of a contractor.

ARTICLE 5
OPERATION AND MAINTENANCE OF DISTRICT FACILITIES AND PROVISION OF
DISTRICT SERVICES

5.1 Facilities. Except as otherwise provided herein, Town shall own all District Facilities and shall be responsible for the operation and maintenance of the same, all for the benefit of Ebert.

5.2 Transfer of District Facilities. No District Facilities, the acquisition or financing of which were financed in whole or in part by the Bonds, shall be transferred to any third party other than the City without the prior written agreement of the Ebert, and any monetary proceeds of any such transfer shall be shared equitably with Ebert in proportion to Ebert's contribution to the District Facilities in question. Notwithstanding any provision hereof to the contrary, in the event that Town finds that it is in the best interests of Town and Ebert to transfer, lease, dedicate, or otherwise convey any interest in ant District Facilities or a part thereof to the City, Town may do so upon such reasonable terms as are determined by Town.

5.3 Use of Town's Facilities and Consultants. Using funds in the Service Fund Account, together with other available funds, Town shall perform the following services utilizing facilities and consultant services provided by Town:

- a. Official Ebert repository for Ebert records, including file space, incidental office supplies, photocopying, meeting facilities and reception services.
- b. Coordination of all regular Board meetings to include:
 1. Preparation and distribution of agenda and information packets.
 2. Preparation and distribution of meeting minutes.
 3. Preparation, filing and posting of legal notices required in conjunction with the meeting.

4. Other details incidental to meeting preparation and follow-up.

c. Ongoing maintenance of an accessible, secure, organized and complete filing system for the Ebert's official records.

d. Monthly preparation of checks and coordination of postings with accounting firm.

e. Periodic coordination with accounting firm of financial report preparation and review of financial reports.

f. Insurance administration, including evaluating risks, comparing coverage, processing claims, completing applications, monitoring expiration date, processing routine written and telephone correspondence, etc. Ensure that all Town contractors and subcontractors maintain required coverage for Ebert's benefit.

g. Election administration, including preparation of election materials, publications, legal notices, pleadings, conducting training sessions for election judges, and generally assisting in conducting the election.

h. Budget preparation, including preparation of proposed budget in coordination with accounting firm, preparation of required and necessary publications, legal notices, resolutions, certifications, notifications and correspondence associated with the adoption of the annual budget and certification of the tax levy.

i. Response to inquiries, questions and requests for information from Ebert property owners and residents and others.

j. Drafting proposals, bidding, contract and construction administration, and supervision of contractors.

k. Analysis of financial condition and alternative financial approaches, and coordination of bond issue preparation.

l. Oversee investment of Ebert funds based on investment policies established by the Board but in any case in accordance with state law.

m. Provide liaison and coordination with other local governments.

n. Coordinate activities and provide information as requested to external auditor engaged by Ebert.

o. Establish and maintain system for assessing and recording system development fees.

p. Supervise and ensure contract compliance of all Ebert service contractors, including the establishment and maintenance of preventive maintenance programs.

q. Coordinate legal, accounting, engineering and other professional services to Ebert.

r. Perform other services with respect to the operation and management of Ebert as requested by Ebert's Board of Directors.

In addition to the services set forth in this Section 5.3, when, if in the professional opinion of Town, other services are necessary, Town shall recommend the same to Ebert's Board or perform such services and report to the Board the nature of such services, the reason they were required, and the result achieved.

Town may provide direct professional services and operation and maintenance services to the District in lieu of retaining consultants or contractors to provide those services.

5.4 Record keeping and Financial Planning.

a. In connection with the construction, acquisition, operation, maintenance, and administration of the District Facilities, Town shall maintain accounts for Ebert in accordance with generally accepted accounting principles, and present regular financial reports, including summaries of receipts and disbursements. These materials shall be available for examination by Ebert during regular business hours upon request. If Ebert shall cause an audit of the books of account and financial reports maintained pursuant to this Section and said audit shall lead to a legal determination of negligence, fraud, or knowing misconduct in the performance of the duties required of Town by this Agreement, Town shall promptly reimburse Ebert for the cost of the audit in addition to any additional sums deemed payable as a result of the audit. Otherwise, the costs of such audit shall be borne by Ebert. Town shall also do the following:

1. Assist any auditors hired by Ebert in the preparation of its yearly audit as required by the laws of the State of Colorado
2. Assist Ebert in analyzing Ebert's long and short-term capital improvement needs and assist in the development of long and short-term capital improvement plans and financial reserves to meet those needs.
3. Advise and assist Ebert by analyzing Ebert's long and short-term financial needs and presenting it with long and short-term financial proposals to meet those needs.
4. Keep and maintain accurate files of all contracts concerning the District Facilities, and all other records necessary to the orderly administration and operation of the District Facilities which are required to be kept by statute or by regulation of the State of Colorado or the United States.
5. Advise and assist Ebert in making applications for and in administering various state and federal grant programs, and operate and maintain the District Facilities in accordance with the requirements of such programs and in accordance with all federal, state, and local laws and regulations.

6. Perform such other services as may from time to time be reasonably necessary to assure that Ebert is in compliance with all applicable federal and state statutes and regulations and with county and local laws applicable to the operation of the District Facilities; provided, however, that all such expenditures shall be made and reimbursed in accordance with this Agreement.

5.5 Covenant Administration and Design Review. Town for itself and on behalf of Ebert shall have the authority, duty and power to enforce the Master Declaration of Covenants, Conditions and Restrictions for Green Valley Ranch North (the Covenants”), including without limitation the implementation and enforcement of covenants and rules and procedures for the notice of alleged violations, conduct of hearings and imposition of associated fees, as well as the establishment and administration of the design review guidelines, and establishment of regulations and rules for the design and other review procedures prescribed by the Covenants. In doing so Town shall have the right and authority to delegate the design review functions to a Design Review Committee, as provided in the Covenants, and establish procedures for the appeal of decisions by the Design Review Committee. Town shall also have the right to delegate any of aforesaid activities and duties to committees of its choosing in consultation with the Ebert Board.

5.5 Town to Provide Qualified Operators. Town shall employ qualified operators, which operators shall perform duties including, but not necessarily limited to the following:

a. Operation of the District Facilities and provision of District services as described herein.

b. Cooperation with City, State, and federal authorities as is necessary to maintain compliance with applicable governmental standards.

c. Coordinating construction with various utility companies to ensure *minimum* interference with the District Facilities.

d. Performing normal maintenance and normal repairs necessary to continue the efficient operation of the District Facilities.

e. Providing for the services of subcontractors necessary to maintain and continue the efficient operation of the District Facilities and the provision of District services.

5.6 Repairs and Replacements. Town shall maintain and operate the District Facilities including the procuring of all inventory, chemicals, parts, tools, equipment, and other supplies necessary to perform the services required under this Article 5.

5.7 Financing.

a. Payment of Service Costs. Ebert shall pay all Actual Service Costs in accordance with this Article 5. It is the desire and intent of the parties that, to the extent possible, the operation, maintenance and administration costs incurred by Town in the performance of the duties and services required in this Agreement be paid through the operation of this Article and the

imposition of the Minimum Service Levy, thus and to that extent avoiding the necessity for Town to exercise its power to assess fees, rates, tolls and/or charges for the purpose of paying all or any part of such costs. Nevertheless, nothing herein shall be construed as a limitation on the powers granted to Town by Colorado law, and as restated in this Agreement, to recoup all or any portion of such operation, maintenance, and administration costs which are not paid through the operation of this Article, (whether or not they exceed the Actual Service Costs,) through the use of such alternative measures as Town may be authorized by Colorado law to utilize for that purpose.

b. Preliminary Budget Process. During each year, Town, in consultation with Ebert, shall prepare and submit to Ebert a set of Preliminary Budget Documents for the forthcoming Budget Year. Town shall deliver the Preliminary Budget Document to Ebert on or before October 15 of each Planning Year. All meetings at which Town considers the Preliminary Budget Documents shall be open to the public and public comment shall be allowed on the Preliminary Budget Documents.

The Preliminary Budget Documents shall set forth the Estimated Service Costs for the Budget Year in accordance with generally accepted accounting principles. Estimated Service Costs for each Budget Element shall include the Town Board's current best estimates of the operation, maintenance, and administration costs to be incurred by Town in the performance of the duties and services required by this Agreement.

c. Budget Review and Approval. On or before November 15 of the Planning Year, Ebert shall either: (a) approve the Preliminary Budget Documents (in which case the Preliminary Budget Documents shall become the final budget for the Budget year), or (b) propose in writing to Town additions to and/or deletions from the Preliminary Budget Documents. All meetings at which Ebert considers the Preliminary Budget Documents shall be open to the public and public comment shall be allowed on the Preliminary Budget Documents. Ebert may propose such additions to and/or deletions from those portions of the Preliminary Budget Documents which directly obligate Ebert to certify the Minimum Service Levy and appropriate and expend funds for services during the Budget Year, and the Boards of the Districts shall meet and confer to reach a resolution of the proposed additions or deletions. If the Preliminary Budget Documents are approved, or approved with additions and/or deletions, Ebert shall certify to the City the Minimum Service Levy (or such other levy as the parties have agreed upon) and Town shall have the right to make all withdrawals from the Service Fund Account as are necessary to fully fund the final budget for the Budget Year.

d. Automatic Budget Revision.

1. If: (a) Ebert fails to approve the Preliminary Budget Documents, or (b) Ebert fails to provide written proposals for additions and/or deletions to the Preliminary Budget Documents in a timely fashion, or (c) Ebert timely proposes written proposals for additions and/or deletions to the Preliminary Budget Documents in a timely fashion but no resolutions by each Board concerning said proposals are adopted in a timely fashion, then the Preliminary Budget Documents for Estimated Service Costs shall be the final budget only insofar as the dollars budgeted therein for Budget Elements do not exceed the amounts generated by the imposition of the Minimum Service Levy for the Budget

Year plus any additional revenues, including but not limited to specific ownership taxes and Conservation Trust Fund moneys, generated by the District as a result, indirect or direct, of the District's existence or its imposition of a mill levy, but excepting revenues pledged to the Bonds.

2. Notwithstanding anything set forth above to the contrary, Ebert shall only be required to fund, on an annual basis, the payment of that amount of Estimated Service Costs that Ebert would be capable of funding through the imposition of the Minimum Service Levy.

3. The funds for Actual Service Costs will be provided through the Minimum Service Levy, and, excepting those revenues deposited into the CRRF, the deposit into the Service Fund Account of the amounts generated thereby plus any additional revenues, including but not limited to specific ownership taxes and Conservation Trust Fund moneys, generated by the Ebert and Town as a result, indirect or direct, of their existence or their imposition of a mill levy, but excepting revenues pledged to the Bonds.

5.8 Appropriation of and Provision for Service Fund. Following the preparation of the final budget for the Budget Year pursuant to Section 5.7 above, Town shall as agent for and on behalf of Ebert certify to the City the Minimum Service Levy (or such other levy as the District may agree) and shall budget, appropriate and upon receipt cause the transfer of funds to the Service Fund Account for the Budget Year as required under the final budget to meet the full amount of the Estimated Service Costs during the forthcoming Budget Year.

5.9 Service Fund Accounts.

a. Deposit. Unless otherwise agreed by Town and Ebert, Ebert will cause there to be deposited into the Service Fund Account the Estimated Service Costs for the ensuing Budget Year. Except to the extent deposited directly by the City, said deposit shall be made upon receipt, as and when the revenues are received from any source. Town shall have the authority to make withdrawals or payments from the Service Fund Account, and the funds deposited in the Service Fund Account, together with interest earned thereon, shall be used solely for the purpose of paying the Actual Service Costs for the Budget Year.

b. Accounting. All deposits and/or withdrawals made with respect to the Service Fund Account shall be separately accounted for by Town.

5.10 Service Fund Account Ownership and Fiscal Year Spending. All funds directly deposited by the City or Ebert into the Service Fund Account shall be deemed to be part of the fiscal year spending of Ebert pursuant to Const. Colo. Article X, Section 20 at the time of deposit. Funds expended from the Service Fund Account shall not be part of the fiscal year spending of Town, which operates as an enterprise for purposes of Const. Colo. Art. X, Sec. 20.

5.11 Limitation of Appropriations. The Districts recognize that certain obligations imposed upon Ebert by this Agreement constitute "debt" or "multi-fiscal year obligations" (as defined in the Constitution of the State of Colorado). At the Prior Elections, Ebert's electorate authorized the incurring of indebtedness in an amount sufficient to fund the various obligations imposed by

this Agreement. In no event shall any commitment, covenant, promise, or other obligation contained in this Agreement require the issuance or incurring of indebtedness by Ebert in excess of its voted indebtedness authorization.

ARTICLE 6 BREACH AND NON-BREACH

6.1 Non-Termination. The parties agree that no breach of this Agreement shall justify or permit termination of the continuing obligations of this Agreement. This Agreement may be terminated only upon the mutual agreement of the Parties.

6.2 Breach, Remedies. In the event of breach of any provision of this Agreement, in addition to contractual remedies, either District may ask a court of competent jurisdiction to enter a writ of mandamus to compel the Board of Directors of the defaulting District to perform its duties under this Agreement, and either District may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other to perform in accordance with the obligations set forth under this Agreement. If, at any time, there shall cease to be electors in Town, or if no electors of Town are willing to act as Directors of Town, Ebert may ask a court of competent jurisdiction to designate the proper persons to assume control of Town for purposes of causing the performance of Town's obligations under this Agreement.

ARTICLE 7 MISCELLANEOUS

7.1 Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Districts. There are no third party beneficiaries to this Agreement.

7.2 Liability of Districts. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon each District nor the breach thereof, nor the issuance and sale of any bonds by a District, shall constitute or create an indebtedness or other financial obligation of the other District within the meaning of any Colorado constitutional provision or statutory limitation. Neither District shall have any obligation whatsoever to repay any debt, financial obligation, or liability of the other District.

7.3 Assignment. Except as set forth herein, neither this Agreement, nor any of either District's rights, obligations, duties or authority hereunder may be assigned in whole or in part by either District without the prior written consent of the other District. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

7.4 Modification. This Agreement may be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, only by an agreement in writing duly authorized and executed by both Districts. No consent of any third party shall be required for the negotiation and execution of any such agreement.

7.5 Waiver. The waiver of a breach of any of the provisions of this Agreement by either District shall not constitute a continuing waiver or a waiver of any subsequent breach by the other District of the same or another provision of this Agreement.

7.6 Integration. This Agreement contains the entire agreement between the Districts and no statement, promise or inducement made by either District or the agent of either District that is not contained in this Agreement shall be valid or binding.

7.7 Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

7.8 Indemnification and Insurance. To the extent permitted by law, Town agrees to save Ebert harmless from the claims of third persons arising out of Town's operation, maintenance, extension and enlargement of District Facilities under color of this Agreement and to defend, at its expense but using dollars paid to Town by Ebert hereunder, all actions for damages arising out of such action which may be brought against Ebert by third persons.

In the event of an occurrence or loss out of which a claim arises or could arise, Ebert agrees to transmit, in writing and at once, any notice or information received or learned by Ebert concerning such claim. Except at its own cost, Ebert agrees not to voluntarily make any payment, assume any obligation or incur any expense in connection with the subject matter of this paragraph. No claim shall lie against Town hereunder unless as a condition precedent thereto, Ebert has fully complied with the provisions of this Agreement nor until the amount of Ebert's obligation to pay shall have been fully determined.

Town shall maintain the following types of insurance coverage with companies and in amounts acceptable to the each Districts Board, the cost of which shall be a component of the Actual Service Costs budgeted annually in accordance with Article 5, above.

a. General liability coverage in the minimum amount of \$500,000 per person/per occurrence and \$1,000,000 per occurrence, or in an amount reflecting the current level of governmental immunity provided by statute, whichever is greater, protecting the Districts and their officers, directors, and employees against any loss, liability, or expense whatsoever from personal injury, death, property damage, or otherwise, arising from or in any way connected with management, administration, and operations.

b. Directors and officers liability coverage (errors and omissions) in the minimum amount of \$1,000,000, protecting the Districts and their directors and officers against any loss, liability, or expense whatsoever arising from the actions and/or inactions of the Districts and their directors and officers in the performance of their duties.

c. The foregoing notwithstanding, Town shall make provisions for workmens compensation insurance, social security employment insurance, unemployment compensation for its employees performing this Agreement as required by any law of the State of Colorado or the federal government and shall, upon request, exhibit evidence thereof to Ebert.

7.9 Ebert Dissolution. In the event Ebert seeks to dissolve pursuant to C.R.S. 32-1-701 et. seq., as amended, written notification of the filing or application for dissolution shall be provided to Town prior to such filing. The plan for dissolution shall include provision for continuation of this Agreement, with responsible party(ies) acceptable to Town being substituted for Ebert as party to this Agreement, said party(ies) to assume all obligations and rights of Ebert hereunder. If no such provision is made for assumption of contractual obligations, then immediately upon dissolution of Ebert, this Agreement shall be null, void and of no further force or effect and Town shall have no further obligation to provide services pursuant to the terms hereof.

7.10 Survival of Obligations. Unfulfilled obligations of both parties arising under this Agreement shall be deemed to survive the expiration of the term of this Agreement and the completion of the District Facilities which are the subject of this Agreement, and shall be binding upon and inure to the benefit of the Districts and their respective successors and permitted assigns. The Districts specifically agree that Town, except to the extent that the Districts have consolidated, shall have the continuing right and obligation, to provide the services and operations contemplated hereby subject to the continuing receipt of funding necessary and adequate therefor.

7.11 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

7.12 Headings for Convenience Only. The headings, captions and titles contained herein are intended for convenience and reference only.

7.13 Debt Must Comply with Law. Nothing herein shall be deemed nor construed to authorize or require Ebert or Town to issue bonds, notes, or other evidences of indebtedness terms, in amounts, or for purposes other than as authorized by Colorado law.

7.14 Amendment 1 Matters. If any provision hereof is declared void or unenforceable due to a purported violation of Const. Colo. Article X, Section 20, then the District or Districts involved in such violation shall perform such tasks as may be necessary to cure such violation, including but not limited to acquiring such voter approvals, either in advance of, or following, an action as may be allowed by law.

7.15 Defined Terms. Any capitalized term used in this Agreement and not specifically defined herein shall have the same meaning as when such term is used in the Service Plans of the Districts or if not there in the Authorizing Resolution and the documents approved thereby.

7.16 Conflicts of Interest. The Districts, being fully informed, hereby waive any potential conflicts of interest that Spencer Fane LLP and CliftonLarsenAllen LLP may have pertaining to the negotiation, preparation and execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the day and year first above written.

TOWN CENTER METROPOLITAN DISTRICT



Authorized Signatory

EBERT METROPOLITAN DISTRICT



Authorized Signatory