

## **TOWN OF BERTHOUD POLICY FOR REVIEWING SERVICE PLANS FOR METROPOLITAN DISTRICTS**

### **Introduction.**

This policy establishes the criteria, guidelines, and processes to be followed by Town Board and Town staff in considering service plans for the organization of metropolitan districts or amendments to those plans (“Policy”), as provided in Colorado’s Special District Act in Article 1 of Title 32 of the Colorado Revised Statutes (the “Act”). The Act provides that metropolitan districts are quasi-municipal corporations and political subdivisions of the state of Colorado (“District”) that can be organized within the boundaries of a municipality provided the municipality’s governing body approves by resolution the proposed service plan for the District. Under the Act, the service plan constitutes the document that delineates the specific powers and functions the District can exercise, including the facilities and services it can provide, the taxes it can impose and its permitted financial arrangements (the “Service Plan”). The Act requires Districts to conform to their Service Plans. “Material modifications” to service plans may be enjoined through court suits brought by the Town or other interested parties.

### **Section 1 – Policy Objectives and Statements.**

- A. This Policy generally supports the formation of a District if it is in the best interests of the area to be served and helps to further the development policies of the Town, as articulated in the Comprehensive Plan, Development Code, development guidelines and other overlay codes as adopted by the Board.
- B. A District, when properly structured, can enhance the quality of development in the Town. The Town is receptive to District formation that provides public benefits which could not be practically provided by the Town or another existing public entity, within a reasonable time and on a comparable basis. It is not the intent of the Town to create multiple entities which would be construed as competing or duplicative.
- C. *The approval of a District Service Plan or Service Plan Amendment for existing Districts is at the sole discretion of Town Board*, which may reject, approve, or conditionally approve Service Plans on a case-by-case basis. Nothing in this Policy is intended, nor shall it be construed, to limit this discretion of Town Board, which retains full authority regarding the approval, terms, conditions, and limitations of all Service Plans subject only to the terms of the Act.
- D. The Town wishes to require a high standard of use for Districts thereby limiting their use to situations that provide a true public benefit. An applicant project is expected to deliver extraordinary benefits across four or more of the objectives described in Section 1.E. of this Policy.

E. It is the intent of the Town that owner/resident control of Districts occur as early as feasible. Service Plans should include governance structures that encourage and accommodate this. Control Districts (also known as “service” or “managing” Districts), without resident representation on the Board of the Control District, that allow developers to control the other Districts that provide the tax revenues (known as “financing” or “taxing” districts) beyond the time needed to repay the issued debt, are prohibited. The use of districts controlled by members of the District Board of Directors who are employed by, owners or principals of, or otherwise affiliated with the developer/proponent of the Service Plan during the period that District debt is being repaid shall be considered on a case by case basis and approved only upon a showing of genuine necessity for the control district structure. Applicants are also encouraged to have a President of the Board of Directors of the control district who is an eligible elector of both the control district and one of the financing or taxing districts, and applications for approval of Service Plans that include having such a President within a fixed time period will be regarded as supporting a finding of “genuine necessity” for the control district structure.

F.

## **Section 2 – Evaluation Criteria**

- A. Prior to considering any proposed Service Plan, or Service Plan Amendment for existing Districts which modifies the total mill levies or debt limitations of a District, a Neighborhood Master Plan (“NMP”) must be approved by the Board as outlined in the Town’s Municipal Code Section 30-6-106. This requirement applies to all properties regardless of underlying zoning, including those properties that have an approved Planned Unit Development (“PUD”). The intent of the NMP process is to outline street and utility infrastructure needs, traffic improvements, open space amounts and locations, park amenities and locations, trail networks, land use types and locations, and other items of significance that may provide benefit to the public and the residents of the District. Other issues such as architectural standards and landscaping standards unique to the development may be incorporated in the NMP but are not required.
- B. Following approval of an NMP, the Town will evaluate any proposed District and its Service Plan based on the District’s ability to deliver public benefits through extraordinary development outcomes. The District applicant must provide a “Public Benefits Narrative” which outlines and explains how the proposed District will deliver public benefits through extraordinary development by addressing “Environmental Sustainability” and “Smart Growth Management” as outlined below, as well as two additional focus areas for a minimum total of FOUR of the following focus areas:
  1. Environmental Sustainability: Development of public improvements that deliver or facilitate the delivery of specific and measurable environmental outcomes, including but not limited to: (i) reduction of Green House Gases (“GHG”), (ii) conservation of water or energy, (iii) encourage multimodal transportation, (iv) enhance community resiliency – against future environmental events (e.g., flooding, drought, etc.); (v) increase renewable energy

capacity; and/or (vi) deliver other environmental outcomes.

2. **Critical Public Infrastructure:** Development of public improvements that address or facilitate addressing significant infrastructure challenges previously identified by the Town, either within or proximate to the District, whether such improvements address a locally-significant challenge or a Town-wide challenge. Examples of a public improvement that constitutes “Critical Public Infrastructure” include water and sewer treatment plants that were constructed to serve the development project where the proposed Districts are located, but which will be owned and operated by the Town and can be expanded to serve areas outside the Districts’ Service Area.
3. **Smart Growth Management:** Development of public improvements that deliver or facilitate the delivery of specific design components that: (i) increase the density of development within portions of the District; (ii) establish, enhance or address the walkability and pedestrian friendliness of the District; (iii) increase the availability of transit and/or multimodal oriented facilities; (iv) create compelling public spaces; and (v) encourage mixed-use development patterns.
4. **Affordable Housing:** Deliver or facilitate the delivery of additional affordable housing units at the Town’s defined level of Area Median Income (“AMI”) or below. The Town defines Affordable Housing as units affordable to a household earning 80 percent of AMI.
5. **Workforce Housing:** Deliver or facilitate the delivery of workforce housing units in the Town’s defined range of AMI. For purposes of this policy, Workforce Housing units shall be defined as units affordable to a household earning between 81 percent and 120 percent of AMI.
6. **Infill/Redevelopment:** Enable the infill or redevelopment of property within the Town, especially when such development is consistent with Town Plan.
7. **Economic Health Outcomes:** Enable delivery of specific and measurable economic outcomes, such as: (i) job growth; (ii) retention of an existing business; and/or (iii) construction of a missing economic resource.
8. **Emergency Services.** Meeting challenges for the provision of emergency services previously identified by the Town. This includes financing the acquisition or donation of land for facilities that will house emergency vehicles and equipment such as fire stations. Preference will be given for Service Plans that facilitate the construction of fire stations that will improve the Town’s Insurance Services Office (ISO) rating.
9. **Water Supply and Storage.** Acquiring a stable and adequate supply of water sufficient to meet the needs of development within the Districts in an environmentally friendly manner that encourages water conservation and reuse.

C. To provide Town Board with information and an assessment consistent with this Policy, staff will

also review and report on all District proposals in the following areas:

1. Financial Assessment: All District proposals are required to submit a Financial Plan to the Town for review. Utilizing the District's Financial Plan, and other supporting information which may be necessary, the Town will evaluate a District's debt capacity and servicing ability. This review may be performed by an independent financial firm and the cost of this review will be the sole responsibility of the District Applicant.
2. Policy Evaluation: All proposals will be evaluated by Town staff against this Policy and a recommendation to approve or deny the request will be made by Town staff to the Board.

### **Section 3 – Application Process**

- A. Process Overview: The application process is designed to provide early feedback to an applicant, adequate time for a comprehensive staff review, and the appropriate steps and meeting opportunities with decision makers.
- B. Letter of Interest: An applicant will provide Town with a Letter of Interest and pay the Letter of Interest fee (refer to fees below). This Letter of Interest may be submitted and considered in parallel with the approval process required for an NMP. The Letter of Interest shall contain the following:
  1. Summary narrative of the proposed development as required in Section 2.B of this policy.
  2. District proposal and Service Plan specifics, including: District powers and purpose; District infrastructure and costs; mill levy rate (both debt and, operations and maintenance); term of District from formation until dissolution or consolidation; forecasted period of build-out; proposed timeline for formation; and current development status of project.
- C. Preliminary Staff Meeting with Applicant: Based on an initial review of the Letter of Interest, staff shall meet with the applicant to discuss the District proposal, potential public benefits, initial staff feedback, the evaluation process, fees, and other application elements.
- D. Formal Application and Service Plan Submittal: After considering any comments made by Town staff in the Preliminary Staff Meeting the applicant may submit a formal application for consideration including the Public Benefits Narrative, the Service Plan and any associated financial plans, and any proposed intergovernmental agreements between the District and the Town.
- E. Formal Staff Review: An interdisciplinary staff team will review the applicant submittal along with any follow-up documentation that is requested to assess the application according to State Statute, this Policy, and other applicable Town policy. Applicants should expect several rounds of feedback and review from Town staff.
- F. Public Hearing Notice: The Service Plan Applicant must cause a written notice of the public hearing to be mailed by first-class mail to the following: (1) all fee title owners of real property within the

boundaries of the proposed District(s) and of any future inclusion area proposed in the Service Plan and (2) all fee title owners of real property located within any proposed extraterritorial “Service Area” located outside the boundaries of the Districts. Such notice shall be mailed no later than thirty (30) days before the scheduled hearing date. A notice shall also be published once in a newspaper of general circulation in the Town no later than thirty (30) days before the scheduled hearing date. The mailed and published notices shall include the following information and shall be in addition to any other statutory notices required by state law:

1. A description of the general nature of the public improvements and services to be provided by the District;
2. A description of the real property to be included in the District and in any proposed future inclusion area, as well as real property located within any proposed extraterritorial Service Area, with such property being described by street address, lot and block, metes and bounds if not subdivided, or such other method that reasonably apprises owners that their property will or could be included in the District’s boundaries;
3. A statement of the maximum amount of property tax mill levy that can be imposed on property in the District under the proposed Service Plan;
4. A statement that property owners desiring to have the Town Board consider excluding their properties from the District must file a petition for exclusion with the Berthoud Town Clerk’s Office no later than ten (10) days before the scheduled hearing date in accordance with Section 32-1-203(3.5) of the Colorado Revised Statutes;
5. A statement that a copy of the proposed Service Plan can be reviewed in the Berthoud Town Clerk’s Office; and
6. The date, time, and location of the Town Board’s public hearing on the Service Plan.

**Board Public Hearing:** The Town Board will conduct a noticed public hearing at a regular or special Board meeting to consider a resolution approving the proposed Service Plan. This hearing will occur no later than thirty (30) days prior to the final date for filing the petition with the District Court seeking an order calling an election on the question of organizing the district.

#### **Section 4 –Service Plan**

- A. **Purpose:** In addition to the requirements of the Act, a Service Plan should memorialize the understandings and agreements between the District and the Town, as well as the considerations that compelled the Town to authorize the formation of the District. The Service Plan must also include all applicable information required by the Act.
- B. **Compliance with Applicable Law:** Any Service Plan submitted to the Town for approval must comply with all state, federal and local laws and ordinances, including the Act.
- C. **Eminent Domain NOT Authorized:** The Service Plan shall contain language that prohibits the District

from exercising the power of eminent domain. However, the Town may choose to exercise its power of eminent domain to construct public improvements within the District in which case the District and the Town will enter into an intergovernmental agreement concerning the public improvements and funding for that use of eminent domain.

- D. Maximum Mill Levies: The maximum amount of requested mill levy for both debt service, and operations and maintenance, shall be consistent with State statutes.
- E. Debt Term Limit: A District shall be allowed no more than forty (40) years for the levy and collection of taxes used to service debt unless a majority of the Board of Directors of the District imposing the mill levy are residents of such District and have voted in favor of a refunding of a part or all of the Debt and such refunding is for one or more of the purposes authorized in C.R.S. Section 11-56-104. The forty-year period shall be measured from the date that the District first issues debt.
- F. District Dissolution: Perpetual Districts shall not be allowed except in cases where ongoing operations and maintenance are required. Except where ongoing operations and maintenance has been authorized, a District must be dissolved as soon as practical upon:
  - a. The payment of all debt and obligations; and
  - b. The completion of District development activity; or
  - c. A period of five or more years without substantial development activity in any of the Districts governed by the Service Plan. The requirement in this Section 4F may be extended or altered upon a majority vote of the Town Board of Trustees.
- G. District Fees: All impact fees, development fees, service fees, and any other fees must be identified with particularity in the District Service Plan.
- H. Notice Requirements: The Service Plan shall require that the District use all reasonable efforts to ensure that all developers of the property located within the District provide written notice to all purchasers of property in the District and any proposed future inclusion area (as well as the purchasers of property located within any extraterritorial Service Area outside the boundaries of the District) regarding the District's existing mill levies, its maximum debt mill levy, any District fees identified in the Service Plan pursuant to Section 4.G, as well as a general description of the District's authority to impose and collect rates, fees, tolls and charges. The form of notice shall be filed with the Town prior to the initial issuance of the debt of the District imposing the mill levy and shall be substantially in the form of **Exhibit A** attached hereto and incorporated by reference.
- I. Annual Report: The Service Plan must obligate the District to file an annual report not later than September 1 of each year with the Town for the year ending the preceding December 31. Details of the Annual Report are to be included in the Service Plan and will be in addition to any requirements in State statutes.
- J. Service Plan Requirements: In addition to all other information required in a Service Plan by the Act, a Service Plan must include the following:

1. Financial Plan: The Service Plan must include debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections. The financial firm must be listed in the Bond Buyers Marketplace or, in the Town's sole discretion, other recognized publication as a provider of financial projections. The Financial Plan must include debt issuance and service schedules and calculations establishing the District's projected maximum debt capacity (the "Total Debt Limitation") based on assumptions of: (i) Projected Interest Rate on the debt to be issued; (ii) Projected Assessed Valuation of the property within the District; and (iii) Projected Rate of Absorption of the assessed valuation within the District. These assumptions must use market-based, market comparable valuation and absorption data.
  - a. Total Debt Limitation: The total debt authorized in the Service Plan must not exceed 100% of the projected maximum debt capacity as shown in the Financial Plan.
  - b. Administrative, Operational and Maintenance Costs: The Financial Plan must also include foreseeable administrative, operational and maintenance ~~costs~~ and a plan that demonstrates the District's ability to sufficiently maintain any improvements made and owned by the District for the life of the District. The Service Plan shall also include a Funding and Reimbursement agreement between the Developer and the District that obligates the Developer to fund needed maintenance and operations of the District until such time as the District is financially able to maintain and operate the District.
2. Public Improvements and Estimated Costs: Every Service Plan must include, in addition to all materials, plans and reports required by the Act, a summary of public improvements to be constructed and/or installed by the district (the "Public Improvements"). The description of these Public Improvements must include, at a minimum:
  1. A map or maps, and construction drawings of such a scale, detail and size as required by the Planning Department, providing an illustration of public improvements proposed to be built, acquired or financed by the District. The NMP may serve this purpose if sufficient detail is provided; and
  2. A written narrative and description of the public improvements; and
  3. A general description of the District's proposed role with regard to the same.

Due to their preliminary nature, the Service Plan must indicate that the Town's approval of the Public Improvements shall not bind the Town, its boards and commissions, and Town Board in any way relating to the review and consideration of land use applications within the District. Applicants will be expected to show the differing costs and consequent debt service requirements for different levels of amenities and Public Improvements within the Districts.

The Service Plan must provide that except in cases in which the Districts will receive aid from a governmental agency or purchase through the state purchasing program, a notice shall be published for

bids on all construction contracts for work or material, or both, involving an expense of sixty thousand dollars or more of public moneys. The Districts may reject any and all bids, and, if it appears that the Districts can perform the work or secure material for less than the lowest bid, they may proceed to do so. No contract for work or material including a contract for services, regardless of the amount, shall be entered into between one or more Districts and a member of the boards of any of the Districts or between one or more Districts and the owner of twenty-five percent or more of the territory within any one of the Districts unless a notice has been published for bids and such member or owner submits the lowest responsible and responsive bid. In the event that applicable Colorado law imposes a more restrictive standard for bidding construction contracts or for contracts between members of the board and the Districts or the owners of property and the Districts, the more restrictive standard shall apply. In the event that applicable Colorado law imposes a less restrictive standard, the requirements of this Policy shall continue to apply.

3. Intergovernmental Agreement: As a condition of final approval of any Service Plan by the Town Board of Trustees, the Districts must execute a Master Intergovernmental Agreement with the Town of Berthoud substantially in the form attached hereto as Exhibit B. Any other intergovernmental agreement which is required or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale. The Service Plan must provide that execution of intergovernmental agreements which are likely to cause substantial increase in the District's budget and are not described in the Service Plan will require the prior approval of Town Board.
4. 4. Extraterritorial Service Agreement: The Service Plan must describe any planned extraterritorial service agreement. The Service Plan must provide that any extraterritorial service agreement by the District that are not described in the Service Plan will require prior approval of Town Board.
5. Tree Replacement Policy: The Service Plan for any metropolitan district that will have park and recreation powers under the Act must include a provision for the mandatory replacement of trees located on District owned or operated property and facilities. The District shall be required to replace trees or shrubs when 40% or more of the plant is dead or is succumbing to a disease that is likely fatal in the short term. Final determinations about the condition of a tree or shrub shall be made by the forester employed or retained by the Town to administer the Town's urban forest.
6. Public Access to Facilities and Improvements. The Service Plan shall include a provision that all public facilities to be financed, constructed, maintained, and operated by the Districts such as golf courses, parks, and recreation centers must be open and accessible to all members of the public including residents of the Town of Berthoud who do not reside within the Districts and persons who do not reside within the Town. Nothing in this Policy shall be construed to prohibit the imposition of a fee or charge for the use of the facilities that is reasonably related to the cost of providing services through the facility. A higher fee may be imposed upon non-residents of the Town or upon residents of the Town who do not reside within the Districts and who do not pay ad valorem taxes to the Districts. Any differential fee imposed upon non-

residents of the Districts must be reasonably proportional to the additional tax burden imposed upon residents of the Districts to pay for the financing, construction, maintenance, and operation of the facilities.

## **Section 5 – Fees**

- A. No request to create a Metro District shall proceed until the fees set forth herein are paid when required.
  1. Letter of Interest Submittal Fee: A Letter of Interest is to be submitted to the Town's Community Development Department and a non-refundable \$2,500 fee shall be paid at the time of submittal of the Letter.
  2. Application Fee: An application along with a draft Service Plan is to be submitted to the Town's Community Development Department and a \$7,500 non-refundable fee. In addition to the non-refundable fee, the applicant must enter into an MOU with the Town regarding payment of Town expenses for review, and submit a \$7,500 deposit towards the Town's review expenses..
  3. Other Expenses: The applicant for a District shall pay all reasonable consultant, legal, and other fees and expenses incurred by the Town in the process of reviewing the draft Service Plan or amended Service Plan prior to adoption, documents related to a bond issue and such other expenses as may be necessary for the Town to incur to interface with the District. All such fees and expenses shall be paid within 30 days of receipt of an invoice for these additional fees and expenses.
  4. Service Plan Amendment Fee: If a proposed amendment to a Service Plan is submitted to the Town's Community Development Department, it should be submitted with a non-refundable \$2,500 fee along with a \$2,500 deposit towards the Town's other expenses and shall be paid at the time of submittal of the application and draft amended Service Plan.

## **Section 6—Continuing Oversight by the Town.**

- A. It is the Town's intention to exercise oversight of Districts following approval of their Service Plans to the maximum extent permitted by Colorado law. Toward that end, the Town will designate a member or members of staff to act as a liaison between the Town and its residents and all Districts within the boundaries of the Town. This individual shall review the annual report provided for in Section 4I. and shall evaluate compliance of the Districts with the Service Plan, including without limitation the Financing Plan. The staff member shall also be available to answer inquiries from the public about the Districts and to direct interested persons to available sources of information regarding the Districts. Representatives of the Districts shall be expected to meet with the staff liaison on an as-needed basis and no less than annually.

**TOWN OF BERTHOUD**  
**RESOLUTION NO. 2023-07**

**A RESOLUTION ADOPTING THE BERTHOUD METROPOLITAN DISTRICT  
POLICY**

WHEREAS, the Town seeks to adopt a metropolitan district policy to guide formation of metropolitan districts within the Town, set consistent and reasonable expectations for developers and proponents of metropolitan districts, and provide more transparency and notice to prospective property owners and homeowners within metropolitan districts regarding the effects and obligations of owning real property within a metropolitan district; and

WHEREAS, the Board of Trustees (“Board”) has reviewed the benefits, burdens, impacts, and various components of metropolitan districts, with input from Town staff and legal counsel; and

WHEREAS, based on guidance from the Board, staff developed: (1) Town of Berthoud Policy for Reviewing Service Plans for Metropolitan Districts; (2) Master Intergovernmental Agreement between the Town and proposed Metropolitan Districts; and, (3) a General Disclosure Form, all attached and incorporated by reference (collectively, “Berthoud Metropolitan District Policy”); and

WHEREAS, the Board finds that adopting the Berthoud Metropolitan District Policy is in the best interests of the Town and will assist in guiding the formation of metropolitan districts, setting consistent and reasonable expectations for developers and proponents of metropolitan districts, and providing more transparency and notice to prospective property owners and homeowners within metropolitan districts.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO AS FOLLOWS:

Section 1. That the Town of Berthoud Policy for Reviewing Service Plans for Metropolitan Districts is hereby adopted to guide the Board of Trustees’ evaluation and decision regarding metropolitan district service plans and to achieve the purposes set forth above.

Section 2. That an agreement in substantially the same form as the Master Intergovernmental Agreement is required to be executed between the Town and any approved metropolitan district following Town approval of a Metropolitan District Service Plan.

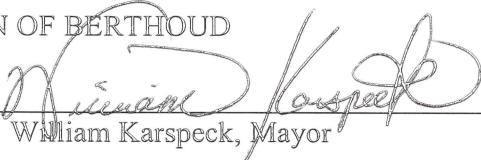
Section 3. Any Metropolitan District Service Plan must incorporate the General Disclosure Form approved by the Town.

Section 4. That this Resolution shall be effective as of the date of its adoption.

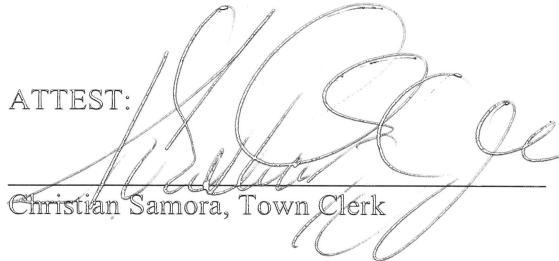
APPROVED, and ADOPTED this 11th day of April, 2023.

TOWN OF BERTHOUD

BY:

  
William Karspeck

ATTEST:

  
Christian Samora, Town Clerk



## EXHIBIT A

### GENERAL DISCLOSURE AND COMMON QUESTIONS REGARDING Metropolitan District

#### 1. What does the District do?

\_\_\_\_\_ Metropolitan District (the “**District**”) was organized on \_\_\_\_\_, pursuant to a Service Plan, approved by the Town Board for the Town of Berthoud, Colorado, on \_\_\_\_\_ (the “**Service Plan**”) for purposes of constructing, operating and maintaining certain public improvements within the boundaries of the District. The District is a governmental entity governed by an elected board of directors made up of property owners and property taxpayers within the District’s boundaries.

The District’s current and potential future boundaries are shown on the map set forth in **Exhibit 1** attached hereto. It is conceivable that additional boundary adjustments may be made within the District. Any such boundary adjustment is subject to prior approval by the owners of the property to be included and must be considered at a public hearing of the District’s board of directors.

Pursuant to the Service Plan, the District is authorized to construct, operate, and maintain public improvements, including streets and traffic controls, water and storm sewer, sanitary sewer services and facilities, and park and recreation services and facilities for the benefit of the property owners of the District. The District may dedicate certain public improvements to the Town of Berthoud (the “**Town**”). The operations and maintenance of public improvements dedicated to the Town shall rest with the Town. Public improvements not dedicated to the Town shall be owned, operated, and maintained by the District or other non-profit or governmental entities. The District has authority to impose property taxes and other fees, rates, tolls, penalties, or charges to fund the construction and operations and maintenance for all improvements identified in the Service Plan. At some point in the future, the District may impose fees and/or rates; all District fees and rates may be adopted and/or amended from time to time by the District’s board of directors at their discretion, as permitted by law.

Certain services may be provided within the District by one or more property owner associations organized as Colorado non-profit organizations comprised of all property owners in the District. Currently, no property owners association has been established within the boundaries of the District. If a property owners association is established, property owners may be subject to fees and assessments payable to the association which will be separate from and in addition to any fees or assessments payable to the District.

**2. How much property tax will the District collect to construct improvements and pay for operations?**

The District has authority to impose property taxes for the construction, operation, and maintenance of the improvements identified in the Service Plan. The District may issue bonds to provide for the costs of capital improvements within its boundaries. In order to meet the debt service requirements for bonds and to pay operations and maintenance costs associated with the provision of services, the District will impose a mill levy under the Service Plan. The mill levy authorized for the District under the Service Plan may not exceed 55.000 mills for the payment of debt obligations and related expenses, may not exceed 17.000 mills for the payment of operations and maintenance obligations and related expenses, and may not exceed a total of 72.000 mills for the payment of debt obligations and operations and maintenance expenses combined, which mill levy rates may be adjusted upward or downward over time as permitted in the Service Plan. In addition, various voter limitations exist which affect the taxing powers of the District, including maximum annual taxing limitations and expenditure limitations. The TABOR Amendment, Article X, Section 20 of the Colorado Constitution, also provides for various legal limitations which may restrict the taxing and spending authority of the District.

**3. What are the advantages of metropolitan districts providing public improvements in lieu of cities, towns or counties?**

Many areas in Colorado utilize special districts to finance public improvements. As cities, towns and counties often do not finance, construct or provide water and wastewater systems, roads, or recreation facilities in new communities, special districts have been organized to build these facilities. Special districts, and the financial powers they utilize, may also permit earlier construction of recreation facilities and other amenities for the benefit of the community when compared with developments not within special districts. Where special districts are utilized, the costs of improvements within the community are generally spread over 20 to 30 years and are paid from mill levies. Special districts are governed by property owners within the community who are better able to address issues of concern to the community than could a larger city, town or county.

**4. How can I be assured that the District will not issue too many bonds and create unreasonably high mill levies?**

All bonds issued by the District will be governed by the controls adopted by the Colorado legislature governing the process by which bonds are issued by special districts. In addition, the organization and operation of the District are governed by the terms of the Service Plan, which limits the mill levy that may be assessed by the District for the payment of debt obligations and related expenses to 55.000 mills, the mill levy that may be assessed by the District for payment of operations and maintenance obligations and related expenses to 17.000 mills, and the total mill levy that may be assessed by the District for debt obligations and operations and maintenance combined to 72.000 mills, subject to adjustments to account for changes in state law with respect to the assessment of property for taxation purposes, the ratio for determining assessed valuation, or other similar matters. The adjustment allows for tax revenues to be realized by the District in an equivalent amount as would have been realized by the District

based on a levy of 72.000 mills absent any change in the manner of the assessment of property for taxation purposes, the ratio for determining assessed valuation, or other similar matters.

The mill levy limits will remain in place unless and until the Service Plan is amended to permit a change in this limit for the District. This limit, as well as others existing under Colorado law and various voter approvals, are believed to be adequate to control the tax levies within the District. As noted above, however, many of the limits of the Service Plan and existing voter limits may be amended from time to time.

Market constraints on property sales by the developer also require that the mill levy within the District be comparable to mill levies in competing development areas in order to further the community as an attractive place for individuals to purchase residential property. Therefore, in the initial stages of the development, it is in the District's and the project developer's best interest to maintain a mill levy in the District comparable to the total property taxes in other similar communities so that the property taxes paid for the amenities and services in the District are perceived as a good value.

## **5. Who bears the risk that the community may not fully develop?**

Bondholders will be providing funding to the District for the District's construction of public improvements authorized by the Service Plan. These initial bonds for the District may be supported, in part, by the developer of the project. Property taxes paid by property owners on residential property will help pay the costs of all bonds issued by the District. This results in the risk of development being shared in part by bondholders and the developer. The property owners also share risk relative to the bonds which are currently limited as noted above in paragraph 4. As previously stated, it is within the District's discretion to impose other fees to help pay for public improvements.

## **6. What will my tax bill look like?**

In determining the tax liability due for residential property, the Larimer County Assessor's Office first determines the actual value of the residential property based upon market approach to appraisal. Up to five years of market activity are analyzed. The actual value of the residential property is then multiplied by the assessment rate, which is set every odd numbered year by the state legislature, to determine the assessed valuation of the residential property. The 2018 assessment rate on residential property was 7.2%. The mill levy is then multiplied by the assessed valuation of the residential property, resulting in the assessment for the residential property. For example, residential property with an actual value of \$450,000 would have an assessed value of \$32,400 ( $\$450,000 \times 7.2\%$ ). One mill (0.001) applied to that valuation for assessment produces \$32.40 of taxes ( $\$32,400 \times 0.001$ ).

It is anticipated that the tax bill for your property will show mill levies for Town of Berthoud, Larimer County, Berthoud Fire District, Thompson R2-J School District, Berthoud Community Library District, Thompson Valley Health Service District, Northern Colorado Water Conservancy District, Larimer Pest Control District, Little Thompson Water District and various other service providers, including \_\_\_\_\_ Metropolitan District. According to information available from the Larimer County Assessor, the total overlapping mill levy

imposed upon the property within the boundaries of the District, but without any District mill levy, was 98.268 mills for tax year 2018 for collection in the year 2019. Therefore, without the District, the annual tax bill levied on a residential property with an actual value of \$450,000 would be approximately \$3,183.88 ( $\$32.40 \times 98.268$ ).

The maximum mill levy the District is permitted to levy is 72.000 mills (0.072000), and the portion of the annual tax bill levied by the District on a residential property with an actual value of \$450,000 would be approximately \$2,332.80 ( $\$32.40 \times 72.000$ ). Your tax bill for your property will also include mill levies from other taxing entities that overlap with the District's boundaries, making the total annual tax bill levied on the residential property approximately \$5,516.68 ( $\$3,183.88 + \$2,332.80$ ).

The assessment ratio for residential property for 2019 (collection year 2020) will be 7.15%.

**Exhibit 2** attached hereto sets forth the approximate mill levies that are currently levied against the property within the District and outlines the annual tax bills levied both with and without the District. Colorado taxing entities certify their mill levies on an annual basis, so the most accurate manner of ascertaining the specific taxing entities and current mill levies imposed on any property is by contacting the Larimer County Assessor's office directly.

## 7. Where can I get additional information regarding the District?

This document is not intended to address all issues associated with special districts generally or with \_\_\_\_\_ Metropolitan District specifically. The Service Plan for the District contains a full description of the District's purpose and functions. Prospective purchasers of property within the District are encouraged to read this document to be fully informed. A copy of the District's Service Plan is available in the Town Clerk's Office. For additional information about the District, prospective purchasers may also contact the District's manager's office at \_\_\_\_\_. The District's meetings are open to the public, at which time you can raise questions regarding any matter related to the activities of the District.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Purchaser's Signature Acknowledging Receipt: \_\_\_\_\_

**EXHIBIT 1**  
**TO GENERAL DISCLOSURE AND COMMON QUESTIONS**

**LEGAL DESCRIPTION OF**  
**\_\_\_\_\_ METROPOLITAN DISTRICT**

**EXHIBIT 2**  
**TO GENERAL DISCLOSURE AND COMMON QUESTIONS**

**ESTIMATE OF PROPERTY TAXES**

**Annual Tax Levied on Residential Property With \$450,000 Actual Value Without the District**

<u>Taxing Entity</u>	Mill Levies (Collection Year 2019**)	Annual tax levied
Town of Berthoud	9.327	\$ 302.19
Larimer County	22.403	\$ 725.86
Berthoud Fire District	13.805	\$ 447.28
Thompson R2-J Bond Pymt	10.022	\$ 324.71
Thompson R2-J Gen Fund	37.406	\$ 1,211.95
Berthoud Comm Library Dist	2.400	\$ 77.76
Thompson Valley Hlth Scv Dist	1.763	\$ 57.12
N Colo Water Cons Dist	1.000	\$ 32.40
Larimer Co Pest Ctrl Dst	0.142	\$ 4.60
Little Thompson Water	0.000	\$ 0.00
<b>TOTAL:</b>	<b>98.268</b>	<b>\$ 3,183.88</b>

**Annual Tax Levied on Residential Property With \$450,000 Actual Value With the District (Assuming Maximum District Mill Levy)**

<u>Taxing Entity</u>	Mill Levies (Collection Year 2019**)	Annual tax levied
Town of Berthoud	9.327	\$ 302.19
Larimer County	22.403	\$ 725.86
Berthoud Fire District	13.805	\$ 447.28
Thompson R2-J Bond Pymt	10.022	\$ 324.71
Thompson R2-J Gen Fund	37.406	\$ 1,211.95
Berthoud Comm Library Dist	2.400	\$ 77.76
Thompson Valley Hlth Scv Dist	1.763	\$ 57.12
N Colo Water Cons Dist	1.000	\$ 32.40
Larimer Co Pest Ctrl Dst	0.142	\$ 4.60
Little Thompson Water	0.000	\$ 0.00
Metropolitan District	72.000	\$ 2,332.80
<b>TOTAL:</b>	<b>170.268</b>	<b>\$ 5,516.68</b>

{00734898.DOCX / 3 }\*\*This estimate of Overlapping Mill Levies is based upon mill levies certified by the Larimer County Assessor's office in December 2018 for collection in 2019, and is intended only to provide approximations of the total overlapping mill levies within the District. The stated mill levies are subject to change and you should contact the Larimer County Assessor's office to obtain the most accurate and up to date information.

**MASTER  
INTERGOVERNMENTAL  
AGREEMENT**

**TOWN OF BERTHOUD AND  
\_\_\_\_\_ METROPOLITAN DISTRICT NOS. \_\_, \_\_, and \_\_**

**MASTER INTERGOVERNMENTAL AGREEMENT**  
**TOWN OF BERTHOUD AND**  
**METROPOLITAN DISTRICT NOS. \_\_, \_\_, AND \_\_**

This Master Intergovernmental Agreement (“Master IGA”) is entered into this \_\_\_\_ day of \_\_\_, 20\_\_ by and between the Town of Berthoud (“Town”), a statutory town and political subdivision of the state of Colorado, and \_\_\_\_\_ Metropolitan District Nos. \_\_, \_\_, and \_\_\_\_, quasi-municipal corporations and political subdivisions of the state of Colorado (“Districts”) (collectively, the Town and the Districts are referred to as the “Parties”).

**RECITALS**

The Districts were organized by order and decree of the (Larimer) (Weld) County District Court for the purpose of financing, constructing, installing, and acquiring public infrastructure to support development within the boundaries of the Districts.

- A. As required by the Special District Act, section 32-1-101 et seq, C.R.S., and the Town of Berthoud Policy for Reviewing Service Plans for Metropolitan Districts, the Districts have submitted a Service Plan which was approved by Resolution No. \_\_\_\_\_ of the Town of Berthoud Board of Trustees on \_\_\_, 20\_\_ (Service Plan). The Service Plan reflects current capital development and financial projections for the Districts on a consolidated basis. The Council's approval of the Service Plan and the organization of the Districts was conditioned on the Districts entering into this Master Intergovernmental Agreement, which sets forth, among other things, the parameters of the Districts' authority to finance and construct public improvements.
  
- B. The constitution and laws of the State of Colorado permit and encourage cooperative efforts by local governmental entities to make the most efficient and effective use of their powers, responsibilities and resources. Due to the fact that the Districts' boundaries are entirely located within the Town limits, and the Town provides municipal services within the Districts' boundaries, the limitations and restrictions on the exercise by the Districts of the powers and duties granted to them under the Special District Act are appropriate and necessary to protect the health, safety and welfare of the residents and citizens of the Town.

**COVENANT**

THEREFORE, in consideration of these mutual promises, which are acknowledged to be sufficient consideration, the Parties collectively agree, and covenant as follows:

**ARTICLE I**  
**DEFINITIONS**

**1.01 Defined Terms.** Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

**Agreement:** This Master Intergovernmental Agreement and any Amended or Supplemental versions.

**Bonds:** Bonds, refunding bonds, notes, certificates, debentures, contracts or other evidence of indebtedness or borrowing incurred by the Districts pursuant to law.

**Business Days:** The days of Monday through Friday during the week, exclusive of any holiday recognized by the United States government or the state of Colorado.

**Code:** The Municipal Code of the Town of Berthoud, as amended.

**Control District:** A title 32 metropolitan district, also known as a “service” or “managing” district, that is controlled by a majority of members of the District Board of Directors who are employed by, owners or principals of, or otherwise affiliated with the developer/proponent of the Service Plan. A Control District allows the developer to control the Resident Districts, also known as Taxing or Finance Districts, that provide tax revenues to service debt issued by the Control District pursuant to an intergovernmental agreement between the Control District and the Resident Districts.

**C.R.S.:** the Colorado Revised Statutes, as amended.

**Development Exactions:** The fees and charges imposed by the Town under the Town Regulations on development, including per unit charges for capital plant investment, such as System Development Fees.

**District:** The \_\_\_\_\_ Metropolitan Districts Nos \_\_ through \_\_\_\_, as described in the Service Plan.

**District Fees:** The fees, rates, tolls, and charges imposed by the Districts pursuant to law.

**Facilities:** The infrastructure prescribed by the Town Requirements necessary to furnish Municipal Services to the Project, and any other public improvements permitted to be constructed by the Districts, as further identified in the Service Plan.

**Financial Plan:** The Financial Plan required by Section 4 J 1. of the SDP and designated as Exhibit \_\_ to the Service Plan.

**Municipal Services:** Water and wastewater, stormwater drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

**Plans:** The plans, documents, drawings and specifications prepared by or for the Districts for construction, installation or acquisition of any of the Facilities.

**Project:** The existing and planned development within the boundaries of the Districts and their Service Area, as defined in the Service Plan.

**Records:** The public records of the Larimer and Weld County Clerk and Recorders.

**Resident District:** A title 32 metropolitan district which has “eligible electors” who are not employed by, owners or principals of, or otherwise affiliated with the developer/proponent of the Service Plan and who reside within the boundaries of the district.

**SDP:** The Town of Berthoud Policy for Reviewing Service Plans for Metropolitan Districts, adopted by Resolution 20\_\_ and amended from time to time.

**Service Plan:** The Amended and Restated Service Plan for the Districts approved by Town Board of Trustees Resolution 20\_\_-\_\_ on \_\_\_\_, 20\_\_.

**Special District Act:** Article 1, Title 32, C.R.S., otherwise cited as section 32-1-101 et seq, C.R.S.

**System Development Fees:** The charges imposed by Town under Town Regulations as a condition to the right to connect to the municipal water and wastewater system, for the purpose of recovering the Town's pro rata capital cost of water or wastewater facilities dedicated to serving those who connect.

**Town:** The Town of Berthoud, a statutory town and political subdivision of the state of Colorado.

**Town Regulations:** The ordinances, resolutions, rules and regulations of the Town, including the Code and the provisions of all zoning, subdivision, public works and building codes, as the same may be amended from time to time, applied on a Town-wide basis. Reference to Town Regulations shall mean the Town Regulations in effect at the time of application.

**Town Requirements:** Collectively, (i) the Code, (ii) Town Regulations, and (iii) obligations imposed through approved plats, site plans, and subdivision improvement agreements to allow for the uses permitted and densities required of development within the Project.

Certain other terms are defined in the text of the Agreement and shall have the meaning set forth in the text.

**1.02 Cross-Reference.** Any reference to an Article or Section number, with or without further description, shall mean such Section or Article in this Agreement.

## ARTICLE II

### FACILITIES DEVELOPMENT AND MAINTENANCE

**2.01 Construction of Facilities.** The Districts shall have the authority to construct and finance the Facilities. The Facilities shall be constructed pursuant to the standards and procedure set forth in the Service Plan and the Town Requirements.

**2.02 Ownership and Maintenance.** Except as provided in the Service Plan or as otherwise allowed by the Town Requirements, the Districts shall convey the Facilities to the Town for operation and maintenance by the Town. Upon acceptance of the Facilities, the Town shall operate, maintain, and/or replace the Facilities, in order to provide Municipal Services to the Project. However, this Agreement shall not restrict the Town from conveying the facilities to a regional service authority or other governmental or quasi-governmental agency or authority, provided that the conveyance shall not affect the validity or tax-exempt status of any Bonds issued to finance the Facilities. The Districts shall be explicitly authorized to operate and maintain any Facilities not conveyed to and accepted by the Town.

**2.03 Bidding Requirements.** Except in cases in which the Districts will receive aid from a governmental agency or purchase through the state purchasing program, a notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of sixty thousand dollars or more of public moneys. The Districts may reject any and all bids, and, if it appears that the Districts can perform the work or secure material for less than the lowest bid, they may proceed to do so. No contract for work or material including a contract for services, regardless of the amount, shall be entered into between one or more Districts and a member of the boards of any of the Districts or between one or more Districts and the owner of twenty-five percent or more of the territory within any one of the Districts unless a notice has been published for bids and such member or owner submits the lowest responsible and responsive bid. In the event that applicable Colorado law imposes a more restrictive standard for bidding construction contracts or for contracts between members of the board and the Districts or the owners of property and the Districts, the more restrictive standard shall apply. In the event that applicable Colorado law imposes a less restrictive standard, the requirements of this Policy shall continue to apply as a matter of contract.

## ARTICLE III

### DEVELOPMENT FEES

**3.01 Charges by the Districts.** The Districts shall have no right to impose system development fees or development impact fees without the express permission of the Town.

## ARTICLE IV

### BOND ISSUANCE

**4.01 Bonds.** The Districts shall only issue Bonds in accordance with the requirements of the Service Plan, the Special District Act, and other requirements of the laws of the state of Colorado and the United States.

**4.02 Benefit/Burden Test.** Any Bond issued by any District shall meet the constitutional requirement that the burden imposed by the debt service mill levy shall be roughly proportional to the benefit received by properties within the District from the Facilities financed through the

Bond. In the event of a change in the law governing this constitutional principle, the Districts shall continue to be governed by this Section 4.02 as a matter of contract law.

**4.03 Control Districts.** The use of Control Districts is governed by this Agreement and Section 1 E. of the SDP. As is provided in the Resolution of the Town Board of Trustees approving the Service Plan, the Parties agree that a Control District or Districts (may) (may not) be employed. [TO BE USED IF THE CONTROL DISTRICT STRUCTURE IS ALLOWED: The Control District(s) may only be in place during the period while any District debt that is permitted under the SDP and the Service Plan is outstanding. After that period, any remaining Control Districts must either be dissolved, or a majority of the Board of Directors must be composed of eligible electors who are not employed by, owners or principals of, or otherwise affiliated with the developer/proponent of the Service Plan and who reside within the boundaries of the District. The transition to resident control must take place no later than the first regular election after the District debt has been paid. The Parties further agree that as of the first regular District election after the date that any Resident District has any eligible elector or electors who are not employed by, owners or principals of, or otherwise affiliated with the developer/proponent of the Service Plan and who reside within the boundaries of the District, the Board President of both the Control District and any related Resident District shall be an individual who is an eligible elector of both the Control District and the Resident District and who is not employed by, an owner or principal of, or otherwise affiliated with the developer/proponent of the Service Plan and who resides within the boundaries of the Control District or the Residential District.

## ARTICLE V

### SERVICE PLAN COMPLIANCE

**5.01 Generally.** The Service Plan contains certain responsibilities, restrictions, covenants and duties which are not set forth in this Agreement. Performance of the Service Plan by the Districts is an implied covenant of this Agreement, for which the default provisions and remedies of section 8.04 shall be applicable in the same manner as if expressly set forth in this Agreement.

**5.02 Service Plan Amendment.** The authority given to the Districts under the terms of the Service Plan and this Agreement is given by the Town in reliance upon certain development and financial assumptions and projections set forth in the Financial Plan that is part of the Service Plan. Although the assumptions and projections are based upon the best information available at the time that the Service Plan was approved, those assumptions and projections may prove to be materially inaccurate. Accordingly, any material departure or deviation from the assumptions and projections in the Financial Plan shall be deemed to be a “material modification” of the Service Plan, requiring the Districts to submit a Service Plan amendment to the Town for approval pursuant to the terms of the Special District Act and SDP. Failure to submit such an amendment shall enable the Town to employ all available remedies under the Special District Act to prevent or rectify a “material modification” of a service plan, in addition to the remedies set forth in Section 8.04 of this Agreement.

## ARTICLE VI

## ANNUAL REVIEW

**6.0 Town Review.** Annually no later than the date Districts are required to submit the annual report under the SDP, the Districts shall furnish to Town an accounting of all actual revenues and expenses, and accumulated reserves for the preceding calendar year, in substantially the same format as the Financial Plan, such that Town can compare the experience of the Districts with the projections and assumptions in the Financial Plan. Town shall have access to Districts' financial statements, accounting records and other supporting documentation, upon written demand, and at such reasonable times, for the purpose of auditing the financial reports submitted by Districts. Such review shall be conducted at the sole discretion of the Town.

**6.1 Quinquennial Review.** Completion of the requirements for annual review shall also fulfill the requirements for quinquennial review mandated by the Special District Act.

**6.2 Continued Oversight.** It is the Town's intention to exercise oversight of the Districts following approval of their Service Plans to the maximum extent permitted by Colorado law. Toward that end, the Town will designate a member or members of staff to act as a liaison between the Town and its residents and the Districts. This individual shall coordinate the Town Review provided for in paragraph 6.0 of this Agreement and shall evaluate compliance of the Districts with the Service Plan, including without limitation the Financing Plan. The staff member shall also be available to answer inquiries from the public about the Districts and to direct interested persons to available sources of information regarding the Districts. The Districts agree that their designated representatives shall meet with the staff liaison on an as-needed basis and no less than annually.

## ARTICLE VII

### DISCLOSURE AND NOTICE

**7.0 Notice.** The District(s) shall use all reasonable efforts to ensure that all developers of the property located within the Districts provide written notice to all purchasers of property in the Districts and any proposed future inclusion area (as well as the purchasers of property located within any extraterritorial Service Area outside the boundaries of the District) regarding the District's existing mill levies, its maximum debt mill levy, any District Fees, as well as a general description of the Districts' authority to impose and collect rates, fees, tolls and charges. The form of notice shall be filed with the Town prior to the initial issuance of the debt of the District imposing the mill levy and shall be substantially in the form of **Exhibit A** attached hereto and incorporated by reference.

**7.1 Enforcement and Continuing Obligation.** The obligation to provide Notice under this Article VII shall extend to all developers and builders of property located within the Districts at the time of the initial issuance of debt and subsequently, and the right to receive Notice extends

to all purchasers of property within the Districts. Pursuant to Article 8.13, this obligation shall be a covenant running with the land and may be enforced in a court of competent jurisdiction through any available remedy at law or equity.

## ARTICLE VI

### LIMITATIONS ON DISTRICTS' POWERS

**6.01 Restrictions on Expansion of Districts' Powers.** The Parties acknowledge that the Service Plan was approved by the Town solely for the purpose of providing, acquiring, constructing, installing, completing, financing, and reimbursing for the Facilities and providing or causing to be provided the services authorized pursuant to this Agreement and described in the Service Plan, and for no other purpose. The Districts shall not undertake or perform any purpose, service or function except as stated in this Agreement and in the Service Plan or as reasonably required for the Districts to accomplish such purposes, responsibilities and obligations. The Town shall not interfere with the exercise by Districts of any of their lawful powers except as the exercise thereof is specifically limited by this Agreement and the Service Plan.

**6.02 Extraterritorial Authority.** Districts will not engage in any service or activity outside the Service Area as defined in the Service Plan except as such Facility or service is expressly described in the Service Plan and is necessary to the provision of Facilities or services within their boundaries, or where the Districts have obtained express written permission of the Town.

**6.03 Change of Districts' Boundaries.** The Districts shall not cause any territory outside the Service Area described in the Service Plan to be included within the Districts, nor shall they cause any territory within the Service Area to be excluded entirely from the Districts' boundaries, without first obtaining Town approval, or unless the inclusion or exclusion of that territory is expressly provided for in the Service Plan.

## ARTICLE VII

### TOWN'S RESERVED POWERS

**7.01 Generally.** As a general-purpose municipal corporation with the police power, the Town adopts and administers policies, rules, and regulations, principally through the Town Regulations. The approval of the Service Plan or this Agreement shall in no manner restrict the Town Council from applying Town Regulations within the Project even though the Town Regulations may have the effect of limiting or delaying development or making development more costly to the landowner and/or Districts, provided the Town Regulations are:

- (a) A lawful exercise of the Town's police powers; and
- (b) not in express contravention of the Town Requirements, the Service Plan, or this Agreement.

**7.02 No Claims.** The Districts shall have no legal or equitable claim against Town as a result of the Town taking or imposing any of the following actions if it is otherwise a lawful exercise of the Town's powers:

- (a) imposing new Development Exactions or increasing (or decreasing) the levels of existing Development Exactions;
- (b) exercise of the Town's right of eminent domain to acquire private properties within the boundaries of the Districts for public purposes upon the payment of just compensation therefore; and
- (c) acquisition of properties zoned for development within the boundaries of the Districts for park, recreation, open space, historic preservation, or other public purpose, pursuant to agreement with the grantor.

## ARTICLE VIII

### GENERAL PROVISIONS

**8.01 Dissolution of Districts.** The Districts shall be dissolved as provided for in the Service Plan and upon the occurrence of the following events:

- (a) all Facilities contemplated under this Agreement and the Service Plan have been constructed, installed, and completed;
- (b) final payment or discharge of all outstanding indebtedness of the Districts in accordance with applicable Colorado and federal law; and
- (c) adequate provision is made for ongoing operation and maintenance of the Facilities; or
- (d) There has been a period of five or more years without substantial development activity in any of the Districts governed by the Service Plan. The requirement in this Paragraph 8.01 may be extended or altered upon a majority vote of the Town Board of Trustees.

**8.02 Additional Warranties.** The Parties warrant that each has the right, power and authority to enter into, perform, and observe this Agreement. Districts disavow as obligations any provision of any agreement or indenture between the Districts and any other special district or among the Districts which is in contravention of the provisions of this Agreement, and Districts stipulate that any such intergovernmental agreement shall be subordinate and subject to the provisions of this Agreement.

**8.03 Instruments of Further Assurance.** The Town and the Districts covenant that they will do, execute, acknowledge and deliver such documents and shall cause to be done such acts and transfers as may reasonably be required for the performance of their obligations hereunder.

**8.04 Default and Remedies.** In the event that one Party believes that the other is in default of this Agreement, the non-defaulting party shall first notify the defaulting party in writing of the default and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) business days from its receipt of the notice within which to cure such default before the non-defaulting Party may exercise any of its remedies under this Agreement, provided that:

- (a) such default is capable of being cured;
- (b) the defaulting Party has commenced the cure within the twenty-day period; and
- (c) the defaulting Party diligently pursues said cure to completion.

If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting Party and diligently pursued to completion. In this instance where the initial corrective action could not be completed within the initial twenty-day period, if the corrective action is not completed within sixty (60) business days after the completion of the initial twenty-day corrective period, the non-defaulting Party may seek any remedy provided for in this Agreement. In addition to specific remedies provided elsewhere in the Agreement, upon default, the non-defaulting Party shall have the right to seek any remedy at law or equity to enforce any obligation, agreement, or covenant of the defaulting Party under this Agreement, or to collect any monies then due and payable to the defaulting Party. In any such legal action, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs of suit from the other Party. In addition to any judicial remedy, the Town may withhold building permits until the default has been cured in full. The remedy of not issuing new building permits shall extend to all properties within the boundaries of the defaulting District, any contemplated inclusion area, and any portion of the District's Service Area for which extraterritorial service is provided outside the boundaries of the District.

**8.05 Notices.** All notices, certificates, or other communications hereunder shall be deemed sufficiently given when mailed by registered or certified mail, postage prepaid and addressed as follows:

If to the Town: Attn: Chris Kirk (or Successor), Town Administrator  
Town of Berthoud  
807 Mountain Avenue  
Berthoud, CO 80513

If to the Districts:

**8.08 No Liability of Town.** Town shall have no obligation whatsoever to repay any debt or liability of the Districts, including the Bonds. The Bonds shall be obligations only of the Districts, and the full faith and credit of the Town shall in no way be employed to guarantee or secure repayment of the Bonds.

**8.07 Notice of Meetings.** The Districts shall submit a written notice to the Town Clerk of every regular and special meeting of the Districts' Board of Directors at least three days prior to the meeting. This requirement may only be fulfilled by a specific and separate notice of each meeting. Written notice must also be provided to the Town Clerk of the cancellation of any regular or special meeting.

**8.08 Assignment.** No transfer or assignment of this Agreement or of any rights hereunder shall be made by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

**8.09 Amendments.** This Agreement may be amended only in writing upon consent of the Parties. Amendments shall be approved by resolutions of the Town Board of Trustees and the Boards of Directors of the Districts during duly noticed meetings of those bodies.

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

**8.11 No Waiver.** The waiver or delay in enforcement of any provision hereof shall not constitute a waiver of any other covenant or obligation in this Agreement. A waiver shall only be deemed to have taken place upon proof of the full legal standard for waiver, which means that the waiving Party must knowingly relinquish or abandon a right or privilege hereunder.

**8.12 Entire Agreement.** This Agreement contains the entire agreement of the parties concerning the subject matter and supersedes all prior conversations, proposals, negotiations, understandings, and agreements, whether written or oral.

**8.13 Covenant Running with the Land.** This Agreement touches and concerns the land within the boundaries of the Districts, any contemplated inclusion area, and any portion of the Districts' Service Area for which extraterritorial service is provided outside the boundaries of the Districts. It is intended by the Parties to be a covenant running with the land. This Agreement may be recorded by any Party in the real property records of any County in which the Districts, any contemplated inclusion area, and any portion of the Districts' Service Area for which extraterritorial service is provided outside the boundaries of the Districts is located.

**8.13 Intended Third Party Beneficiaries.** This Agreement is made for the sole purpose of promoting and protecting the public health, safety, and welfare of the residents, electors, and taxpayers of the Districts and the Town. The residents, electors, and taxpayers are intended third party beneficiaries of this Agreement and shall have standing to enforce any of the terms, covenants, and agreements set forth in this Agreement.

*[Signatures on Following Pages.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

**THE TOWN OF BERTHOUD**

ATTEST:

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\_\_\_\_\_, Town Clerk

APPROVED AS TO FORM:

---

Erin M. Smith, Town Attorney

**METROPOLITAN DISTRICT NOS. \_\_\_, \_\_\_,  
AND \_\_\_**

By: \_\_\_\_\_

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

## Notary Public