

**FIRST AMENDED AND RESTATED DISTRICT FACILITIES CONSTRUCTION  
AND SERVICE AGREEMENT**

DISTRICT FACILITIES CONSTRUCTION AND SERVICE AGREEMENT entered into and dated as of March 3, 2003, by and between Buckhorn Valley Metropolitan District No. 1 and Buckhorn Metropolitan District No. 2.

(Cover Sheet Only)

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## **DISTRICT FACILITIES CONSTRUCTION AND SERVICE AGREEMENT**

This **DISTRICT FACILITIES CONSTRUCTION AND SERVICE AGREEMENT** (the "Agreement") is made and entered into and dated as of February 20, 2003, by and between **BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 1** ("the Operating District") and **BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2**, ("the Taxing District"), individually and/or collectively referred to as "the District" or "the Districts," as the context indicates. Said Districts are quasi-municipal corporations and political subdivisions of the State of Colorado.

### **RECITALS**

WHEREAS, the formation of the Districts was approved by the Town of Gypsum as multiple districts whose purposes are to provide essential public improvements and services as contemplated herein; and

WHEREAS, the purposes for which the Districts were formed are specifically set forth in their Service Plan (defined below), which was prepared for the Districts pursuant to Sections 32-1-201, C.R.S. et seq., and with respect to which all required governmental approvals have been obtained therefor; and

WHEREAS, the Service Plan may be amended from time to time as permitted herein and any and all such amendments shall become part of the Service Plan as such term is used herein; and

WHEREAS, under the Service Plan, the Districts are required to work together and coordinate their efforts with respect to all activities contemplated in the Service Plan including but not limited to the management and administration of the Districts, the provision of essential services by the Districts and the financing, construction, operation and maintenance of public improvements; and

WHEREAS, the Service Plan discloses and establishes the necessity for and desirability of an intergovernmental agreement or intergovernmental agreements between the Districts concerning the manner in which the Districts shall implement their Service Plan; and

WHEREAS, pursuant to the 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, inter alia, for the sharing of costs, the imposition of taxes, and the incurring of debt; and

WHEREAS, at an election of the qualified electors of the Taxing District duly called and held in accordance with law and pursuant to due notice, a majority of eligible electors who voted at such election voted in favor of the Taxing District incurring indebtedness in an amount sufficient to lawfully authorize the Taxing District to enter into an agreement containing terms as set forth herein with the Operating District; and

WHEREAS, the Service Plan describes certain "Facilities" to be financed in accordance with a general plan of finance described therein or in accordance with plans of finance permitted therein, from the proceeds of indebtedness to be issued by the Taxing District and/or from other funds held or obtained by the Taxing District and to be made available for the purposes of fulfilling the Taxing District's commitments hereunder; and

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

WHEREAS, the Districts have agreed, and the Service Plan provides, that the Operating District will own (subject to discretionary transfer to other governmental entities or authorities), operate, maintain, and construct the Facilities benefiting the Districts, and that the Taxing District will pay all costs related to the construction, operation, and maintenance of such Facilities by the Operating District as set forth in and in accordance with the terms of this Agreement; such payments may include, but not be limited to, payments to the Operating District for debt service requirements of revenue bonds issued by the Operating District for such capital costs; and

WHEREAS, the Service Plan describes the amount of money estimated to be necessary to fund the financing, construction and/or acquisition of the Facilities, and describes the anticipated timing of financing and construction of the facilities, which amounts and timing may be amended as contemplated by the Service Plan, as permitted under governing law, and/or pursuant to the terms of this Agreement; and

WHEREAS, the Service Plan describes the amount of money estimated to be necessary to fund the operation, maintenance management and administrative services to be provided to the Taxing District by the Operating District, which amounts and timing may be amended as contemplated by the Service Plan, as permitted under governing law, and/or pursuant to the terms of this Agreement; and

WHEREAS, the Districts desire to provide in this Agreement for the implementation of principles and objectives set forth in the Service Plan regarding the financing, construction, operation and maintenance of the Facilities, and regarding administration of the affairs of the Districts including the collection, management and expenditure of funds of the Districts; and

WHEREAS, the Districts understand that it may be necessary for additional agreements to be executed between them regarding matters addressed herein, but desire at this time to establish by this Agreement the general framework for implementation of the provisions of the Service Plan; and

WHEREAS, all amendments to this Agreement made pursuant hereto and not in specific conflict with specific limits of the ballot questions that authorized the debt represented by this Agreement shall be deemed part of this Agreement and fully authorized by such ballot questions.



## COVENANTS

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

### ARTICLE I

#### GENERAL PROVISIONS

1.1 Interpretation. In this Agreement, unless the context expressly indicates otherwise, the words defined below shall have the meanings set forth below:

a. The term "herein," "hereunder," "hereby," "hereto," "hereof" and any similar term, refer to this Agreement as a whole and not to any particular article, section, or subdivision hereof; the term "heretofore" means before the date of execution of the Agreement; and the term "hereafter" means after the date of execution of this Agreement.

b. All definitions, terms, and words shall include both the singular and the plural, and all capitalized words or terms shall have the definitions set forth in Section 2.1 hereof.

c. Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa.

d. The captions or headings of this Agreement are for convenience, only and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement.

e. All schedules, exhibits, and addenda referred to herein are incorporated herein by this reference.

1.2 Effective Date and Term. This Agreement shall be effective as of March 1, 2003, upon execution hereof by the Districts and shall represent the valid, binding and legally enforceable obligation of the Districts until such time as each of the terms and conditions hereof has been performed in their entirety, or until this Agreement is terminated by mutual written agreement of the Districts as permitted herein or as otherwise might be provided herein.

1.3 Purpose and Scope of Agreement. This Agreement shall be governed and interpreted, in general, by the following provisions in this Section 1.3. It is agreed by the Districts that the statements of intention set forth in this Section 1.3 are essential to the proper interpretation of this Agreement and are intended to clarify the general intent of specific provisions contained herein. The following statements are illustrative of the Districts' intentions and while they are to be used to construe and govern this Agreement, they are not intended to constitute an all-inclusive statement of the intentions of the Districts. Reference shall also be made to the Service Plan for purposes of construing this Agreement and the intent of the Districts

manifested by the Districts' course of conduct or other extrinsic evidence. The Districts agree that any District shall be entitled to any remedy, order, judgment or action which is or may be necessary in order to make operative the intentions of the Districts as expressed herein:

a. The Service Plan states that the Operating District will be responsible for managing the financing, construction, operation and maintenance of the Facilities for the benefit of the Districts. The Service Plan describes the nature of the relationship between the Districts and contemplates that this Agreement would be executed by the Districts to effectuate that relationship.

b. The Service Plan further states that the Operating District will have little or no assessed valuation within its boundaries from which general obligation bonds could be paid, and consequently contemplates that the Taxing District will issue bonds appropriately secured or credit-enhanced by third parties. Alternatively, the Service Plan allows for or does not prevent the Operating District from issuing secured or credit-enhanced revenue bonds for capital costs, the debt service requirements of which are expressly intended to be paid from payments made by the Taxing District hereunder and which may be refunded or repaid from the proceeds of general obligation indebtedness issued by the Taxing District when adequate assessed valuation exists within the Taxing District. The Service Plan contemplates that virtually all assessed valuation of property to be developed within the Districts' service areas will be located within the boundaries of the Taxing District and that the Taxing District will issue general obligation bonds or revenue bonds at various points in time described in the Service Plan, and will use the proceeds thereof to pay its obligations contained in this Agreement to the Operating District. Proceeds from bonds will be used to construct the Facilities for the Taxing District consistent with the "Operating and Taxing Districts" philosophy described in the Service Plan. The Taxing District will issue general obligation bonds to capture the tax value of increases in the tax base within the Taxing District caused, to a significant degree, by the availability of Services and Facilities from the Operating District. The transfer of bond proceeds from the Taxing District to the Operating District is intended to result in an equitable allocation of the costs of all the Facilities to all properties within the Taxing District which are benefited by those Facilities.

c. The Service Plan contemplates that the essential terms of this Agreement between the Operating District and the Taxing District concerning the costs of acquiring, constructing, or otherwise providing, and the costs of operating and maintaining, certain water, street, traffic safety, television relay and translation, transportation, park and recreation and sanitation facilities and improvements, all as further set forth herein would be voted upon by the electorate of the Taxing District at the organizational election of the Taxing District. The Districts recognize that numerous amendments and adjustments to this Agreement may be necessary over time; subject, however, to the requirement that any increase in the monetary amount of the obligations of the Taxing District to make payments to the Operating District, or any increase in the maximum annual tax increase or the total repayment cost of the debt evidenced by this Agreement beyond the amount set forth in ballot questions presented to the electorate of the Taxing District may require additional voter authorization. The Districts agree that unless the Districts receive the advice of legal counsel to the contrary, no further

authorization of the electorate will be required to authorize other substantive changes to this Agreement.

d. The Taxing District acknowledges that, as might be necessary, the Operating District may negotiate for and obtain certain security or credit enhancement for the Operating or Taxing District's bonds from Persons which as of the date hereof own property within the Taxing District and Operating District, and that if such security or credit enhancement is provided, substantial damage will result to such Persons in the event this Agreement is breached by the Taxing District or the Operating District in any material manner. Consequently, the Districts agree that neither the Operating District nor the Taxing District shall be entitled to terminate this Agreement except pursuant to the express provisions of Article VIII below, and that this Agreement is intended to be strictly enforced to the maximum extent permitted by law. Nothing in this paragraph shall be construed as granting any rights to third parties.

e. The purpose of this Agreement is to set forth the rights and obligations of the Taxing District to fully fund, and of the Operating District to construct, own, or transfer, and to operate and maintain, public facilities and services of benefit to the District. This Agreement shall in all circumstances be interpreted consistent with the Service Plan and the intentions expressed therein regarding the role of each District in implementing the Service Plan. The Districts acknowledge that performance of this Agreement for the full term hereof is key to full implementation of the Service Plan by the Districts and that any material departure herefrom by either District, or any attempt by either District to terminate this Agreement or materially alter its terms except in accordance herewith, by judicial action or otherwise, is acknowledged to be and shall constitute a "material departure" from the Service Plan which, in addition to all other remedies set forth herein, the aggrieved District shall be entitled to seek to enjoin in accordance with Section 32-1-207, C.R.S., as amended from time to time. Notwithstanding the foregoing agreements regarding "material departures" from the Service Plan, the agreements and acknowledgements of the Parties relative thereto are expressed solely for the benefit of the Parties to aid in their efforts to enforce this Agreement and shall not constitute or be admissible as admissions by any Party in efforts which may be taken by any other Person to enjoin activities by any District under state law.

f. It is agreed by the Districts that the Operating District is not, and shall not be considered or deemed in the future, a service company, nor a regulated public utility as defined in Section 40-1-103(1)(a), C.R.S., as amended from time to time, nor as such terms are defined in any constitutional provision, statute, or law of the State of Colorado, nor as defined in any rule or regulation of any entity or Person asserting jurisdiction in matters relating to this Agreement or the subject matter hereof. The Districts further agree that in the event the Operating District is ever determined by a third party to be a public utility as defined in Section 40-1-103(1)(a), C.R.S., then the Operating District is intended to be exempt from any regulation by the Public Utilities Commission or any other special commission, pursuant to the Colorado Constitution, Article XXV, and Article V Section 35, and Sections, 32-1-1001(j)(k) and 32-1-1006, C.R.S., and other applicable statutes.

g. It is not the intention of the Operating District to offer or provide service by this Agreement to members of the general public outside of the Taxing District's service area;

rather, it is the Operating District's intention to offer and provide certain services to the Operating District and the Taxing District in accordance with the Service Plan.

h. It is the intention of the Districts to enter into this Agreement to further their interests and to comply with the Service Plan as quasi-municipal corporations conducting business in the State of Colorado.

i. It is not the intention of the Districts, and the Districts expressly disavow any claim or attempt, to dedicate any of their property to a public use outside of the Districts, or to make any offer to provide service to the public outside of the service area of the Districts, or to make any representation that any District is capable of providing service to the public at large through this Agreement. The Operating District does not desire to offer, and shall not be construed as offering, to furnish service to the public or any individual resident or property owner outside the service area of the Operating District or the Taxing District through this Agreement. Nothing herein shall prevent the Operating District from providing service to property owners outside the Operating District's service area through a separate contract.

j. This Agreement shall be construed as a private intergovernmental agreement between the Districts. It is expressly agreed by the Districts that no Person other than the Taxing District shall obtain hereby any enforceable rights to service from the Operating District, and to this end it is expressly declared by the Districts that no Person shall be construed as a third party beneficiary of any kind of this Agreement except as expressly stated herein.

k. Users in the Taxing District shall receive Service from and/or use of the Facilities owned by the Operating District only upon payment of Development Fees, User Fees, and other Charges and/or taxes to or for the benefit of the Operating District or its designee, and subject to the terms and conditions contained herein. No portion of the Facilities or capacity therein shall be dedicated for the private use or benefit of any Person or Customer. Furthermore, Users within the Taxing District shall have no legally enforceable right to demand the Facilities or Service from the Operating District in excess of Facilities and Services for which the Operating District has received payment from the Taxing District. The Taxing District shall have all such rights and remedies as are available under this Agreement. All Service and Facilities contemplated herein shall be provided to the Taxing District only in accordance with the express agreements and limitations contained herein.

l. The Operating District shall be considered and deemed a contract carrier and not a common carrier.

m. The Districts agree that no effort shall be undertaken by any District to request supervision, control, or regulation of this Agreement, of any District, or of the property of any District, by the Public Utilities Commission of the State of Colorado, or any other regulatory authority or any other entity claiming jurisdiction of the subject matter hereof. The Taxing District shall assist the Operating District in defending against any claim of such jurisdiction.

n. In the event that the Operating District defaults in payments of its own Bonds, if any, and if as a result thereof or as a result of any action arising subsequent thereto, the maximum term for repayment of the Operating District's Bonds is increased in any manner from the maximum term set forth when such Bonds were issued, the obligations of the Taxing District hereunder shall nevertheless continue in full force and effect subject to termination of such obligations as they relate to said Bonds at the date and time at which the Taxing District's obligations hereunder would have terminated had the Operating District not defaulted on its Bonds or taken such other course of action which has the affect to increasing the maximum term of the Taxing District's obligations under this Agreement. The intention of the foregoing is that this provision shall be applied only in the event that Bonds issued by the Operating District are restructured in any manner other than for a normal refunding, or a refunding in the ordinary course of business.

o. It is the intention of the Districts that in the event of a conflict between this Agreement and the provisions of the bond resolution adopted by Buckhorn Valley Metropolitan District No. 2 on March 3, 2003, the bond resolution shall control.

p. It is the intention of the Districts that the payment obligations of the Taxing District to the Operating District hereunder shall be payable on a basis subordinate to payments due on any bonds issued by the Taxing District.

## ARTICLE II

### DEFINITIONS

2.1 Definitions. As used herein, unless the context expressly indicates otherwise, the words defined below and capitalized throughout the text of this Agreement shall have the respective meanings set forth below:

a. "Accounts" shall mean and refer to Construction Account and Service Account collectively.

b. "Capital Costs" shall mean those costs derived from the financing model as set forth in the Service Plan, as may be amended from time to time, which are to be incurred by the Operating District for the purpose of planning, designing, constructing and acquiring, including the costs and fees of issuance of Bonds, a portion or all of the Facilities including, but not limited to:

1. All costs of materials attributable to the actual construction or acquisition of the Facilities, including all costs incurred to acquire the Facilities from third Persons and all related components and materials used therein, all costs incurred for the acquisition of water rights, all costs of organization of the Districts, and all other costs or fees due or paid under cost recovery or other agreements with third Persons, together with all costs incurred to obtain financing for the Facilities. For those items for which any construction contract provides that payment is to be made on a per unit basis, the construction cost shall be

that amount actually paid pursuant to the construction contract so providing, which sum should reflect the cost of the actual quantities used;

2. All labor costs incurred in the actual construction or acquisition of the Facilities;

3. All costs attributable to the construction or acquisition of the Facilities or any part or component thereof incurred as a result of change orders approved in accordance with any construction contract;

4. All costs incurred for design, planning, engineering, construction, management, landscape architecture and engineering, soil testing and inspection, and line and systems testing and inspection attributable to the Facilities;

5. Site and right-of-way acquisition costs, including legal fees;

6. All legal and accounting costs incurred in connection with the financing, construction or acquisition of the Facilities;

7. All costs for construction administration, financial, inspection and other professional fees together with any site, right-of-way, permit, or easement acquisition costs;

8. Any other costs, expenses or expenditures associated with the furtherance of the construction of the Facilities; and

9. Any funds retained or payments accrued and owing by the Operating District for construction completed but not yet paid during that Budget Year.

c. "Agreement" shall mean this Agreement and any amendment hereto made in accordance herewith.

d. "Annual Payment Option" shall mean the option which may be elected by the Taxing District pursuant to Section 3.2 hereof to make payments for Capital Costs as specifically permitted herein, except as such amounts are modified and adjusted pursuant to the terms hereof.

e. "Board" or "Boards" shall mean the lawfully organized Boards of Directors of the Districts.

f. "Bonds" shall be defined in specific sections of this Agreement and may have different meanings depending upon the specific context in which the term is used.

g. "Budget Elements" shall mean the specific elements of the Operating District's budget documents setting forth the anticipated capital costs of provision of the

Facilities proposed to be constructed during the Budget Year, and shall also mean the specific elements of Service to be provided by the Operating District during the Budget Year.

h. “Budget Year” shall mean the year (immediately following the Planning Year) during which Capital Costs and Service Costs are to be incurred.

i. “Charges” shall mean all rates, fees, tolls, charges or penalties imposed by the Districts with the exception of Development Fees, ad valorem property taxes, or User Fees.

j. “Commencement Date” shall mean the first business day of that month in which operation of any portion of the Facilities begins.

k. “Construction” shall include, but not be limited to, design engineering, construction, expansion, acquisition, maintenance, repair, and replacement of the Facilities, and all appurtenances thereto necessary or convenient to the completion, use, and operation of the Facilities.

l. “Construction Account” shall mean the account created by the Operating District on its financial records for the purpose of holding funds to be expended for the Construction of the Facilities and for other purposes contemplated in this Agreement.

m. “Construction Schedule” shall mean the schedule showing the anticipated Facilities planned for Construction during the Budget Year.

n. “Development Fees” shall mean the fees imposed and collected by the Operating District or Taxing District, including pre-paid fees, for the right of residents and property owners in the Taxing District to connect to or gain access to the Facilities provided pursuant to this Agreement.

o. “Districts” shall mean the Operating District and the Taxing District collectively, including any duly authorized representative, officer, director, employee, agent, engineer or attorney of any District, if applicable.

p. “Emergency Repair” shall mean any repair or replacement of the Facilities which in the opinion of the Operating District, require immediate action in order to avoid damage to the Facilities, unscheduled interruption of service, or danger to District’s residents or property owners.

q. “Estimated Capital Costs” shall mean the estimated costs for constructing or acquiring Facilities for the Budget Year, derived in accordance with Section IV and as set forth in the Service Plan, subject to such modification as is contemplated by the Service Plan.

r. “Estimated Service Costs” shall mean the estimated costs for operation and maintenance of the Facilities, and administration of the Districts for the Budget Year derived in accordance with Section 5.7 hereof.

s. "Event of Default" shall mean one of the events or the existence of one of the conditions set forth in Article VIII hereof.

t. "Facilities" shall mean the facilities and improvements generally described in the Service Plan.

u. "Final Budget" shall generally mean the final budget established by the Operating District pursuant to the provisions of Article IV regarding Construction of the Facilities and pursuant to the provisions of Article V regarding Service. The term shall derive its specific meaning from the context in which it is used.

v. "Major Repairs or Replacement" shall mean any single repair or replacement of any portion of the Facilities which requires an estimated total expenditure in excess of Twenty-Five Thousand Dollars (\$25,000).

w. "Maximum Annual Payment" shall mean (i) the highest payment that the Operating District may require the Taxing District to pay in any one year for the combination of Capital Costs and Service Costs under this Agreement, (not to exceed the revenue that can be produced from the Maximum Mill Levy), together with other funds of the Taxing District legally available therefor, or (ii) fifty percent of the valuation for assessment of the taxable property in the Taxing District, whichever is greater.

x. "Maximum Mill Levy" shall mean the highest mill levy that the Operating District may require the Taxing District to impose for payment of the combination of Capital Costs and Service Costs under this agreement not to exceed the highest mill levy permitted under the Service Plan, as amended, but in no event in excess of fifty (50) mills, as set forth in § 32-1-1101(6)(b) C.R.S. If another exemption for this Agreement is available under § 32-1-1101(6) C.R.S., or if an adjustment is otherwise allowed by law, the Maximum Mill Levy shall be subject to automatic adjustment.

y. "Operating District" shall mean Buckhorn Valley Metropolitan District No. 1.

z. "Operations and Maintenance," and/or "Operations" or "Maintenance" shall mean, whether such terms are used together or separately, the provision by the Operating District of such services as are necessary to assure the orderly and proper function of all the Facilities in order to provide Service as contemplated herein, and shall also include all general, administrative, accounting, legal, and other similar services required by the Operating District to maintain the proper organization and existence of the Operating District and the Taxing District, as well as the proper functioning of all the Facilities, the issuance of bonds, and all other costs set forth by the Operating District and portions of its budget in any year which are not specifically designated as Capital Costs or Debt Service Costs.

aa. "Parks and Recreation" shall mean the "Park and Recreation" facilities described in the Service Plan.



bb. "Party" or "the Parties" shall mean the Districts.

cc. "Person" shall mean any individual, corporation, joint venture, estate, trust, partnership, association, or other legal entity, including governmental entities, other than the Districts.

dd. "Planning Year" shall mean the year immediately preceding the corresponding Budget Year.

ee. "Plans" shall mean the plans, documents, drawings, and other specifications prepared by or for the Operating District for the Construction, installation, acquisition of, or connection to any Facilities, including any addendum thereto, and any change order, revision, and/or modification thereof.

ff. "Preliminary Budget Documents" shall mean those documents prepared by the Operating District for submission to the Taxing District during the Planning Year which may include a schedule for deposits into the Construction Fund Account and Service Account and may include a proposed Construction Schedule for the Budget Year.

gg. "Sanitation" shall mean the "Sanitation" improvements described in the Service Plan.

hh. "Service" shall mean the provision by the Operating District of operations, maintenance and administrative services to the Taxing District, and the provision by the Operating District of water, sewer and such other services for which the Operating District shall be entitled to a User Fee.

ii. "Service Costs" shall mean costs derived from the financing model as set forth in the Service Plan, as may be amended from time to time, for all operation, maintenance, and administrative costs incurred by the Operating District in the performance of the duties and services required by this Agreement.

jj. "Service Fund" shall be that account owned and established by the Operating District into which the Taxing District shall deposit the full amount of the Estimated Service Costs and Service Costs for the Facilities and Services.

kk. "Service Plan" shall mean the Service Plan for Buckhorn Valley District Nos. 1 and 2 as approved by the Town of Gypsum, dated January 11, 2000 and amended on January 28, 2003, as the same may be amended from time to time either by the Districts informally as non-material modifications under state law, or by the City by official action. Any reference herein to Service Plan shall include any and all amendments, formal or otherwise to the Service Plan provided that the records of the Districts indicate or imply approval by the Districts of such amendments

ll. "Streets" shall mean the "Street" improvements described in the Service Plan.

2. mm. "Taxing District" shall mean Buckhorn Valley Metropolitan District No.
- nn. "Television Relay and Translator" shall mean the "Television Relay and Translator" facilities described in the Service Plan.
- oo. "Traffic and Safety Controls" shall mean the "Traffic and Safety Controls" described in the Service Plan as modified as contemplated in the Service Plan
- pp. "Transportation Systems" shall mean the "Transportation" facilities described in the Service Plan.
- qq. "Users" shall mean the residents, property owners, or Persons served by or receiving Service from the Operating District.
- rr. "User Fees" shall mean the periodic fees, if any, imposed and collected by the Operating District from residents and property owners in the Taxing District for the monthly or other periodic Service provided by the Operating District.
- ss. "Water Distribution System" shall mean the "Water" facilities described in the Service Plan.

### ARTICLE III

#### FINANCING OF THE FACILITIES AND OPERATIONS, MAINTENANCE AND ADMINISTRATIVE SERVICES GENERAL TERMS

3.1 No Additional Electoral Approval Required. The authorization for issuance of debt, fiscal year spending, revenue collections and other constitutional matters requiring voter approval for purposes of this Agreement, as well as the construction of the Facilities, and the provision of operation, maintenance and administrative services pursuant to the terms hereof, were approved at elections held for the Districts in accordance with law and pursuant to due notice. The performance of the terms of this Agreement requires no further electoral approval. To the extent that further voter authorization is required to give effect to any provision of this Agreement, the Taxing District agrees to use best efforts to obtain voter approval for such additional authorization and, if necessary, cooperate in obtaining approval of an amendment to the Service Plan at the request of the Operating District. If any claim is filed in a court of competent jurisdiction by a person with standing to do so, seeking to have this Agreement or any of its obligations declared void or unenforceable, or in any manner otherwise affecting this Agreement which could have a material adverse effect on any bonds issued by the Districts, or any District, or on the ability of the Operating District to conduct the activities contemplated herein, the Taxing District shall take all necessary action and use best efforts to immediately provide funds to the Operating District to enable it to perform all executory obligations

hereunder. The Districts shall also vigorously oppose such claims and the Taxing District shall cooperate in taking all such other curative action requested by the Operating District.

3.2 Payments for Capital and Service Costs. The Districts acknowledge and agree that the maximum amount of Capital Costs and Service Costs, which could become due under this Agreement are not permitted to materially exceed the projections set forth in the Service Plan as such projections may be amended from time to time whether or not such amended projections are contained in formal amendments to the Service Plan. In the event the Operating District determines that inflation, contingencies or other unforeseen matters require an increase in the maximum amount of Capital Costs or Service Costs necessary for the Districts, and additional authorization is necessary to implement the terms of this Agreement to meet such requirements, the Taxing District agrees to use best efforts to obtain additional authorization, and if necessary, to obtain approval of an amendment to the Service Plan. If, despite best efforts to do so, the Taxing District is not able to obtain such additional authorization and/or any necessary amendment to the Service Plan, the Operating District may, in its sole discretion, make downward adjustments of Capital Costs and Service Costs as necessary to equal the aggregate amount of authorization at that time. In the event such downward adjustments are made to Capital Costs and Service Costs by the Operating District, the Operating District shall notify the Taxing District of the revised amounts within thirty (30) days thereafter. Capital Costs and Service Costs due under this Agreement shall be paid by the Taxing District upon the execution of this Agreement in payments to the Construction Account and Service Account, respectively, unless the following options are exercised:

a. Annual Payment Option for Capital Costs. At the option of the Taxing District, the Taxing District may pay the portion of Capital Costs due hereunder in payments to the Construction Account made annually in amounts determined in accordance with Article IV hereof, payable without interest except in cases of an Event of Default. The Taxing District will have the option each year in conjunction with the preparation of budgets under Article IV hereof to either pay in full the then remaining balance of the maximum amount of Capital Costs, in an amount not to exceed the Capital Costs due under this Agreement or to elect the Annual Payment Option and pay the Estimated Capital Costs for the next succeeding year as determined hereunder, subject to the provisions of Section 3.2.c. and Section 3.9 hereof. Election by the Taxing District of the Annual Payment Option shall be made by delivery of a notice to the Operating District at the time budget review and approval is conducted pursuant to Article IV hereof and shall be deemed to have occurred in the absence of such notice upon adoption of a budget for the Budget Year in question by the Taxing District. The amount of payment due for the Annual Payment Option shall not be less than the greater of the amounts set forth in the Service Plan for capital construction costs or in the Final Budget of any given year, except as such amounts are adjusted and modified as permitted or required herein or in the Service Plan, but in no event in excess of the Maximum Annual Payment. The Districts recognize that the amounts set forth in the Service Plan are expressed in dollars which, in accordance with the Service Plan, may be adjusted for numerous factors subject to the overall limitation of the amount of debt of the Taxing District as set forth in the Service Plan.

b. Annual Payment Option for Service Costs. At the option of the Taxing District, the Taxing District may pay the portion of the maximum amount of Service Costs

