

CAPITAL PLEDGE AGREEMENT

This **CAPITAL PLEDGE AGREEMENT** (the “**Agreement**”), is made and entered into and dated as of _____ 1, 2020 by and among SW DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (the “**Issuer**”), SW DOWNTOWN METROPOLITAN DISTRICT NO. _ (the “**Metropolitan District**”), and UMB BANK, N.A. (the “**Trustee**”).

RECITALS

A. The Metropolitan District is a quasi-municipal corporation and political subdivision of the State of Colorado (the “**State**”), duly and regularly created as a metropolitan district under the constitution and laws of the State, in particular Title 32, Article 1, Colorado Revised Statutes (“**C.R.S.**”). The Service Plan (the “**Service Plan**”) for the Metropolitan District (and SW Downtown Metropolitan District No. _) was approved by the City Council of the City of Colorado Springs, Colorado (the “**City**”) on September 5, 2017.

B. At the election of the qualified electors of the Metropolitan District duly called for and held on November 7, 2017 (the “**Election**”), in accordance with law and pursuant to due notice, a majority of eligible electors who voted at the Election voted in favor of the issuance of general obligation indebtedness and the imposition of taxes for the payment thereof, for the purpose of funding certain of the Public Improvements (defined below).

C. In order to facilitate the provision of the public improvements (the “**Public Improvements**”) described in the Service Plan and in the Operating Plan (defined below) in a timely, efficient and cost-effective manner sufficient to serve the anticipated development within the Issuer and the Metropolitan District, it is hereby determined that the Issuer shall issue (i) its “Limited Tax and Supported Special Revenue Bonds, Series 2020A” in an aggregate principal amount of \$_____ (the “**Series 2020A Bonds**,” and together with all other bonds issued pursuant to or to refund bonds issued pursuant to the Master Indenture, the “**Bonds**”), pursuant to a Series 2020A Supplemental Trust Indenture dated as of _____, 2020 (as amended or supplemented from time to time, referred to herein as the “**Master Indenture**”), by and between the Issuer and the Trustee and a Trust Indenture dated as of _____, 2020 (as amended or supplemented from time to time, referred to herein as the “**Series 2020A Supplemental Indenture**,” and together with the Master Indenture, the “**Indentures**”), by and between the Issuer and the Trustee.

D. The Metropolitan District has determined that the Public Improvements are generally contemplated by its Service Plan, are needed and will benefit the Metropolitan District’s residents, property owners, and taxpayers.

E. In order to facilitate the issuance of the Series 2020A Bonds in exchange for the purchase of the Series 2020A Bonds by the owners thereof (the “**Owners**”), the Metropolitan District has, by the terms of this Agreement, agreed to impose ad valorem property taxes and pledge certain revenues described herein to the Trustee, on behalf of the Issuer, to provide for a portion of the payment of debt service on the Series 2020A Bonds and covenanted to take certain actions with respect to generating such revenues, for the benefit of the Owners.

F. The Issuer is required, in accordance with the Indentures, to determine the ad valorem property tax levy to be imposed by the Metropolitan District hereunder in accordance with the terms of such Indentures (subject to the limitations of this Agreement). The Trustee is entitled to enforce against the Issuer its obligation to determine and require imposition by the Metropolitan District of the ad valorem property taxes, and to enforce against the Metropolitan District its obligation to impose the Metropolitan District Required Mill Levy representing the ad valorem property taxes required by the Indentures.

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

H. Due to the nature of the obligation incurred by the Issuer under the Indentures and by the Metropolitan District hereunder, it is not possible to predict with certainty the amount of principal and interest on the Series 2020A Bonds and additional Bonds (if any) the Metropolitan District will pay hereunder and the Issuer will pay under the Indentures and, as a result, each of the Issuer and the Metropolitan District will allocate to their respective Election all of the indebtedness represented by this Agreement (and, in the case of the Issuer, the Indentures), based upon the principal amounts of Series 2020A Bonds payable pursuant to the terms hereof and the manner in which the Issuer allocates the same based upon the Public Improvements financed by such Series 2020A Bonds. The Metropolitan District will, upon the issuance of additional Bonds as permitted by this Agreement, allocate additional electoral authority as applicable.

I. The Metropolitan District hereby determines that the execution of this Agreement, the issuance of the Series 2020A Bonds, and the provision of the Public Improvements are in the best interests of the Metropolitan District and the residents, property owners, and taxpayers thereof.

AGREEMENT

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

ARTICLE 1

DEFINITIONS

Capitalized terms used in this Agreement and not defined in this Article I shall have the meaning assigned to such terms in the Indenture.

1.1 Definitions.

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

“**Agreement**” shall mean this Agreement and any amendment hereto made in accordance herewith.

“**Annual Obligations Costs**” shall mean the Debt Obligations Costs to become due and payable in accordance with the Bond Documents in the applicable Collection Year.

“**Board**” shall mean the lawfully organized Boards of Directors of the Metropolitan District.

“**Board of County Commissioners**” shall mean the Board of County Commissioners for El County, Colorado.

“**Bond Documents**” means the Bonds, the Indentures, and any other indenture, resolution, loan agreement, custodial agreement, paying agent agreement or other instrument(s) pursuant to which the Bonds are issued and governed.

“**Bond**” has the meaning set forth in the Recitals hereto.

“**City**” has the meaning set forth in the Recitals hereto.

“**C.R.S.**” means Colorado Revised Statutes, as amended.

“**Collection Year**” means the calendar year next-succeeding the year in which the Metropolitan District Required Mill Levy was imposed.

“**County Assessor**” shall mean the Assessor for El Paso County, Colorado.

“**Debt Obligations**” shall mean the Series 2020A Bonds, and any additional Bonds issued pursuant to the Bond Documents, and any other bonds, notes, certificates or obligations (including a repayment obligation under a loan agreement or similar agreement) issued or incurred by the Issuer and designated by the Issuer as secured by a lien on all or any portion of the Metropolitan District Pledged Revenues payable hereunder; provided that such obligations are issued for the purpose of (i) refinancing the Series 2020A Bonds, any additional Bonds or any other obligations of the Issuer for which the Metropolitan District is obligated to impose ad valorem property taxes, or obligations issued to refinance the same, or (ii) issued for the purpose of financing or refinancing the Public Improvements; provided however, that an obligation shall not constitute a Debt Obligation hereunder unless (i) it will be issued in denominations of not less than \$500,000 each, AND (ii) it will initially be issued to financial institutions or institutional investors, as such terms are defined in Section 32-1-103(6.5), C.R.S.

“**Debt Obligations Costs**” means the debt service on, and related costs in connection with, the Debt Obligations, including, without limitation, payments with respect to regularly scheduled principal payments and interest (including current interest, and accrued and unpaid interest, if any); required replenishment of reserve funds; funding to the required level of surplus funds; funding to the required level of sinking funds; costs of issuance; payments related to any credit enhancement, liquidity support or interest rate protection for the Debt Obligations; fees and expenses of any financial advisor, trustee, bond registrar, paying agent, authenticating agent, rebate analyst or consultant, legal counsel, accountant and other consultants, calculation agent,

remarketing agent, or credit enhancement, liquidity support or interest rate protection provider, and other costs, fees and expenses related to the foregoing and any other amounts required to be paid by the Indenture, provided that with respect to the calculation of principal and interest on any Debt Obligations for which there are no regularly scheduled principal payments (i.e., where no mandatory principal sinking fund payment schedule or other mandatory principal payment schedule is established pursuant to the Bond Documents), Debt Obligations Costs for the applicable Collection Year shall be limited to all interest due on such Debt Obligations in the Collection Year (whether current interest, accrued and unpaid interest, and interest due as a result of compounding, if any) and the greatest amount of principal that can be paid from the revenues produced by the Metropolitan District Required Mill Levy in such Collection Year to the extent the Debt Obligations are payable, without premium or penalty, from such amounts, and other amounts required to be paid with respect to such Debt Obligations in such Collection Year pursuant to the Bond Documents.

“Effective Date” shall mean the date on which the Issuer issues the Series 2020A Bonds.

“Electronic Means” shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

“Final Assessed Valuation” means the final certified assessed valuation of all taxable property in the Metropolitan District subject to the taxation as certified by the County Assessor to the Metropolitan District in December of each year.

“Issuer” has the meaning set forth in the Recitals hereto.

“Metropolitan District” has the meaning set forth in the Recitals hereto.

“Metropolitan District Pledged Revenues” shall mean the aggregate of the Metropolitan District Required Mill Levy Revenue and Specific Ownership Tax Revenues, each as collected with respect to all property subject to taxation by the Metropolitan District.

“Metropolitan District Required Mill Levy” shall have the meaning set forth in the Master Indenture.

“Metropolitan District Required Mill Levy Revenue” means revenues generated from the imposition of the Metropolitan District Required Mill Levy by the Metropolitan District, net of collection costs.

“Operating Plan” shall mean the Operating Plan and Budget for the Issuer, as approved by the City, as the same may be amended from time to time.

“Payment Obligation” shall mean the obligation of the Metropolitan District to pay a portion of the Annual Obligations Costs in accordance with the provisions hereof, but solely from and to the extent of the Metropolitan District Pledged Revenues.

“Public Improvements” has the meaning set forth in the Recitals hereto.

“**Series 2020A Bonds**” has the meaning set forth in the Recitals hereto.

“**Service Plan**” shall mean the Service Plan for the Metropolitan District, as approved by the City, as the same may be amended from time to time.

“**Specific Ownership Tax**” means the specific ownership taxes collected by the County and remitted to the Metropolitan District pursuant to Section 42-3-107, C.R.S., or any successor statute.

“**Specific Ownership Tax Revenues**” shall mean the portion of the Specific Ownership Tax received by the Metropolitan District attributable to the imposition of the Metropolitan District Required Mill Levy.

“**State**” shall mean the State of Colorado.

“**Supplemental Act**” shall mean the Supplemental Public Securities Act, Sections 11-57-201, *et seq.*, C.R.S., as the same may be amended from time to time.

“**Termination Date**” shall mean the earlier of (a) date on which all Debt Obligations permitted to be issued by the Issuer in accordance with the provisions hereof have been defeased pursuant to the terms of the Bond Documents, or (b) forty (40) years from the date the Metropolitan District Require Mill Levy is first imposed.

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

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms, 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.

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 1.1 hereof.

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.

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.

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

ARTICLE II

PAYMENT OBLIGATION

2.1 **No Additional Electoral Approval Required.** The authorization for issuance of debt, imposition of taxes, fiscal year spending, revenue collections and other constitutional matters requiring voter approval by the Metropolitan District for purposes of this Agreement, was approved at the Election held in accordance with law and pursuant to due notice. The performance of the terms of this Agreement requires no further electoral approval by the Metropolitan District.

2.2 **Funding of Debt Obligations Costs Generally.**

(a) The Issuer shall issue the Bonds and other Debt Obligations as necessary to finance and construct the Public Improvements in accordance with the Operating Plan of the Issuer and the Service Plan of the Metropolitan District. In exchange for the purchase by the Owners of the Debt Obligations, the proceeds of which are to be applied to the provision of the Public Improvements in accordance with the Bond Documents, the Metropolitan District hereby agrees to pay as much of the Annual Obligations Costs as may be funded with the Metropolitan District Pledged Revenues available to the Metropolitan District from the Metropolitan District Required Mill Levy Revenue and Specific Ownership Tax Revenues, in accordance with the provisions hereof.

(b) The obligations of the Metropolitan District to levy, collect and remit to the Trustee the Metropolitan District Required Mill Levy Revenue as provided herein shall constitute a limited tax general obligation of the Metropolitan District subject to the limitations set forth herein. The obligations of the Metropolitan District to impose, collect, and remit to the Trustee, the Specific Ownership Tax Revenues shall constitute a special, limited obligation of the Metropolitan District payable solely from and to the extent of such Specific Ownership Tax Revenues.

(c) In no event shall the total or annual obligations of the Metropolitan District hereunder exceed the maximum amounts permitted under its Service Plan, its electoral authority, and any other applicable law. The entire Payment Obligation with respect to the Metropolitan District will be deemed defeased on the Termination Date.

(d) Because the actual total Metropolitan District Pledged Revenues payable by the Metropolitan District hereunder cannot be determined with any certainty at this time, the Metropolitan District shall not be permitted to pre-pay any amounts due hereunder.

2.3 **Pledge of Metropolitan District Pledged Revenues.** The Metropolitan District Pledged Revenues are hereby pledged by the Metropolitan District to the Trustee, on behalf of the Issuer, for the payment of the Annual Obligations Costs in accordance with the provisions hereof. The Payment Obligations shall constitute an irrevocable lien upon the Metropolitan District Pledged Revenues of the Metropolitan District. The lien of such pledge made herein of the Metropolitan District Pledged Revenues shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Metropolitan District

irrespective of whether such persons have notice of such liens. To the fullest extent permitted by law, the Metropolitan District hereby elects to apply all of the provisions of the Supplemental Act to this Agreement and the other parties acknowledge and consent to such election. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Payment Obligation of the Metropolitan District shall be governed by Section 11-57-208 of the Supplemental Act. Pursuant to Section 11-57-208 of the Supplemental Act, the pledges and liens created by this Agreement are subject to any prior pledges and liens, the Metropolitan District hereby covenants and represents that it has not heretofore created any prior pledge or lien on the Metropolitan District Pledged Revenues.

2.4 **Imposition of Mill Levy.**

(a) In order to fund its Payment Obligation, the Metropolitan District agrees to levy on all property subject to taxation by the Metropolitan District, in addition to all other taxes, direct annual taxes in 2020 (for collection in 2021), and in each year thereafter so long as any Debt Obligations remain outstanding, in the amount of the Metropolitan District Required Mill Levy, each as determined by the Issuer. Nothing herein shall be construed to require the Metropolitan District to impose an ad valorem property tax levy for the payment of the Payment Obligation in excess of the Metropolitan District Required Mill Levy, beyond the maximum debt mill levy term as set forth in its Service Plan or after the Termination Date. It is acknowledged by the Metropolitan District that the Issuer is required, in accordance with the Indentures, to determine the ad valorem property tax levy to be imposed by the Metropolitan District hereunder in accordance with the terms of the Indentures (subject to the limitations of this Agreement, including the limitations of the Metropolitan District Required Mill Levy definition set forth herein).

(b) In order to facilitate the determination of the Metropolitan District Required Mill Levy by the Issuer, the Metropolitan District shall provide to the Issuer (i) on or before September 30 of each year, commencing September 30, 2020, the preliminary certification of assessed value for the Metropolitan District provided by the County Assessor; and (ii) no later than one business day after receipt by the Metropolitan District, the Final Assessed Valuation for the Metropolitan District provided by the County Assessor (expected to be provided to the Metropolitan District no later than December 10 of each year). In accordance with the definitions of the Metropolitan District Required Mill Levy set forth in the Indentures, the Issuer shall use such information to determine the Metropolitan District Required Mill Levy for such calendar year. The Issuer shall preliminarily determine the Metropolitan District Required Mill Levy and provide the same to the Metropolitan District no later than October 1 of each year commencing October 1, 2020, and shall finally determine the Metropolitan District Required Mill Levy and provide the same to the Metropolitan District no later than December 10 of each year.

(c) The Metropolitan District acknowledges that it has actively participated in the development of the calculations for determining the Metropolitan District Required Mill Levy, that such calculation is designed to relate to the benefit to the Metropolitan District of the Public Improvements financed by the Debt Obligations and that, so long as made in accordance with the definitions of the Metropolitan District Required Mill Levy, the determinations of the

Issuer as to the Metropolitan District Required Mill Levy shall be final and binding upon the Metropolitan District.

(d) This Section 2.4 is hereby declared to be the certificate of the Metropolitan District to the Board of County Commissioners indicating the aggregate amount of taxes to be levied for the purposes of paying its Payment Obligation due hereunder.

(e) It shall be the duty of the Metropolitan District annually at the time and in the manner provided by law for the levying of the Metropolitan District's taxes, if such action shall be necessary to effectuate the provisions of this Agreement, to ratify and carry out the provisions hereof with reference to the levy and collection of the ad valorem property taxes herein specified, and to require the officers of the Metropolitan District to cause the appropriate officials of El Paso County, to levy, extend and collect said ad valorem taxes in the manner provided by law for the purpose of providing funds for the payment of the amounts to be paid hereunder promptly as the same, respectively, become due. Said taxes, when collected, shall be applied only to the payment of the amounts to be paid hereunder in accordance with the provisions of this Agreement.

(f) Said Metropolitan District Required Mill Levy shall be levied, assessed, collected, and enforced at the time and in the form and manner and with like interest and penalties as other general taxes in the State.

(g) The Metropolitan District shall pursue all reasonable remedies to collect, or cause the collection of, delinquent Metropolitan District Required Mill Levy Revenue within its boundaries.

2.5 Payment and Application of Metropolitan District Pledged Revenues. The Metropolitan District hereby agrees to remit to the Trustee and/or any other entity designated by the Issuer pursuant to the Bond Documents, as soon as practicable upon receipt, all revenues comprising the Metropolitan District Pledged Revenues, which Metropolitan District Pledged Revenues shall be applied by the Trustee and such other parties to pay Annual Obligations Costs, in accordance with the Bond Documents and in compliance with the priority of lien of such Debt Obligations on the Metropolitan District Pledged Revenues. Such Metropolitan District Pledged Revenues shall be paid by the Metropolitan District in lawful money of the United States of America by check mailed or delivered, or by wire transfer, to the Trustee, and such other appropriate parties pursuant to the Bond Documents or such other method as may be mutually agreed to by the Issuer and the Trustee. To the extent that excess revenues are released to the Issuer pursuant to the provisions of the Bond Documents, the Issuer agrees to apply the same to the construction and acquisition of Public Improvements or repayment of the Issuer's obligations incurred to construct or acquire such Public Improvements, as permitted by law, the Election, and any applicable agreements pertaining to such revenues.

2.6 Effectuation of Pledge of Security, Current Appropriation.

(a) The sums herein required to pay the amounts due hereunder are hereby appropriated for that purpose, and said amounts for each year shall be included in the annual budget and the appropriation resolution or measures to be adopted or passed by the Board of the

Metropolitan District in each year while any of the Payment Obligations herein authorized are outstanding and unpaid. No provisions of any constitution, statute, resolution or other order or measure enacted after the execution of this Agreement shall in any manner be construed as limiting or impairing the obligation of the Metropolitan District to levy, administer, enforce and collect the ad valorem property taxes as provided herein for the payment of the Payment Obligations.

(b) Furthermore, the Metropolitan District acknowledges that third parties may provide financial commitments and additional security for the Debt Obligations and, as a result, shall be entitled to rely on the payment obligations of the Metropolitan District to the Issuer contained hereunder. Accordingly, it is acknowledged by the Issuer that the purpose of this Section 2.6 is to ensure that the Trustee, on behalf of the Owners, receives all payments due herein in a timely manner in order to pay the Debt Obligations Costs for the benefit of the Owners and such third parties.

(c) In addition, and without limiting the generality of the foregoing, the obligations of the Metropolitan District to transfer funds to the Trustee for each payment described herein shall survive any court determination of the invalidity of this Agreement as a result of a failure, or alleged failure, of any of the directors of the Metropolitan District to properly disclose, pursuant to State law, any potential conflicts of interest related hereto in any way, provided that such disclosure is made on the record of the Metropolitan District's meetings as set forth in their official minutes.

2.7 **Limited Defenses; Specific Performance.** It is understood and agreed by the Metropolitan District that its obligations hereunder are absolute, irrevocable, and unconditional except as specifically stated herein, and so long as any obligation of the Metropolitan District hereunder remains unfulfilled, the Metropolitan District agrees that notwithstanding any fact, circumstance, dispute, or any other matter, it will not assert any rights of setoff, counterclaim, estoppel, or other defenses to its payment obligations, or take or fail to take any action which would delay a payment to the Issuer or the Trustee or impair the Issuer's ability to receive payments due hereunder. Notwithstanding that this Agreement specifically prohibits and limits defenses and claims of the Metropolitan District, in the event the Metropolitan District believes that it has valid defenses, setoffs, counterclaims, or other claims other than specifically permitted by this Section 2.7, it shall, nevertheless, make all payments to the Trustee as described herein and then may attempt or seek to recover such payments by actions at law or in equity for damages or specific performance, respectively.

2.8 **Future Exclusion of Property.** The parties agree that this Agreement constitutes "indebtedness" as contemplated by Section 32-1-503 of Colorado Revised Statutes. Any property excluded from the Metropolitan District after the date hereof is to remain liable for the imposition of the Metropolitan District Required Mill Levy of the Metropolitan District and payment of the proceeds thereof in accordance with the provisions hereof, to the same extent as such property otherwise remains liable for the debt of the Metropolitan District, as provided in Section 32-1-503 of Colorado Revised Statutes, as amended, for so long as any Debt Obligations are outstanding. In the event that any order providing for the exclusion of property from the Metropolitan District does not so provide and specifically indicate the liability of such excluded property for the obligations set forth herein, the Metropolitan District hereby agrees to take all

actions necessary to cause the property owners of such proposed excluded property to covenant to assume all responsibilities under this Agreement, which covenants shall run with the land and shall be in a form satisfactory to the Issuer.

2.9 Additional Covenants.

(a) The Metropolitan District will maintain its existence and shall not merge or otherwise alter its corporate structure in any manner or to any extent as might reduce the security provided for the payment of its Payment Obligation.

(b) Without the prior written consent of the Issuer, the Metropolitan District will not issue or incur bonds, notes, or other obligations payable in whole or in part from, or constituting a lien upon, the general ad valorem taxes of the Metropolitan District (other than general ad valorem taxes imposed for the purpose of funding operation, maintenance and administrative costs, provided that such taxes are not imposed in excess of the amount permitted under its Service Plan after first taking into account the imposition of the Metropolitan District Required Mill Levy) or other Metropolitan District Pledged Revenues, other than obligations subject to annual appropriation which are payable on a basis subordinate to the Payment Obligation.

(c) The Issuer shall keep and maintain, or cause to be kept and maintained, accurate records and accounting entries reflecting all funds received from the Metropolitan District and the use(s) of such funds, including monthly unaudited financial statements reflecting the information contained in the accounting records.

(d) At least once a year in the time and manner provided by law, each of the Metropolitan District and the Issuer will cause an audit to be performed of the records relating to its revenues and expenditures. In addition, at least once a year in the time and manner provided by law, each of the Metropolitan District and the Issuer will cause a budget to be prepared and adopted. Copies of such budgets and audits will be filed and recorded in the places, time, and manner provided by law.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Issuer and the Metropolitan District. Each of the Metropolitan District and the Issuer hereby makes the following representations and warranties with respect to itself:

(a) The Issuer and the Metropolitan District is a quasi-municipal corporation and political subdivision duly organized and validly existing under the laws of the State.

(b) The Metropolitan District and the Issuer each have all requisite corporate power and authority to execute, deliver, and to perform its obligations under this Agreement. The Metropolitan District's and the Issuer's execution, delivery, and performance of this Agreement have been duly authorized by all necessary action.

(c) Neither the Metropolitan District nor the Issuer is in violation of any applicable provisions of law or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the ability of the Metropolitan District or the Issuer to perform its respective obligations hereunder. The execution, delivery and performance by the Metropolitan District or the Issuer of this Agreement (i) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator, or governmental authority, (ii) will not violate any provision of any document or agreement constituting, regulating, or otherwise affecting the operations or activities of the Metropolitan District or the Issuer in a manner that could reasonably be expected to result in a material adverse effect, and (iii) will not violate any provision of, constitute a default under, or result in the creation or imposition of any lien, mortgage, pledge, charge, security interest, or encumbrance of any kind on any of the revenues or other assets of the Metropolitan District or the Issuer pursuant to the provisions of any mortgage, indenture, contract, agreement, or other undertaking to which the Metropolitan District or the Issuer is a party or which purports to be binding upon the Metropolitan District or upon any of its revenues or other assets which could reasonably be expected to result in a material adverse effect.

(d) Each of the Metropolitan District and the Issuer has obtained all consents and approval of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery, and performance by the Metropolitan District and the Issuer of this Agreement.

(e) There is no action, suit, inquiry, investigation, or proceeding to which the Metropolitan District or the Issuer is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body, or official which is pending or, to the best knowledge of the Metropolitan District or the Issuer threatened, in connection with any of the transactions contemplated by this Agreement nor, to the best knowledge of the Metropolitan District or the Issuer is there any basis therefor, wherein an unfavorable decision, ruling, or finding could reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of the Metropolitan District or the Issuer to perform its obligations under, this Agreement.

(f) This Agreement constitutes the legal, valid, and binding obligation of the Metropolitan District and the Issuer, enforceable against each of the Metropolitan District and the Issuer in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium, or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

ARTICLE IV

NON-COMPLIANCE AND REMEDIES

4.1 **Events of Non-Compliance.** The occurrence or existence of any one or more of the following events shall be an “**Event of Non-Compliance**” hereunder, and there shall be no default or Event of Non-Compliance hereunder except as provided in this Section:

(a) the Metropolitan District fails or refuses to impose the Metropolitan District Required Mill Levy or to remit the Metropolitan District Pledged Revenues as required by the terms of this Agreement;

(b) any representation or warranty made by any party in this Agreement proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness would have a material adverse effect upon any other party;

(c) any party fails in the performance of any other of its covenants in this Agreement, and such failure continues for 60 days after written notice specifying such default and requiring the same to be remedied is given to any of the parties hereto;

(d) the Metropolitan District or the Issuer commences proceedings for dissolution or consolidation with another special district during the term of this Agreement; or

(e) (i) the Metropolitan District or the Issuer shall commence any case, proceeding, or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, or other similar official for itself or for any substantial part of its property, or the Metropolitan District shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Metropolitan District any case, proceeding, or other action of a nature referred to in clause (i) and the same shall remain not dismissed within 90 days following the date of filing; or (iii) there shall be commenced against the Metropolitan District any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, or bonded pending appeal within 90 days from the entry thereof; or (iv) the Metropolitan District shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Metropolitan District shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

4.2 **Remedies For Events of Non-Compliance**. Subject to Section 2.7 hereof, upon the occurrence and continuance of an Event of Non-Compliance, any party may proceed to protect and enforce its rights against the party or parties causing the Event of Non-Compliance by mandamus or such other suit, action, or special proceedings in equity or at law, in any court of competent jurisdiction, including an action for specific performance. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions hereof, the prevailing party in such litigation or other proceeding shall obtain, as part of its judgment or award, its reasonable attorneys' fees and costs.

ARTICLE V

MISCELLANEOUS

5.1 **No Recourse Against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board of the Metropolitan District or the Issuer, or any officer or agent of the Metropolitan District or the Issuer acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of a Payment Obligation. Such recourse shall not be available either directly or indirectly through the Board of the Metropolitan District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of this Agreement and as a part of the consideration hereof, each of the Metropolitan District, the Issuer, and the Trustee specifically waives any such recourse.

5.2 **Conclusive Recital.** Pursuant to Section 11-57-210 of the Supplemental Act, it is hereby recited that this Agreement and the Payment Obligation is incurred pursuant to the Supplemental Act, and such recital shall be conclusive evidence of the validity and the regularity of this Agreement after its delivery for value.

5.3 **Limitation of Actions.** Pursuant to Section 11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization, execution, or delivery of this Agreement shall be commenced more than thirty days after the authorization of this Agreement.

5.4 **Notices.** Except as otherwise provided herein, all notices or payments required to be given under this Agreement shall be in writing and shall be sent by Electronic Means and by hand delivery, regular or certified mail, return receipt requested, or air freight, to the following addressees:

Issuer and Metropolitan District: c/o Spencer Fane, LLP
1700 Lincoln Street, Ste. 200
Denver, Colorado 80203
Attn: Russ Dykstra
Telephone: (303) 839-3845
Email: rdykstra@spencerfane.com

Trustee: UMB Bank, n.a.
1670 Broadway
Denver, Colorado 80202
Attn: Corporate Trust & Escrow Services
Telephone: (303) 839-2220
Facsimile: (303) 839-2287
Email: Leigh.Lutz@umb.com

All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received on the day of transmittal if sent by Electronic Means or

one day after mailing. Any party by written notice so provided may change the address to which future notices shall be sent.

5.5 **Consent of the Metropolitan District.** The Metropolitan District hereby consents to the terms of the Series 2020A Bonds as set forth in the Indentures and the provisions of the Indentures pertaining to the issuance of additional Debt Obligations thereunder. So long as not issued in excess of \$50,000,000 (excluding refundings) and so long as issued to finance or refinance the Public Improvements, the issuance of any additional Debt Obligations of the Issuer, including refundings thereof, shall not be subject to the consent of the Metropolitan District.

5.6 **Miscellaneous.**

(a) This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment, or warranty outside those expressly set forth in this Agreement.

(b) If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions hereof, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

(c) It is intended that there be no third-party beneficiaries of this Agreement, other than the Owners, the Trustee, and any other trustee, fiduciary or custodian under any Financing Document. Nothing contained herein, expressed or implied, is intended to give to any person other than the parties hereto, the Owners, and the Trustee any claim, remedy, or right under or pursuant hereto, and any agreement, condition, covenant, or term contained herein required to be observed or performed by or on behalf of any party hereto shall be for the sole and exclusive benefit of the other party.

(d) This Agreement may not be assigned or transferred by any party without the prior written consent of each of the other parties.

(e) This Agreement shall be governed by and construed under the applicable laws of the State.

(f) This Agreement may be amended or supplemented by the parties, but any such amendment or supplement must be in writing and must be executed by all parties.

(g) If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which banks in Denver, Colorado or the Trustee are authorized or required by law to remain closed, such payment may be made or act performed on

the next succeeding day which is not a legal holiday or a day on which banks in Denver, Colorado are authorized or required by law to remain closed.

(h) Each party has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

(i) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(j) Time is of the essence hereof; provided, however, that if the last day permitted or the date otherwise determined for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

(k) The Metropolitan District and the Issuer shall have the right to access and review each other's records and accounts, on reasonable times during their respective regular office hours, for purposes of determining compliance by the Metropolitan District and the Issuer with the terms of this Agreement. Such access shall be subject to the provisions of Public Records Act of the State contained in Article 72 of Title 24, C.R.S. In the event of disputes or litigation between the parties hereto, all access and requests for such records shall be made in compliance with the Public Records Act.

(l) The Issuer and the Metropolitan District each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

5.7 **Effective Date and Termination Date.** This Agreement shall become effective on the Effective Date, and shall remain in effect until the Termination Date.

5.8 **Electronic Transactions.** The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by Electronic Means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

5.9 **Rights of Trustee.** Notwithstanding any other provision herein, at such time as no amounts remain due and owing under the Indenture, all rights of the Trustee hereunder (including, but not limited to, the right to consent to any amendment hereto as a party hereof), shall terminate and be of no force or effect without further action by the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the Metropolitan District, the Issuer and the Trustee have executed this Agreement as of the day and year first above written.

**SW DOWNTOWN BUSINESS
IMPROVEMENT DISTRICT**

By: _____
President

ATTEST:

Secretary

**SW DOWNTOWN METROPOLITAN
DISTRICT NO. _**

By: _____
President

ATTEST:

Secretary

UMB BANK, N.A.

By: _____
Authorized Representative