

**FIRST AMENDMENT TO SERVICE PLAN**  
**FOR**  
**CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT**

IN THE CITY AND COUNTY OF DENVER, COLORADO

Prepared for

Central Platte Valley Metropolitan District

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## INTRODUCTION

### General Overview

This First Amendment to Service Plan for the Central Platte Valley Metropolitan District (the ADistrict≅) (the AFirst Amendment≅) is submitted pursuant to the Special District Control Act, Section 32-1-201, et seq., Colorado Revised Statutes, as amended (the ADistrict Act≅), and the requirements of the City and County of Denver, Colorado (the ACity≅).

The District is a quasi-municipal corporation and a political subdivision of the State of Colorado (the AState≅) organized on May 21, 1998, pursuant to the requirements of the District Act, authorized to provide water facilities, sewer facilities, street improvements, safety improvements, and park and recreation facilities for the inhabitants of the District. Organization of the District was effected by order and decree of the District Court in and for the City and County of Denver, Colorado following: (i) the filing with and approval by the City of a service plan (the AService Plan≅) consisting of a financing plan and a preliminary engineering survey describing the proposed improvements by the District; (ii) the filing of a petition for organization and the subsequent hearing thereon approving the petition; and (iii) the approval of the question of the District=s organization at an election held for that purpose. The power of the District is prescribed and limited by the Service Plan and the District Act. The District Act permits amendments of existing service plans by a procedure analogous to that required for their original approval.

When the District was created in 1998, the District consisted of approximately 52 acres. In 1999, approximately 25 acres of land was excluded from the District after the sale of such property by Trillium Corporation (the ADeveloper≅ or ATrillium≅) to East-West Partners. The District is currently comprised of approximately 26 acres as legally described in Exhibit A (the AProperty≅) and is currently substantially owned in its entirety by Trillium. This area is generally known as AThe Commons≅ and is located in the Central Platte Valley of the City, generally northwest of the Denver Union Terminal, south and west of the 20<sup>th</sup> Street Viaduct, east of the Consolidated Mainline Railroad Tracks and northeast of Cherry Creek. The Developer plans to develop the Property as a mixed-use development (the ADevelopment≅) containing residential, hotel, retail, commercial, office and intermodal transit uses consistent with Planned Unit Development No. 4310 (the APUD≅), dated August 15, 1997 and other City land use regulations including the Travel Demand Management Plan (the ATDM Plan≅).

The First Amendment is being proposed for the purpose of prescribing the conditions under which bonds may be issued and other obligations incurred (collectively, the AObligations≅) by a non-profit corporation formed by the District to finance the land acquisition and construction, equipping and improving of public parking facilities within the current boundaries of the District (the AParking Facilities≅). The incurrence of such Obligations by a non-profit corporation for such purposes was not expressly contemplated in the District=s original Service Plan. Construction and operations of parking facilities by such a corporation are advantageous to the District for several reasons, as set forth below under the section ABenefit to District in Creating the Corporation.≅

## **Existing General Obligation Voter Authorization of the District**

Pursuant to an election held on May 5, 1998, the electors of the District authorized the issuance of general obligation bonds in an aggregate principal amount not to exceed \$56,750,000 for the purposes of financing the costs of acquiring, installing, constructing, operating and maintaining, or otherwise providing within the original boundaries of the District and within its service area (i) Street and Roadway Improvements (\$41,920,000 authorized); (ii) Traffic and Safety Controls and Devices (\$1,830,000 authorized); (iii) a Local Water Distribution System (\$11,100,000 authorized); (iv) a Local Sanitary Sewage System (\$500,000 authorized); and (v) Parks or Recreational Facilities or Programs (\$1,400,000 authorized) as each of the five activities are more fully defined in their respective ballot questions (collectively, the AProject).

Pursuant to an Open Space/Infrastructure Agreement with the City dated as of September 1, 1998(the AAgreement), the District's portion of the costs of certain infrastructure required under the Agreement will be financed primarily by the issuance of approximately \$33.2 million general obligation bonds. The District has to date issued two series of general obligation bonds to finance such costs: General Obligation Bonds, Series 1998, in the aggregate principal amount of \$2,500,000; and the General Obligation Bonds, Series 1999, in the aggregate principal amount of \$22,000,000. The District's remaining voter authorization for the issuance of general obligation indebtedness, in aggregate, is \$32,250,000 (original voter approval general obligation indebtedness of \$56,750,000 less total general obligation bonds issued by the District to date of \$24,500,000).

The District's remaining voter authorization for the issuance of general obligation indebtedness for Street and Roadway Improvements is \$23,350,523 (original voter approved general obligation indebtedness of \$41,920,000 authorized less bonds issued by the District to date of \$18,569,477).

The Service Plan places restrictions on the District's ability to issue general obligation bonds and incur other indebtedness as follows: any general obligation bonds issued by the District shall, together with all other outstanding unlimited tax general obligation bonds previously issued by the District, be equal to or less than the greater of (i) fifty percent (50%) of the District's assessed valuation for non-residential properties or (ii) twenty-five percent (25%) of the District's assessed valuation for all property within the District, except to the extent that such debt complies with the provisions of C.R.S. Sec. 32-1-1101(6)(a) (which allows general obligation bonds to be issued if the bonds are credit enhanced, privately placed, rated in one of the four highest investment grade rating categories, or necessary to comply with a federal or state order); provided further, however, that in order to qualify under the exception provided in C.R.S. Sec. 32-1-1101(6)(a)(IV), privately placed debt shall be issued only to an Accredited investor, as that term is defined by Rule 501(a) under Regulation D promulgated under the Securities Act of 1933, as amended. Any general obligation bonds issued, together with all outstanding unlimited tax general obligation bonds previously issued by the District, if greater than (i) fifty percent (50%) of the District's assessed valuation for non-residential property or (ii) twenty-five percent (25%) of the assessed valuation of all property within the District, and not secured by a credit facility, shall be issued as limited tax general obligation bonds, and the District's obligation for repayment of each series of such bonds will be limited to the imposition and collection of a mill levy not to exceed fifty (50) mills, inclusive of any mill levy required for the payment of any and all general obligation bonds (the ALimited Mill Levy). The

Limited Mill Levy shall be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or the method of their calculation. The Limited Mill Levy will remain for such series of general obligation bonds until such time as the assessed valuation of the property within the boundaries of the District is equal to or exceeds two (2) times the outstanding unlimited general obligation debt of the District, together with the series of general obligation bonds proposed for release from the Limited Mill Levy, or until a credit facility is secured. No bonds shall be issued which contain provisions permitting acceleration of the bonds upon default. Given certain constraints of Article X, Section 20 of the Colorado Constitution (the ATABOR Amendment or ATABOR), the District Act and the Service Plan, as amended, the District does not currently contemplate seeking voter approval for the issuance of additional general obligation indebtedness.

The District has also issued Special Obligation Bonds, Series 1998, in the aggregate principal amount of \$12,000,000 for the purpose of financing a portion of the City's costs of certain infrastructure required under the Agreement. The issuance of the Special Obligation Bonds was also approved by the electors of the District at the organizational election held on May 5, 1998. Such Special Obligation Bonds are payable by the District solely from payments made to the District by the City under the Agreement.

### **THE DISTRICT'S PROPOSED MECHANISM FOR FINANCING PARKING FACILITIES**

The Service Plan grants to the District the power to provide for the acquisition, construction, installation and/or operation and maintenance of street improvements as permitted by the Special District Act Section V.A.1. of the District's Service Plan at page 7. The District Act defines street improvements as the construction and installation of curbs, gutters, culverts, and other drainage facilities and sidewalks, bridges, *parking facilities*, paving, lighting, grading, landscaping, and other street improvements. District Act at Section 1004(2)(f) (emphasis added).

As development accelerates within the current District boundaries, the need for adequate parking facilities to serve such development as development occurs also accelerates. The District proposes to utilize a 63-20 corporation to finance the acquisition of land for and the construction, equipping and improving of Parking Facilities. A 63-20 corporation is a private, not-for-profit corporation created for the purpose of financing public improvements on behalf of a political subdivision of a state. Obligations issued by a 63-20 corporation may be tax-exempt if the organization and purposes of the corporation and the Obligations meet the requirements of regulations promulgated under Section 103 of the Internal Revenue Code of 1986, as amended. The not-for-profit 63-20 corporation to be formed by the District for the purposes set forth in the First Amendment shall be known as the Central Platte Valley Public Improvements Corporation (the Corporation). In order to take advantage of the federal tax benefits of the Corporation, the District will structure, to the maximum extent possible, the Obligations in a manner which will enable the interest on such Obligations to be excluded from gross income for federal income tax law purposes. However, because of limitations imposed by federal tax law, the Corporation may have

to issue some Obligations, the interest on which will not be excluded from gross income for federal income tax purposes.

### **Organization of and Operation by the Corporation**

Pursuant to requirements of the Internal Revenue Service, the District must approve by resolution the organization and scope of operations of the Corporation and incurrence of Obligations by a 63-20 corporation in order for such Obligations to be tax-exempt. Each series of Obligations issued by the Corporation must be approved by the District. As indicated below, the District shall provide the City with a copy of each such resolution authorizing the incurrence of Obligations by the Corporation.

The Articles of Incorporation of the Corporation shall include at least the following provisions:

1. The sole purpose of the Corporation shall be to provide Parking Facilities required to service the phased development of The Commons.
2. The Parking Facilities shall be provided and operated in accordance with the PUD, the TDM Plan and other applicable laws, rules and regulations.
3. All Obligations incurred by the Corporation shall be in compliance with the Service Plan, as amended particularly the section entitled ALimitations on Obligations Incurred by the Corporation on behalf of the District herein.
4. The Corporation shall provide the City with all notices, certifications and information required under the Service Plan as amended.
5. The Corporation shall not deprive the City or the District of any tax revenues each would have otherwise been entitled to receive.
6. The Corporation shall provide to the Manager of Revenue the following: (a) upon adoption or amendment, the budget of the Corporation; (b) upon approval or amendment, construction schedules for the Parking Facilities; (c) annually, audited financial statements of the Corporation to include a statement as to the total amount of Obligations outstanding; (d) annually, the names, addresses and terms of member of the Board of Directors of the Corporation; (f) as secured, current documentation of credit enhancements, if any, of Obligations incurred by the Corporation; (g) upon production, primary and secondary market disclosure documents, if any, for current outstanding indebtedness of the Corporation.
7. A resolution of the District authorizing Obligations shall be adopted prior to incurrence of such Obligations.

### **Benefit to District in Creating the Corporation**

A 63-20 corporation structure for the incurrence of Obligations is advantageous to the District in several respects. First, the District has insufficient voter authorization for the issuance of general obligation indebtedness to finance the Parking Facilities relative to the phased development of The Commons. The Corporation will facilitate the incurrence of up to approximately \$350 million in Obligations to be used to provide for the Parking Facilities. See also, sections AFinancing of Land and AFinancing of Construction below. The final amount of Obligations will depend on among other things, receipt of final feasibility reports and appraisals. In addition the amount will be subject to market conditions at the time of issuance. Second, the Corporation, as a not-for-profit entity will be able to grant a mortgage on the Parking Facilities as security for repayment of the Corporation's Obligations. The grant of a mortgage by a political subdivision of the State, such as the District, may not be permissible without prior voter authorization. The benefit in granting such a mortgage is that the mortgage improves the credit quality of the Obligations, which allows the Obligations to be marketed at a lower interest rate. This is due to the mortgage providing additional collateral to the Bondholders. Third, the Corporation will be constructing the Parking Facilities to service the phased development of The Commons in accordance with the PUD and the IDM Plan. Finally, under regulations promulgated by the Internal Revenue Service, title to any Parking Facilities financed by the Corporation will automatically revert to the District once the Obligations issued to finance such structures are retired. The District, as owner of the Parking Facilities, may continue to make the Parking Facilities available to the public.

Obligations incurred by the Corporation to finance Parking Facilities will be secured by revenues of the Parking Facilities, and may be further secured by other lawfully available revenues (e.g. funds to be held by the bond trustee and investment earnings on such funds) and a mortgage on the Parking Facilities.

The utilization of the Corporation will facilitate the financing of the acquisition of the land from Trillium or an entity controlled by Trillium Corporation on which the Parking Facilities will be constructed. The Corporation will construct the Parking Facilities to service the phased development of The Commons in accordance with the PUD and the IDM Plan.

The exact number and location of Parking Facilities to serve the Project will be dependent upon the feasibility study required to be delivered to the Manager of Revenue as described herein. The anticipated schedule of financing and construction of the Parking Facilities will also be dependent on such feasibility study and will also be delivered to the Manager of Revenue with the feasibility study.

The Corporation will not qualify for any existing statutory property tax-exemptions. Property owned by the Corporation will be subject to the imposition of ad valorem property taxes by the City and the District, which would not be the case if such property were to be owned by the District.

### **Financing of Land**

The Corporation will use the proceeds of Obligations to acquire land for the Parking Facilities (the Acquisition Obligations). It is anticipated that the acquisition price may range

from \$50 million to \$150 million (ultimately determined by and subject to a third party MAI appraisal). The Corporation will commission a third party MAI appraiser to determine the land value.

### **Financing of Construction**

In addition to the Acquisition Obligations, over a period of years, the Corporation will incur Obligations between \$100 million and \$200 million to finance construction in series, or tranches, that run parallel with the phased development of The Commons. Again, the ultimate sizing will be determined by the final feasibility reports and market conditions at the time of issuance. The proceeds of these Obligations (the AConstruction Obligations≡) will be used to acquire and construct the Parking Facilities (exclusive of the land).

### **Benefits of the First Amendment to the City**

Approval of the First Amendment will benefit the City, given that the Corporation will be constructing and operating the Parking Facilities to service the phased development of The Commons in accordance with the PUD and the TDM Plan developed for The Commons, which may have a positive impact on air quality, traffic congestion and mobility in the Central Platte Valley.

### **Impact of Corporation on Right-of-way Exactions**

Formation and utilization of the Corporation by the District to finance and construct the Parking Facilities will not impact existing right-of-way exactions required by the City from the development

### **Limitations on Obligations Incurred by the Corporation on behalf of the District**

The Corporation may authorize, incur, sell, issue and deliver Obligations without the prior consent of the City so long as each of the following conditions (herein referred to as the AMinimum Criteria≡), have been met:

1. Prior to incurring an Obligation, the Corporation shall certify to the City=s Manager of Revenue that the Parking Facilities to be financed have been presented to the City=s Manager of Public Works and Director of Planning and that the proposed Parking Facilities are expected to comply with the PUD, the TDM Plan and other applicable land use regulations.
2. All Obligations incurred shall be (a) rated in one of the four highest investment grade rating categories, without regard to numerical or symbol designations by one or more nationally recognized organizations that regularly rate such obligations; or (b) secured as to payment of the principal and interest by an irrevocable and unconditional letter of credit, line of credit, insurance policy or other credit enhancement issued by an institution rated in one of the three highest investment grade rating categories (without regard to numerical or symbol designations) by one or more nationally recognized organizations, which regularly



rate such institutions; or (c) only owned by Accredited investors as set forth in Rule 501(a) under Regulation D promulgated pursuant to the Securities Act of 1933, as amended, so long as condition 2(a) and 2 (b) are not met.

3. If Obligations are privately placed, they shall be only owned by an Accredited investor as defined by Rule 501(a) under Regulation D promulgated under the Securities Act of 1933, as amended.

4. a. The maximum term of any new money Obligation is limited to 120% of the economic useful life of the asset, but in no event greater than forty years.

b. Refundings are not permitted simply to extend the average life of the Obligations unless default is imminent and/or a refunding achieves savings on a present value basis of at least 5%.

5. The Corporation on behalf of the District may incur no Obligations until the following conditions are met:

a. The District shall have engaged nationally recognized feasibility consultants, which consultants and their scope of services shall be subject to prior approval by the City as described in Section 5(b) below. Such scope of services shall address issues of absorption, parking, financing, construction and ability to discharge debt.

b. At least 15 days prior to the marketing of any Obligations, the Corporation delivers to the Manager of Revenue a feasibility study, which includes an absorption analysis, parking studies and financing plan, including proposed financing and construction schedules performed by nationally recognized consultants, that concludes that the projected revenues to secure such Obligations will be sufficient to repay such Obligations upon their stated interest payment dates, mandatory sinking fund redemption dates and maturity dates. The Corporation shall give notice to the Manager of Revenue that a feasibility study is to be prepared by a nationally recognized consultant at least 21 days prior to starting such feasibility study. Such nationally recognized consultants and the scope of services to be performed by the consultants shall be acceptable to the Manager of Revenue, whose acceptance shall not be unreasonably withheld. If the Manager of Revenue has not notified the District in writing of his/her objection within three weeks of being notified of the identity of and scope of services to be performed by the nationally recognized consultants, the Manager of Revenue shall be deemed to have accepted such matters.

c. At least 15 days prior to the marketing of any Obligations, the Corporation causes to be delivered to the Manager of Revenue a form of the expected opinion of a nationally recognized bond counsel to be delivered at closing, which includes all standard requirements of a bond opinion and in addition opines that: the Obligations (i) are consistent with the District's Service Plan, as amended; (ii) comply with the

Corporation's Articles of Incorporation; and (iii) comply with any applicable TABOR limitations.

d. At least 15 days prior to the marketing of any Obligations, the Corporation causes to be delivered to the Manager of Revenue a copy of the resolution of the District approving the incurrence of such Obligations by the Corporation.

e. At least 15 days prior to the marketing of any Obligations, the Corporation causes to be delivered to the Manager of Revenue a signed statement from the underwriter or financial adviser that the yields of such Obligations are expected to be within the range of then prevailing market rates.

6. No proceeds from any Obligations incurred by the Corporation shall be expended on construction until the City's Manager of Public Works and Director of Planning have approved the Parking Facilities to be constructed as being in compliance with the PUD, the TDM Plan and other applicable laws of the City.

All incurrences of Obligations shall be deemed to be in compliance with the Service Plan so long as the Minimum Criteria have been met.

### **MATERIAL DEPARTURE**

It shall be a material departure from this Service Plan as amended to:

1. Amend the provisions of the Articles of Incorporation of the Corporation required herein; and
2. Create any other 63-20 corporation or other financing entity except the Corporation.

### **CONCLUSIONS**

It is submitted that the First Amendment for the Central Platte Valley Metropolitan District has established that:

1. There is sufficient projected need within the current boundaries of the District for the acquisition, construction, equipping and improving of Parking Facilities within the current District boundaries;
2. The existing Parking Facilities within current District boundaries are inadequate for projected needs within the District's current boundaries;
3. The existing means for the District to finance the Parking Facilities is inadequate;
4. The proposal for the acquisition, construction and operation of Parking Facilities for the benefit of the District is or will be in substantial compliance with the PUD and the TDM Plan; and

5. The adoption of the First Amendment is in the best interests of the District.

EXHIBIT A  
LEGAL DESCRIPTION

[Current Legal Description of District]