

**CITY OF CENTENNIAL,
COLORADO**

RESOLUTION NO. 2010-R-63

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL,
COLORADO, APPROVING THE FIRST AMENDMENT TO THE SERVICE PLAN
FOR VALLEY CLUB POINTE METROPOLITAN DISTRICT**

WHEREAS, the Valley Club Pointe Metropolitan District (the "District") was duly formed in accordance with §§ 32-1-101 *et seq.*, C.R.S. (the "Special District Act") and an order of formation was duly entered of record by the Arapahoe County District Court in Civil Action No. 2004CV4305; and

WHEREAS, the District is located entirely within the boundaries of the City of Centennial, Colorado (the "City"); and

WHEREAS, the present boundaries of the District include 22.9 acres, more or less, located north and west of the intersection of South Parker Road and East Arapahoe Road in the City; and

WHEREAS, the Service Plan for the District (the "Service Plan") was considered and approved by Resolution No. 2004-R-44 of the City on September 8, 2004; and

WHEREAS, the District seeks to amend the Service Plan to increase authorized indebtedness from Four Million Seven Hundred Thousand Dollars (\$4,700,000) to Seven Million One Hundred Thousand Dollars (\$7,100,000) based on the District's representation to City Council that: (1) revenue to be generated by a landowner approved public improvement fee ("PIF") will be sufficient to support the increased debt authorization; and (2) that public improvement costs, including engineering and management costs, will exceed levels originally contemplated when the District was originally formed in 2004; and

WHEREAS, a copy of the proposed First Amendment to the Service Plan of Valley Club Pointe Metropolitan District (the "Amendment"), as submitted to the City by the Board of Directors of the District is attached to this Resolution as Exhibit A and is incorporated herein; and

WHEREAS, the City Council has determined to conduct a public hearing on the proposed Amendment; and

WHEREAS, notice of the hearing before the City Council was duly published by the City Clerk in The Villager, a newspaper of general circulation within the City, on July 1, 2010, and a copy of the notice was provided to the Board of Directors of the District; and

WHEREAS, the City Council has considered the Amendment and all other testimony and evidence presented at the hearing; and

WHEREAS, the City Council finds that the Amendment should be approved subject to the conditions as set forth herein, if any,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO:

Section 1. The City Council hereby finds and determines that all of the relevant requirements of the Special District Act relating to the filing of the Amendment have been fulfilled, that notice of the hearing was given in the time and manner required by law, and that City Council has jurisdiction to act on the Amendment.

Section 2. The City Council further determines that all pertinent facts, matters and issues were submitted at the public hearing; that all interested parties were heard or had the opportunity to be heard; and that evidence satisfactory to the City Council of each of the following was presented:

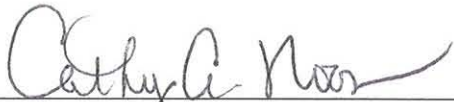
- a. There is sufficient existing and projected need for organized service in the area to be serviced by the District;
- b. The existing service in the area to be served by the District is inadequate for present and projected needs;
- c. The District is capable of providing economical and sufficient service to the area within its proposed boundaries; and
- d. The area to be included in the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. The Amendment, in the form attached to this Resolution as Exhibit A is hereby approved without conditions. For any period during which a PIF is imposed within the boundaries of the District, the District shall cooperate with the City in the review of the District's records related to the administration and collection of the PIF.

Section 4. This Resolution shall take effect immediately upon its approval by the City Council.

Section 5. The District shall cause a copy of this Resolution to be filed with the Arapahoe County District Court and the Division of Local Government.

ADOPTED by a vote of 8 in favor and 0 against this 2nd day of August, 2010.

By: 
Cathy A. Noon, Mayor

ATTEST:

Approved as to Form:

By: 
City Clerk or Deputy City Clerk

By: 
For City Attorney's Office

EXHIBIT A
First Amendment to the Service Plan for
Valley Club Pointe Metropolitan District

FIRST AMENDMENT

TO THE

SERVICE PLAN

FOR

**VALLEY CLUB POINTE METROPOLITAN DISTRICT
CITY OF CENTENNIAL, ARAPAHOE COUNTY, COLORADO**

July 6, 2010

Submitted for the

Board of Directors

by

Grimshaw & Harring, P.C.
Norman (Rick) F. Kron
Thomas N. George
1700 Lincoln Street, Suite 3800
Denver, Colorado 80203

**FIRST AMENDMENT TO THE SERVICE PLAN
OF
VALLEY CLUB POINTE METROPOLITAN DISTRICT**

I. INTRODUCTION:

The Service Plan for the Valley Club Pointe Metropolitan District ("District") was approved by the City of Centennial by Resolution No. 2004-R-44 on September 8, 2004. Following a successful election within the proposed District, an Order and Decree of the Arapahoe County District Court forming the District was entered in Civil Action No. 2004CV4305 on November 16, 2004.

This First Amendment to the Service Plan ("Amendment") for District is submitted in accordance with the requirements of Section 32-1-207(2), C.R.S., and Sections E.5 and H of the District Service Plan. The purpose of this Amendment is to increase the authorized indebtedness of the District.

II. AMENDMENT:

The Service Plan is hereby amended to increase the authorized indebtedness from Four Million Seven-Hundred Thousand Dollars (\$4,700,000) to Seven Million One Hundred Thousand Dollars (\$7,100,000). The reason for this increase is that the District's Public Improvement costs, including engineering and management, capitalized interest, bond issuance costs, district organizational costs and contingencies, will exceed levels originally contemplated in the District's Service Plan by an estimated Two Million Four-Hundred Thousand Dollars (\$2,400,000). The planned development in the District is expected to be able to support the increased authorization, primarily through use of revenues from a landowner-approved public improvement fee ("PIF") that would be limited to up to 1% and that is to be paid to or collected by the District.

A. The following table shall replace the "Service Plan Debt Authorization" table on page eight (8), Section E.5, of the District Service Plan:

Roadways, including traffic improvements, roadways, signage, signals, lighting	\$3,400,000
Water	\$1,100,000
Sewer – sanitary and storm	\$1,100,000
Parks and Recreation – Landscape, Buffer, Open Space	\$1,500,000
TOTAL	\$7,100,000

B. The following paragraph shall be added to the Service Plan as a new paragraph at the end of Section E.3:

By private covenants recorded against all of the property in the District, the landowners have approved the imposition of a Public Improvement Fee (“PIF”) to be collected in a manner similar to a sales tax against the same retail sales as the City imposes its sales tax. Similar to the PIF formerly used at Park Meadows and currently in use at Flatirons Crossing and other locations in Colorado, the PIF would be collected by retailers and paid to the District to assist in bond repayment and for operations after the bonds are paid. Either the Declarant or the District may perform the collection duties on the PIF (but it is most likely that the District will perform this administrative task). The PIF is limited to be no more than one percent of such sales. The PIF rate, combined with the Centennial sales tax rate, is less than the current sales tax rate alone for nearby properties in the City of Aurora.

A copy of the private covenants, including provisions for the PIF, was recorded in the Arapahoe County Clerk and Recorder’s office at Reception No. B8062994 on June 1, 2008. Recently, the covenants were revised with the advice of District Bond Counsel, and the approval of all of the landowners in the District. The amended covenants recently recorded in the Arapahoe County Clerk and Recorder’s office at Reception No. D0057148 on June 15, 2010 (“Declaration”). There is no expiration date for the PIF in the Declaration because the declarant anticipates that there will continue to be an enhanced level of maintenance of the public improvements and spaces in the District after the debt is paid, and the PIF would be used for those ongoing District costs.

The District acknowledges that the City’s agreement to extend the “Development Incentive” to the Owner as defined and provided in the “Development Agreement Arapark, LLC and Centennial Center City of Centennial, Colorado effective January 1, 2010 (“Development Agreement”) was expressly conditioned on the agreements and understandings set out in Article XIV of the Development Agreement. The District states that it shall comply with the requirements of Article XII that would apply to the District as stated below:

1. No Duplication. Revenues generated by or resulting from a PIF shall not be used to pay, reimburse, or otherwise compensate the Owner, special district, or third party for costs or expenses that are also paid, reimbursed, or otherwise compensated from the Development Incentive provided by the Development Agreement.
2. Review and Auditing. To ensure compliance with the requirements of Section XII of the Development Agreement, the District understands,

recognizes, and agrees that the City's review and auditing of records provided by the Owner pursuant to Section IV(B)(6) of the Development Agreement shall, at the City's option, also extend to the City's review and auditing of the District or other entity responsible for the administration of the PIF as identified in the Declaration or in other documentation imposing District fees and District charges for development within the Property. The District shall reasonably cooperate with the City in the review and auditing of the District's records and in reconciling payments made from the administration of the PIF as identified in the Declaration or in other documentation imposing fees and charges for development. Said Section IV(B)(6), as applied to the District and the PIF states as follows:

Reporting Concerning PIF Revenues and Disbursements. Between January 1 and January 31 of each year, the District shall cause to be prepared and delivered to the City a written annual report of the expenditure and application of all PIF revenues actually received by the District during the preceding calendar year together with a statement of the year-end balance of all unexpended PIF revenues held by the District. Such report shall identify the particular purpose and application of each expenditure and the report shall evidence the District's conformance with the applicable requirements of the Development Agreement. In the event that the City determines that the annual report fails to evidence the District's conformance with the applicable requirements of the Development Agreement, the City may demand in writing that the District submit to the City a supplement to the annual report which supplement shall contain additional documentation, certifications, invoices, and receipts to evidence the District's conformance with the applicable requirements of the Development Agreement. Such City demand shall cite specific provisions of the annual report that are found by the City to be insufficient. The District's reporting obligation pursuant to this paragraph shall continue for every year (and the January following the last year in which) that the City reports to the District that Development Incentives are paid to, expended by, or held by the Owner. Following the expiration of the City's obligation to pay Development Incentive as provided in Section IV of the Development Agreement to the Owner and within ninety (90) days of the depletion of all Development Incentive held by the Owner as reported to the District by the City, the District shall cause to be prepared and delivered to the City a final written report meeting the requirements of this paragraph ("District's Final Annual Report"). The reasonable costs and expenses incurred by the District in the preparation of the annual report, any supplemental report, and the final report required in accordance with this paragraph shall be a "public purpose" within the meaning of paragraph B(5) of Section IV of the

Development Agreement and may be paid from the PIF revenues or any other funds of the District lawfully available for such purpose.

3. PIF Notice at Point-of Sale. To the extent allowed by law and the Declaration, for any period during which a PIF is imposed within the District, the District shall impose and enforce an affirmative requirement upon every commercial enterprise or business subject to imposition of a PIF the continuing and visible posting at each point of sale (e.g., cash register) of a sign substantially in the following form with a message in not less than 28 point typeface:

A public or private improvement fee or "PIF" is charged for each qualifying transaction at this establishment for the purpose of defraying costs and expenses associated with this commercial shopping area. The PIF is not imposed by the City of Centennial and is not a tax.

As provided in the Development Agreement, such affirmative requirement may be imposed within any lease, covenant, or other means at the election of the Owner. In addition, to the extent allowed by law and the Declaration, the District shall adopt a motion or resolution to impose and enforce such affirmative requirement and work with the Owner to reasonably ensure that posting is continuously maintained and to cure failures known to the District within 72 hours following notice of any failure.

C. The schedule for issuing bonds is hereby revised from planning to issue the bonds in 2004 or 2005 to 2010 or 2012, with the delay being a result of the downturn in the general economy. Exhibit C is revised to accommodate this new timetable and add PIF revenue.

III. CRITERIA FOR APPROVAL:

Pursuant to §32-1-207, C.R.S., the District is of the opinion that the following statutory criteria are met by this Amendment:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District;
2. The existing service in the area to be served by the District is inadequate for projected needs;
3. The District is capable of providing economical and sufficient service to the area within their boundaries; and
4. The area within the District does have, and will have, the financial ability to discharge the existing and proposed indebtedness on a reasonable basis.

It is submitted that the Service Plan, as amended hereby, meets the requirements of Section 32-1-203(2), C.R.S., and Sections E.5 and H of the District Service Plan. Therefore, it is requested that the City Council of Centennial, Colorado, adopt a resolution that approves this First Amendment to the Service Plan for Valley Club Pointe Metropolitan District.