



City of Albuquerque

City of Albuquerque
Government Center
One Civic Plaza
Albuquerque, NM 87102

Legislation Details (With Text)

File #: R-21-184

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Status: Enacted

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In control: City Council

Final action: 9/8/2021

Enactment date: 9/27/2021

Enactment #: R-2021-061

Title: F/S Approving The Application And Petition Of Success Land Holdings, LLC And Heritage Trails Development I, LLC, For Formation Of The Aspire Public Improvement District Pursuant To The Public Improvement District Act, NMSA 1978, §§ 5-11-1 To -27 (2001, As Amended Through 2019) And City Ordinance Enactment No. 0-2003-12, Council Bill No. FS 0-03-84; Making Findings In Connection With The Application And Petition And Supporting Documentation Requesting Approval Of The Formation Of The District; Determining The Real Property To Be Included Within The District And The Purposes For Which The District Is Being Formed; Approving The General Plan, Feasibility Study, Rate, Method Of Apportionment And Manner Of Collection Of A Special Levy To Be Imposed Upon Real Property Within The District, And Approving A Development Agreement For The District; Establishing Parameters For The Issuance Of Special Levy Bonds; Authorizing The District To Issue Subordinate Obligations; Providing For Governance Of The District; Providing That Bonds And Other Obligations Of The District Shall Not Be Obligations Of The City; Waiving And Cancelling Certain Requirements To Formation Of A Public Improvement District; Ratifying Certain Actions Heretofore Taken; Repealing All Actions Inconsistent With This Formation Resolution; Directing The Mailing Of A Notice Of Adoption Of This Formation Resolution By The City Clerk; And Taking Related Action (Peña)

Sponsors: Klarissa J. Peña

Indexes:

Code sections:

Attachments: 1. R-184, 2. R-184 Approved Floor Substitute.pdf, 3. FS R-184Enacted

Date	Ver.	Action By	Action	Result
9/21/2021	3	Mayor	Signed by the Mayor	
9/14/2021	2	City Council	Sent to Mayor for Signature	
9/8/2021	1	City Council	Substituted	Pass
9/8/2021	1	City Council	Passed as Substituted	Pass
8/16/2021	1	City Council	Accepted with a Recommendation Do Pass	
8/9/2021	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass	Pass
8/2/2021	1	City Council	Introduced and Referred	
8/2/2021	1	President	Referred	

CITY of ALBUQUERQUE TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S R-21-184

ENACTMENT NO. _____

SPONSORED BY: Councilor Klarissa Peña

RESOLUTION

F/S Approving The Application And Petition Of Success Land Holdings, LLC And Heritage Trails Development I, LLC, For Formation Of The Aspire Public Improvement District Pursuant To The Public Improvement District Act, NMSA 1978, §§ 5-11-1 To -27 (2001, As Amended Through 2019) And City Ordinance Enactment No. 0-2003-12, Council Bill No. FS 0-03-84; Making Findings In Connection With The Application And Petition And Supporting Documentation Requesting Approval Of The Formation Of The District; Determining The Real Property To Be Included Within The District And The Purposes For Which The District Is Being Formed; Approving The General Plan, Feasibility Study, Rate, Method Of Apportionment And Manner Of Collection Of A Special Levy To Be Imposed Upon Real Property Within The District, And Approving A Development Agreement For The District; Establishing Parameters For The Issuance Of Special Levy Bonds; Authorizing The District To Issue Subordinate Obligations; Providing For Governance Of The District; Providing That Bonds And Other Obligations Of The District Shall Not Be Obligations Of The City; Waiving And Cancelling Certain Requirements To Formation Of A Public Improvement District; Ratifying Certain Actions Heretofore Taken; Repealing All Actions Inconsistent With This Formation Resolution; Directing The Mailing Of A Notice Of Adoption Of This Formation Resolution By The City Clerk; And Taking Related Action (Peña)

APPROVING THE APPLICATION AND PETITION OF SUCCESS LAND HOLDINGS, LLC AND HERITAGE TRAILS DEVELOPMENT I, LLC, FOR FORMATION OF THE ASPIRE PUBLIC IMPROVEMENT DISTRICT PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, NMSA 1978, §§ 5-11-1 to -27 (2001, AS AMENDED THROUGH 2019) AND CITY ORDINANCE ENACTMENT NO. 0-2003-12, COUNCIL BILL NO. FS 0-03-84; MAKING FINDINGS IN CONNECTION WITH THE APPLICATION AND PETITION AND SUPPORTING DOCUMENTATION REQUESTING APPROVAL OF THE FORMATION OF THE DISTRICT; DETERMINING THE REAL PROPERTY TO BE INCLUDED WITHIN THE DISTRICT AND THE PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE GENERAL PLAN, FEASIBILITY STUDY, RATE, METHOD OF APPORTIONMENT AND MANNER OF COLLECTION OF A SPECIAL LEVY TO BE IMPOSED UPON REAL PROPERTY WITHIN THE DISTRICT, AND APPROVING A DEVELOPMENT AGREEMENT FOR THE DISTRICT; ESTABLISHING PARAMETERS FOR THE

ISSUANCE OF SPECIAL LEVY BONDS; AUTHORIZING THE DISTRICT TO ISSUE SUBORDINATE OBLIGATIONS; PROVIDING FOR GOVERNANCE OF THE DISTRICT; PROVIDING THAT BONDS AND OTHER OBLIGATIONS OF THE DISTRICT SHALL NOT BE OBLIGATIONS OF THE CITY; WAIVING AND CANCELLING CERTAIN REQUIREMENTS TO FORMATION OF A PUBLIC IMPROVEMENT DISTRICT; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS FORMATION RESOLUTION; DIRECTING THE MAILING OF A NOTICE OF ADOPTION OF THIS FORMATION RESOLUTION BY THE CITY CLERK; AND TAKING RELATED ACTION.

Capitalized terms used in the recitals below and not defined therein shall have the meanings ascribed to such terms in Section 1 hereof.

WHEREAS, the New Mexico Public Improvement District Act, NMSA 1978, §§ 5-11-1 to -27 (2001, as amended through 2019) provides that an application and petition may be filed with the governing body of a municipality for the formation of a public improvement district for the purpose of financing public infrastructure improvements; that, unless waived pursuant to the Act, the governing body shall hold a hearing to determine whether a public improvement district should be formed; and, upon determination that formation of a district is in the interest of the property owners and the citizens of the governing body's municipal jurisdiction, shall order that the public improvement district be formed, and that the district shall be formed without an owner determination if the application and petition were submitted by the owner(s) of 100% of the property proposed to be included within the district; and

WHEREAS, the formation of a public improvement district may result in the imposition of special levies to pay the costs of public infrastructure to be acquired by a public improvement district; and

WHEREAS, the Act authorizes owners, public improvement districts and municipalities to enter into development agreements to establish the obligations of the owner or developer, the municipality and the public improvement district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities, and other matters relating to the development, improvement and use of real property within the district; and

WHEREAS, the City has enacted policy guidelines and application procedures for the establishment of public improvement districts within the City; and

WHEREAS, the Applicants have presented an Application and Petition for Approval of the Formation of the Aspire Public Improvement District and the following documents in support of the

Petition:

(i) a description of the proposed District, including a legal description and current title report for the Land, the identity and addresses of all persons or entities with any interest in the property, evidence that there are no persons registered to vote within the boundaries of the District and that the owners of the Land have unanimously consented to the formation of the District, and a description of the appropriateness of the boundaries;

(ii) a General Plan, which includes, among other things, a description of the District's boundaries, anticipated types and locations of Infrastructure Improvements, information regarding the future ownership and maintenance of the Infrastructure Improvements, and adequate information to establish financial parameters for operation of the District;

(iii) a Feasibility Study, which includes a market absorption study, description of improvements to be constructed, construction schedule and financing plan for the Infrastructure Improvements upon formation of the District, a description of the Applicants' equity contribution and the timing and sources of the contribution, and an operating plan for the Infrastructure Improvements;

(iv) a Rate and Method of Special Levy Apportionment in sufficient detail to enable each owner or resident within the District to estimate the maximum amount of the proposed District Special Levy;

(v) an MAI Appraisal;

(vi) a description of Applicants' development experience and financial ability to complete the Infrastructure Improvements;

(vii) forms of Disclosure of District Special Levy;

(viii) a description of the consistency of the Infrastructure Improvements with the City's development policies and objectives;

(ix) a Development Agreement to be entered into by and between the City, the District, and the Developer;

(x) a form of Formation Resolution; and

WHEREAS, except for those improvements that are dedicated and conveyed to another governmental entity, the PID Funded Infrastructure Improvements will be designed and constructed according to all applicable City requirements, will be suitable for dedication to the City upon completion, and will be acquired by the District and then dedicated to, owned and operated by the City; and

WHEREAS, pursuant to the Development Agreement, the District may fund the cost of

formation and acquisition of PID Funded Infrastructure Improvements from the Developer with proceeds of (i) one or more series of District Bonds, as provided in the Act, which will be payable from the District Special Levy, and/or (ii) the collection of the District Special Levy, with or without the issuance of the District Bonds, through, among other things, the satisfaction of one or more Subordinate Obligations; and

WHEREAS, pursuant to the Application, the District will (i) be responsible for imposing the District Special Levy as provided in the Act, (ii) adopt procedures for the foreclosure of delinquent District Special Levy liens on the Land, and (iii) administer the District Special Levy, including any required payments to the Bernalillo County Assessor and Bernalillo County Treasurer from the proceeds of the District Special Levy; and

WHEREAS, pursuant to the Formation Documents, the District will finance and acquire the PID Funded Infrastructure Improvements to serve a tract of land approximately eighty-three (83) acres of land, located wholly within the corporate boundaries of the City to consist of an estimated five hundred and six (506) single family detached residential lots, which is an authorized purpose and appropriate use of a public improvement district as set forth in the PID Ordinance; and

WHEREAS, the City Council has considered the Application and has determined that proceeding further with the formation of the District is consistent with the PID Ordinance and promotes the interests, convenience or necessity of the owners, residents of the District and citizens of the City of Albuquerque.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE THAT:

Section 1. As used in this Formation Resolution, the following terms shall have the meanings specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

- A. "ABCWUA" means the Albuquerque Bernalillo County Water Utility Authority.
- B. "Act" means the Public Improvement District Act, NMSA 1978, §§ 5-11-1 to -27 (2001, as amended) and the home rule powers and all enactments of the City Council.
- C. "Applicants" means the Petitioner and the Developer.
- D. "Application" means the Application and Petition filed with the City for the formation of the Aspire Public Improvement District and all documentation incorporated by reference in the Petition, submitted to the City pursuant to the Act and the PID Ordinance.
- E. "Bond Resolution" means one or more resolutions of the District Board

authorizing issuance of one or more series of District Bonds for the purpose of financing the acquisition of the PID Funded Infrastructure Improvements and other eligible costs, which are subject to the financing parameters and other applicable requirements established in this Formation Resolution.

F. "City" means the City of Albuquerque, New Mexico.

G. "Clerk" means the City Clerk.

H. "Council" means the City Council of the City.

I. "County" means Bernalillo County, New Mexico.

J. "Developer" means Heritage Trails Development I, LLC, a New Mexico limited liability company.

K. "Development Agreement" means the Infrastructure Development and Acquisition Agreement dated as of even date herewith by and between the City, the District, and the Developer, which agreement shall memorialize the obligations of the District to the City and the Developer, shall be binding upon and enforceable against the District immediately following adoption of this Formation Resolution, with no further action by the District, and shall then be subsequently ratified and executed by the District.

L. "Disclosure of District Special Levy" means each disclosure of special levy in the forms attached as Exhibit 8 to the Application.

M. "District" means the Aspire Public Improvement District.

N. "District Board" means the governing body of the District.

O. "District Bonds" means one or more series of bonds proposed to be issued by the District pursuant to the Act, which are secured by a first lien and pledge of the District Special Levy.

P. "District Boundary Map" means the map attached as Exhibit [A] to the General Plan.

Q. "District Special Levy" or "District Special Levies" means the special levy or special levies to be imposed on the Land pursuant to NMSA 1978, § 5-11-20 (2013).

R. "Feasibility Study" means the study of the estimated costs and financing methods of the Infrastructure Improvements, including the Plan of Finance, submitted by the Applicants in connection with the Application and as supplemented or amended from time to time.

S. "Formation Documents" means the Application, the Petition, the General Plan, the Feasibility Study, Rate and Method of Special Levy Apportionment, the Development Agreement,

and such other documents as are required by the Act and the PID Ordinance to be submitted by the Applicants in connection with an application for the formation of the District.

T. "Formation Resolution" means this resolution adopted by the Council in connection with its approval of the formation of the District.

U. "General Plan" means the General Plan submitted by the Applicants in connection with the Application and as supplemented or amended from time to time, which is on file with the Clerk and includes, among other information, a map depicting the boundaries of the District and the real property proposed to be included in the District, a general description of anticipated improvements and their locations, and general cost estimates, proposed financing methods and anticipated District Special Levies.

V. "Infrastructure Improvements" means the PID Funded Infrastructure Improvements, as well as all other public and private improvements on the Land to be financed from sources other than the District Special Levy.

W. "Land" means the real property described in the District Boundary Map.

X. "MAI Appraisal" means the valuation of the Land as of October 1, 2020, as prepared by David Pearson, MAI, together with the Supplemental Market Study and Valuation, as of October 1, 2020, as prepared by David Pearson, MAI.

Y. "Petition" means the petition for formation of the District submitted by the Petitioner to the City pursuant to the Act and the PID Ordinance, which contains the signature of the owner of one hundred percent (100%) of the Land and requests that the City declare the District formed without requiring compliance with the provisions for posting, publication, mailing, notice, hearing and owner determination provided in the Act.

Z. "Petitioner" means Success Land Holdings, LLC, a New Mexico limited liability company, which is the sole owner of 100% of the Land.

AA. "PID Funded Infrastructure Improvements" means the portion of the Infrastructure Improvements financed with the proceeds of the District Bonds, Subordinate Obligations, and/or revenues derived from the collection of the District Special Levy, as identified in the General Plan.

BB. "PID Ordinance" means City Ordinance Enactment No. 0-2003-12, Council Bill No. F/S 0-03-84.

CC. "Plan of Finance" means the plan of finance included at Section VI of the Feasibility Study.

DD. “Rate and Method of Special Levy Apportionment” means the rate, method of apportionment and manner of collection of the District Special Levy submitted by the Applicants in connection with the Application and as supplemented or amended from time to time.

EE. “State” means the State of New Mexico.

FF. “Subordinate Obligations” means one or more subordinate bonds, subordinate promissory notes and/or other subordinate obligations, secured by a second priority pledge of the District Special Levy and constituting a reimbursement obligation, issued by the District to memorialize the obligation of the District to pay the costs of PID Funded Infrastructure Improvements received by the District plus interest at a rate authorized by the District Board on the principal amount of such promissory notes and/or other subordinate obligations.

Section 2. Construction of Formation Resolution. Except as otherwise expressly provided in this Formation Resolution, or unless the context otherwise requires:

A. All words and phrases shall be construed and understood according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

B. The singular includes the plural and the plural includes the singular.

C. Words importing any gender include the other gender.

D. All references to Sections shall refer to Sections of this Formation Resolution, unless otherwise stated.

E. “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore” and “hereafter” refer to this Formation Resolution and not solely to the particular portion of this Formation Resolution in which such word is used.

F. All times will be local time in the City unless otherwise designated in this Formation Resolution.

Section 3. Findings. The City hereby declares that it has considered the Application and all other relevant information and data, and hereby makes the following findings:

A. The Petitioner owns 100% of the Land and no persons are registered to vote within the boundaries of the District within the seventy days immediately preceding the date of adoption of this Formation Resolution.

B. As planned and proposed by the Applicants, the Infrastructure Improvements to be conveyed to the City have been or will be constructed to City specifications and will be subject to

inspection, approval and acceptance by the City prior to conveyance to the City, as described in the Development Agreement.

C. The District Bonds and Subordinate Obligations will not be backed by the credit, general funds or resources of the City in any manner. Owners of the District Bonds or the Subordinate Obligations will have no right to require the City or the District to impose ad valorem property taxes to pay amounts due under the District Bonds or the Subordinate Obligations.

D. The District will serve the interests, convenience and necessity of the Applicants the future owners of the Land and the citizens of the City:

(i) The District will be utilized to finance PID Funded Infrastructure Improvements benefitting the Land, which will be developed as a master planned development, consisting of residential uses;

(ii) The information provided in the Application provides a reasonable basis upon which the Council has determined that all the Land is directly or indirectly benefited by the District, as contemplated by NMSA 1978, §§ 5-11-2(S) (2019) and 5-11-6(A) (2019);

(iii) The cost of constructing the PID Funded Infrastructure Improvements will be apportioned in a reasonable manner among the owners of Land, in accordance with the Rate and Method of Special Levy Apportionment, and will not be passed on to the citizens of the City, other than the owners of the Land, or the City itself;

(iv) The City will receive the benefit of the PID Funded Infrastructure Improvements through dedication of the Infrastructure Improvements not otherwise dedicated to the State, the County or the ABCWUA.

E. The Developer has the financial capacity to undertake the development of the Infrastructure Improvements.

F. The Plan of Finance is feasible and will not impose an undue burden on the future owners of the Land or served by the PID Funded Infrastructure Improvements.

G. The Plan of Finance will enable the District to acquire the PID Funded Infrastructure Improvements in a cost-effective manner.

H. The District is planned and will be implemented in a manner which provides for the expenses to be paid by the Developer and the District, as applicable.

I. As planned, the District and the PID Funded Infrastructure Improvements are consistent with the City's existing development goals, growth management policies, and conservation policies.

J. The formation of the District and the issuance of District Bonds and Subordinate Obligations, subject to the requirements and limitations specified in this Formation Resolution, are consistent with the requirements of the PID Ordinance.

Section 4. Formation of District; District Foreclosure Procedures for Delinquent Special Levies; Property Tax Levy.

A. The Aspire Public Improvement District is hereby ordered approved and formed to carry out the purposes set forth in, and according to the provisions of, this Formation Resolution. The District shall include the Land, which is the real property described in the General Plan's District Boundary Map and more particularly identified in the legal description attached as Exhibit 1 to the Application.

B. The Application and Petition are hereby accepted and approved.

C. The General Plan is hereby accepted and approved.

D. The Feasibility Study is hereby accepted and approved. The District shall implement and reasonably carry out the Plan of Finance.

E. The Development Agreement is hereby accepted and approved. The Chief Administrative Officer of the City is hereby authorized and directed to execute the Development Agreement on behalf of the City. Any changes, insertions, deletions and modifications to the Development Agreement shall be deemed to have been approved by the Council upon execution and delivery of the Development Agreement by the Chief Administrative Officer of the City, such execution and delivery to be conclusive evidence of such approval. The District shall be a party to the Development Agreement, as approved by the Council, immediately upon formation of the District and without any further action by the District and shall be bound to the obligations set forth therein.

F. The Development Agreement shall be an agreement or condition pertaining to the District, as contemplated by § 4(D) of the PID Ordinance, so that any existing agreements with the Petitioner, Developer or other developers and landowners regarding the provision of Infrastructure Improvements proposed to be furnished to the City shall be deemed amended to reflect the terms of the Development Agreement.

G. The Rate and Method of Special Levy Apportionment, establishing the apportionment and manner of collection of District Special Levy in sufficient detail to enable each owner of all or a portion of the Land or resident within the District to estimate the maximum amount of the proposed District Special Levy, is hereby accepted and approved.

H. The Disclosure of District Special Levy is hereby approved.

I. The District shall have the powers necessary and convenient to pay a portion of the costs of the District, including administrative and formation costs, and finance the acquisition of the PID Funded Infrastructure Improvements as provided in the Formation Documents. The District and the City shall be bound by the terms thereof; however, the Formation Documents (excluding the Development Agreement) may be amended or supplemented by the District, without further action by the City, provided that such amendment or supplement is within the financial parameters set by this Formation Resolution.

J. The officers, agents and employees of the City are hereby directed, authorized and empowered to do all acts and things and to execute and deliver all documents relating to or requested by the District and necessary to carry out and comply with the provisions of the Formation Documents.

K. The principal purpose of the District shall be to finance the acquisition of the PID Funded Infrastructure Improvements.

L. The District Special Levies to be imposed by the District shall not exceed the maximum amounts set forth in the Application, subject to adjustment consistent with the terms of the Act and the Rate and Method of Special Levy Apportionment.

M. The District shall be self-supporting, as provided in § 1(F) of the PID Ordinance.

N. The financing proposed in the Application and other Formation Documents meet the applicable requirements of §§ 5 and 6 of the PID Ordinance.

O. The District Board shall use its best efforts to hold a public meeting within 60 days following the date of adoption of this Formation Resolution. At that meeting, the District Board shall adopt an open meeting policy and bylaws for the District; ratify and execute the Development Agreement, the terms of which shall be binding upon and enforceable against the District immediately upon formation notwithstanding this instruction by the Council to the District Board; direct the recording of the Development Agreement, the notice of formation, the notice of information, and certain related filings with the Bernalillo County Clerk, as contemplated by the Act; and, in compliance with NMSA 1978, § 5-11-8(D) (2017), take such other action toward administering in a reasonable manner the implementation of the General Plan including, but not limited to, the imposition of the District Special Levy, the acquisition of PID Funded Infrastructure Improvements, and the issuance of the District Bonds and/or Subordinate Obligations, as authorized by this Formation Resolution.

P. Pursuant to the authority granted in NMSA 1978, §§ 5-11-20(I) (2013) and 5-11-

23(F) (2019), the District shall establish procedures for foreclosure of delinquent District Special Levies and for redemption of foreclosed property, which procedures shall be substantially similar to the foreclosure and redemption procedures applicable to Municipal Improvement Districts set forth in NMSA 1978, §§ 3-33-28 to -30 (1965, as amended), and as set forth for the District in the Development Agreement approved by this Formation Resolution.

Q. The District is authorized to impose a tax levy in an amount not to exceed \$3.00 per \$1,000.00 of net taxable value of taxable property within the boundaries of the District, unless a higher rate is approved pursuant to NMSA 1978, § 5-11-23(A) (2019).

Section 5. Authorization of District Bonds. The District may issue District Bonds pursuant to the terms of the Development Agreement and one or more Bond Resolutions in the amounts and subject to the financing requirements and limitations set forth in this Formation Resolution.

A. Each Bond Resolution shall be approved by the City's Debt Committee prior to its enactment by the District. The City's Debt Committee shall not condition approval of the Bond Resolution or the issuance of the District Bonds upon compliance by a third-party owner of the Land with a requirement to furnish the Disclosure of District Special Levy to prospective or actual purchasers of the Land.

B. Each Bond Resolution shall include, at minimum, the following provisions for the protection of owners of the Bonds:

(i) Each Bond Resolution shall provide for the establishment of a debt service reserve fund in an amount acceptable to the Council and the District Board.

(ii) Each Bond Resolution shall include provisions for the public offering or private placement of District Bonds in compliance with the criteria of § 5(E)(5) of the PID Ordinance unless, in accordance with the PID Ordinance then in effect, the City's Debt Committee and the City Council determine such compliance is not required based upon the recommendations made by underwriters or financial consultants to the City.

(iii) Each Bond Resolution shall provide that the District Bonds shall be sold pursuant to a limited public offering or private placement and issued in such denominations as determined by the District Board.

(iv) The minimum maturity of District Bonds shall be at least one day. The final maturity date for Bonds shall not be more than 30 years after the date of issuance of such series of District Bonds by a District.

(v) Each Bond Resolution shall include provisions for appointment of a

trustee pursuant to an indenture of trust, a supplemental indenture of trust, or other similar instrument.

(vi) The District Bonds shall bear interest at rates not to exceed 12% per annum.

(vii) The maximum aggregate principal amount of District Bonds issued shall not exceed the estimated cost of the PID Funded Infrastructure Improvements to be financed by the District, as determined at the time a series of District Bonds is issued by the District, plus all costs connected with the issuance and sale of the District Bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs.

C. Prior to the issuance of District Bonds, each Bond Resolution shall be presented to the City Council for approval as being consistent with the provisions of Section 5 of this Resolution.

D. In addition to any other express or implied authority granted by the Act and the PID Ordinance, the District may, in its sole discretion and without further review and approval of the Council, issue Subordinate Obligations pursuant to NMSA 1978, §§ 5-11-10 (2001) and -20 (2013), § 1(G) of the PID Ordinance, the Formation Documents, and the terms of one or more resolutions of the District Board authorizing issuance of one or more Subordinate Obligations, for the purpose of memorializing and/or satisfying the obligation of the District to pay for the value of the PID Funded Infrastructure Improvements received by the District.

Section 6. District Governance.

A. The District Board shall initially be composed of the five (5) members:

(i) one of whom shall be employed in City Council Services, which member shall initially be Julia Coulloudon;

(ii) one of whom shall be employed in the Department of Finance and Administration, which member shall initially be Christine Boerner;

(iii) one of whom shall be employed in the City Planning Department, which member shall initially be James Aranda; and

(iv) two members nominated by the Applicants, and consented to by the City Council, which members shall initially be Garret Price and Scott Steffen;

B. Christine Boerner, James Aranda, and Garret Price shall serve 6-year terms.

C. Julia Coulloudon and Scott Steffen shall serve 4-year terms.

D. Pursuant to NMSA 1978, § 5-11-6(A) (2019), Scott Steffen is appointed to be the clerk of the District and Garret Price is appointed to be treasurer of the District.

E. Pursuant to NMSA 1978, § 5-11-9(B) (2019), at the end of the appointed directors' initial terms, an election shall be held in conformance with the Election Code and the Local Election Act as provided in NMSA 1978, § 5-11-7 (2019), to select a new slate of directors for the District Board.

Section 7. Waiver of Additional Hearing and Election. Based on the information provided by the Applicants in the Application, the Petition has been signed by and on behalf of the owner of 100% of the Land to be included in the proposed District, and on that basis the City waives the requirements for posting, publication, mailing, notice, hearing and owner determination, as authorized by NMSA 1978, § 5-11-7(F) (2019). Furthermore, the election required to be held pursuant to the Act shall be canceled, in compliance with § 5-11-7(G) (2019) of the Act, since no persons are registered to vote within the boundaries of the District within the seventy days immediately preceding the date hereof as prescribed by NMSA 1978, § 5-11-7(B) (2019).

Section 8. Amendments. This Formation Resolution may be amended or supplemented by ordinance or resolution adopted by the Council in accordance with the laws of the City and the State.

Section 9. Repealer. All ordinances or resolutions, or parts thereof in conflict with the provisions of this Formation Resolution, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

Section 10. Severability. If any section, paragraph, clause or provision of this Formation Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this Formation Resolution.

Section 11. Notice of Adoption of Formation Resolution. In compliance with NMSA 1978, § 5-11-8(A) (2017), the Clerk is hereby directed to cause a copy of this Formation Resolution to be delivered, by certified mail, return receipt requested, to the Bernalillo County Assessor, Bernalillo County Treasurer, the Bernalillo County Manager, the Secretary of the New Mexico Taxation and Revenue Department, and the Director of the Local Government Division of the New Mexico Department of Finance and Administration.

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