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Title: F/S Making Findings In Connection With The Resolution Of Winrock Town Center Tax Increment Development District 1 Authorizing The Issuance And Sale Of Senior Lien Tax Increment Bonds; And Ratifying And Approving The Issuance And Sale Of The Winrock Town Center Tax Increment Development District 1 Senior Lien Gross Receipts Tax Increment Bonds, Series 2022, As Substantially Consistent With The Requirements Of City Ordinance Enactment No. O-2006-036 And City Council Resolution No. R-2008-126, Enactment No. R 2008-120 (Gibson, by request)
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Date	Ver.	Action By	Action	Result
12/17/2021	3	City Clerk	Published	
12/15/2021	3	Mayor	Signed by the Mayor	
12/14/2021	2	City Council	Sent to Mayor for Signature	
12/6/2021	1	City Council	Substituted	Pass
12/6/2021	1	City Council	Passed as Substituted	Pass
11/15/2021	1	President	To be heard at the Council Meeting	
11/15/2021	1	City Council	Introduced	

CITY of ALBUQUERQUE TWENTY FOURTH COUNCIL

COUNCIL BILL NO. F/S R-21-215 ENACTMENT NO. _____

SPONSORED BY: Diane Gibson, by request

RESOLUTION

F/S Making Findings In Connection With The Resolution Of Winrock Town Center Tax Increment Development District 1 Authorizing The Issuance And Sale Of Senior Lien Tax Increment Bonds; And Ratifying And Approving The Issuance And Sale Of The Winrock Town Center Tax Increment

Development District 1 Senior Lien Gross Receipts Tax Increment Bonds, Series 2022, As Substantially Consistent With The Requirements Of City Ordinance Enactment No. O-2006-036 And City Council Resolution No. R-2008-126, Enactment No. R 2008-120 (Gibson, by request) MAKING FINDINGS IN CONNECTION WITH THE RESOLUTION OF WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 AUTHORIZING THE ISSUANCE AND SALE OF SENIOR LIEN TAX INCREMENT BONDS; AND RATIFYING AND APPROVING THE ISSUANCE AND SALE OF THE WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 SENIOR LIEN GROSS RECEIPTS TAX INCREMENT BONDS, SERIES 2022, AS SUBSTANTIALLY CONSISTENT WITH THE REQUIREMENTS OF CITY ORDINANCE ENACTMENT NO. O-2006-036 AND CITY COUNCIL RESOLUTION NO. R-2008-126, ENACTMENT NO. R 2008-120.

Capitalized terms in the following preambles shall have the meanings assigned in City Council Resolution No. R-2008-126, Enactment No. R-2008-120 (the “Formation Resolution”) except as otherwise defined in this Resolution, or unless the context clearly requires otherwise.

WHEREAS, pursuant to the Act and Ordinance Enactment No. O-2006-036 (the “TIDD Ordinance”), the Council enacted the Formation Resolution, in which the Council approved the formation of the Winrock Town Center Tax Increment Development District 1 (“District 1”) and District 2 (“District 2” and together with District 1, the “Districts”) for the purpose of financing public infrastructure improvements; and

WHEREAS, pursuant to City Council Resolution No. R-08-177, Enactment No. R-2008-117, the Council approved the Development Agreement between Winrock Partners LLC (the “Developer”), the City and the Districts, and further amended the Development Agreement pursuant to City Council Resolution No. R-15-170, Enactment No. R-2015-027, by which the Developer will construct the TIDD Infrastructure Improvements to serve approximately 83 acres of land, located wholly within the corporate boundaries of the City; and

WHEREAS, Chapter 58, Laws of New Mexico 2009 authorizes the Districts to issue TIDD Bonds in an aggregate maximum principal amount for the Districts of \$137,000,000 in net proceeds, as adjusted for inflation after January 1, 2009, which shall be payable from Gross Receipts Tax Increment and Property Tax Increment, for the purpose of financing the TIDD Infrastructure Improvements, subject to certain requirements set forth in the Formation Resolution and the Development Agreement, as amended; and

WHEREAS, pursuant to the Development Agreement, as amended, the TIDD

Infrastructure Improvements will be financed by the Districts' issuance of multiple series of TIDD Bonds as provided in the Act; and

WHEREAS, pursuant to the Development Agreement, as amended, all TIDD Infrastructure Improvements to be acquired by the Districts will be designed and constructed according to all applicable City standards, will be suitable for dedication to the City upon completion, and will be acquired by the Districts and then, as applicable, reconveyed to, owned and operated by the City; and

WHEREAS, at the time of adoption of the Formation Resolution and the appointment of the Governing Body of the Districts, there were no qualified resident electors residing in the Districts; and

WHEREAS, the Developer constructed the following dedicated infrastructure projects within the Districts:

An approximately 930 space two-level subterranean parking garage located in District 1, including access ramps, pedestrian circulation (stairs and elevators), fire system, mechanical systems, electrical system, security system and plumbing system;

A portion of Ring Road located in District 1, and associated infrastructure, including, without limitation, sidewalks, landscaping features, landscape buffer and street lighting;

A main entrance drive north of the existing BJ's restaurant and another entrance drive south of the existing Macaroni Grill restaurant that continues east, both located in District 2; a portion of Ring Road located in District 2 that borders District 2's southwestern and southern boundaries and a north/south road adjacent to the west side of District 2; improvements to the Indian School Road right-in/right-out access and its adjoining road headed south into the property, the installation of a new access point and associated drive off of America's Parkway headed east into the site, all of which are located in District 2, including sidewalks, landscaping features, landscape buffer, street lighting and other public utilities associated with such entrance drives and roads; and other public infrastructure improvements located in District 2 that serve District 2, consisting of water lines, sewer lines and storm drains; and

Various public infrastructure improvements previously paid by the Developer including, without limitation, storm drains located in District 1, a portion of Ring Road located in District 1 (east of the portion of Ring Road listed above) and an access point and associated drive to Indian School Road, including sidewalks, landscaping features, landscape buffer and street lighting located in District 2

(collectively, the "Series 2015 Project"); and

WHEREAS, the Council, pursuant to City Council Resolution No. R-2015-195, Enactment No. R-2015-051, approved the issuance of the first series of TIDD Bonds, which were issued to finance the Series 2015 Project, and the transaction documents related thereto; and

WHEREAS, District 1 has heretofore issued its Winrock Town Center Tax Increment Development District 1 Senior Lien Gross Receipts Tax Increment Bonds, Series 2015 in the aggregate principal amount of \$43,325,000 (the “Series 2015 Bonds”) to finance the Series 2015 Project; and

WHEREAS, the Developer has also constructed or will construct the following dedicated infrastructure projects within the Districts, in addition to those financed by the Series 2015 Bonds:

Various public infrastructure improvements including, without limitation, architectural, legal, engineering, planning, consulting and design costs, most of which being previously paid by the Developer, including a portion of Road B located in District 1, and associated infrastructure, including, without limitation, paving, sidewalks, storm drains, sewer, water, fire lines, reuse water lines and infrastructure, landscaping features, irrigation facilities, landscape buffer, street lighting, streetscape, canopy renovation and pedestrian walkway associated with the parking garage financed with proceeds of the Series 2015 Bonds and other pedestrian walkways;

The community park situated in District 1 at the core of the site including without limitation, architectural, legal, engineering, planning, consulting and design costs, water feature and infrastructure, gazebo, children’s play area, outdoor performance space, walking paths, bridges, landscaping, irrigation facilities, benches, trash cans, other pedestrian and hardscape amenities, that portion of green energy sources allocable to the park, and public restrooms; and

Various public infrastructure improvements including, without limitation, architectural, legal, engineering, planning, consulting and design costs for roads serving the community park located in Districts 1 and 2, and associated infrastructure, including, without limitation, paving, sidewalks, storm drains, sewer, water, fire lines, reuse water lines and infrastructure, landscaping features, irrigation facilities, landscape buffer, street lighting, streetscape and other pedestrian walkways;

(collectively, the “Series 2020 Project”); and

WHEREAS, the Council, pursuant to City Council Resolution Enactment No. R-2020-107, approved the issuance of the second series of TIDD Bonds, which were issued to finance the Series 2020 Project, and the transaction documents related thereto; and

WHEREAS, District 1 has heretofore issued its Winrock Town Center Tax

Increment Development District 1 Subordinate Lien Gross Receipts Tax Increment Bonds, Series 2020 in the aggregate principal amount of \$21,595,000 (the “Series 2020 Bonds”) to finance the Series 2020 Project; and

WHEREAS, the Developer has commenced or will commence the construction of the following dedicated infrastructure projects within the Districts, in addition to those financed by the Series 2015 Bonds and, except as noted below, the Series 2020 Bonds:

Various public infrastructure improvements including, without limitation, architectural, legal, engineering, planning, consulting and design costs for the portion of the Community Park and Road E, to the extent the proceeds of the Series 2020 Bonds are not sufficient therefor. The community park is located in District 1 and Road E is located in Districts 1 and 2. Costs include, but are not limited to, associated infrastructure, construction, grading, removals, paving, sidewalks, storm drains, sewer, water, fire lines, reuse water lines and infrastructure, landscaping features, irrigation facilities, landscape buffer, street lighting, streetscape, security infrastructure and adjacent roadway improvements, to include paving, curb, gutter and landscaping, that are necessary due to the impact of the Road E design and construction (estimated cost \$1,500,000);

Road A situated mainly in District 2 entering from the west of the site. Road A includes without limitation, architectural, legal, engineering, surveying, planning, consulting and design costs, main entry architectural feature, construction, grading, removals, paving, sidewalks, storm drains, sewer, water, fire lines, reuse water lines and infrastructure, landscaping, landscaping features, landscape median, irrigation facilities, landscape buffer, street lighting, streetscape, security infrastructure and other pedestrian walkways, curb, gutter, storm drains, curb cuts, reconfiguring of portions of surrounding parking fields impacted by the Road A design (estimated cost \$8,000,000);

Parcourse located in Districts 1 and 2, including without limitation, legal, engineering, surveying, planning, consulting and design costs, signage, construction, paving, reuse water lines and infrastructure, landscaping, landscaping features, irrigation facilities, path lighting, shade structures, green energy for lighting, seating, streetscape and other pedestrian walkways, curb, gutter, curb cuts, exercise equipment to include planning and installation, exercise equipment and installation at Jerry Cline park (estimated cost \$400,000);

Dog park located in District 1 and adjacent to District 1, including without limitation, legal, engineering, surveying, planning, consulting and design costs, reuse water lines and

infrastructure, construction, landscaping, benches, shade structures, drinking fountain, I-40 barrier wall, signage, irrigation facilities, path lighting, green energy for lighting, streetscape to dog park, and other pedestrian walkways, curb cuts (estimated cost \$400,000); and

To the extent of any monies remaining after payment of the foregoing TIDD Infrastructure Improvements and to the extent the proceeds of the Series 2020 Bonds are not sufficient therefor, a water treatment plant to serve Districts 1 and 2, water reuse lines throughout Districts 1 and 2, and additional portions of the internal public roads including utilities, landscape, street scape and lighting.

(collectively, the “Series 2022 New Money Project”); and

WHEREAS, the financing of the Series 2022 New Money Project is an authorized purpose and appropriate use of a tax increment development district as set forth in the Act and the TIDD Ordinance; and

WHEREAS, the Act provides that a district board that has issued bonds in accordance with the Act may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of the outstanding bonds for, among other things, the purpose of reducing interest costs or effecting other economies; and

WHEREAS, District 1 desires to refund the Series 2015 Bonds (the “Series 2022 Refunding Project”), which are currently outstanding in the aggregate principal amount of \$40,241,000, for the purpose of reducing interest costs and to achieve net present value debt service savings to the District, after taking into account all costs of such refunding; and

WHEREAS, the Governing Body of District 1 has adopted Resolution No. 2021-08 (the “Bond Resolution”) authorizing the issuance of the “Winrock Town Center Tax Increment Development District 1 Senior Lien Gross Receipts Tax Increment Bonds, Series 2022” (the “Series 2022 Bonds”) to pay, or to reimburse the Developer amounts previously paid by it for, a portion of the costs of the Series 2022 New Money Project and to provide, together with other moneys available therefor, for the refunding of the outstanding Series 2015 Bonds, all subject to the ratification and approval of the Series 2022 Bonds by the Council; and

WHEREAS, the Governing Body of District 1 has adopted Resolution No. 2021-10 (“Resolution No. 2021-10”) approving the execution and delivery of certain transaction documents related to the issuance of the Series 2022 Bonds and amending certain provisions of Resolution No. 2021-08; and

WHEREAS, the Council has considered the Bond Resolution and Resolution No. 2021-10

in connection with the requirements for the issuance by District 1 of the Series 2022 Bonds set forth in the TIDD Ordinance and the Formation Resolution.

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

Section 1. Findings. The City hereby declares that it has considered the Bond Resolution, Resolution No. 2021-10 and all other relevant information and finds as follows:

A. The Bond Resolution authorizes the issuance of the Series 2022 Bonds in an aggregate principal amount not to exceed \$55,000,000, at a maximum net effective interest rate not to exceed 5.00% per annum and provides that no Series 2022 Bond shall bear interest at a rate exceeding 5.50% per annum, which rates and other details of the Series 2022 Bonds will be specifically determined and approved by the Chairperson or the Vice Chairperson (the "Designated Officer") of District 1 as set forth in a certificate (the "Sale Certificate") executed by such person, all as authorized by the Bond Resolution.

B. The Series 2022 Bonds will be issued for the purpose of (i) financing a portion of the costs of the Series 2022 New Money Project which is an authorized purpose and appropriate use of a tax increment development district as set forth in the Act, the TIDD Ordinance, the Formation Resolution, the Development Agreement, as amended, the Bond Resolution and Resolution No. 2021-10 and (ii) refunding the outstanding Series 2015 Bonds.

C. The Bond Resolution provides that the Series 2022 Bonds will be the obligations solely of the Districts, and will not be backed by the faith, credit, general funds or resources of the City, the County or the State in any manner. Owners of the Series 2022 Bonds will have no right to require that the City, the County or the Districts impose ad valorem property taxes to pay TIDD Bonds, including but not limited to, the Series 2022 Bonds.

D. The City's Debt Committee has reviewed and approved the Series 2022 Bond transaction.

E. The City hereby waives Section 6(B)(ii) of the Formation Resolution requiring a contribution or other credit facility to be provided by the Developer, based upon the marketing plan for the Series 2022 Bonds, the sophistication of the intended purchasers of the Series 2022 Bonds and recommendations made by the underwriter of the Series 2022 Bonds and the financial advisor to District 1.

F. The Bond Resolution, the master indenture and supplemental indenture provide for the following terms and parameters for the Series 2022 Bonds:

(i) the maximum principal amount of the Series 2022 Bonds shall not exceed \$55,000,000;

(ii) the Series 2022 Bonds shall be sold pursuant to a limited public offering;

(iii) the purchase price of the Series 2022 Bonds (including underwriting discount, original issue premium and original issue discount) shall be not less than 95% of the aggregate principal amount of the Series 2022 Bonds and the underwriting discount will not exceed 1.00% of the aggregate principal amount of the Series 2022 Bonds;

(iv) the maximum annual net effective interest rate on the Series 2022 Bonds shall not exceed 5.00% per annum;

(v) the Series 2022 Bonds shall be dated as of the date of delivery of the Series 2022 Bonds;

(vi) the Series 2022 Bonds shall be issued only as fully registered bonds in a book entry only system in minimum denominations of \$500,000, and any integral multiple of \$1,000 in excess thereof;

(vii) the Series 2022 Bonds shall each be numbered consecutively from one upwards;

(viii) the Series 2022 Bonds may mature in serial or term maturities with the last such maturity no later than 25 years from the date of initial delivery or issuance of the Series 2015 Bonds;

(ix) the Series 2022 Bonds shall be subject to optional redemption not later than May 1, 2032 and at a redemption price not exceeding 103% of the principal amount thereof plus accrued interest to the redemption date;

(x) the amount of principal of the Series 2022 Bonds maturing, or subject to mandatory sinking fund redemption, in any particular year shall not exceed \$9,000,000;

(xi) District 1 shall establish, on the date of issuance of the Series 2022 Bonds, a debt service reserve fund to secure the Series 2022 Bonds in an amount equal to the least of (a) the maximum annual debt service requirements on the Series 2022 Bonds, calculated as of the date of issuance of the Series 2022 Bonds, deducting the amount deposited in the debt service reserve fund from the principal due on the final maturity date of the Series 2022 Bonds, based on the assumption that such amount will be used to pay a portion of the principal of the Series 2022 Bonds on such final maturity date of the Series 2022 Bonds; (b) 125% of the average annual debt service requirements on the Series 2022 Bonds, calculated as of the date of issuance of the Series 2022 Bonds; or (c) 10% of the aggregate principal amount of the Series 2022 Bonds; and

(xii) the Designated Officer of District 1 shall approve and execute the Sale Certificate for the Series 2022 Bonds.

G. District 1 has designated BOKF, NA to serve as trustee (the "Trustee") pursuant to an indenture of trust. The Trustee may exercise the rights and remedies of District 1 for the protection of bondholders and the appointment of a receiver or other agent to protect and enforce the rights of any holder of the Series 2022 Bonds in the event of a default in the payment of debt service on the Series 2022 Bonds, which default cannot be cured by drawing on the debt service reserve fund established for the Series 2022 Bonds or drawing on available funds deposited in the bond funds established for the Series 2022 Bonds.

H. District 1 has designated, and the City hereby designates, Wells Fargo Securities, LLC to act as underwriter for the sale of the Series 2022 Bonds.

I. District 1 has designated, and the City hereby designates, Sherman & Howard L.L.C. to act as bond and disclosure counsel and to prepare bond and disclosure documents necessary to effectuate the sale of the Series 2022 Bonds to the public.

J. District 2 has pledged and assigned to the Trustee all Gross Receipts Tax Increment generated in District 2 in order to secure the payment of the principal of, premium, if any, and interest on the Series 2022 Bonds and such pledge and assignment satisfies Section 7(D) of the TIDD Ordinance which provides that "Gross Receipts Tax Increment Bonds shall be payable from the gross receipts taxes generated from taxable activities located in the TIDD" and the tenth Whereas Clause of the Formation Resolution which provides "pursuant to the Application and as provided for in the TIDD Act, the Applicant anticipates that the TIDD Infrastructure Improvements will be financed, in part through the issuance by each of the Districts of separate series of Bonds secured by the portion of gross receipts tax increment revenues and property tax increment revenues generated within each of the Districts and dedicated to the City, and the City will have no responsibility for construction of the

TIDD Infrastructure Improvements, payment of the Tax Increment Bonds, or other financial obligations of the Districts.”

K. The sale of the Series 2022 Bonds in minimum denominations of \$500,000 satisfies the second paragraph of Section 7(D)(4) of the TIDD Ordinance which provides: “Privately placed bonds need not be rated; however, the purchasers of such bonds must be ‘qualified institutional buyers’ (as such term is defined in Rule 144A of the Securities Exchange Commission) and must agree not to resell the bonds except to ‘qualified institutional buyers’ or ‘accredited investors’, as such terms are defined by the SEC, in a private placement. If appropriate, the Applicant shall enter into a ‘Continuing Disclosure Undertaking’ (as required by Rule 15c2-12 of the Securities Exchange Commission) relating to the issuance of the bonds.”

L. Section 4(A)(ii) of the Development Agreement, as amended, provides that “The maximum aggregate principal amount of TIDD Bonds issued by any District shall not exceed the actual costs of the TIDD Infrastructure serving the District plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance, and other costs normally associated with the issuance of TIDD Bonds pursuant to statute;” which supersedes Section 5(D)(ii) of the Formation Resolution which provides “The maximum aggregate principal amount of Increment Bonds issued by each TIDD shall not exceed 100% of the initial cost of the public improvements serving that TIDD, as determined at the time that TIDD issues a series of Bonds.”

M. The Developer has represented to District 1 and the City that prior to the date hereof it has paid not less than 20% of the costs of the sum of (i) the Series 2015 Project, (ii) the Series 2020 Project and (iii) the Series 2022 New Money Project in satisfaction of the requirements of Section 5-15-20B NMSA 1978, as amended and Section 5(D)(iii) of the Formation Resolution. The City hereby waives compliance with Section 4(A)(i) of the Development Agreement, as amended, based on compliance with the requirements of Section 5-15-20B NMSA 1978, as amended, and Section 5(D)(iii) of the Formation Resolution.

N. The Series 2022 Refunding Project shall generate “industry accepted interest rate savings”, which satisfies Section 8(D) of the TIDD Ordinance.

O. Except as otherwise provided herein, the Bond Resolution is in compliance with the provisions of Section 5 of the Formation Resolution.

P. Except as otherwise provided herein, the Bond Resolution and the issuance and sale of the Series 2022 Bonds satisfies in all respects the requirements provided in the Formation Resolution, the TIDD Ordinance and the Act for the issuance of the Series 2022 Bonds.

Section 2. Approval of Issuance and Sale of Series 2022 Bonds Pursuant to the Bond Resolution and Resolution No. 2021-10. Based upon the findings set forth in Section 1 of this Resolution, the issuance and sale of the Series 2022 Bonds as set forth in the Bond Resolution and Resolution No. 2021-10 are hereby approved.

Section 3. Ratification. All actions which have previously been taken by the Council and the officers of the City, or their designees, in connection with the transactions contemplated by any of the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

Section 4. Repealer. All ordinances or resolutions, or parts thereof in conflict with the provisions of this 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 5. Waiver. All documents, including, without limitation, the Development Agreement, as

amended, resolutions and ordinances, or parts thereof, pertaining to the issuance and sale of bonds by District 1 and the financing of TIDD Infrastructure Improvements by District 1 inconsistent herewith are hereby waived to the extent only of such inconsistency.

Section 6. Severability. If any section, paragraph, clause or provision of this 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 Resolution.

Section 7. Publication of Notice of Adoption of Resolution. The Clerk is hereby directed to publish a notice of this Resolution, in substantially the following form:

(Form of Summary of Resolution for Publication)

Notice is hereby given of the title and general summary of the subject matter contained in a resolution duly adopted and approved by the City Council of the City of Albuquerque, New Mexico relating to ratification and approval of the issuance and sale of the Winrock Town Center Tax Increment Development District 1 Senior Lien Gross Receipts Tax Increment Bonds, Series 2022. Complete copies of the resolution are available for public inspection during the regular business hours of the City Clerk, City of Albuquerque, New Mexico.

The title of the Resolution is as follows:

RESOLUTION

MAKING FINDINGS IN CONNECTION WITH THE RESOLUTION OF WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 AUTHORIZING THE ISSUANCE AND SALE OF SENIOR LIEN TAX INCREMENT BONDS; AND RATIFYING AND APPROVING THE ISSUANCE AND SALE OF THE WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 SENIOR LIEN GROSS RECEIPTS TAX INCREMENT BONDS, SERIES 2022, AS SUBSTANTIALLY CONSISTENT WITH THE REQUIREMENTS OF CITY ORDINANCE ENACTMENT NO. O-2006-036 AND CITY COUNCIL RESOLUTION NO. R-2008-126, ENACTMENT NO. R 2008-120.

A summary of the subject matter of the Resolution is contained in its title.

(End of Form of Summary of Resolution for Publication)

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