



REVENUE FOR THE FINANCING OF PUBLIC INFRASTRUCTURE FOR THE DISTRICTS PURSUANT TO THE TIDD ACT; APPROVING THE SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF ALBUQUERQUE, NEW MEXICO, MDS INVESTMENTS, LLC, AS SUCCESSOR IN INTEREST TO MESA DEL SOL, LLC, AND THE DISTRICTS, PURSUANT TO THE TIDD ACT; CONSENTING TO THE FIRST AMENDMENT TO TAX INCREMENT DEVELOPMENT PLAN RATIFIED IN CONNECTION WITH THE FORMATION OF DISTRICTS, PURSUANT TO THE TIDD ACT; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS RESOLUTION.

WHEREAS, on December 18, 2006, the City of Albuquerque, New Mexico (the “City”), adopted Resolution Enactment No. R-2006-126 (the “Formation Resolution”), approving the formation of Mesa Del Sol Tax Increment Development Districts 1 through 5 (the “Districts”) in accordance with the Tax Increment for Development Act, NMSA 1978, §§ 5-15-1 to -29, as amended (the “TIDD Act”); and

WHEREAS, pursuant to Section 5-15-15(B) of the TIDD Act, on January 10, 2007 the City adopted Resolution Enactment No. R-2007-001 (the “Dedication Resolution”), whereby the City dedicated 67% of certain City Gross Receipts Tax Increment Revenue and City Property Tax Increment Revenue generated within the Districts for the financing of Public Infrastructure for the Districts; and

WHEREAS, on December 18, 2006, the City ratified and approved that certain Tax Increment Development Plan (the “TIDD Plan”) relating to the development of the Districts pursuant to the TIDD Act; and

WHEREAS, on August 6, 2007, the City adopted Resolution Enactment R-2007-193 approving that certain Master Development Agreement for Implementation of the Mesa Del Sol Tax Increment Development Districts 1 through 5, among the City, Mesa del Sol LLC and the Districts, effective May 22, 2008, as amended by the First Amendment to the Master Development Agreement, effective September 17, 2009 (as amended, the “Master Development Agreement”); and

WHEREAS, on December 17, 2018, the City adopted Resolution Enactment No. R-2018-099 consenting to an assignment of the Master Development Agreement to MDS Investments, LLC, a New Mexico limited liability company (the “Developer”); and

WHEREAS, Senate Bill 566 of the First Session of the Fifty Fourth Legislature (“Senate Bill

566”) amended the TIDD Act to, among other things, clarify that property tax increment revenue and municipal and county gross receipts tax increment revenue may be used by tax increment for development districts to finance and/or reimburse the costs of public infrastructure improvements in tax increment development districts without the issuance of bonds; and

WHEREAS, the City Council desires to amend the Formation Resolution, Dedication Resolution and Master Development Agreement, and to consent to an amendment to the TIDD Plan, each pursuant to this Resolution, as necessary to implement the provisions of the TIDD Act, as amended by Senate Bill 566; and

WHEREAS, the City Council finds that this Resolution promotes the interests, convenience or necessity of the owners and residents of the Districts and citizens of the City.

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

SECTION 1. DISTRICT DOCUMENT AMENDMENTS. In order to permit the use of property tax increment revenue and City gross receipts tax increment revenue by the Districts to finance and/or reimburse the costs of on site and off site public infrastructure improvements without the issuance of bonds in accordance with the TIDD Act as amended by Senate Bill 566, the Formation Resolution, Dedication Resolution, Master Development Agreement and TIDD Plan must be amended.

SECTION 2. FIRST AMENDMENT TO THE FORMATION RESOLUTION. The definition of the term “TIDD Infrastructure Improvements” contained in the Formation Resolution,

““TIDD Infrastructure Improvements” means the public infrastructure improvements to be financed with proceeds of District Bonds as described and in the approximate locations shown in Exhibit 1 to the Tax Increment Development Plan.”

is hereby deleted and replaced in its entirety with the following:

““TIDD Infrastructure Improvements” means the public infrastructure improvements to be financed with proceeds of District Bonds or other tax increment revenues as authorized by the TIDD Act, as described and in the approximate locations shown in Exhibit 1 to the Tax Increment Development Plan.”

Except as provided in this Resolution, all terms and provisions of the Formation Resolution shall remain unchanged and in full force and effect. The Formation Resolution as modified and amended is hereby ratified and confirmed in all respects. From and after the date hereof, all references to the Formation Resolution shall be deemed references to the Formation Resolution

as amended hereby.

SECTION 3. FIRST AMENDMENT TO THE DEDICATION RESOLUTION. The first sentence of Section 3 of the Dedication Resolution,

“Pursuant to Sections 5-15-15(E) and 15-15-16(H) NMSA 1978, the City hereby dedicates 67% of the gross receipts tax increment revenues of the City’s local option gross receipts tax revenues (excluding the Transportation Infrastructure Tax), state-shared gross receipts tax revenues, and 67% of the property tax revenues (which shall not include any property tax intended to pay debt service but shall include 100% of any operating property tax) generated within each of Districts 1 through 5 for the purpose of securing the payment of District Bonds.”

is hereby deleted and replaced in its entirety with the following:

“Pursuant to Section 5-15-15(E) NMSA 1978, the City hereby dedicates 67% of the gross receipts tax increment revenues of the City’s local option gross receipts tax revenues (excluding the Transportation Infrastructure Tax), state-shared gross receipts tax revenues, and 67% of the property tax revenues (which shall not include any property tax intended to pay debt service but shall include 100% of any operating property tax) generated within each of Districts 1 through 5 for the purpose of financing Public Infrastructure.”

Except as provided in this Resolution, all terms and provisions of the Dedication Resolution shall remain unchanged and in full force and effect. The Dedication Resolution as modified and amended is hereby ratified and confirmed in all respects. From and after the date hereof, all references to the Dedication Resolution shall be deemed references to the Dedication Resolution as amended hereby.

SECTION 4. SECOND AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT.

The City Council hereby approves the Second Amendment to Master Development Agreement, in substantially the form attached hereto as Exhibit A. Except as provided in the Second Amendment to Master Development Agreement, all terms and provisions of the Master Development Agreement shall remain unchanged and in full force and effect. The Master Development Agreement as modified and amended is hereby ratified and confirmed in all respects. From and after the date hereof, all references to the Master Development Agreement shall be deemed references thereto as amended hereby.

SECTION 5. FIRST AMENDMENT TO THE TIDD PLAN. The City Council hereby consents to the First Amendment to TIDD Plan, in substantially the form attached hereto as Exhibit B. Except as provided in the First Amendment to TIDD Plan, all terms and provisions of the TIDD Plan shall

remain unchanged and in full force and effect. The City's consent to the TIDD Plan as modified and amended is hereby ratified and confirmed in all respects. From and after the date hereof, all references to the TIDD Plan shall be deemed references thereto as amended hereby.

SECTION 6. PRIOR CONSISTENT ACTIONS RATIFIED; INCONSISTENT ACTIONS REPEALED. All prior actions of the City Council or its officers taken in connection with the matters addressed in this Resolution are ratified, except to the extent that such actions are inconsistent with the matters authorized in this Resolution. Prior actions of the City Council in conflict with this Resolution are hereby repealed, but only to the extent of such inconsistency.

SECTION 7. GENERAL AUTHORIZATION. The Chief Administrative Officer of the City or her designee are hereby authorized and directed to execute the Second Amendment to the Master Development Agreement and take all action necessary to carry out the amendments to the Formation Resolution and Dedication Resolution, and the consent to the First Amendment to TIDD Plan, and to perform such obligations of the City and such other actions as, in consultation with Bond Counsel and advisors to the City in connection with the First Amendment to the Formation Resolution, the First Amendment to the Dedication Resolution, the Second Amendment to the Master Development Agreement or First Amendment to the TIDD Plan, shall be necessary or advisable in connection with this Resolution.

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