



CITY OF RIO RANCHO  
RESOLUTION

RESOLUTION NO. 12

ENACTMENT NO. 06-014

CITY OF RIO RANCHO  
MARIPOSA EAST PUBLIC IMPROVEMENT DISTRICT  
FORMATION RESOLUTION.

1  
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3  
4  
5 APPROVING THE PETITION OF HIGH DESERT INVESTMENT CORPORATION FOR  
6 FORMATION OF THE MARIPOSA EAST PUBLIC IMPROVEMENT DISTRICT (THE  
7 "DISRTICT") PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, SECTIONS  
8 5-11-1 THROUGH 5-11-27, NMSA 1978 AND THE CITY OF RIO RANCHO  
9 ADMINISTRATIVE PROCEDURES, CHAPTER 2, ARTICLE 10; MAKING FINDINGS IN  
10 CONNECTION WITH THE PETITION AND SUPPORTING DOCUMENTATION  
11 REQUESTING APPROVAL OF THE FORMATION OF THE DISTRICT; DETERMINING  
12 THE REAL PROPERTY TO BE INCLUDED WITHIN THE DISTRICT AND THE  
13 PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE  
14 GENERAL PLAN AND THE IMPOSITION OF A PROPERTY TAX TO BE IMPOSED  
15 UPON REAL PROPERTY WITHIN THE DISTRICT; APPROVING A FORM OF  
16 DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT;  
17 APPROVING PARAMETERS FOR THE ISSUANCE OF DISTRICT BONDS; PROVIDING  
18 FOR GOVERNANCE OF THE DISTRICT; PROVIDING THAT BONDS AND OTHER  
19 OBLIGATIONS OF THE DISTRICT SHALL NOT BE OBLIGATIONS OF THE CITY OF  
20 RIO RANCHO; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING  
21 ALL ACTIONS INCONSISTENT WITH THIS RESOLUTION.  
22

23 Capitalized terms in the following preambles shall have the meanings assigned in Section  
24 1 of this Formation Resolution, unless the context clearly requires otherwise.  
25

26 **WHEREAS:** the Act provides in part that an owner of real property may petition the  
27 governing body of the municipality or county in which the real property is  
28 located for the formation of a public improvement district for the purpose of  
29 financing public infrastructure improvements to real property within a public  
30 improvement district; and  
31

32 **WHEREAS:** the Act provides that, unless waived pursuant to Section 5-11-7(l), NMSA  
33 1978, the governing body shall hold a hearing to determine whether a public  
34 improvement district should be formed; and, upon determination that  
35 formation of a district is in the interest of the property owner(s) and the  
36 citizens of the governing body's municipal or county jurisdiction, shall order  
37 that the public improvement district be formed; and  
38

39 **WHEREAS:** the Act authorizes owners, public improvement districts, municipalities and  
40 counties to enter into development agreements to establish the obligations of  
41 the owner or developer, the county or municipality and the public  
42 improvement district concerning the zoning, subdivision, improvement,  
43 impact fees, financial responsibilities, and other matters relating to the  
44 development, improvement and use of real property within the district; and

1  
2 **WHEREAS:** the City has adopted policy guidelines and application procedures for the  
3 establishment of public improvement districts within the City; and  
4

5 **WHEREAS:** the Applicant has presented a Petition for formation of the District for the  
6 purpose of financing the PID Infrastructure Improvements; and  
7

8 **WHEREAS:** the Applicant has submitted the following documents in support of the  
9 Petition, together constituting the Application:

10 (i) a proposed General Plan for the District (which includes a map and  
11 description of the District's boundaries, real property tracts, type and location of PID  
12 Infrastructure Improvements, estimated construction costs and anticipated property tax  
13 levy);  
14

15 (ii) Evidence of unanimous consent to the formation of the District by the owners  
16 of the Real Property;  
17

18 (iii) a Feasibility Study (including a Description of Infrastructure to be Financed,  
19 Proposed Finance Plan, and a Market Absorption Analysis);  
20

21 (iv) a description of the Applicant's contribution of Additional Improvements  
22 serving the real property within the District in addition to the PID Infrastructure  
23 Improvements;  
24

25 (v) a description of Applicant's development experience and financial ability to  
26 complete the PID Infrastructure Improvements and Additional Improvements;  
27

28 (vi) a proposed Form of Disclosure to Property Buyers;  
29

30 (vii) A Preliminary Financing Plan (including an estimated construction schedule,  
31 financing plan for the public infrastructure, estimated costs of improvements, projected  
32 maintenance costs, and description of improvements to be owned by the City); and  
33

34 (viii) a proposed form of Development Agreement to be entered into by the  
35 Applicant, the City and the District; and  
36

37 **WHEREAS:** pursuant to the Development Agreement, the PID Infrastructure  
38 Improvements have been or will be designed and constructed according to  
39 all applicable City standards, are to be suitable for dedication to the City  
40 upon completion, and will be acquired by the District and then dedicated to,  
41 owned and operated by the City; and  
42

43 **WHEREAS:** pursuant to the Development Agreement, the District will acquire the PID  
44 Infrastructure Improvements with proceeds of District Bonds, as provided in  
45 the Act, which Bonds will be payable by a District Property Tax levied upon  
46 the Taxable Property, which District Property Tax will also be levied in  
47 amounts sufficient to pay the District's Annual Administrative Costs but which  
48 shall not exceed \$3.00 per \$1,000 of the assessed value of the Taxable  
49 Property for purposes of paying such Annual Administrative Costs; and  
50

1 **WHEREAS:** the Development Agreement provides for the collection of a Facilities Fee by  
2 the District, in addition to the District Property Tax, which shall be collected  
3 by the District for each legal parcel or tract of real property within the District,  
4 at the earlier of (i) the issuance of an initial building permit by the City of Rio  
5 Rancho or (ii) the transfer of title to the legal parcel or tract by the Applicant  
6 to a third party, which Facilities Fee, the revenues of which Facilities Fee  
7 may be pledged by the District as additional security for District Bonds; and  
8

9 **WHEREAS:** pursuant to the Application and Development Agreement, the purpose of the  
10 District is to finance the PID Infrastructure Improvements for a master-  
11 planned, 1,465 acre tract to consist of single family residential subdivisions,  
12 multifamily housing and commercial uses, which is an authorized purpose  
13 and appropriate use of a public improvement district as set forth in the PID  
14 Policy; and  
15

16 **WHEREAS:** the City Council has considered the Application and related submittals by the  
17 Applicant and has determined that proceeding with the formation of the  
18 District is consistent with the PID Policy and promotes the interests,  
19 convenience or necessity of the owners, residents of the District and citizens  
20 of the City of Rio Rancho.  
21

22 **NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF**  
23 **RIO RANCHO:**

24 **Section 1. Defined Terms.** As used in this Formation Resolution, the following  
25 terms shall have the meanings specified, unless the context clearly requires otherwise  
26 (such meanings to be equally applicable to both the singular and the plural forms of the  
27 terms defined):  
28

29 "Act" means Sections 5-11-1 through 5-11-27, NMSA 1978, as supplemented and  
30 amended, the Charter of the City of Rio Rancho, and all enactments of the City's  
31 Governing Body, including this Resolution.  
32

33 "Accumulated Revenues" means the amounts on deposit in the various accounts of  
34 the debt service fund established and maintained for the District Bonds, as provided in the  
35 indenture of trust for the District Bonds, which may include, without limitation, a surplus  
36 account, a capitalized interest account, a debt service reserve account, and a principal and  
37 interest account.  
38

39 "Additional Improvements" means the infrastructure improvements to be constructed  
40 by the Applicant, through financing or resources other than the proceeds of District Bonds,  
41 as described in and according to the construction schedule provided in the Application and  
42 as described, and in the approximate locations shown, in Exhibit B to the General Plan.  
43

44 "Annual Administrative Costs" means the District's annual costs, including  
45 accounting, legal and other costs, of preparing budget documentation (on a quarterly and  
46 annual basis) required by the Local Government Division of the Department of Finance and  
47 Administration of the State, and such other documentation or activities as may be  
48 reasonably required or helpful to assure that the District Property Tax and District Facilities  
49 Fee are properly imposed and collected each year while the District Bonds are outstanding.  
50

1  
2 "Applicant" means High Desert Investment Corporation.

3  
4 "Application" means the petition for formation of the Mariposa East Public  
5 Improvement District and documentation incorporated by reference in the Application and  
6 submitted to the City pursuant to the Act and the PID Policy.

7  
8 "Bond Resolution" means a resolution authorizing issuance of District Bonds in an  
9 aggregate principal amount not to exceed \$16,000,000 for the purpose of financing the PID  
10 Infrastructure Improvements and containing certain provisions set forth in Section 6 of this  
11 Formation Resolution.

12  
13 "City" means the City of Rio Rancho, New Mexico.

14  
15 "Clerk" means the City Clerk.

16  
17 "Development Agreement" means the development agreement dated as of February  
18 15, 2006 to be entered into by and among the City, the District and the Applicant in  
19 accordance with the Act.

20  
21 "District" means the Mariposa East Public Improvement District.

22  
23 "District Bonds" means bonds proposed to be issued by the District pursuant to the  
24 Act, as authorized by this Formation Resolution.

25  
26 "District Boundary Map" means the map attached as Exhibit B to the General Plan.

27  
28 "District Facilities Fee" means a fee in the amount(s) established in the  
29 Development Agreement, which shall be imposed and collected by the District at the time  
30 that an initial building permit is issued by the City of Rio Rancho for each legal parcel or  
31 tract of real property within the District.

32  
33 "District Property Tax" means an ad valorem property tax levied by the District on  
34 the Taxable Property, levied in amounts sufficient to pay the annual debt service  
35 requirements on the District Bonds and to pay Annual Administrative Costs.

36  
37 "Expenses" means the City's costs of reviewing the Application and other  
38 documentation related to the Application, including legal fees.

39  
40 "Facilities Fee" means a fee payable to the District by the Applicant or the owner of  
41 a legal parcel or tract of real property within the District, at the earlier of (i) the issuance of  
42 an initial building permit by the City of Rio Rancho or (ii) the transfer of title to the legal  
43 parcel or tract by the Applicant to a third party, for the purpose of defraying a portion of the  
44 cost of providing the PID Infrastructure Improvements to serve such lot or tract.

45  
46 "Feasibility Study" means the study of the estimated costs and financing methods of  
47 the PID Infrastructure Improvements submitted by the Applicant in connection with its  
48 Petition for formation of the Mariposa East Public Improvement District.

49  
50 "Formation Documents" means the Application and such other documents as are  
51 required by the Act and the PID Policy to be submitted by a petitioner in connection with a

1 petition for the formation, implementation and governance of the District; Formation  
2 Documents include, without limitation, the General Plan, the Development Agreement, the  
3 Preliminary Financing Plan and the Feasibility Study, and all exhibits and attachments  
4 incorporated in such documents by reference.

5  
6 "Formation Resolution" means this resolution adopted by the City in connection with  
7 its approval of the formation of the District.

8  
9 "General Plan" means the General Plan submitted by the Applicant in connection  
10 with the Application.

11  
12 "Herein," "hereby," "hereunder," "hereof," "hereinbefore" and "hereafter" refer to this  
13 Formation Resolution and not solely to the particular portion of this Formation Resolution in  
14 which such word is used.

15  
16 "Petition" means a petition for formation of the District submitted pursuant to the Act  
17 and the PID Policy for formation of the proposed District.

18  
19 "PID Infrastructure Improvements" means the infrastructure improvements to be  
20 financed with the proceeds of District Bonds as described and in the approximate locations  
21 shown in Exhibit D to the General Plan.

22  
23 "PID Policy" means Chapter 2, Article 10 of the Administrative Procedures of the  
24 City of Rio Rancho.

25  
26 "Taxable Property" means the real property described in Exhibit B to the General  
27 Plan and such personal property located within the District as is subject to the assessment  
28 of ad valorem property taxes within the District.

29  
30 "State" means the State of New Mexico.

31  
32 **Section 2. Findings.** The City hereby declares that it has considered the  
33 Application and all other relevant information and data, and hereby makes the following  
34 findings:

35  
36 A. The Applicant and persons who have authorized the Applicant to  
37 submit the Application on their behalf own 100% of the real property located within the  
38 District, as described in Exhibit "B" to the General Plan.

39  
40 B. As planned and proposed by the Applicant, the PID Infrastructure  
41 Improvements have been or will be constructed to City specifications, will be subject to  
42 inspection, approval and acceptance by the City prior to dedication to the City, as provided  
43 in the Development Agreement.

44  
45 C. The District Bonds proposed to be issued by the District will be the  
46 general obligations solely of the District, and will not be backed by the faith, credit, general  
47 funds or resources of the City in any manner. Owners of District Bonds will have no right to  
48 require that the City impose ad valorem property taxes to pay District Bonds.

49  
50 D. The District will serve the interests, convenience and necessity of  
51 Applicant, future owners of parcels located within the District and the citizens of the City:

1  
2 (i) The cost of constructing the PID Infrastructure Improvements  
3 will be allocated to the owners of Real Property who will utilize the PID Infrastructure  
4 Improvements in a fair and equitable manner, and will not be imposed upon the  
5 other citizens of the City or the City itself;  
6

7 (ii) The City will receive the benefit of the PID Infrastructure  
8 Improvements and the PID Infrastructure Improvements will be dedicated to the  
9 City, as provided in the Development Agreement; and  
10

11 (iii) As planned, the District's financing and operations will result in  
12 no net cost to the City.  
13

14 E. The financing of the PID Infrastructure Improvements is feasible and,  
15 based upon the Feasibility Study, will not impose an undue burden on the future owners of  
16 property located within the District or served by the PID Infrastructure Improvements.  
17

18 F. The financing of the PID Infrastructure Improvements will enable the  
19 District to construct those improvements in a cost-effective manner.  
20

21 G. The District is planned and will be implemented in a manner which  
22 provides for the Expenses to be paid by the District.  
23

24 H. As planned, the PID Infrastructure Improvements are consistent with  
25 the City's development goals and growth control policies.  
26

27 I. The formation of the District and the issuance of District Bonds subject  
28 to the requirements and limitations specified in this Formation Resolution are consistent  
29 with the requirements of the PID Policy.  
30

31 **Section 3. Waiver of Additional Hearing and Election.** Based on the  
32 information provided by the Applicant in the Application, the Petition has been signed by  
33 and on behalf of the owners of 100% of the Real Property to be included in the proposed  
34 District, and on that basis the City waives the requirements for posting, publication, mailing,  
35 notice and owner election, as authorized by Section 5-11-7(I), NMSA 1978.  
36

37 **Section 4. Approval of Application and Formation Documents; Formation of**  
38 **District.**  
39

40 A. The Petition is hereby accepted.  
41

42 B. The Mariposa East Public Improvement District is hereby ordered  
43 approved and formed to carry out the purposes set forth in, and according to the provisions  
44 of, this Formation Resolution and the following Formation Documents:  
45

46 (i) The General Plan is hereby accepted and approved. The  
47 District shall include the Real Property as set forth in the General Plan.  
48

49 (ii) The Development Agreement, in substantially the form  
50 presented in connection with this Resolution, is hereby accepted and approved, with only  
51 such changes as are determined by the City Administrator to be consistent with this

1 Formation Resolution.

2  
3 (iii) The Feasibility Study is hereby accepted.

4  
5 (iv) The Draft Disclosure to property owners in substantially the  
6 form attached to the Application, is hereby approved.

7  
8 (v) The District shall have the powers necessary and convenient to  
9 finance and construct the PID Infrastructure Improvements as provided in the General  
10 Plan, Feasibility Study and Development Agreement, as those documents may be  
11 amended or modified with the approval of the City. The District and the City shall be bound  
12 by the terms thereof.

13  
14 C. The purpose of the District shall be to provide financing of the PID  
15 Infrastructure Improvements as set forth in the Application.

16  
17 D. The District Bonds shall comply with the provisions of Section 5 of this  
18 Formation Resolution except as otherwise approved in a supplemental resolution by the  
19 District's governing board and the City Council.

20  
21 E. The maximum annual debt service on the Bonds shall not exceed  
22 \$1,500,000.

23  
24 F. The District shall be self-supporting, as provided in Section 2-10-3(D)  
25 of the PID Policy, and shall levy a District Property Tax to pay Annual Administrative Costs  
26 not to exceed \$3.00 per \$1,000 of assessed valuation on Taxable Property within the  
27 District.

28  
29 G. The District shall comply with existing City policies for development,  
30 growth management and conservation.

31  
32 H. The PID financing proposed in the Petition and other Formation  
33 Documents meets the applicable requirements of Section 2-10-7(C) of the PID Policy.

34  
35 I. The officers, agents and employees of the City are hereby authorized  
36 and empowered to take all actions necessary and to execute and deliver all documents  
37 relating to or requested by the District to carry out and comply with the provisions of the  
38 Formation Documents.

39  
40 J. Prior to taking actions toward or in connection with the imposition of  
41 property tax or the issuance of District Bonds, as authorized by this Formation Resolution,  
42 the District's governing body shall meet to adopt an open meetings policy and by-laws for  
43 the District.

44  
45 **Section 5. Authorization of District Bonds.** The District may issue Bonds pursuant  
46 to the Bond Resolution in the amounts and subject to the requirements set forth in this  
47 Formation Resolution.

48  
49 A. The aggregate principal amount of the District Bonds shall not exceed  
50 \$16,000,000.

1 B. The maximum annual debt service on the Bonds shall not exceed  
2 \$1,500,000.

3  
4 C. The Bond Resolution shall include, at minimum, the following  
5 provisions for the protection of owners of the Bonds:

6  
7 (i) The establishment of a debt service reserve fund in an amount,  
8 on the date of issuance of the District Bonds, equal to the least of (i) the maximum annual  
9 debt service requirements on all outstanding District Bonds; (ii) 125% of the average  
10 annual debt service requirements on the District Bonds; or (iii) 10% of the aggregate  
11 principal amount of the District Bonds.

12  
13 (ii) Capitalized interest for a period of 36 months.

14  
15 (iii) Provisions for appointment of a trustee pursuant to an indenture  
16 of trust or other similar instrument, and for the trustee's exercise of the rights and remedies  
17 of the District for the protection of bondholders, including, without limitation, the trustee's  
18 appointment of a receiver or other agent to complete the construction of the PID  
19 Infrastructure Improvements in the event of an uncured default in the payment of debt  
20 service on the District Bonds;

21  
22 (iv) A replenishment agreement providing in substance that:

23  
24 (aa) prior to the date on which the District establishes the  
25 budget in each fiscal year in which the District Bonds are outstanding, the Applicant shall  
26 transfer to the District or its assigns the amount necessary to replenish the debt service  
27 reserve account to the amount required for the District Bonds for any amounts drawn to  
28 pay debt service during the current fiscal year;

29  
30 (bb) the District shall set the District tax levy at the rate  
31 needed (1) to pay debt service in the next fiscal year, based on the Accumulated  
32 Revenues, and (2) fully replenish the reserve account to the reserve requirement for the  
33 Bonds;

34  
35 (cc) the Applicant's obligations shall be enforceable by the  
36 District on behalf of owners of property within the District and by the trustee for the District  
37 Bonds; and

38  
39 (dd) the replenishment agreement shall terminate when the  
40 certified assessed valuation of the taxable property within the District multiplied by 20 mills  
41 (\$20.00 per \$1,000 of taxable value) equals or exceed net maximum annual debt service  
42 on the Bonds.

43  
44 (v) Provisions requiring that the District Bonds shall be sold and  
45 issued in minimum denominations of at least \$500,000 and shall be available for purchase  
46 and restricted with respect to resale to "Qualified Institutional Buyers" (as defined in Rule  
47 144A of the Securities and Exchange Commission) or to "accredited investors" (as defined  
48 in rule 501 of Regulation D of the Rules Governing the Limited Offering and Sale Securities  
49 without registration under the Securities Act of 1933). The City Council hereby determines  
50 that, specifically with respect to the District Bonds, the foregoing restrictions satisfy the  
51 investor suitability concerns addressed in Section 2-10-7(F) of the PID Policy.

1  
2 (vi) The final maturity date for the District Bonds of no more than 30  
3 years after the date of issuance.

4  
5 D. The Bond Resolution shall provide, and shall require that each District  
6 Bond contain a statement to the effect that, the Bonds are general obligations of the  
7 District, are payable from ad valorem property taxes on all taxable property within the  
8 District, which property taxes are unlimited as to rate or amount, and are not a debt,  
9 obligation or liability of any kind of the City of Rio Rancho or the State of New Mexico.

10  
11 E. The District Bonds may be additionally secured by Facilities Fee  
12 revenues, as further provided in the trust indenture for the District Bonds.

13  
14 **Section 6. District Governance.**

15 A. The District's governing body shall be composed of five members,  
16 including:

17  
18 (i) two members appointed by the Council, one of which members shall  
19 initially be James Palenick and Richard Kristof;

20  
21 (ii) two members appointed by Petitioner, and consented to by the  
22 City Council, which members shall be initially be Jack Eichorn and Lauda Medara; and

23  
24 (iii) one member agreed upon by the City Council and by Petitioner,  
25 which member shall be initially be Robert Anderson.

26  
27 B. James Palenick, Lauda Medara and Jack Eichorn shall serve six-year  
28 terms.

29  
30 C. Richard Kristof and Robert Anderson shall serve four-year terms.

31  
32 D. Pursuant to Section 5-11-6 of the Act, Richard Kristof is appointed to  
33 be the clerk and treasurer of the District.

34  
35 E. Within six years following the date of formation of the District, either  
36 the District shall hold an election of members of the governing body of the District as  
37 required by law, or the Council shall appoint five then-sitting City Councilors to serve as the  
38 governing body.

39  
40 **Section 7. Amendments.** This Formation Resolution may be amended or  
41 supplemented by ordinance or resolution adopted by the City Council in accordance with  
42 the laws of the City and the State.

43  
44 **Section 8. Repealer.** All ordinances or resolutions, or parts thereof in conflict  
45 with the provisions of this Formation Resolution, are hereby repealed to the extent only of  
46 such inconsistency. To the extent, if any, that this Formation Resolution conflicts with any  
47 provision of the PID Policy, that provision is waived solely with respect to the formation of  
48 and other matters concerning the District, and the PID Policy shall remain in full force and  
49 effect in connection with any other application or project to which the PID Policy applies or  
50 may apply in the future. This repealer shall not be construed to revive any ordinance or  
51 resolution, or part thereof, heretofore repealed.

