CITY OF RIO RANCHO

RESOLUTION NO. 105
ENACTMENT NO. 04-103

CABEZON PUBLIC IMPROVEMENT DISTRICT
FORMATION RESOLUTION

APPROVING THE PETITION OF CURB NORTH, INC. FOR FORMATION OF THE
CABEZON PUBLIC IMPROVEMENT DISTRICT PURSUANT TO THE PUBLIC
IMPROVEMENT DISTRICT ACT, SECTIONS 5-11-1 THROUGH 5-11-27, NMSA 1978
AND CITY OF RIO RANCHO ADMINISTRATIVE PROCEDURES, CHAPTER 2, ARTICLE
10; MAKING FINDINGS IN CONNECTION WITH THE PETITION AND SUPPORTING
DOCUMENTATION REQUESTING APPROVAL OF THE FORMATION OF THE PUBLIC
IMPROVEMENT 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, RATE, METHOD OF APPORTIONMENT
AND THE MANNER OF COLLECTION OF A SPECIAL LEVY TO BE IMPOSED UPON
REAL PROPERTY WITHIN THE DISTRICT; APPROVING A DEVELOPMENT
AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT; APPROVING PARAMETERS
FOR THE ISSUANCE OF DISTRICT BONDS AND THE PROVISION OF ENHANCED
SERVICES WITHIN THE DISTRICT; PROVIDING FOR GOVERNANCE OF THE
DISTRICT; PROVIDING THAT BONDS AND OTHER OBLIGATIONS OF THE DISTRICT
SHALL NOT BE OBLIGATIONS OF THE CITY OF RIO RANCHO; RATIFYING CERTAIN
ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH
THIS RESOLUTION.

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

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

WHEREAS: the Act provides that, unless waived pursuant to Section 5-11-7(I), NMSA
1978, 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 owner(s) and the
citizens of the governing body's municipal or county jurisdiction, shall order
that the public improvement district be formed; and that the district shall be
formed if the petition was submitted by the owner(s) of 100% of the property
proposed to be included within the district; and

WHEREAS: the Act authorizes owners, public improvement districts, municipalities and
counties to enter into development agreements to establish the obligations of
the owner or developer, the county or 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, pursuant to the PIO Policy, the City has enacted policy guidelines and application procedures for the establishment of public improvement districts within the City; and

WHEREAS: the Applicant has presented a Petition for formation of the District for the purpose of (i) financing the PIO Infrastructure and (ii) providing the Enhanced Services; and

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

(i) a proposed General Plan for the District (which includes a description of the District's boundaries, real property tracts, type and location of PIO Infrastructure and Additional Improvements, estimated construction costs and draw schedule and Rate and Method of Special Levy Apportionment);

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

(iii) a Feasibility Study (consisting of a Market Absorption Analysis, List of Improvements, Construction Schedule and Financing Plan for (a) the PIO Infrastructure Improvements and (b) the Additional Improvements during the 36-month construction period commencing upon the formation of the District;

(iv) an MAI Appraisal;

(v) a description of the Applicant's Equity Contribution and the timing and sources of the contribution;

(vi) a description of Applicant's development experience and financial ability to complete the PIO Infrastructure Improvements and the Additional Improvements;

(vii) a proposed Form of Special Levy Disclosure to Home Buyers;

(viii) an operating plan for the PIO Infrastructure and Additional Improvements;

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

(x) a proposed Development Agreement to be entered into by the Applicant, the City and the District; and

WHEREAS: pursuant to the Development Agreement, following formation of the District, the Applicant will construct the PIO Infrastructure Improvements in a single phase, in accordance with the construction schedule included in the Application, the City's rules and regulations and the Development Agreement; and

WHEREAS: pursuant to the Development Agreement, the PIO Infrastructure Improvements are to be designed and constructed according to all applicable
City standards, are to be suitable for dedication to the City and/or SSCAFCA upon completion, and will be dedicated to, owned and operated by the City and/or SSCAFCA; and

WHEREAS: pursuant to the Development Agreement, the PID Infrastructure Improvements will be financed by the District’s issuance of a single series of District Bonds as provided in the Act, payable by a special levy upon the Real Property; and

WHEREAS: pursuant to the Development Agreement, the Enhanced Services will be provided on an ongoing basis by the District and will be funded from the revenues of a separate special levy on the Real Property (which, together with the special levy imposed for the payment of debt service on the District’s Bonds, is referred to in this Formation Resolution and further defined in Section 1 hereof as the “District Special Levies”); and

WHEREAS: pursuant to the Application, the District will be responsible for imposing the Special Levy as provided in the Act, will adopt procedures, as set forth in this Resolution, for the foreclosure of delinquent special levy liens on real property located within the District, and for the cost of administering the Special Levy, including any required reimbursements to the Sandoval County Assessor and Sandoval County Treasurer, as an operating cost of the District, which costs may be eligible for reimbursement through the Special Levy or the proceeds of District Bonds; and

WHEREAS: pursuant to the Application and Development Agreement, the purpose of the District is to finance the PID Infrastructure Improvements and to provide the Enhanced Services for to a master-planned, 675 acre tract to consist of single family residential subdivisions, multifamily housing and commercial uses, which is an authorized purpose and appropriate use of a public improvement district as set forth in the PID Policy; and

WHEREAS: the City Council has considered the Application and related submittals by the Applicant and has determined that proceeding 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 Rio Rancho.

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

Section 1. Defined Terms. 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):

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

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

"Applicant" means Curb North, Inc.

"Application" means the petition for formation of the Cabezon Public Improvement District and documentation incorporated by reference in the Application and submitted to the City pursuant to the Act and the PID Policy.

"Bond Resolution" means a resolution authorizing issuance of District Bonds in an aggregate principal amount not to exceed $11,500,000 for the purpose of financing the PID Infrastructure Improvements and containing certain provisions set forth in Section 6 of this Formation Resolution.

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

"Clerk" means the City Clerk.

"Development Agreement" means the development agreement dated_______, 2004 by and between the City and the Applicant in accordance with the Act.

"District" means the Cabezon Public Improvement District.

"District Bonds" means bonds proposed to be issued by the District pursuant to the Act.

"District Boundary Map" means the map attached as Exhibit 1 to the General Plan.

"District Special Levies" or "Special Levies" means the special levies to be imposed on the Real Property pursuant to Section 5-11-20, NMSA 1978, including Special Levy A and Special Levy B.

"Enhanced Services" means the maintenance of landscaping for the linear park, trails and parkway and in portions of the City's rights of way for Cabezon Boulevard, Westside Boulevard, Unser Boulevard (east side only), Western Hills Road and Trailside Road, and shall include, without limitation, provision of water and electricity, repair and replacement of the irrigation system and plant material, fertilizer, trimming and weed and trash removal.

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

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

"Formation Documents" means the Application and such other documents as are required by the Act and the PID Ordinance to be submitted by a petitioner in connection with a petition for the formation, implementation and governance of the District; Formation Documents include, without limitation, the General Plan, the Development Agreement, the Rate and Method of Apportionment of Special Levy and the Feasibility Study, and all exhibits and attachments incorporated in such documents by reference.
"Formation Resolution" means this resolution adopted by the City in connection with its approval of the formation of the District.

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

"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.

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

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

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

"Rate and Method of Special Levy Apportionment" means the rate, method of apportionment and manner of collection of the District Special Levies submitted by the Applicant in connection with the Application.

"Real Property" means the real property described in the District Boundary Map.

"Sophisticated Investor" means a purchase of District Bonds that qualifies as a "sophisticated investor" within the meaning of Securities and Exchange Commission Rule 144A.

"Special Levy A" means the District Special Levy imposed for the purpose of paying debt service on District Bonds, as set forth in the General Plan and provisions for the rate and apportionment of the special levy.

"Special Levy B" means the District Special Levy imposed for the purpose of funding the Enhanced Services, as set forth in the General Plan and provisions for the rate and apportionment of the special levy.

"SSCAFCA" means the Southern Sandoval County Arroyo Flood Control Authority.

"State" means the State of New Mexico.

Section 2. 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 Applicant and persons who have authorized the Applicant to submit the Application on their behalf own 100% of the real property located within the District.

B. As planned and proposed by the Applicant, the PID Infrastructure
Improvements will be constructed to City and/or SSCAFCA specifications, will be subject to inspection, approval and acceptance by the City and/or SSCAFCA prior to dedication to the City and/or SSCAFCA, as provided in the Development Agreement.

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

D. The Enhanced Services are services that are not now provided by the City and are not otherwise anticipated to be provided by the City.

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

(i) The cost of constructing the PID Infrastructure Improvements and providing the Enhanced Services will be allocated to the owners of Real Property who will utilize the PID Infrastructure Improvements and Enhanced Services, in a fair and equitable manner, and will not be passed on to the citizens of the City or the City itself; and

(ii) The City will receive the benefit of the PID Infrastructure Improvements and the PID Infrastructure Improvements will be dedicated to the City or to SSCAFCA, as provided in the Development Agreement.

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

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

H. The funding of the Enhanced Services through the District is a reasonable and cost-effective method of providing those services to the Real Property and will not impose additional costs on the City or its citizens that do not reside within the District.

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

J. As planned, the PID Infrastructure Improvements and Additional Improvements are consistent with the City's development goals and growth control policies.

K. The formation of the District and the issuance of District Bonds subject to the requirements and limitations specified in this Formation Resolution are consistent with the requirements of the PID Policy.

Section 3. Waiver of Additional Hearing and Election. Based on the information provided by the Applicant in the Application, the Petition has been signed by and on behalf of the owners of 100% of the Real Property to be included in the proposed District, and on that basis the City waives the requirements for posting, publication, mailing, notice, hearing and owner election, as authorized by Section 5-11-7(I), NMSA 1978.
Section 4. Approval of Application and Formation Documents; Formation of District; Approval of District Foreclosure Procedures for Delinquent Special Levies.

A. The Petition is hereby accepted and approved.

B. The Cabezon 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 and the following Formation Documents:

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

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

(iii) The Rate and Method of Special Levy Apportionment, and the apportionment and manner of collection of District Special Levies therein, is hereby accepted and approved.

(iv) The Feasibility Study is hereby accepted.

(v) The Notice of Special Levy, in substantially the form attached as Exhibit F to the Feasibility Study, is hereby approved.

(vi) The District shall have the powers necessary and convenient to finance and construct the PID Infrastructure Improvements and to fund and provide the Enhanced Services as provided in the General Plan, Feasibility Study, Rate and Method of Apportionment and Development Agreement, as those documents may be amended or modified with the approval of the City. The District and the City shall be bound by the terms thereof.

C. The purpose of the District shall be to provide financing of the PID Infrastructure Improvements and funding of the Enhanced Services set forth in the Application.

D. The District Bonds shall not exceed the principal amount set forth in Section 5 of this Formation Resolution, and shall have a value to lien ratio of at least 4 to 1, except as otherwise approved in a supplemental resolution by the District's governing board and the City Council.

E. The maximum annual amount of Special Levy A shall not exceed $1,102,970, except as otherwise provided in the Rate and Method of Apportionment of Special Levy. The maximum annual amount of Special Levy B shall not exceed $189,534, subject to a maximum annual increase of ten percent (10%), as provided in the Rate and Method of Apportionment of Special Levy.

F. The District shall be self-supporting, as provided in Section 2-10-3(D) of the PID Policy.
G. The District shall comply with existing City policies for development, growth management and conservation.

H. The PID financing proposed in the Petition and other Formation Documents meet the applicable requirements of Section 2-10-7(D) of the PID Policy.

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

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

K. Pursuant to the authority granted by sections 5-11-23(F) and 5-11-20(G), NMSA 1978, the District shall establish procedures for foreclosure of delinquent 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 sections 3-33-28 through 3-33-30, NMSA 1978, and as set forth for the District in the Development Agreement approved by this Resolution.

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

A. The aggregate principal amount of the District Bonds shall not exceed $11,500,000.

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

(i) The Bond Resolution shall provide for the establishment of a debt service reserve fund in an amount, on the date of issuance of the District Bonds, equal to the least of (i) the maximum annual debt service requirements on all outstanding District Bonds; (ii) 125% of the average annual debt service requirements on the District Bonds; or (iii) 10% of the aggregate principal amount of the District Bonds;

(ii) The Bond Resolution shall provide for capitalized interest for a period of at least 15 months, which requirement shall be in lieu of a letter of credit or other contribution arrangement otherwise addressed in Section 2-10-7(D)(vi) of the PID Policy.

(iii) The Bond Resolution shall provide that the District Bonds shall be sold and issued in minimum denominations of at least $25,000 and shall be subject to a marketing agreement pursuant to which the secondary sales of the District Bonds by the underwriter of the Bonds shall be only to Sophisticated Investors. The City Council hereby determines that, specifically with respect to the District Bonds, the foregoing restrictions satisfy the investor suitability concerns addressed in Section 2-10-7(F) of the PID Policy.

(iv) The final maturity date for the District Bonds shall not be more
than 30 years after the date of issuance.

(v) The Bond Resolution shall include provisions for appointment of
a trustee pursuant to an indenture of trust or other similar instrument.

(vi) The Bond Resolution shall provide that the trustee may exercise
the rights and remedies of the District for the protection of bondholders, including, without
limitation, the following:

(aa) the trustee's collection of Special Levies;

(bb) the trustee's foreclosure of delinquent Special Levies;

and

(cc) the trustee's appointment of a receiver or other agent to
complete the construction of the PID Infrastructure Improvements in the event of a default
in the payment of debt service on the District Bonds, which default cannot be cured by
either (x) drawing on the debt service reserve fund established for the District Bonds, (y)
through payment pursuant to a letter of credit or other guaranty provided by the Applicant
or (z) through the Applicant's direct payment of the amount necessary to pay the debt
service on the District Bonds then due, which appointment may be made irrespective of
whether foreclosure remedies are exercised.

C. The Bond Resolution shall provide, and shall require that each District
Bond contain a statement to the effect that, the Bonds are special limited obligations of the
District and are not a debt, obligation or liability of any kind of the City of Rio Rancho or the
State of New Mexico.

Section 6. District Governance.

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

(i) two members appointed by the Council, one of which shall be the
City Administrator and one of which shall be the Director of Fiscal Services, which
members shall initially be City Administrator James Palenick and Richard Kristof;

(ii) two members appointed by Petitioner, and consented to by the
City Council, which members shall be initially be Stan Strickman and Bo Johnson; and
(iii) one member agreed upon by the City Council and by Petitioner,
which member shall be initially be James Neblett.

B. Stan Strickman, Richard Kristof and James Neblett shall serve six-year
terms.

C. James Palenick and Bo Johnson shall serve 4-year terms.

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

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

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

Section 8. 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. To the extent, if any, that this Formation Resolution conflicts with any
provision of the PID Policy, that provision is waived solely with respect to the formation of
and other matters concerning the District, and the PID Ordinance shall remain in full force
and effect in connection with any other application or project to which the PID Ordinance
applies or may apply in the future. This repealer shall not be construed to revive any
ordinance or resolution, or part thereof, heretofore repealed.

Section 9. 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 Resolution.

Section 10. Publication of Notice of Adoption of Formation Resolution. The Clerk is
hereby directed to publish a notice of this Formation Resolution, in substantially the
following form:

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 Rio
Rancho, New Mexico relating to the approval of the Cabezon Public Improvement District.
Complete copies of the resolution are available for public inspection during the regular
business hours of the City Clerk, City of Rio Rancho, New Mexico.

The title of the Formation Resolution is as follows:

CITY OF RIO RANCHO
CABEZON PUBLIC IMPROVEMENT DISTRICT
FORMATION RESOLUTION

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FOR THE ISSUANCE OF DISTRICT BONDS AND THE PROVISION OF ENHANCED
SERVICES WITHIN THE DISTRICT; PROVIDING FOR GOVERNANCE OF THE

Jim Owen, Mayor

11/12/04

Date

ATTEST: Roman Montoya, City Clerk

(SEAL)