CITY OF RIO RANCHO
RESOLUTION

RESOLUTION NO. 12

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

APPROVING THE PETITION OF HIGH DESERT INVESTMENT CORPORATION FOR
FORMATION OF THE MARIPOSA EAST PUBLIC IMPROVEMENT DISTRICT (THE
"DISTRICT") PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, SECTIONS
5-11-1 THROUGH 5-11-27, NMSA 1978 AND THE 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 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 AND THE IMPOSITION OF A PROPERTY TAX TO BE IMPOSED
UPON REAL PROPERTY WITHIN THE DISTRICT; APPROVING A FORM OF
DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT;
APPROVING PARAMETERS FOR THE ISSUANCE OF DISTRICT BONDS; 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 to real property within a public
improvement district; and

WHEREAS: the Act provides that, unless waived pursuant to Section 5-11-7(l), 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

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 City has adopted 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 financing the PID Infrastructure Improvements; 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 map and description of the District's boundaries, real property tracts, type and location of PID Infrastructure Improvements, estimated construction costs and anticipated property tax levy);

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

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

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

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

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

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

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

WHEREAS: pursuant to the Development Agreement, the PID Infrastructure Improvements have been or will be designed and constructed according to all applicable City standards, are to 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 will acquire the PID Infrastructure Improvements with proceeds of District Bonds, as provided in the Act, which Bonds will be payable by a District Property Tax levied upon the Taxable Property, which District Property Tax will also be levied in amounts sufficient to pay the District's Annual Administrative Costs but which shall not exceed $3.00 per $1,000 of the assessed value of the Taxable Property for purposes of paying such Annual Administrative Costs; and
WHEREAS: the Development Agreement provides for the collection of a Facilities Fee by the District, in addition to the District Property Tax, which shall be collected by the District for each legal parcel or tract of real property within the District, at the earlier of (i) the issuance of an initial building permit by the City of Rio Rancho or (ii) the transfer of title to the legal parcel or tract by the Applicant to a third party, which Facilities Fee, the revenues of which Facilities Fee may be pledged by the District as additional security for District Bonds; and

WHEREAS: pursuant to the Application and Development Agreement, the purpose of the District is to finance the PID Infrastructure Improvements for a master-planned, 1,465 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 Policy 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.

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

"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 B to the General Plan.

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

"Application" means the petition for formation of the Mariposa East 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 $16,000,000 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 as of February 15, 2006 to be entered into by and among the City, the District and the Applicant in accordance with the Act.

"District" means the Mariposa East Public Improvement District.

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

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

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

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

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

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

"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 Mariposa East Public Improvement District.

"Formation Documents" means the Application and such other documents as are required by the Act and the PID Policy 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 Preliminary Financing Plan 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 D to the General Plan.

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

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

"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, as described in Exhibit "B" to the General Plan.

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

C. The District Bonds proposed to be issued by the District will be the general 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 impose ad valorem property taxes to pay District Bonds.

D. 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 will be allocated to the owners of Real Property who will utilize the PID Infrastructure Improvements in a fair and equitable manner, and will not be imposed upon the other citizens of the City or the City itself;

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

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

E. 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.

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

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

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

I. 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 and owner election, as authorized by Section 5-11-7(I), NMSA 1978.

Section 4. Approval of Application and Formation Documents; Formation of District.

A. The Petition is hereby accepted.

B. The Mariposa East 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 Feasibility Study is hereby accepted.

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

(v) The District shall have the powers necessary and convenient to finance and construct the PID Infrastructure Improvements as provided in the General Plan, Feasibility Study 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 as set forth in the Application.

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

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

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

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 meets the applicable requirements of Section 2-10-7(C) 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 property tax 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.

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 $16,000,000.
B. The maximum annual debt service on the Bonds shall not exceed $1,500,000.

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

   (i) 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) Capitalized interest for a period of 36 months.

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

   (iv) A replenishment agreement providing in substance that:

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

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

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

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

   (v) Provisions requiring that the District Bonds shall be sold and issued in minimum denominations of at least $500,000 and shall be available for purchase and restricted with respect to resale to “Qualified Institutional Buyers” (as defined in Rule 144A of the Securities and Exchange Commission) or to “accredited investors” (as defined in rule 501 of Regulation D of the Rules Governing the Limited Offering and Sale Securities without registration under the Securities Act of 1933). 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.
(vi) The final maturity date for the District Bonds of no more than 30 years after the date of issuance.

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

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

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 members shall initially be James Palenick and Richard Kristof;

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

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

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

C. Richard Kristof and Robert Anderson shall serve four-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 Policy shall remain in full force and effect in connection with any other application or project to which the PID Policy 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 Mariposa East 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:

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CITY OF RIO RANCHO
MARIPOSA EAST PUBLIC IMPROVEMENT DISTRICT
FORMATION RESOLUTION
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(End of Form of Summary of Resolution for Publication)

ADOPTED THIS 8TH DAY OF FEBRUARY, 2006.

Jim Owen, Mayor

Date 2/10/06

ATTEST:

Roman Montoya, City Clerk

(SEAL)