RESOLUTION NO. 2017-1621

APPROVING THE APPLICATION AND PETITION OF LA PLATA PIÑON, LLC, REQUESTING APPORPTIONMENT OF THE LA PLATA RANCH PUBLIC IMPROVEMENT DISTRICT PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, NMSA 1978, §§ 5-11-1 TO -27 (2001, AS AMENDED) AND CHAPTER 22, ARTICLE 5, FARMINGTON CITY CODE, AS AMENDED FROM TIME TO TIME; MAKING FINDINGS IN CONNECTION WITH THE APPLICATION AND 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, FEASIBILITY STUDY, RATE AND METHOD OF APPORTIONMENT AND MANNER OF COLLECTION OF A SPECIAL LEVY TO BE IMPOSED UPON REAL PROPERTY WITHIN THE DISTRICT, AND APPROVING A PID DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT; AUTHORIZING THE ISSUANCE OF SPECIAL LEVY BONDS BY THE DISTRICT PURSUANT TO CERTAIN TERMS AND FINANCING PARAMETERS SPECIFIED IN THIS FORMATION RESOLUTION; AUTHORIZING THE DISTRICT TO ISSUE SUBORDINATE OBLIGATIONS AND ENTER INTO CONSTRUCTION CONTRACTS; PROVIDING FOR GOVERNANCE OF THE DISTRICT; WAIVING CERTAIN REQUIREMENTS TO FORMATION OF A PUBLIC IMPROVEMENT DISTRICT; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS FORMATION RESOLUTION; DIRECTING THE MAILING OF A NOTICE OF ADOPTION OF THIS FORMATION RESOLUTION BY THE CITY MANAGER; AND TAKING RELATED ACTION.

Capitalized terms used in the recitals below and not defined therein shall have the meanings ascribed to such terms in Section 1 hereof.

WHEREAS, the New Mexico Public Improvement District Act, NMSA 1978, §§ 5-11-1 to -27 (2001, as amended) provides in part that an application and petition may be filed with the governing body of the municipality for the formation of a public improvement district for the purpose of financing public infrastructure improvements; that, unless waived pursuant to the Act, 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 owners and the citizens of the governing body's municipal or county jurisdiction, shall order that the public improvement district be formed without an owners' election, and that the district shall be formed if the application and 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 City of Farmington, New Mexico (the "City") has enacted policy guidelines and application procedures for the establishment of public improvement districts within the City, contained in Ch. 22, Art. 5, Farmington City Code, as amended from time to time, (the "PID Ordinance"); and

WHEREAS, the Applicant has presented an Application and Petition for Approval of the Formation of the La Plata Ranch Public Improvement District (the "District"), which, among other things, is supported by a petition for formation signed by the Petitioners and provides the following documents and information in support of the Application:

(i) a description of the proposed District, including a legal description of its boundaries and a current title report for the Land, the identity and addresses of all persons or entities with any interest in the property, certification by the Applicant that there are no resident qualifications on the Land, evidence that the owners of the Land have unanimously consented to the formation of the District, an explanation of how the boundaries were chosen, adequate information to establish financial parameters for operation of the District, and information regarding the future ownership and maintenance of the Infrastructure Improvements;

(ii) a proposed General Plan for the District, which includes
a description of the District's boundaries, type and location of Infrastructure Improvements, and estimated construction costs;

(iii) a Feasibility Study, which includes a market absorption study, description of improvements to be constructed, construction schedule and financing plan for the Infrastructure Improvements upon formation of the District, and an operating plan for the Infrastructure Improvements;

(iv) a Rate and Method of Special Levy Apportionment in sufficient detail to enable each owner or resident within the District to estimate the maximum amount of the proposed District Special Levy;

(v) an MAI Appraisal;

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

(vii) proposed forms of the Disclosures of District Special Levy;

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

(ix) a PID Development Agreement to be entered into by and among the City, the District and the Applicant; and

(x) a proposed form of Formation Resolution; and

WHEREAS, pursuant to the PID Development Agreement, all Infrastructure Improvements, except for those PID Eligible Infrastructure Improvements that are dedicated and conveyed to another governmental entity, have been or will be designed and constructed according to all applicable City requirements, are to be suitable for dedication to the City, and will be acquired and/or constructed by the District and then dedicated to, owned and operated by the City; and

WHEREAS, pursuant to the PID Development Agreement, the District will fund costs of formation and acquisition and/or construction of PID Funded Infrastructure Improvements with proceeds of (i) one or more series of District Bonds, as provided in the Act, which will be payable by the District Special Levy, and/or (ii) the collection of the District Special Levy, without the issuance of the District Bonds through, among other things, the satisfaction of (a) one or more Subordinate Obligations payable by the District to the Applicant and/or (b) one or more Construction Contracts, and

WHEREAS, pursuant to the Application, the District will (i) be responsible for imposing the District Special Levy as provided in the Act, (ii) adopt procedures for the foreclosure of delinquent District Special Levy liens on the Land, and, (iii) administer the District Special Levy, including making any required payments to the County Assessor and County Treasurer from the District Special Levy; and

WHEREAS, pursuant to the Formation Documents and any amendments or supplements thereto, the District will finance and acquire and/or construct the PID Funded Infrastructure Improvements to serve approximately 259.94 acres of land, located wholly within the corporate boundaries of the City accommodating approximately 456 single-family homes, approximately 665 multifamily units with a net developable land area of approximately 1,445,604 square feet, and approximately 784,122 net developable square feet of commercial uses, to be developed in multiple phases, which is an authorized purpose and appropriate use of a District as set forth in the PID Ordinance; and

WHEREAS, the timeframe for the installation of the Infrastructure Improvements and the development of the land is contingent upon local economic conditions, which are dependent on the energy sector; and

WHEREAS, the City Council (the "Council" or the "City Council") has considered the Application and related submittals by Applicant and has determined that proceeding further 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 Farlington.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF FARMINGTON THAT:

Section 1. As used in this Formation Resolution, including the recitals above, 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):

A. "Act" means the Public Improvement District Act,

B. "Applicant" means La Plata Piñon, LLC, a New Mexico limited liability company.

C. "Application" means the 'Application and Petition for Approval of the Formation of the La Plata Ranch Public Improvement District' submitted by the Applicant to the City pursuant to the Act and the PID Ordinance and all other supplemental information and documentation delivered to the City pursuant to the PID Ordinance.

D. "Bond Resolution" means one or more resolutions of the District Board authorizing issuance of one or more series of District Bonds for the purpose of financing the acquisition and/or construction of the PID Funded Infrastructure Improvements and other eligible costs, which are subject to the financing parameters and other applicable requirements established in this Formation Resolution.

E. "City" means the City of Farmington, New Mexico.

F. "Clerk" means the City Clerk.

G. "Construction Contract" means one or more construction contracts between the District and a third-party to construct PID Funded Infrastructure Improvements.

H. "Council" means the City Council of the City.

I. "County" means San Juan County, New Mexico.

J. "Disclosures of District Special Levy" means the special levy disclosures in the forms attached as Exhibit 8 to the Application.

K. "District" means the La Plata Ranch Public Improvement District.

L. "District Board" means the governing body of the District.

M. "District Bonds" means one or more series of bonds proposed to be issued by the District pursuant to the Act, which are secured by a first lien and pledge of the District Special Levy.

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

O. "District Special Levy" or "District Special Levies" means the special levy or special levies to be imposed by the District on the Land pursuant to NMFA 1978, § 5-11-20 (2013).

P. "Feasibility Study" means the study of the estimated costs and financing methods of the Infrastructure Improvements submitted by the Applicant in connection with the Application, in the form attached as Exhibit 7 to the Application and as supplemented or amended from time to time.

Q. "Formation Documents" means the Application, the General Plan, the Feasibility Study, Rate and Method of Special Levy Apportionment, the PID Development Agreement, and such other documents as are required by the Act and the PID Ordinance to be submitted by the Applicant in connection with an application for the formation of the District.

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

S. "General Plan" means the General Plan submitted by the Applicant in the form attached as Exhibit 6 to the Application and as supplemented or amended from time to time, which is on file with the Clerk and includes a map depicting the boundaries of the district and the real property proposed to be included in the district; a general description of anticipated improvements and their locations; and general cost estimates, proposed financing methods and anticipated special levies.

T. "Infrastructure Improvements" means the PID Funded Infrastructure Improvements and such other improvements, which are collectively all of the improvements on the Land, whether funded solely by the Applicant or with a portion of the costs to be reimbursed to the Applicant by the District from the proceeds of the District Bonds and/or revenues derived from the collection of the District Special Levy, as described and in the approximate locations shown on Exhibit B to the General Plan, as supplemented or amended from time to time.

U. "Land" means the real property described in the District Boundary Map.

V. "MAI Appraisal" means the valuation of the Land as of October 15, 2014, and amended as of April 21, 2015, prepared by Dominion Property Advisors.

W. "Petition" means the petition for formation of the District submitted by the Petitioners to the City pursuant to the Act and the PID Ordinance, which contains the signature of the owners of one hundred percent (100%) of the Land and requests that the City declare the District formed without requiring compliance with the provisions for posting, publication, mailing, notice, hearing and owner election provided in the Act.

X. "Petitioners" means La Plata Holdings, LLC, a New Mexico limited liability company and Tierra La Plata, LLC, a New Mexico limited
liability company, which together are the owners of 100% of the Land.

Y. "PID Development Agreement" means the Infrastructure Development and Acquisition Agreement dated as of even date herewith by and between the City, the District, and the Applicant, in accordance with Section 4(e) of the PID Ordinance, in the form attached as Exhibit 11 to the Application and as supplemented or amended from time to time, which PID Development Agreement shall be binding upon the District immediately following adoption of this Formation Resolution and shall then be subsequently ratified and executed by the District.

Z. "PID Funded Infrastructure Improvements" means the portion of the Infrastructure Improvements financed with the proceeds of the District Bonds, Subordinate Obligations, or revenues derived from the collection of the District Special Levy, as identified in Table 4 in Section III.C of the General Plan, as supplemented or amended from time to time.

AA. "PID Ordinance" means Ch. 22, Art. 5, Farmington City Code, as amended from time to time.

BB. "Rate and Method of Special Levy Apportionment" means the rate, method of apportionment and manner of collection of the District Special Levy submitted by the Applicant in the form attached as Exhibit D to the General Plan and as supplemented or amended from time to time.

CC. "State" means the State of New Mexico.

DD. "Subordinate Obligations" means two or more promissory notes and/or other subordinate obligations, secured by a second priority pledge of the District Special Levy and constituting a reimbursement obligation, issued by the District to the Applicant to memorialize the obligation of the District to pay the Applicant for the costs of PID Funded Infrastructure Improvements received by the District plus interest at a rate authorized by the District Board on the principal amount of such promissory notes and/or other subordinate obligations.

Section 2. Construction of Formation Resolution. Except as otherwise expressly provided in this Formation Resolution, or unless the context otherwise requires:

A. All words and phrases shall be construed and understood according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

B. The singular includes the plural and the plural includes the singular.

C. Words importing any gender include the other gender.

D. All references to Sections shall refer to Sections of this Formation Resolution, unless otherwise stated.

E. "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.

F. All times will be local time in the City unless otherwise designated in this Formation Resolution.

Section 3. 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 Petitioners own 100% of the Land and no resident qualified electors or any other persons are located on the Land within the fifty days immediately preceding the date of adoption of this Formation Resolution.

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

C. The District Bonds, Subordinate Obligations, and Construction Contracts will be the sole obligations of the District, and will not be backed by the credit, general funds or resources of the City in any manner. Owners of the District Bonds or the Subordinate Obligations and third-parties contracting with the District pursuant to a Construction Contract will have no right to require the City or the District to impose ad valorem property taxes to pay amounts due under District Bonds, Subordinate Obligations and/or Construction Contracts.

D. The District will serve the interests, convenience and necessity of Applicant, Petitioners, future owners of the Land and the citizens of the City:

(1) The District will be utilized to finance PID Funded
Infrastructure Improvements benefiting the Land, which will be developed as a master planned community and consist of a mixture of residential and non-residential uses;

(iii) The Applicant has demonstrated that the District will benefit the owners of the Land, as the end-users of the PID Funded Infrastructure Improvements, and the City, which benefits include, but are not limited to, additional amenities and increased quality of development, as contemplated by Section 1(A) of the PID Ordinance;

(iv) The information provided in the Application provides a reasonable basis upon which the City Council has determined that all the Land is directly or indirectly benefited by the District, as contemplated by NMSA 1978, §§ 5-11-2(T) (2013) and 5-11-6(A) (2013).

(iv) The cost of constructing the PID Funded Infrastructure Improvements will be apportioned in a reasonable manner among the owners of Land, in accordance with the Rate and Method of Special Levy Apportionment, and will not be passed on to the citizens of the City, other than the owners of the Land, or the City itself; and

(v) The City will receive the benefit of the PID Funded Infrastructure Improvements through dedication of the PID Funded Infrastructure Improvements not otherwise dedicated to another governmental entity.

E. The Applicant has the financial capacity to undertake the development of the Infrastructure Improvements.

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

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

H. The District is planned and will be implemented in a manner which provides for the expenses to be paid by the Applicant and the District, as applicable.

I. As planned, the District and the PID Funded Infrastructure Improvements meet the existing development policies and objectives of the City.

J. The formation of the District and the issuance of District Bonds and Subordinate Obligations, subject to the requirements and limitations specified in this Formation Resolution, are consistent with the requirements of the PID Ordinance.

K. Payment of the application fee described in the PID Ordinance, as adjusted by the First Amended and Restated Annexation Agreement among the City and the Petitioners, was satisfied by the Applicant and all other costs billed to or incurred by the City in connection with its review of the Application and Petition have been paid by the Applicant at least 14 days prior to the date of adoption of this Formation Resolution.

Section 4. Approval of the Formation Documents; Formation of District; Approval of District Foreclosure Procedures for Delinquent Special Levies.

A. The La Plata Ranch Public Improvement District is hereby approved and formed to carry out the purposes set forth in, and according to the provisions of, this Formation Resolution. The District shall include the Land, which is the real property described in the General Plan's District Boundary Map and more particularly identified in the legal descriptions attached as Exhibit 1 to the Application. The City makes no representation or warranty as to any environmental, archeological, or other physical condition of the Land.

B. The Application and Petition are hereby accepted and approved.

C. The General Plan is hereby accepted and approved.

D. The Feasibility Study is hereby accepted and approved.

E. The PID Development Agreement substantially in the form presented herewith, with such changes, insertions, deletions and modifications as shall be approved by the City Manager is hereby accepted and approved. The City Manager is hereby authorized and directed to execute the PID Development Agreement on behalf of the City. Any changes, insertions, deletions and modifications to the PID Development Agreement shall be deemed to have been approved by the City upon execution and delivery of the PID Development Agreement by the City Manager, such execution and delivery to be conclusive evidence of such approval. As contemplated by Section 4(f) of the PID Ordinance, any agreements with the
Applicant and/or the Petitioners regarding the provision of Infrastructure Improvements proposed to be furnished to the City shall be deemed amended to reflect the terms of the PID Development Agreement. Pursuant to Section 4(g) of the PID Ordinance, the PID Development Agreement may not be amended without the authorization of the City Council. The District shall be a party to the PID Development Agreement, as approved by the City Council, immediately upon formation of the District and without any further action by the District and shall be bound to the obligations set forth therein.

F. The Rate and Method of Special Levy Apportionment, establishing the apportionment and manner of collection of District Special Levy in sufficient detail to enable each owner of all or a portion of the Land or resident within the District to estimate the maximum amount of the proposed District Special Levy, is hereby accepted and approved.

G. The Disclosure of District Special Levy substantially in the form attached as Exhibit 9 to the Application is hereby approved.

H. The District shall have the powers necessary and convenient to pay a portion of the costs of the District, including administrative and formation costs, and finance the acquisition and/or construction of the PID Funded Infrastructure Improvements as provided in the Formation Documents, as those documents may be amended or modified in accordance with the provisions of this Formation Resolution. The District and/or the District Board shall be bound by any amendment thereto. Any modification to the FormationDocuments requires the prior approval of the City, except that any or all of the Formation Documents (excluding the PID Development Agreement) may be amended or modified by the District, without further action by the City, provided that such amendment or modification is within the parameters of this Formation Resolution.

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

J. The principal purpose of the District shall be to finance the acquisition and/or construction of the PID Funded Infrastructure Improvements whether such improvements are conveyed to or constructed by the District following, contemporaneous with, or prior to (i) the issuance of a series of District Bonds and/or (ii) one or more Subordinate Obligations.

K. The District Special Levies to be imposed by the District shall not exceed the maximum amounts set forth in the General Plan, subject to adjustment consistent with the terms of the Act and the Rate and Method of Special Levy Apportionment. The District shall not commence collection of the District Special Levies until the requirements of Section 5.A of the PID Development Agreement are satisfied.

L. The District shall be self-supporting, as provided in Section 1(e) of the PID Ordinance.

M. The District financing proposed in the Application and other Formation Documents meet the applicable requirements of Sections 5 and 6 of the PID Ordinance.

N. The District Board shall use its best efforts to hold a public meeting within 30 days following the date of adoption of this Formation Resolution. At that meeting, the District Board shall adopt an open meeting policy and bylaws for the District; ratify and execute the PID Development Agreement, the terms of which shall be binding upon and enforceable against the District immediately upon formation notwithstanding this instruction by the City Council to the District Board; direct the recording of PID Development Agreement, the notice of formation, the notice of information, and certain related filings with the County Clerk, as contemplated by the Act; and, in compliance with NMSA 1978, § 5-11-8(D) (2001), shall take such other action toward administering in a reasonable manner the implementation of the General Plan including, but not limited to, the acquisition and/or construction of PID Funded Infrastructure Improvements, the imposition of the District Special Levy and the issuance of the District Bonds and/or Subordinate Obligations, as authorized by this Formation Resolution.

O. Pursuant to the authority granted in NMSA 1978, §§ 5-11-20(I) (2013) and 5-11-23.F (2001) of the Act, the District shall establish procedures for foreclosure of delinquent District 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 NMSA 1978, §§ 3-33-28 to -30 (1965, as amended), and as set forth for the District in the PID Development Agreement approved by this Formation Resolution.

Section 5. Authorization of District Bonds, Subordinate Obligations
and Construction Contracts.

A. The District may, in compliance with Section 4(H) of the PID Ordinance, issue District Bonds pursuant to the terms of the PID Development Agreement and a Bond Resolution. Subject to the limitations herein and the terms and conditions in the PID Development Agreement, the District Bonds shall be issued in an aggregate amount sufficient to fund the total cost associated with the District's acquisition and/or construction of the PID Funded Infrastructure Improvements and any corresponding debt service reserve fund, capitalized interest, and costs of issuance (as identified under the heading "Uses" in Table 5 of the Plan of Finance).

(i) The maximum aggregate principal amount of the District Bonds shall not exceed $9,600,000 or such higher amount approved in a supplemental resolution of the Council.

(ii) Each Bond Resolution shall include, at minimum, the following provisions for the protection of owners of the Bonds:

(a) The establishment of a reasonably required debt service reserve fund in an amount acceptable to the District Board.

(b) The imposition of District Special Levies in amounts equal to or greater than 110% of the maximum annual debt service requirements of all District Bonds outstanding and, as applicable, the then-current additional series of District Bonds then-proposed to be issued by the District pursuant to the terms of the Bond Resolution.

(c) The requirement that the principal amount of any series of the District Bonds shall be within an overall value to lien ratio of at least 3 to 1.

(d) The requirement that at the time of issuance of a series of District Bonds, the estimated total tax and assessment obligation for a class of property, including projected ad valorem taxes and the maximum annual District Special Levies, shall not exceed one and ninety-nine hundredths percent of the anticipated, average market value of each class of property at the time of issuance of a certificate of occupancy as determined by a member appraiser of the appraisal institute.

(e) Each Bond Resolution shall include provisions for appointment of a trustee pursuant to an indenture of trust, a supplemental indenture of trust, or other similar instrument.

(f) Each 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 trustee's collection of District Special Levies and the trustee's foreclosure of delinquent District Special Levies.

B. In addition to any other express or implied authority granted by the Act and the PID Ordinance, the District may, in its sole discretion and without further review and approval of the City Council, issue Subordinate Obligations and/or enter into Construction Contracts, pursuant to NRS 117, §§ 5-11-10 (2001) and -20 (2013), Section 1(F) of the PID Ordinance, the Formation Documents, and the terms of one or more resolutions of the District Board authorizing issuance of one or more Subordinate Obligations and/or Construction Contracts, for the purpose memorializing and/or satisfying the obligation of the District to pay for the value of the PID Funded Infrastructure Improvements received by the District.

Section 6. District Governance.

A. The District Board shall initially be composed of the following five (5) appointed members:

(i) one of whom shall be City Manager Robert Mayes;

(ii) one of whom shall be City Attorney Jennifer Brekelkell;

(iii) one of whom shall be Administrative Services Director H. Andrew Mason; and

(iv) two members nominated by the Applicant, and consented to by the City Council, which members shall initially be Price Bayless and David L. Silverman;

shall serve 6-year terms.

B. Pursuant to § 5-11-6 of the Act, Price Bayless is appointed to be the clerk of the District and David L. Silverman is appointed to be treasurer of the District.

At the end of the appointed directors' initial terms, the District shall pay the costs of an election, to be held by the City in conformance with the Act and the PID Ordinance, to select a new slate of directors for the District Board by the later of (i) six years following the date that the appointed members of the District Board take office or,
if permitted by law, (ii) a date following the issuance by the District of its final series of District Bonds in an amount sufficient to fund the PID Funded Infrastructure Improvements and any costs of issuance (as identified under the heading “Uses” in Table 5 of the Plan of Finance at Section V.A of the Feasibility Study and as amended from time to time). If an election is not scheduled to occur prior to the 6th anniversary of the date that the appointed members of the District Board take office, the Council will resume governance of the District, as the District Board, and, if permitted by law, will act through designees consisting of the five directors holding office at the end of the appointed directors’ term.

Section 7. Waivers. Based on the information provided by the Applicant in the Application, the Application is supported by a petition for formation signed by the Petitioners, as owners of 100% of the Land to be included in the proposed District, and no resident qualified electors or any other persons are located on the Land, and on that basis the City waives (a) the requirements for posting, publication, mailing, notice, hearing and owner election, as authorized by NMSA 1978, § 5-11-7(I) (2001) and (b) delivery of the certificate from the City Clerk, described in Section 3(1) of the PID Ordinance, evidencing the names of persons with an interest in the Land and resident qualified electors, as authorized by Section 6(g) of the Ordinance. Furthermore, there shall be no election concerning the formation of the District among a resident qualified electors as prescribed by NMSA 1978, § 5-11-7(J) (2001).

Section 8. 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 9. 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 Ordinance, such 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 10. 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 Formation Resolution.

Section 11. Notice of Adoption of Formation Resolution. In compliance with NMSA 1978, § 5-11-8(A) (2001), the City Manager is hereby directed to cause a copy of this Formation Resolution to be delivered, by certified mail, return receipt requested, to the County Assessor, the Executive Officer of the County, the Secretary of the New Mexico Taxation and Revenue Department, and the Director of the Local Government Division of the New Mexico Department of Finance and Administration.

PASSED, APPROVED, SIGNED AND ADOPTED this 28th day of March, 2017.

Gayla McCulloch, Mayor Pro Tem

Dianne Smylie, City Clerk