

RESOLUTION NO. CFD EMI RES 1

**A RESOLUTION OF THE DISTRICT BOARD OF EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1 (CITY OF MESA, ARIZONA) APPOINTING DISTRICT OFFICERS; APPROVING THE GENERAL PLAN; TAKING CERTAIN OTHER ACTIONS WITH REGARD TO ORGANIZATION OF THE DISTRICT; CALLING A SPECIAL BOND AND OPERATION AND MAINTENANCE AD VALOREM TAX ELECTION FOR THE DISTRICT; AND ENTERING INTO A DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT WITH THE CITY AND OWNER.**

**BE IT RESOLVED BY THE DISTRICT BOARD OF EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1 (CITY OF MESA, ARIZONA) as follows:**

**Section 1. Findings.**

A. On April 2, 2012, the Mayor and Council of the City of Mesa, Arizona (hereinafter called the "City"), adopted Resolution No. 10005 (the "*Resolution*") ordering and declaring formation of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) (hereinafter called the "*District*"), and authorizing and approving a Development Agreement (as hereinafter defined).

B. All conditions precedent to the formation of the District have been satisfied.

C. As provided by Title 48, Chapter 4, Article 6, Arizona Revised Statutes, as amended (the "*Act*"), the District is a special purpose district for purposes of Article IX, Section 19, Constitution of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7, Constitution of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5, Arizona Revised Statutes, as amended, and, except as otherwise provided in Section 48-708(B), of the Act, is considered to be a municipal corporation and political subdivision of the State of Arizona, separate and apart from the City.

D. The owner of all real property in the District (the "*Owner*") filed with the City Clerk the "general plan" for the District, which sets out a general description of the public infrastructure improvements for which the District was formed and the general areas to be improved (hereinafter referred to as the "*General Plan*").

E. Certain matters relating to the organization of the District must be determined by the district board of the District (hereinafter referred to as the "*District Board*") including consideration of a Development, Financing Participation, Waiver and Intergovernmental Agreement by and among the District, the City and the Owner (the "*Development Agreement*").

F. The Owner may construct or acquire a portion of the "public infrastructure" (as such term is defined in Section 48-701, of the Act) described in the General Plan or has undertaken "public infrastructure purposes" (as such term is defined in Section 48-701, of the

Act) related thereto in contemplation of acquisition of such public infrastructure by a community facilities district.

G. (1) The District is authorized by Section 48-719, of the Act, to issue and sell general obligation bonds of the District to provide moneys for certain "public infrastructure purposes" consistent with the "general plan" of the District.

(2) Such bonds may not be issued unless approved at an election ordered and called to submit to the qualified electors of the District, which qualified electors consist of persons residing in the District who have registered to vote and those persons who are qualified to vote pursuant to Section 48-707(G), of the Act. If no person has registered to vote within the District within twenty-nine (29) days immediately preceding any scheduled election date, the owners of land within the District who are qualified electors of the State of Arizona and other landowners according to Section 48-3043, of the Act (the "*Landowners*" and in either case hereinafter referred to as, collectively, the "*qualified electors*") shall vote on the question of authorizing the District Board to issue such bonds for such purposes.

(3) The District is authorized by Section 48-723, of the Act to levy an ad valorem tax on the assessed value of all real and personal property in the District for the purpose of applying the taxes to the operation and maintenance expenses of the District.

(4) The ad valorem tax for operation and maintenance purposes may not be levied unless approved at an election by the qualified electors of the District.

(5) The District Board deems it necessary and advisable to order and call such an election at this time for the purpose of submitting questions that request authorization to issue general obligation bonds and levy an ad valorem property tax for the District's operation and maintenance expenses, and to establish the procedures whereby such election should be held.

(6) An estimate of the amount of financing necessary to provide for, through acquisition, construction or otherwise, the "public infrastructure purposes", a general description of which are set out in the general plan of the District, has been presented to the District Board.

**Section 2.** Appointment of District Officers. The persons serving as Mayor and Vice Mayor of the City are hereby appointed "Chairman" and "Vice Chairman," respectively, of the District Board; the person serving as the City Clerk is hereby appointed "District Clerk"; the person serving as the City Senior Executive Manager (or such other person serving as the City's financial services budget director) is hereby appointed "District Treasurer"; the person serving as the City Manager is hereby appointed "District Manager". Gust Rosenfeld P.L.C. is hereby retained as the District's bond counsel and special counsel and all conflicts of interest that exist now or in the future between the City and the District caused by such dual representation are hereby waived. The District Manager is authorized to appoint the City Engineer, or such other qualified entity, as District Engineer when such appointment shall be necessary to further the purposes of the District. Except as otherwise provided by resolution of the District, all agreements and other documents to which the District is a party shall be executed on behalf of the District by the District Manager or the designee of the District Manager.

**Section 3.**     Posting of Notices. Statements of the District directing where all public notices of the meetings of the District shall be posted in substantially the form attached hereto as Exhibit A has been filed with the Clerks of Maricopa County and the City and is hereby approved and ratified for all purposes thereof.

**Section 4.**     Preparation of Budget. The District Board hereby instructs the District Treasurer to cause to be prepared a draft of a proposed budget for the District for the ensuing fiscal year to be circulated for consideration at a subsequent meeting of the Board as required by Section 48-716, Arizona Revised Statutes, as amended. Such budget shall include the costs of providing the District, its board members, officers, employees, agents and contractors with adequate insurance coverage.

**Section 5.**     Approval of General Plan. The General Plan as submitted to the City is hereby approved in all respects.

**Section 6.**     Call of Election. A special election, in and for the District, be and the same is hereby ordered and called to be held on May 17, 2012 (the "Election"), at which time there shall be submitted to the qualified electors of the District the questions set forth in the form of official ballot attached hereto, marked Exhibit B and incorporated by reference herein. Based upon a certificate of the Maricopa County Recorder, dated a date not more than twenty-nine (29) days prior to the date of the Election, there are no persons registered to vote within the District.

The District Clerk is directed to appoint election workers, election officials and such other necessary persons to the extent required to assist in conducting the election. The District Clerk is further directed to take such other actions as are necessary and appropriate to carry out the purposes of this resolution.

**Section 7.**     Posting and Publishing of Matters Relating to Election. The Election shall be called by posting notices in three (3) public places within the boundaries of the District not less than twenty (20) days before the date of the Election in substantially the form hereto attached and marked Exhibit C. Notice shall also be published in the The Arizona Republic, a newspaper of general circulation in the City, once a week for two consecutive weeks preceding the Election in substantially the form of Exhibit C.

**Section 8.**     Polling Place. The polling place and the time the poll shall be opened and closed shall be as provided in Exhibit C.

**Section 9.**     Affidavit for Landowners. If the qualified electors are and become the Landowners, prospective electors voting in the Election shall execute an affidavit substantially in the form hereto attached and marked Exhibit D.

**Section 10.**    Preparation of Ballots and Affidavits. The District Clerk is hereby authorized and directed to have printed and delivered to the election officers at such polling place such ballots and, if necessary, such affidavits, to be by them furnished to the qualified electors of the District offering to vote at the Election, in substantially the form of Exhibits B and D.

**Section 11.** Compliance with Voting Rights Act 1965. In order to comply with the Voting Rights Act of 1965, as amended, the following shall be translated into Spanish and posted, published and recorded in each instance where posting, publication and recording of such proceedings are required, to-wit: Exhibits B, C and D, all absentee voting materials and all instructions at the polling place.

**Section 12.** Applicable Law. The Election shall be held, conducted and canvassed in conformity with the provisions of the general election laws of the State of Arizona, except as otherwise provided by law, and only such persons shall be permitted to vote at such election who are qualified electors of the District. Absentee voting shall be permitted in accordance with the provisions of Title 16, Chapter 4, Article 8, Arizona Revised Statutes, as amended.

**Section 13.** Canvass. On or before May 31, 2012, which is a date within fourteen (14) days after the date of the Election, the District Board shall meet and canvass the returns, and if a majority of the votes cast at the Election is in favor of issuing the bonds and levying an ad valorem property tax for operation and maintenance purposes, the Board shall enter the fact on its minutes.

**Section 14.** Approval of Development Agreement. The Development Agreement by and among the City, the District and the Owner, as presented to the Board and on file with the District Clerk, is hereby approved. The Chairman of the District Board is authorized and directed to execute and deliver, and the Clerk is authorized and directed to attest, the Development Agreement.

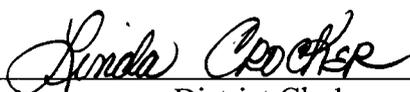
**Section 15.** Effective Date. This resolution shall be effective immediately.

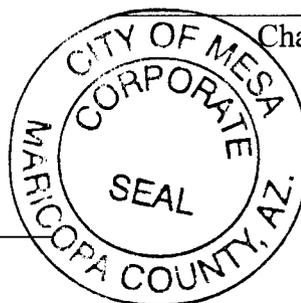
**PASSED** by the District Board of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) on April 23, 2012.



Chairman, District Board

ATTEST:

  
District Clerk



EXHIBITS:

- A - Statements Regarding Posting of Public Meetings
- B - Form of Ballot
- C - Form of Notice of Election
- D - Form of Affidavit of Elector

**EXHIBIT A**

**OPEN MEETING LAW NOTICE**

Notice of Meetings

**EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1  
(CITY OF MESA, ARIZONA)**

TO THE GENERAL PUBLIC:

PLEASE TAKE NOTICE that the District Board of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona), will hold its meetings at Mesa City Council Chambers, 57 E. First Street, Mesa, Arizona 85201, and that notice of such meetings will be given at least twenty-four (24) hours prior to a meeting and notice will be posted on the bulletin board outside the Mesa City Council Chambers at 57 E. First Street, Mesa, Arizona 85201.

DATED AND POSTED: April 25, 2012.

  
\_\_\_\_\_

Clerk

**EXHIBIT B**

Number of acres owned \_\_\_\_\_

**OFFICIAL BALLOT**

**GENERAL OBLIGATION BOND AND OPERATION AND MAINTENANCE AD VALOREM TAX SPECIAL ELECTION  
FOR EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1  
(CITY OF MESA, ARIZONA)**

**May 17, 2012**

Question No. 1

Shall the district board (the "Board") of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) (the "District") be authorized to issue general obligation bonds of the District, in the denominations, series and form prescribed by the Board, and having the maturities (not exceeding twenty-five (25) years), interest payment dates and interest rates, whether fixed or variable, not exceeding twelve percent (12%) per annum, established by the Board and containing such other terms, conditions, covenants and agreements as the Board deems proper, in the maximum amount of not to exceed four hundred thirty-five million dollars (\$435,000,000) to provide monies: (a) (1) for planning, design, engineering, construction, acquisition or installation of any or all of the following improvements, including necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances ("public infrastructure"): (a) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge; (b) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge; (c) water systems for domestic, industrial, irrigation, municipal or fire protection purposes including production, collection, storage, treatment, transport, delivery, connection and dispersal, but not including facilities for agricultural irrigation purposes unless for the repair or replacement of existing facilities when required by other improvements described herein; (d) highways, streets, roadways and parking facilities including all areas for vehicular use for travel, ingress, egress and parking; (e) areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking; (f) pedestrian malls, parks, recreational facilities other than stadiums, and open space areas for the use of members of the public for entertainment, assembly and recreation; (g) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems; (h) public buildings, public safety facilities and fire protection facilities; (i) lighting systems, (j) traffic control systems and devices, including signals, controls, markings and signage; and (k) equipment, vehicles, furnishings and other personalty related to such items, (2) acquiring, converting, renovating or improving existing facilities for public infrastructure; (3) acquiring interests in real property for public infrastructure; (4) establishing reserves to secure payment of debt service on bonds; (5) funding and paying from bond proceeds interest accruing on bonds for a period of not to exceed three (3) years from their date of issuance; (6) refinancing any matured or unmatured bonds with new bonds; and (7) expenses of the District incident to and reasonably necessary to carry out the purposes specified in this paragraph (clauses (1) through (7), both inclusive, being "public infrastructure purposes"); and (b) for repaying all or part of the amounts advanced by land-owners for public infrastructure purposes set forth above; such bonds shall be payable from a tax levied and collected annually on all taxable property in the District, sufficient to pay interest on such bonds when due and to redeem such bonds when they mature, as authorized by the constitution and laws of the State of Arizona, including particularly (but not by way of limitation) Title 48, Chapter 4, Article 6, Arizona Revised Statutes, together with all amendments and additions thereto?

The voter shall place a mark in the square opposite the words "Bonds, Yes" or "Bonds, No", whichever words express the voter's choice.

BONDS, YES
BONDS, NO

Question No. 2

Shall the District Board of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) (the "District") be authorized to levy and collect an annual ad valorem tax on the assessed value of all real and personal property in the District at a rate not to exceed thirty cents (30¢) per one hundred dollars (\$100) of assessed valuation of all real and personal property in the District, such taxes to be applied to the operation and maintenance expenses of the District, in accordance with the constitution and laws of the State of Arizona, including particularly (but not by way of limitation) Section 48-723, Arizona Revised Statutes, as amended?

The voter shall place a mark in the square opposite the words "Tax, Yes" or "Tax, No", whichever words express the voter's choice.

TAX, YES
TAX, NO

**NOTICE TO VOTERS:**

The voter shall indicate his vote on each question by inserting a mark in the square opposite the phrase which expresses his choice. Only qualified electors of the District are eligible to vote at this special election. The voter understands that the vote cast will constitute the vote for all of the acres owned by the voter.

## EXHIBIT C

### NOTICE OF ELECTION

#### **TO THE QUALIFIED ELECTORS OF AND PROPERTY OWNERS IN EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1 (CITY OF MESA, ARIZONA) (THE "DISTRICT"):**

A general obligation bond and an operation and maintenance ad valorem tax special election will be held on May 17, 2012, for the District at the polling place hereafter set forth. The District is comprised of real property located within the Central Arizona College (#21) voting precinct. The General Plan for the District is on file with the City Clerk of the City of Mesa, Arizona.

#### **PRECINCT**

**POLLING PLACE** Mesa City Hall, City Clerk's Office, 20 East Main Street, Suite 150, Mesa, AZ 85201

Precinct registers may contain the names of all registered voters in the precinct, and the election board at the polling place shall require a prospective elector to execute an affidavit stating that the elector is a qualified elector of the District.

The polling place will open at 9:00 a.m. and close at 4:00 p.m. The purpose of the election is to permit the qualified electors of the District to vote on the following questions:

#### *Question No. 1*

Shall the district board (the "Board") of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) (the "District") be authorized to issue general obligation bonds of the District, in the denominations, series and form prescribed by the Board, and having the maturities (not exceeding twenty-five (25) years), interest payment dates and interest rates, whether fixed or variable, not exceeding twelve percent (12%) per annum, established by the Board and containing such other terms, conditions, covenants and agreements as the Board deems proper, in the maximum amount of not to exceed four hundred thirty-five million dollars (\$435,000,000) to provide monies: (a) (1) for planning, design, engineering, construction, acquisition or installation of any or all of the following improvements, including necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances ("public infrastructure"): (a) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge; (b) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge; (c) water systems for domestic, industrial, irrigation, municipal or fire protection purposes including production, collection, storage, treatment, transport, delivery, connection and dispersal, but not including facilities for agricultural irrigation purposes unless for the repair or replacement of existing facilities when required by other improvements described herein; (d) highways, streets, roadways and parking facilities including all areas for vehicular use for travel, ingress, egress and parking; (e) areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking; (f) pedestrian malls, parks, recreational facilities other than stadiums, and open space areas for the use of members of the public for entertainment, assembly and recreation; (g) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems; (h) public buildings, public safety facilities and fire protection facilities; (i) lighting systems, (j) traffic control systems and devices, including signals, controls, markings and signage; and (k) equipment, vehicles, furnishings and other personalty related to such items, (2) acquiring, converting, renovating or improving existing facilities for public infrastructure; (3) acquiring interests in real property for public infrastructure; (4) establishing reserves to secure payment of debt service on bonds; (5) funding and paying from bond proceeds interest accruing on bonds for a period of not to exceed three (3) years from their date of issuance; (6) refinancing any matured or unmatured bonds with new bonds; and (7) expenses of the District incident to and reasonably necessary to carry out the purposes specified in this paragraph (clauses (1) through (7), both inclusive, being "public infrastructure purposes"); and (b) for repaying all or part of the amounts advanced by land-owners for public infrastructure purposes set forth above; such bonds shall be payable from a tax levied and collected annually on all taxable property in the District, sufficient to pay interest on such bonds when due and to redeem such bonds when they mature, as authorized by the constitution and laws of the State of Arizona, including particularly (but not by way of limitation) Title 48, Chapter 4, Article 6, Arizona Revised Statutes, together with all amendments and additions thereto?

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Question No. 2

Shall the District Board of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) (the "District") be authorized to levy and collect an annual ad valorem tax on the assessed value of all real and personal property in the District at a rate not to exceed thirty cents (30¢) per one hundred dollars (\$100) of assessed valuation of all real and personal property in the District, such taxes to be applied to the operation and maintenance expenses of the District, in accordance with the constitution and laws of the State of Arizona, including particularly (but not by way of limitation) Section 48-723, Arizona Revised Statutes, as amended?

The voter shall place a mark in the square opposite the words "Tax, Yes" or "Tax, No", whichever words express the voter's choice.

**EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1  
(CITY OF MESA, ARIZONA)**

**EXHIBIT D**

**AFFIDAVIT OF PROSPECTIVE ELECTOR  
AS TO OWNERSHIP OF LAND OR OTHER  
QUALIFICATION TO VOTE PURSUANT TO  
SECTION 48-3043, ARIZONA REVISED STATUTES, AS AMENDED**

STATE OF ARIZONA )  
COUNTY OF MARICOPA )  
CITY OF MESA )  
EASTMARK COMMUNITY FACILITIES )  
DISTRICT NO. 1 )  
(CITY OF MESA, ARIZONA) )

**COMES NOW** the undersigned and, being first duly sworn, deposes and says as follows:

1. I am the authorized representative of DMB Mesa Proving Grounds, LLC (the "*Company*"), a limited liability company duly formed and validly existing pursuant to the laws of the State of Arizona.

2. The Company I so represent owns 2,170.8 acres in the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) (the "*District*").

3. The Company is qualified to vote pursuant to Section 48-3043, Arizona Revised Statutes, as amended, as the bona fide owner of 2,170.8 acres of land within the District, holding title or evidence of title of record of said acres.

4. As the authorized representative of the Company, I have been designated and authorized by the board of directors of the Company to represent and vote for and on behalf of the Company, in the election being held by the District on the date hereof.

DMB MESA PROVING GROUNDS, L.L.C.,  
an Arizona limited liability corporation,

By: \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing Affidavit of Prospective Elector as to Ownership of Land or Other Qualification to Vote Pursuant to Section 48-3043, Arizona Revised Statutes, as Amended, was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the \_\_\_\_\_ of DMB Mesa Proving Grounds, L.L.C., an Arizona limited liability corporation of the \_\_\_\_\_, a \_\_\_\_\_, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

*(Affix Seal Here)*