

RESOLUTION NO. 21-44

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, PINAL COUNTY, ARIZONA, AMENDING ITS POLICY GUIDELINES AND APPLICATION PROCEDURES FOR THE ESTABLISHMENT OF COMMUNITY FACILITIES DISTRICTS.

WHEREAS, Title 48, Chapter 4, Article 6 of the Arizona Revised Statutes, as amended (the "Act"), enables the mayor and city council (the "City Council") to approve the formation of community facilities districts within the boundaries of the City of Apache Junction, Arizona (the "City") upon the receipt of a landowner petition in accordance with the Act; and

WHEREAS, in order to facilitate the potential formation of community facilities districts, on February 16, 2021, the City Council adopted Resolution No. 21-05 and thereby adopted the "City of Apache Junction, Arizona Policy Guidelines and Application Procedures for the Establishment of Community Facilities Districts" (the "CFD Policy"); and

WHEREAS, on March 18, 2021, the Governor of Arizona signed into law House Bill 2317, which made certain amendments to the Act that were effective immediately; and

WHEREAS, the City Council has determined that because of the recent amendments to the Act subsequent to the City Council's adoption of the CFD Policy, it is appropriate to update the CFD Policy as set forth in the revisions to the CFD Policy attached as Exhibit A to this resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AS FOLLOWS:

- 1) The City Council hereby adopts and approves the revisions to the CFD Policy, attached hereto as Exhibit A.
- 2) The city manager, or his designee, is hereby authorized and directed to implement the revised CFD Policy, effective immediately, including the imposition and collection of the fees described therein.
- 3) The city manager, or his designee, is hereby authorized from time to time to approve minor administrative, technical or procedural changes and corrections to the CFD Policy, where it is in the best interests of the City to do so and in accordance with the Act.

4) Any prior policy guidelines and application procedures or similar documents of the City pertaining to the formation of community facilities districts are hereby repealed and of no further force or effect.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS ____ DAY OF _____, 2021.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 2021.

WALTER "CHIP" WILSON
Mayor

ATTEST:

JENNIFER PENA
City Clerk

APPROVED AS TO FORM:

RICHARD JOEL STERN
City Attorney

EXHIBIT A

RESOLUTION NO. 21-44
EXHIBIT A

**CITY OF APACHE JUNCTION, ARIZONA
POLICY GUIDELINES AND APPLICATION PROCEDURES
FOR THE ESTABLISHMENT OF
COMMUNITY FACILITIES DISTRICTS**

In order to secure for the City of Apache Junction, Arizona (the “City”), the benefits of the Community Facilities District Act (the “Act”) enacted by the Arizona Legislature in 1988 (A.R.S. §§ 48-701 through 48-728, as amended), and to promote the best interests of the City, the following Policy Guidelines and Application Procedures have been adopted by the Mayor and City Council of the City (the “City Council”).

A community facilities district (a “CFD”) provides a funding mechanism: (i) to finance construction, acquisition, operation and maintenance of public infrastructure that benefits the real property comprising the CFD and its ultimate users; and (ii) to better enable the City to provide municipal services benefitting the users of the real property within the CFD.

Recognizing a CFD is a statutory special taxing district with municipal taxing, borrowing and, as applicable, foreclosure powers within the boundaries of the City, the City Council believes that the formation of any CFD should be conducted carefully in order to protect property owners and taxpayers within the CFD, and to enable the long-term success of the CFD.

In order to assist the City Council in making a reasonable judgment as to whether or not to establish a CFD and upon what terms, the City Council has established these Policy Guidelines and Application Procedures (these “Policy Guidelines”). These Policy Guidelines are not intended to affect the operations of either of Superstition Mountains Community Facilities District No. 1 or Apache Junction Water Utilities Community Facilities District, which are CFDs previously formed by the City.

**ARTICLE 1
General Policies**

1.1 CFDs should be utilized primarily in connection with the financing of major public infrastructure for development of master planned communities, substantial residential development or substantial commercial development. CFDs within the City are intended to be utilized to provide an enhanced level of public infrastructure and amenities. The overall development plan for the real property to be contained within a proposed CFD should (i) include regional public amenities and (ii) be of a unique and high quality nature, including design standards, architectural design, landscaping and building materials.

1.2 All improvements within the boundaries of a CFD, including public infrastructure improvements financed by a CFD, shall be in conformance with the City’s General Plan in order to encourage orderly growth and development. A CFD is not intended to fund or subsidize developer-requested enhancements, nor will a CFD or any CFD bonds be backed by City transaction privilege (sales) taxes at large.

1.3 Each CFD is different, and each application for formation shall be evaluated at the sole and absolute discretion of the City Council. The formation of a CFD, and any subsequent

CFD financing, will not be considered solely based upon a request for equivalency or similar treatment between separate development projects or other CFDs within the City, or even between separate financings within a CFD. The City Council will not waive requirements merely because of a failure of the applicant to conduct appropriate due diligence.

1.4 The City will encourage an area to be governed by as few CFDs as possible, and a preference will be given to one master CFD for all property within an entire development project. This policy is adopted to avoid creating communities or projects where only a portion of the development is ultimately within the boundaries of the CFD, to facilitate ease of administration and to create the largest tax/revenue base possible. The decision to form a CFD shall be a decision of the City Council exercised in its sole and absolute discretion.

1.5 Pursuant to A.R.S. §§ 48-702, 48-705, 48-708 and 48-711, unless otherwise agreed to by the City, the CFD will be governed by a Board of Directors (the “CFD Board”) comprised of the members of the City Council, ex officio. The City may require the applicant/developer to procure insurance acceptable to the City for the CFD Board. In addition, the City may require the premiums for such insurance to be pre-paid by the applicant/developer for a period of five years or as otherwise agreed upon. Unless otherwise agreed to by the City, the day-to-day responsibilities of the CFD will be performed by City staff. Advisory committees may, at the sole option of the CFD Board, be utilized. If the City permits formation of a CFD with a five member appointed CFD Board in accordance with the Act, the City shall seek appropriate ongoing indemnification from the applicant/developer and shall prefer that City staff have no obligation for day-to-day responsibilities of the CFD. The City Council, in its sole and absolute discretion, may provide that the CFD Board is comprised of five appointed members if adequate safeguards and controls are in place, as may be acceptable to the City, to ensure the soundness of any CFD financing program, as well as the adequacy and legality of the legal proceedings and disclosure documents in connection with any financing.

1.6 Unless otherwise agreed to by the City, the CFD must be self-supporting and no City funds will be used for CFD purposes, including the CFD’s financing transactions and the operation and maintenance of the CFD. Notwithstanding anything contained herein, none of the property, the full faith and credit or the taxing power of the City (including, without limitation, transaction privilege (sales) taxes, construction sales taxes or development fees) shall be pledged to the payment of any CFD obligation, indebtedness or default.

1.7 The CFD Board will determine, in its sole and absolute discretion, the amount, timing and form of financing to be used by a CFD during its review process of any project feasibility report.

1.8 Unless otherwise agreed to by the CFD Board in its sole and absolute discretion, all public infrastructure constructed or acquired by the CFD will utilize public procurement procedures in accordance with applicable laws, rules and regulations (i.e. A.R.S. Title 34, Apache Junction City Code Volume I, Chapter 3; and *Achen-Gardner v. Superior Court*, 173 Ariz. 48 (1992)), as such laws, rules and regulations would be applied in the case of the City. From time to time, the CFD Board may elect to adopt policies and procedures regarding procurement, including such policies and procedures that are similar to those of the City.

1.9 The CFD will not use bond proceeds or other CFD funds to purchase from the person requesting CFD financing public rights-of-way or other real property to be used for public infrastructure improvements, if such real property would be required to be dedicated and conveyed to the City by the developer/landowner upon development of the developer's/landowner's property.

1.10 All costs of administration and operation of the CFD and the operation and maintenance of public infrastructure in the CFD shall be the responsibility of the CFD, the developer/landowner, applicable homeowners' associations, or any combination of the foregoing.

1.11 Where applicable, the developer/landowner will provide appropriate indemnification of the City and the CFD, including their respective elected officials, directors, appointed officers, employees and agents, in connection with the CFD.

1.12 Unless otherwise agreed to by the City and the CFD, all bond financings described herein shall be "acquisition" financings whereby the applicant/developer pays for the construction or acquisition of public infrastructure and the CFD subsequently acquires such public infrastructure by paying CFD bond proceeds to the applicant/developer.

1.13 CFD financing typically will not be provided for subdivision and local improvements normally expected or required as part of a development. A CFD is not intended to fund or subsidize developer requested enhancements. Special consideration may be given if the development is in conjunction with a major economic development project that is directly related to City Council's economic development goals or the proposed development provides an enhanced level of infrastructure desired by the City.

1.14 These Policy Guidelines may be modified from time to time. Any applicant will be given the opportunity to propose alternative approaches to those provided herein, with the understanding that concerns of the City must be adequately addressed before the staff of the City will recommend approval of formation of a CFD to the City Council.

ARTICLE 2

Content of Completed Application

All applications for the formation of a CFD shall be submitted to the City. In accordance with A.R.S. § 48-702, formation of a CFD will not be considered until an applicant submits a completed application (a "Completed Application"). All costs related to the applicant's preparation of the Completed Application, including, without limitation, all reports, descriptions, studies and plans, as described in this Article shall be paid by the applicant and shall not be eligible for reimbursement if the CFD is formed. Each Completed Application shall meet all of the requirements of these Policy Guidelines and shall, at a minimum, contain the following:

2.1 General Matters.

a. A description of the proposed CFD, including a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the real property (including any liens and encumbrances on the real property), a condition of title report and the names and addresses of any qualified electors located within the proposed CFD boundaries. A

current title report and a certificate from the county elections department shall be submitted as evidence of the names of persons with any interest in the real property and qualified electors, respectively. The description must contain an analysis of the appropriateness of the CFD boundaries.

b. A description of the applicant, including the corporate and organizational structure of the entity or individual submitting the application. This description should also include the names of all officers and/or corporate directors directly related to or associated with the proposed development and the proposed CFD. If there is more than one property owner, the application shall designate a representative for the applicants.

c. The name, address, telephone number and other relevant information of the primary contact for the applicant. This information should also list the names (and other relevant information) of any legal representatives, engineers, architects, financial consultants and/or other consultants significantly involved in the preparation and submission of the Completed Application.

2.2 A detailed description of all public infrastructure to be constructed, acquired or improved within the boundaries of the CFD, including a detailed description of the types of infrastructure to be financed by the CFD, the estimated construction or acquisition costs of the public infrastructure, the estimated annual operation and maintenance costs of the public infrastructure for the first fifteen (15) years after completion and the governmental approvals that will be required for both the public and private improvements to be constructed and operated.

2.3 A proposed project schedule for commencement and completion of (a) the public infrastructure and (b) the private development.

2.4 A financing plan for the public infrastructure, including capital costs and operation and maintenance costs.

2.5 A financial feasibility study for the entire project (or such phases of the project that are expected to be constructed within five (5) years of submission of the Completed Application) covering both the public infrastructure and the private development. This should include:

a. An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other CFD costs will impact the ultimate end users of the property, specifically projected property taxes and property tax rates, special assessments, fees, charges and other costs that would be borne by property in the CFD. The analysis should include the impact on a single family detached residence with the expected average assessed valuation within the proposed boundaries of the CFD. The City may request additional analyses based on commercial, industrial or other types of residential properties subject to the proposed CFD property taxes, special assessments, fees, charges and other costs. The analysis should also address the impact these costs will have on the marketability of the private development and a comparison of proposed tax rates and charges in adjoining and similar areas outside of the proposed CFD.

b. A detailed financing plan for the private development in the CFD.

c. A market absorption study for the private development in the CFD prepared by an independent consultant acceptable to the City. Such study shall include estimates of the

revenue to be generated by the development and an estimate of the ability of the market to absorb the development as well as a market absorption calendar for the private development.

2.6 A description of the proposed equity contribution from the applicant/landowner and a calendar showing the timing and sources of such equity contribution.

2.7 A description of the applicant's professional experience, including with similar types of developments, and evidence demonstrating its financial capacity (including financial statements) to undertake the development associated with the public infrastructure and private development.

2.8 A disclosure form explaining the expected and possible tax, assessment and other financial burdens of the CFD to prospective owners of property within the boundaries of the CFD. Upon each sale of property in the CFD, the developer/landowner shall file with the City a receipt, signed by the purchaser, which acknowledges the purchaser's receipt of the disclosure form. Developers/landowners are required to describe in their promotional material the financial and other relative impacts on the development being included in a CFD. Copies of the disclosure form must be placed on file with the District Clerk. The applicant/developer shall present a plan, including, as applicable, proposed language in the homeowners' association covenants, conditions and restrictions pertaining to the development, whereby all future prospective owners of taxable property within the boundaries of the CFD shall receive disclosure of the CFD and the expected and possible tax, assessment and other financial burdens of the CFD.

2.9 An operating plan for the CFD, i.e., what functions the CFD will provide and how the operation and maintenance of the infrastructure and all other services in the CFD will be provided. The Completed Application will include how the CFD will comply with the website provisions in A.R.S. § 48-727, including how the applicant will provide for payment of costs related to establishing and maintaining the CFD's website or an allocable portion of the City's website for multiple CFDs.

2.10 A description of how the proposed CFD meets the existing development objectives of the City, including the degree to which the CFD is consistent with the goals of the City's General Plan for promoting orderly development, consistent with growth management policies and zoning requirements and the degree to which the land use plan for the CFD is consistent with the City's General Plan Map for the area.

2.11 As applicable, a description of: i) regional public amenities; and (ii) the unique and high quality nature of the development, including design standards, architectural design, landscaping and building materials.

2.12 As applicable, the feasibility report information described in Sections 4.4, 4.5 and 4.6 hereof.

2.13 [Reserved.]

2.14 The Completed Application shall include a petition in favor of creation of the CFD. The petition must include a list of all parcels in the proposed CFD along with the parcel number, owner names, situs address and lot size (parcel square footage or acreage) for each individual

parcel. The petition must be signed by the owners of at least 25% of the land area proposed to be included in the CFD.

2.15 A District Development, Financing Participation, Waiver and Intergovernmental Agreement, or similar agreement, between the City and the applicant in substantially final form, including all terms and provisions to be approved by the City if formation of a CFD is approved. The agreement must include matters required by A.R.S. § 48-708(C) through (E) and must have been fully negotiated by the applicant and City staff.

2.16 Unless otherwise agreed to by the City, the applicant is responsible for procuring, and paying the cost of, insurance to cover all actions and activities taken by the CFD Board and officers of the CFD relating to the CFD formation, financing, administrative actions or other related activities of the types, in amounts and with deductibles determined by the City's risk manager or other appropriate officer. The Completed Application will provide an explanation of how such insurance coverage shall be procured and paid for by the applicant and how assurances will be provided that the premiums and deductibles will be paid in the future. Insurance should include a "per occurrence coverage" including a "securities" rider if bonds are anticipated to be sold. If formed, the CFD Board may revise the insurance requirements or accept other forms of insurance.

2.17 The Completed Application must indicate how indemnification outlined in the District Development, Financing Participation, Waiver and Intergovernmental Agreement, or similar agreement, will be provided for the City, the CFD and their respective elected officials, directors, appointed officers, employees and agents for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees and expenses, incurred in any challenge or proceeding relating to the formation, operation and administration of the CFD, the offer and sale of CFD bonds, the levying by the CFD of any tax, assessment or charge and the operation and maintenance of public infrastructure financed or owned by the CFD, by the entity providing indemnification (including financial statements and other supporting information for such entity, appropriate collateral arrangements, and other appropriate provisions and considerations).

ARTICLE 3

Application Procedures and Submission Requirements

3.1 Ten (10) paper copies and one (1) electronic copy of the Completed Application for the formation of a CFD shall be submitted to the Development Services Director, Planning and Zoning Division, of the City who will coordinate an inter-departmental analysis of the Completed Application.

3.2 At the time of submission of the Completed Application, the applicant shall pay to the City a non-refundable application fee of \$15,000.00 in connection with the submission and consideration of each Completed Application to request formation of a CFD. Any amount of such application fee remaining after formation of the CFD shall be used for administrative costs of the CFD. The City will not require an additional application fee for any resubmission of the Completed Application or a substantially similar Completed Application within one year of the initial submission.

3.3 Prior to submission of a Completed Application, and at the request of the applicant, the City Manager and appropriate officers of the City may arrange a pre-submission meeting with the applicant, City staff, and outside professionals and consultants for the purpose of discussing the possible submission of a Completed Application and conformity with these Policy Guidelines.

3.4 Following the pre-submission meeting, or at any other time prior to submission of the Completed Application, City staff may request additional information. The applicant shall provide any and all additional information requested prior to submitting the Completed Application.

3.5 Following the submission of the Completed Application, City staff may request additional information. The applicant shall promptly provide any and all additional information requested, and if City staff requests such information prior to the City Council's consideration of formation of the CFD, then such additional information must be provided by the applicant prior to the City Council's consideration of formation of the CFD.

3.6 The review, analysis and consideration of a Completed Application will include, without limitation, a comprehensive review of the Completed Application to determine whether the Completed Application is consistent with these Policy Guidelines, identification of missing or incomplete information and identification and discussion of any concerns with the applicant. This will include, without limitation, examining the feasibility of the development, analysis of land ownership interests, analysis of the proposed financing structure, risk analysis and evaluation of community benefits. Under direction of the City Manager, or his or her designee, a report may be prepared including recommendations related to the proposed CFD and an analysis of the impact of the formation of the proposed CFD and its effects on the City. Additional requirements may be placed on any or all of the applicant, developer(s), landowner(s), builder(s) and/or the proposed CFD. This review will include the preliminary approval of the form, terms and provisions of the substantially final form of the District Development, Financing Participation, Waiver and Intergovernmental Agreement, or similar agreement, necessary for formation of the CFD. A Completed Application must be consistent with these Policy Guidelines and must contain all the information required herein and requested by City staff during the application process.

3.7 The City shall comply with all statutory timelines pertaining to review of the Completed Application. Specifically, but without limitation, upon submission of a Completed Application the City Council shall within sixty (60) days hold a public hearing to consider the Completed Application. A resolution declaring the intent to form the CFD may be considered by City Council immediately following the public hearing. If City Council does not adopt the resolution of intention to form the CFD, the City Council will provide a written basis for not adopting the resolution of intention and shall identify the specific changes for the Completed Application to be approved, if applicable.

3.8 If the City Council approves the formation of a CFD and there are existing agreements with developers/landowners for the provision of infrastructure proposed to be furnished by the CFD, then those agreements will be amended, or deemed amended by the parties thereto, to reflect the agreements and conditions pertaining to the CFD and the development agreements executed in conjunction with the formation of the CFD. The amendments will reflect

that such infrastructure improvements will be provided (including by acquisition) by either the developer/landowner or the CFD.

3.9 If the City Council approves formation of a CFD, the applicant and City staff shall coordinate a schedule of events for formation of the CFD and shall execute an appropriate agreement (i.e. the District Development, Financing Participation, Waiver and Intergovernmental Agreement, or similar agreement) by and among the City, the CFD and the applicant which shall be entered into concurrently with or promptly after formation of the CFD, which shall incorporate the requirements of any report, recommendations of the City staff relating to such CFD, the requirements of these Policy Guidelines and any other restrictions, provisions and agreements required by the City. The City may charge a fee related to the execution and recording of such agreement of \$15,000, or such other amount approved by the City from time to time.

3.10 If a Completed Application includes a petition for formation of the CFD that is signed by 100% of the owners of all the real property in the proposed CFD, as well as meeting all the requirements described herein in form satisfactory to the City, the City may declare the CFD formed without posting, publication, mailing, notice and public hearings or landowner election. Otherwise the alternative provisions of the Act pertaining to formation of the CFD must be followed.

ARTICLE 4

CFD Operations and Debt Financing

4.1 Upon approval of formation of a CFD, the developer/landowner shall deposit with the CFD a nonrefundable administrative expense deposit in the amount of \$60,000.00. In anticipation of formation of the CFD, or in the instance of formation by petition of all landowners, the applicant may agree with the City to make this nonrefundable deposit prior to approval of formation of the CFD. The administrative expense deposit shall be applied by the CFD to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the CFD or its public improvements. This deposit shall be applied to payments for services rendered by City staff, CFD staff and outside consultants who may be retained by the City and/or the CFD, including, without limitation, bond counsel, financial advisors, engineers, appraisers and attorneys. From time to time, upon depletion of the administrative expense deposit, the CFD may request, and the developer/landowner shall promptly deposit with the CFD, additional \$25,000 deposits to be applied to the purposes contemplated in this Section 4.1. The CFD and the developer/landowner may agree to a smaller amount of deposits to replenish the administrative expense deposit, but in no event shall a replenishment deposit be less than \$5,000 and in no event shall the administrative expense deposit balance be less than \$25,000. The deposits described herein shall be deposited in the CFD's accounts which are managed by City staff (acting in their capacity as CFD staff). If the deposits are made prior to formation of the CFD, City staff may deposit such monies in other operating accounts of the City on a temporary basis pending formation of the CFD. The City may require an applicant/developer to provide additional security, for example a letter of credit, for the operation and maintenance expenses of the CFD.

4.2 In order to provide for the CFD to be self-supporting for its administrative, operation and maintenance expenses, the City and the CFD may, unless otherwise agreed, require

the imposition, if approved at an appropriate election, of at least a \$0.30 per \$100 of net assessed limited property value ad valorem tax upon the CFD's taxable property. The City and the CFD may require the imposition, if approved at an appropriate election, an ad valorem tax at a rate higher than \$0.30 per \$100 of net assessed limited property value. Failure to impose such a tax may relieve the City and the CFD from undertaking any obligations or operations.

4.3 The debt of a CFD shall not have any substantial direct or indirect negative impacts on the debt or financing capabilities of the City. In addition, the debt of a CFD may not impose an unreasonably high financial burden on future CFD residents. The City Council may consider debt burdens, and corresponding tax rates and levies, in exercising its sole and absolute discretion to approve or deny the formation of a CFD. In connection with any request for debt financing included in an application for CFD formation, unless otherwise agreed by the City, the applicant must provide a current appraisal of the fair cash market value of the property within the proposed CFD which will be taxed or assessed, prepared by a person who is designated as a Member Appraisal Institute ("MAI") and a certified general real estate appraiser (such person hereafter referred to as an "MAI Appraiser"), such appraisal to be in form and substance acceptable to the City, in its sole and absolute discretion. Generally, the appraisal shall be based on the wholesale, bulk sale of the real property in the CFD, but the City may require additional appraisal requirements depending on current market conditions or the type of project to be financed. After formation of a CFD, the CFD may require an appraisal in connection with any request for debt financing, and such appraisal shall be prepared in accordance with the provisions of this Section and in accordance with the pertinent District Development, Financing Participation, Waiver and Intergovernmental Agreement, or as otherwise required by the CFD Board, in its sole and absolute discretion.

4.4 General obligation bonds of the CFD shall be secured by an ad valorem tax on all taxable property located within the CFD in accordance with the Act. The aggregate amount of general obligation debt of a CFD shall comply with the debt limitations described in the Act. In a Completed Application, and prior to the issuance of general obligation bonds by the CFD, in each feasibility report, the developer/applicant shall describe, in addition to the requirements of the Act, the following:

- a. The current direct and overlapping tax and assessment burdens on the taxable property within the CFD that is proposed to be taxed and the full cash value and net assessed limited property value of that taxable property as shown on the most recent assessment roll.
- b. The expected market absorption of development within the CFD.
- c. The expected amount and timing of CFD general obligation bonds to be issued.
- d. The effect of the CFD bond issuance on CFD tax rates, calculated over the entire period of time that the proposed general obligation bonds are estimated to be outstanding or based on the phasing of the project to be financed, as applicable.

e. Estimated savings or economic advantage, if any, to prospective landowners in the form of reduced sales prices, enhanced public services and/or amenities, or additional community benefits that are projected to result from CFD financing.

f. The proposed total tax rate of the CFD.

g. At the time of formation of a CFD, the “target” secondary tax rate per \$100 of net assessed limited property value for the CFD shall be reviewed by the City Council and described in the District Development, Financing Participation, Waiver and Intergovernmental Agreement pertaining to the CFD. The City Council will require similar “target” secondary tax rates in any CFDs formed by the City, but the City Council, in its sole and absolute discretion, may approve different “target” secondary tax rates for different CFDs formed by the City. After formation of a CFD, the “target” secondary tax rate to be levied for a CFD with respect to any CFD general obligation bonds will not exceed the approved “target” secondary tax rate per \$100 of net assessed limited property value, unless otherwise required by law, and provided the CFD Board, in its sole and absolute discretion, may levy a tax rate lower than the “target” secondary tax rate described in the District Development, Financing Participation, Waiver and Intergovernmental Agreement pertaining to the CFD.

h. A description of the marketing plan for the sale of CFD bonds, including whether the bonds will be publicly offered or privately placed. The CFD Board, in its sole and absolute discretion, may evaluate and authorize a marketing plan for the sale of CFD bonds that imposes additional requirements for the sale of CFD bonds.

4.5 Revenue bonds shall be payable from a specified CFD revenue source in accordance with the Act. In a Completed Application, and prior to the issuance of revenue bonds by the CFD, in each feasibility report, the developer/applicant shall describe, in addition to the requirements of the Act, the following:

a. The current direct and overlapping tax and assessment burdens on the taxable property within the CFD and the full cash value and net assessed limited property value of that taxable property as shown on the most recent assessment roll.

b. The revenue source from which bonds will be payable, including the projected debt service coverage ratio. The City reserves the right to require the applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues, including a comparison between the proposed rates and fees to be charged by the CFD and the rates and fees charged by the City or other CFDs for similar services.

c. The expected market absorption of development within the CFD.

d. The expected amount and timing of CFD revenue bonds to be issued.

e. The financial impact of the proposed issues(s) on prospective landowners.

f. A description of the marketing plan for the sale of CFD bonds, including whether the bonds will be publicly offered or privately placed. The CFD Board, in its sole and

absolute discretion, may evaluate and authorize a marketing plan for the sale of CFD bonds that imposes additional requirements for the sale of CFD bonds.

4.6 Special assessment bonds shall be secured by a first lien (subject only to the lien for general taxes and prior special assessments) on the property benefited in accordance with the Act. In a Completed Application, and prior to the issuance of special assessment bonds by the CFD, in each feasibility report, the developer/applicant shall describe, in addition to the requirements of the Act, the following:

a. The current direct and overlapping tax and assessment burdens on the taxable property within the CFD and on the real property to comprise the assessed property, and the full cash value and net assessed limited property value of the taxable property within the CFD and of the real property to comprise the assessed property as shown on the most recent assessment roll.

b. The amount and timing of CFD special assessment bonds to be issued.

c. The expected market absorption of development within the CFD.

d. The assessment burden to be placed on the prospective assessed real property.

e. A description of the marketing plan for the sale of CFD bonds, including whether the bonds will be publicly offered or privately placed. In an unrated public offering of special assessment bonds, an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the CFD Board, in its sole and absolute discretion, shall indicate a land value (prior to improvements being installed) to debt ratio of at least 6 to 1 as of a date prior to the issuance of the CFD bonds. Further, in connection with the sale of unrated privately placed special assessment bonds, the CFD Board must have received an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the CFD Board, in its sole and absolute discretion, indicating a wholesale/bulk land value (assuming the existence of the improvements being financed by the bonds and less five percent (5%)) to debt ratio of at least 4 to 1 as of a date prior to the issuance of the CFD bonds. If a 4 to 1 ratio is not achieved, a scaling down of the proposed special assessment bonds and/or a phasing of the public infrastructure construction is expected. The CFD Board, in its sole and absolute discretion, may evaluate and authorize a marketing plan for the sale of CFD bonds that imposes additional requirements for the sale of CFD bonds. The CFD Board, in its sole and absolute discretion, may require alternative and additional appraisal requirements or land value to debt ratios that differ from the provisions of this subsection.

f. If any prospective assessed real property is expected to be subdivided, the process by which the assessments will be allocated to the subdivided land. If the subdivision is expected to occur after the issuance of CFD special assessment bonds, the developer/applicant shall describe a plan of prepayment of the next debt service payment due on the special assessment bonds, plus a contingency amount to be determined in the sole and absolute discretion of the CFD Board, to ensure no draws on any reserve fund result from the subdivision and corresponding assessment modification.

4.7 Notwithstanding the provisions pertaining to the public offering and private placement of CFD bonds set forth in this Article 4, such provisions may be modified if other financing structures are presented which, in the sole and absolute discretion of CFD Board, provide other means to address CFD Board concerns.

4.8 Costs of issuance related to the issuance of bonds and obligations described in this Article 4 shall be paid from the proceeds of CFD bonds, unless otherwise approved by the CFD Board, in its sole and absolute discretion. The CFD Board may require the developer/landowner to make cash contributions to the CFD for costs of issuance related to CFD bonds. On a case by case basis, the CFD Board may require the developer/landowner to pay an additional amount related to a CFD bond transaction for CFD staff time to process the transaction.

4.9 As applicable, the CFD shall enter into collection agreements with the County Treasurer for the collection of ad valorem property taxes, special assessments and other fees and charges. The developer/landowner shall consent, as applicable, to the modification of any CFD financing structure as necessary to comply with the terms of such collection agreements, including, without limitation, the application of CFD bond proceeds to capitalized interest.

ARTICLE 5

Financing Considerations

5.1 The developer/landowner shall provide at least \$0.25 in infrastructure or community improvements that benefit the CFD for each \$1.00 of debt to be issued by a CFD to finance public infrastructure purposes. If agreed to by the CFD Board, in its sole and absolute discretion, prior infrastructure and community improvements constructed or acquired by the developer/landowner may be included in calculating the developer/landowner's compliance with this Section 5.1.

5.2 If permitted by law, all CFD bond issues shall include a debt service reserve fund in an amount acceptable to the CFD Board. The CFD Board may, in its sole and absolute discretion, authorize the issuance of CFD bonds without a debt service reserve fund.

5.3 The applicant or the developer/landowner (or such other third party acceptable to the City and the CFD) shall indemnify the City, the CFD and their respective elected official, directors, appointed officers, employees and agents, and shall hold the City, the CFD and their respective elected officials, directors, appointed officers, employees and agents harmless for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, or administration of the CFD, the offer and sale of CFD bonds, the levying by the CFD of any tax, assessment or charge and the operation and maintenance of public infrastructure financed or owned by the CFD.

5.4 Unless otherwise provided to the City pursuant to other requirements prior to CFD financing and acquisition by the CFD or the City, the CFD or the City will require an independent environmental report or assessment of any real property which will be dedicated to or otherwise owned, leased or operated by the City or the CFD and a proposed form or indemnity agreement with respect to all environmental law liability.

5.5 Developers/landowners shall be responsible for all costs and expenses incurred in any assessment modifications related to CFD special assessment bonds.