

 <p>SURPRISE ARIZONA</p>		<p>Standard Operating Procedure</p> <p>COMMUNITY FACILITIES DISTRICTS</p>	
<p>PROCESS: Application and Establishment of a Community Facilities District Within the City of Surprise</p>			
<p>POLICY REFERENCE: Arizona Revised Statutes (ARS) § 48-701 et. seq.; Surprise Municipal Code § 2-335 et. seq.; Securities Exchange Commission Rule 144A;</p>			
<p>ISSUE DATE: November 13, 2003 (Resolution 03-166)</p>	<p>LAST AMENDED DATE: February 28, 2008 (Resolution 08-20)</p>	<p>EFFECTIVE DATE: November 20, 2018 (Resolution 2018-115)</p>	

GENERALLY

In order to secure for the City of Surprise, Arizona (the “City”), the public benefits of the Community Facilities Act (the “Act”), as most recently amended by the Arizona Legislature in 2017 (Laws 2017, Chapter 208; codified at [Arizona Revised Statutes, Title 48, Chapter 4, Article 6](#)) and to promote the best interests of the City, the following policy guidelines and application procedures are adopted by the City Council and are applicable to Community Facilities Districts (a “CFD” or “CFDs”) when approved by the City to assist in development of land owned by third party landowners acting in a capacity as developers. Recognizing that a CFD is a statutory special taxing district with borrowing powers created within the boundaries of the City that has perpetual existence, the City Council believes that the formation of each CFD should be considered carefully in order to ensure its lasting success.

Each CFD shall be treated separately and apart from every other one for purposes hereof including particularly, but not by way of limitation, for purposes of [Policy Section 1.e](#) and [Procedures Section 1.b.e](#) under Policy Section 1b under Procedures.

PURPOSE

The purpose of this document is to establish policy guidelines and procedures for the establishment of CFDs within the City of Surprise that afford a fair and equitable process for those entities wishing to pursue this financing mechanism, but that also insulate the ultimate property owners within the CFD from overly burdensome financial hardship. Thus, this policy includes provisions that attempt to protect homeowners from financial liability in excess of targeted tax rates and assessments.

DEFINITIONS

All terms used herein shall have the meaning given to them in the Act (specifically, [A.R.S. § 48-701](#)), unless otherwise defined below. Terms not defined in the Act shall have the meanings

ascribed to them in the Surprise Municipal Code or shall have their ordinary and regular meaning.

POLICY

1. General Policies

- a. Community facilities districts (“CFD” or “CFDs”) , as defined in the Act, in the City may provide a funding mechanism for approved development projects to finance the construction, operation, and maintenance of public infrastructure and/or the acquisition of completed public infrastructure that benefits the ultimate owners of the real property comprising the CFD (the “District”). The CFD may also be utilized by the City to provide enhanced municipal services to the Property benefitted by the improvements.
- b. A CFD should be formed primarily in connection with the construction and/or the acquisition of public infrastructure for development of infill or mixed-use master planned communities, projects that include substantial commercial and/or residential development, or development that would promote quality job creation in the City of Surprise.
- c. CFD financing is intended for large, regional infrastructure associated with master planned communities or major, large development projects in order to promote growth funding for certain growth-related costs and to preserve city bonding capacity for city-wide infrastructure, such as that included in the Capital Infrastructure Plan (“CIP”).
- d. Any public infrastructure financed through a CFD should be in conformance with the City’s General Plan, area plans, zoning, and plans for infrastructure, parks, and open space in order to encourage orderly growth and development. A CFD is not intended to replace or subsidize minimum or otherwise required developer-funded infrastructure or community improvements to serve the CFD property. The use of a CFD for infrastructure or community improvements that are the subject of development impact fees is disfavored. Special consideration may be given to a developer requesting formation of a CFD if the proposed development provides an enhanced level of infrastructure amenities and/or municipal services desired by the City, or if the City deems public infrastructure requirements placed upon the development to be significantly disproportionate to the normal infrastructure requirements.
- e. The Applicant shall provide, from non-CFD sources, at least \$0.25 in infrastructure or community improvements for each \$1.00 of debt to be issued by a CFD to finance public infrastructure purposes.
- f. Fees and other charges assessed by the City in connection with the submission and consideration of an Application to form a CFD shall not exceed fifteen thousand dollars (\$15,000.00). The City may use outside consultants as “staff” to review or confirm any analyses prepared in conjunction with an Application for or financing by the CFD. If authorized by the district board of a CFD (the “Board”), exercising its sole discretion, all or part of such costs may be reimbursed to the Applicant from a CFD tax levy, CFD assessments, CFD revenues or CFD bond proceeds, provided such reimbursement is in conformance with federal law, state law, and these guidelines.

- g. To provide ease of administration and the largest tax/revenue base possible, 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 a single development. The decision to form a CFD shall be a decision of the City Council exercised in its sole and absolute discretion. Such decision will have no other ramifications on any other aspects of the project such as zoning, and does not guarantee other matters with respect to the project as they relate to the City or the CFD.
- h. Unless the City Council determines otherwise, each CFD will be governed by a nine member Board (the "Board") consisting of the members of the City Council, ex officio, and the two additional members designated in the CFD application by the property owner owning the largest amount of privately owned acreage in the proposed district. The two additional members will be appointed when the Council adopts the resolution ordering formation of the CFD. In the alternative, the City Council may appoint a five member Board, with the members to be appointed when the Council adopts the resolution ordering formation of the CFD. Board members appointed by the City Council shall not have a substantial financial interest (defined as a non-speculative pecuniary or proprietary interest, either direct or indirect, that is not a remote interest, as defined in A.R.S. § 38-502) in any property located within the CFD, or be an owner, officer, or member of an entity with an ownership interest in property located within the CFD, nor shall the relative of any member (defined as a spouse, child, child's child, parent, grandparent, brother, or sister, and their spouses, or the parent, brother, sister, or child of a spouse) have a substantial financial interest in any property located within the CFD or be an owner, officer, or member of an entity with an ownership interest in property located within the CFD. At the option of the Board, advisory committees may be utilized. The day-to-day administrative responsibilities of the CFD will be performed pursuant to a contract by outside personnel or by the City staff. Each Board member appointed by the City Council, who is not also a member of the Council, shall execute a document granting an unqualified "hold harmless" guarantee for the City, the CFD and its officers, agents, and employees.
- i. The two additional members designated by the owner(s) of the largest amount of privately-owned acreage in the proposed CFD shall serve terms of a length set forth in the Act. However, if no such terms are designated in the Act, the two members shall each serve six-year terms, provided, however, of the first two such additional members to be appointed, one shall serve a term of four years to establish staggered terms for such members. If the City Council elects to appoint a five member Board, the Council will designate three of the five initial members to serve six-year terms and two to serve four-year terms to establish staggered terms.
- j. Unless otherwise agreed to by the City, the CFD must be self-supporting from the standpoint of financing, operations, and maintenance; no City funds will be used for CFD purposes. Notwithstanding anything contained herein, none of the property, the credit nor the taxing power of the City shall be pledged to or otherwise secure the payment of any CFD obligation or indebtedness.
- k. After review of required pertinent information, the Board will determine, in its sole and absolute discretion, whether the CFD will fund construction and/or acquisition of public infrastructure as well as the amount, timing, and form of financing to be used by a CFD.

- l. All public infrastructure constructed and/or acquired by a CFD will utilize statutory public procurement in accordance with all applicable federal and state laws and the Surprise Municipal Code, as such may be amended from time to time.
- m. The CFD will not use bond proceeds or other CFD funds to purchase 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 Applicant upon development of the Property.
- n. Unless otherwise agreed to by the City, all costs of administration and operation of the CFD and the operation and maintenance of public infrastructure provided by the CFD including replacement reserves, if appropriate, shall be the responsibility of the CFD, the Applicant, applicable homeowner associations, or any combination of the foregoing, as may be acceptable to the Board. The day-to-day administrative responsibilities of the CFD will be performed pursuant to one or more contracts with outside personnel or by the City staff.
- o. These Policy Guidelines and Application Procedures may be modified from time to time by the City Council and will be applicable to any Applications under review. All concerns of the City must be adequately addressed before the staff of the City will consider an Application to be complete and ready for submission and consideration by the City Council.

2. Implementation

- a. Owners which determine to proceed with formation of a CFD shall appoint a single contact to whom all communications about the CFD from representatives of the City shall be directed; who will initiate any discussion on any matter related to the formation of the CFD with representatives of the City; and who, personally or by designee, together with the City representative, will attend future finance related meetings held by any homeowner association formed by the developer for the purpose of marketing, managing, and selling property within the CFD. The representative of the City for the same purposes shall be the City Manager of the City or his/her designee. No other person associated with the City shall be contacted with regard to the foregoing except such representative. The City Council can meet with CFD applicants but cannot negotiate, promise, or otherwise bind the City.
- b. If it is determined that a CFD should be part of the development plan for the proposed District, subject to the requirements hereof, matters relating to the formation and subsequent activities of such CFD with regard to the proposed District shall be accomplished by an amendment to the development agreement, provided a development agreement exists. If there is no existing development agreement the owner is required to enter into a CFD development agreement to be considered for approval by the City Council along with the CFD Application.
- c. Upon written request to the City, owners which express interest in having CFD[s] included as part of their plans for development will be provided with a standard form of agreement expected to be entered into by the City, the CFD, such owner, and other interested parties in conjunction with formation of the CFD that includes standard terms and conditions that will be common to all such districts formed by the City and will not

be subject to negotiation. Such provisions would include those relating to indemnification, limitations on remedies, procedures for constructing and/or acquiring infrastructure (including applicable public bidding requirements), and expense subsidies.

3. Contents of a Completed Application

- a. An “Application” for the purposes of [A.R.S. § 48-702 \(B\)](#) and for the formation of a CFD, must be **complete** and submitted in its entirety prior to any determination by the City Council that a CFD will be formed. The Application shall, at a minimum, contain the following information and be organized in the manner described below.
- b. Applicant Information
 - i. General Description: A general description of the Applicant, including the corporate and organizational structure of the entity or individual making the Application to form a CFD. This description should include the names of all officers and/or corporate directors directly related or associated with the proposed development of the proposed district.
 - ii. Contact(s): The name, address, phone number, and other relevant information of the primary contact for the Applicant. This information should list the names (and other relevant information) of any legal representatives, engineers, architects, financial consultants, and/or other consultants significantly involved with the Application.
 - iii. Experience: A general description of the Applicant’s experience with similar types of projects as development of the Property
 - iv. Financial Capability: Financial statements and any additional evidence demonstrating the Applicant’s ability, capacity, and commitment to undertake the proposed development
- c. Designation of Board Members
 - i. Provide the names, addresses, telephone numbers, backgrounds, qualifications, and other relevant information of the two additional board members designated by the owner of the largest amount of privately owned acreage in the proposed CFD who may be appointed to the Board in accordance with [Policy Section 1.h](#).
 - ii. State the process for the designation of the two additional board members on completion of the development of all property in the CFD.
 - iii. Provide documentation evidencing each such member’s obligation to comply with Arizona Revised Statutes [Title 38, Chapter 3, Articles 3.1 and 8](#).
- d. Petition
 - i. A complete 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 name(s), situs address, metes and bounds description, and lot size (parcel square footage or acreage) for each individual parcel. The petition must be signed by the owners of at least twenty-five percent (25%) of the land area proposed to be included in the CFD.

e. Proposed CFD and Public Infrastructure Description

- i. General Description: A general description of the proposed CFD, its purpose, proposed public infrastructure and/or services to be provided, and a statement describing the overall community benefit or enhanced public services to be derived from the CFD. This description shall include a statement 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, and any area, infrastructure, parks, open space, and other plans guiding development in the area.
- ii. Location: A description of the proposed CFD's general location within the City; an area site map illustrating the proposed boundaries and a legal description of the proposed boundaries. This description must include an analysis of the appropriateness of the CFD boundaries and how those boundaries address Section 1 above, including the adjacency of property owned by the State of Arizona and the likelihood of development of the State Land in the future.
- iii. Ownership Interests: The identity and address of all persons or entities with any interest in the property within the proposed District including lienholders and purchasers under pending sales contracts and the names and addresses of any qualified electors located within the proposed boundaries of the CFD. A certificate from the Maricopa County Assessor or, if not accurate, a current title report and certificate from the Maricopa County Elections Department shall be submitted as evidence of names or persons with any interest in the land and qualified electors, respectively.
- iv. Operating Plan: An operating plan for the CFD, describing the functions of the CFD and how the operation and maintenance of the public infrastructure will be provided.
- v. Status of Entitlements and Source of Water, Sewer Treatment and Other Utilities/Services: The status of all entitlements with respect to the proposed district as well as the plan for providing water, sewer treatment and other utilities and services (fire, police, education, etc.) to the area.

f. Proposed Improvements

- i. Description of Public Infrastructure: A detailed description of the types of public infrastructure to be constructed and/or acquired by the CFD. This description should include a proposed project schedule for commencement and completion of (a) public infrastructure and (b) the private development.

- ii. Description of Enhanced Municipal Services: A detailed description of the enhanced municipal services proposed to be provided, funded, and/or maintained by the Applicant or CFD, including, but not limited to, public safety, fire protection, roadway landscape maintenance, public parks, public trails, other public open space, and/or publicly accessible recreational amenities.
 - iii. Estimated Costs: An estimate of the costs to construct and/or acquire the public infrastructure and enhanced municipal services to be completed and/or maintained by the CFD. This information shall include a detailed list of the estimated cost of each component of the public infrastructure and enhanced municipal services. The Applicant should take note of the fact that the public infrastructure to be acquired cannot be the subject of a statutory development fee assessed by the City.
 - iv. Development Timetable: A detailed timetable describing the scheduling, timing or phasing of the public infrastructure and enhanced municipal services. This schedule should include a timetable for acquiring both the public and private components of the overall development with respect to the proposed District. Each phase of the development should be shown separately.
- g. Financing Plan
- i. Description of Financial Plan: A detailed description of the capital financing plan for the public infrastructure, enhanced municipal services, and the private development with respect to the proposed District, including both public and private components of such development. This description must include the proposed types of tax-exempt/taxable bonds to be issued for the public infrastructure and enhanced municipal services as well as the financing plan of the Applicant for the private development and the sources of the proposed financing including any debt or equity.
 - ii. Sources and Uses of Funds: A detailed sources and uses of funds for the public infrastructure with respect to the proposed District. This schedule must include the description of components of the public infrastructure and enhanced municipal services that will be financed by the type of bonds to be issued.
 - iii. Financial Feasibility: A financial feasibility study, covering the period of time until the last proposed bond of the CFD will be paid, for the entire project being developed on the proposed District including the public infrastructure, enhanced municipal services, and the private development. This feasibility study must include a preliminary market absorption study for the private development.
 - iv. Fiscal Impact: An analysis of the tax, assessment, and utilities fee impact on the users/residents within the CFD, specifically, projected property tax rates and levies, special assessments, fees, charges and any other costs to be borne by the CFD. A comparative analysis of such taxes, assessments, and fees of similar or adjoining areas and/or CFDs must also be provided.
 - v. Value-to-Lien Ratio Analysis: Based on the estimated value of the property within the proposed District, including after construction of the public improvements and

enhanced municipal services, an analysis of the value-to-lien ratios of the proposed public financing if in the form of assessment bonds.

- vi. Operation and Maintenance Costs: A detailed description and a financial proforma of the estimated annual operation and maintenance costs of the public infrastructure and enhanced municipal services, including for replacement reserves, if appropriate. The Application must clearly detail the specific entities such as the CFD, homeowner associations, the Applicant, the City, etc. that will be responsible for funding the ongoing operation and maintenance costs for all CFD improvements and enhanced municipal services, including for replacement reserves, if appropriate. This section shall also provide a description of the revenue source of each.
- h. District Development and Financing Participation Agreement
 - i. The District Development and Financing Participation Agreement between the City and the Applicant (the "CFD District Agreement") must include matters required by the Act, such as A.R.S. § 48-708(D), and must have been fully negotiated by the Applicant and City staff, with agreement by both parties, and in a substantially final form, including all terms and provisions to be approved by the City if formation of a CFD is approved.
 - i. Miscellaneous Information
 - i. Marketing Plan: A detailed description of the proposed marketing plan to be used by the Applicant to market property within the CFD. This information may include comparisons of the proposed CFD to similar CFDs in the area.
 - ii. Disclosure to Prospective Property Owners: Information regarding the proposed disclosure form that will be used to describe to prospective buyers the potential tax, assessment, and fee implications of the CFD. The form shall describe any economic advantage or the estimated savings, if any, to property owners in the form of reduced purchase prices, enhanced public services and/or amenities, additional community benefits, etc. that are projected to result from CFD financing. Such forms shall have provisions for the signed acknowledgement of receipt of such disclosure form. Landowners/developers/homebuilders are required to describe in their promotional materials the financial and other relative impacts of the development being in a CFD and must state that signed disclosure forms will be required as part of the closing documents for the initial purchase by a homebuyer and, as practicable any subsequent transfers. Also, information regarding how the landowners/developers/homebuilders will require the creation and maintenance of a website for each homeowners' association within the proposed District that prominently includes the fact that the property within the association is part of a CFD and the implications thereof.
 - iii. Equity Contribution: A description of the proposed equity contribution from the Applicant/landowner and a calendar showing the timing and sources of such equity contribution including evidence of at least \$1.00 of eligible infrastructure or community improvements benefiting the proposed District for each \$0.25 of debt to be issued by the CFD and reimbursed to the developer.

- iv. Insurance and Indemnification: The Applicant is responsible for the cost of insurance to cover all actions and activities taken by the Board of the CFD, including the two additional board members designated by the owner(s) and any other members appointed by the City Council, relating to the CFD formation, financing, administrative actions, or other related activities in amounts and with deductibles determined by the Risk Manager of the City. The completed Application shall provide an explanation of how such insurance coverage shall be provided by the Applicant and how assurances will be provided that premiums and deductibles will be paid in the future. Insurance must include “per occurrence coverage” including a “securities” rider if bonds are to be sold.
- v. Separately, the completed Application must also indicate how indemnification outlined in the development agreement will be provided for the City, the CFD and their agents, officers, and employees 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, 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, the entity providing the indemnification (including financial statements and other supporting information for such entity), appropriate collateral arrangements, etc.
- vi. Development Agreements: Include as an appendix, any existing development agreements entered into, including any amendments, thereto, between the City and the Applicant relating to this proposed development. The new or amended development agreement must be in substantially final form, including all terms and provisions to be approved by the City if formation of a CFD is approved by the City Council. The development agreement must include matters required by A.R.S. § 48-701 et. seq. and must have been fully negotiated by the Applicant and City staff, with agreement by both parties.
- vii. Waiver: In its sole and absolute discretion, the City reserves the right to waive any requirements of this Community Facilities District Policy. The waiver shall be administratively approved by the City Attorney and the City Manager, or his/her designee, after having been publicly noticed in a newspaper of general circulation for no less than ten (10) days.

PROCEDURES

1. Pre-Submission Meeting

- a. The City encourages potential applicants for a CFD to schedule, prior to submission of its Application, a meeting with City staff to discuss the proposed project and the potential submission of an application before the Applicant expends substantial time and financial resources preparing a formal Application. A pre-application meeting is not mandatory, but is recommended. During the meeting, the Applicant will present and discuss the proposal to City staff, and staff will provide comments and feedback on the proposal and identify any initial concerns. The City will not charge an application fee for this meeting. A pre-application meeting may be scheduled by contacting the

Administration Division of the City's Finance Department and may include appropriate City staff and outside professionals and consultants.

2. Application

- a. One hard copy of the Application, along with an electronic copy thereof, for the formation of a CFD shall be submitted to the Finance Department, Administration Division, of the City.
- b. At the time of submission of the Application, the Applicant shall be charged a non-refundable fee of \$15,000 as a deposit on account to be applied by the City in its sole discretion to the costs incurred in connection with processing and reviewing the Application and the formation and administration of each CFD. The City will provide for the timely payment of all such costs and expenses. If, upon formation of the CFD, any balance of such deposit remains, it will be applied for the purposes described in [Procedures Section 3.a](#). If the application is denied, the City will not assess any additional fee for the submission of a substantially similar Application submitted within one year following the denial.
- c. The Application will not be considered "complete," until it has been reviewed and analyzed by appropriate City staff, and the Applicant has submitted all requested documentation and information. The determination as to whether the Application is complete shall be made within sixty (60) days of submission, unless the City and the Applicant agree to extend the time period, or if the Applicant unreasonably delays providing information requested by the City. Before or during the pre-submission conference or at any other time prior to a determination that the Application is complete, City staff may request additional information. The Applicant shall promptly provide any and all supplemental information requested.
- d. The review, analysis, and consideration of an Application will be generally conducted as follows:
 - i. Phase 1 will consist of a comprehensive review of the Application to identify missing or incomplete information and to identify and discuss concerns with the Applicant. The end result of Phase 1 will be a determination of whether the Application is complete or incomplete. An application shall be deemed "complete" when it is determined by City staff to include all documents and other information required to be submitted under the Act, and this Policy and requested by staff and otherwise conforms to this Policy.
 - ii. If the Application is determined to be complete, the review will move on to Phase 2, which will be a more detailed review by appropriate City staff that will include, but will not be limited to, examining the feasibility, financing analyses, and evaluation of community benefits relating to the CFD as well as compatibility with the matters described in [Policy Section 2.c](#). This Phase may include several iterations of review, comment, and re-review.
 - iii. Phase 3 will consist of a report, prepared by the City, which includes recommendations related to the CFD and an analysis of the impact of the

formation of the CFD and its effects on the City. This report may provide a recommended disposition of the completed Application and any additional requirements that will be placed on the Applicant and/or the CFD.

- e. At the conclusion of Phase 3, the completed Application along with any reports prepared by City staff and the staff's recommendation will be forwarded to the City Council for consideration and possible approval during a regular City Council meeting to be convened within sixty (60) days of the City staff's determination that the Application is complete. The request for formation of the CFD shall be placed on the agenda as a public hearing item, and the public will be allowed to speak and comment on the Application.
- f. A resolution declaring the intent to form a CFD shall be considered by the City Council immediately following the public hearing. If the City Council does not adopt the resolution, it will provide a written basis for not adopting the resolution which shall identify the specific changes needed for the completed Application to be approved. The written basis will be prepared by City staff for approval by the City Council during the next regularly scheduling public meeting. A copy of the approved written basis will be promptly provided to the Applicant.
- g. The resolution must include the area to be included in the district; the purpose of the district; a statement that a general plan for the district is on file with the City Clerk; the date, time, and location of the hearing to be held on the formation of the district; where objections to the formation of the district must be filed; the composition of the Board; and and a statement that formation of the CFD may result in the levy of taxes to pay the costs of improvements to be constructed by the District and for the operation and maintenance of the improvements.
- h. If the City Council approves an Application, the Applicant and City staff will coordinate a schedule of events for formation of the CFD. Simultaneously with formation of the CFD, the Applicant and the City will enter into the final CFD District Agreement incorporating the requirements of any report, recommendations of City staff relating to such CFD, the requirements of these policy guidelines and any other restrictions, provisions and agreements required by the City. If there are existing agreements with the Applicant for the provision of public infrastructure proposed to be furnished by the CFD, then those agreements will be amended to reflect the agreements and conditions pertaining to the CFD by the means of such CFD District Agreement. As required by [Policy Section 3.h.i](#) above, a fully negotiated CFD District Agreement along with any necessary or amended development agreements must be included as part of a complete CFD Application.

3. CFD Financial Operations and Debt Financing

- a. Upon approval of formation of a CFD, the Applicant shall deposit with the CFD a nonrefundable administrative expense fee in the amount of \$50,000. The administrative expense fee shall be applied by the CFD in its sole discretion to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation, and maintenance with respect to the CFD or its public infrastructure. The CFD Board will provide for the timely payment of all such

costs and expenses. From time to time, upon depletion of the administrative expense fee and provision of an accounting of the uses of such amount, the CFD Board may request, and the Applicant shall promptly deposit with the CFD, additional \$25,000 deposits to be applied to the purposes contemplated herein.

- b. The Board shall require the imposition of an ad valorem property tax upon the CFD taxable property of up to \$100.00 of assessed value upon the CFD taxable property in order to provide for the CFD to be self-supporting for its administrative, operation, and maintenance expenses and replacement reserve purposes, if appropriate. Failure to cooperate with the imposition of such tax will relieve the City and the CFD from undertaking any obligations or operations.
- c. In connection with any request for debt financing, unless otherwise agreed to by the City, the Applicant will provide a current appraisal of the fair cash market value of the property within the proposed CFD that is to 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 appraisal to be in form and substance acceptable to the City, in its sole discretion. Generally, the appraisal shall be based on the wholesale, bulk sale of the property in the CFD.
- d. The amount of debt of a CFD may not have any substantial direct or indirect negative impacts on the debt or financing capabilities of the City, and the debt imposed on the CFD may not impose an unreasonable financial burden on future CFD residents.
- e. Each feasibility report for financing by a CFD shall describe any economic advantage or the estimated savings, if any, to residents in the form of reduced purchase prices, enhanced public services and/amenities, additional community benefits, etc. that are projected to result from such CFD financing.
- f. Proceeds of the sale of each bond issue shall, except to the extent limited by applicable law, be applied to fund a debt service reserve fund in the maximum, permissible amount or an acceptable reserve fund surety bond, insurance policy or other guarantee shall be provided in lieu thereof. If applicable law does not permit the funding of such a reserve fund, the applicant or third parties shall provide amounts for such purpose under circumstances acceptable to the Board.
- g. If general obligation (“GO”) bonds are to be issued by the CFD, those GO bonds will be secured by an unlimited ad valorem tax on all taxable property located within the CFD. Prior to the issuance of GO bonds by the CFD, the Applicant shall describe in the project feasibility report, in addition to the statutory requirements, the following:
 - i. The current direct and overlapping tax and assessment burden on the property within the CFD and the full cash value and assessed valuation of the Property as shown on the most recent assessment roll. (The Applicant shall provide a current appraisal of the fair market value of the Property within the CFD that is to be taxed, prepared by a person who is designated as a 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 Board, in its sole discretion. Generally, the appraisal shall be based on the wholesale, bulk value of the Property. The appraisal shall not be required if the sizing of the debt

issuance is based on existing assessed values or if sufficient collateral is to be provided by the Applicant so that land value is not a determinative issue.

- ii. The amount and timing of CFD GO bonds to be issued
- iii. The expected market absorption of development within the CFD
- iv. The effect of the CFD bond issuance on CFD property tax rates, calculated over the entire period of time that the proposed GO bonds are estimated to be outstanding or based on the phasing of the public infrastructure to be financed, as applicable.
- v. Choice of mechanism to limit the total tax rate of the CFD. Except as hereinafter provided, a series of bonds will only be issued if the debt service therefor can be amortized with substantially equal amounts of annual debt service from amounts generated by a tax rate determined by the Board per one hundred dollars (\$100.00) of secondary assessed valuation of property within the boundaries of the CFD as indicated on the tax roll for the then current tax year. For purposes of the foregoing, a delinquency factor for tax collections equal to the greater of five percent (5%) or the historic, highest 3 year average, annual, percentage delinquency factor for taxpayers within the City as of such fiscal year shall be assumed; all property in the CFD owned by the Applicant or any entity owned or controlled by the Applicant shall be assigned the last value such property had when categorized as "vacant" for purposes of secondary assessed valuation and the debt service for any outstanding series of bonds theretofore issued shall be taken into account in determining whether such tax rate will produce adequate debt service tax collections; provided, however, that the first series of the bonds shall be issued no later than necessary to have the debt service tax costs therefor appear on the first tax bill applicable to any single family residential unit, to be located within the boundaries of the CFD to be owned by other than the Applicant or any entity owned or controlled by the Applicant or any purchaser to whom the Applicant or any entity owned or controlled by the Applicant sells property within the boundaries of the CFD. A deposit equal to one year's maximum debt service on each series of such bonds will be required from the Applicant or third parties and would be used to maintain the tax rate described above at its original level; such deposit would be subject to replenishment if applied for such purpose.

The CFD Board at its discretion may consider issuing bonds in greater amounts than described in the preceding paragraph. If the debt service tax rate determined by the Board is not sufficient to produce amounts to pay the entire debt service necessary with respect to such GO bonds when due, the Applicant or other entity acceptable to the Board will be required to provide collateral sufficient to pay one-hundred percent (100%) of the difference between the revenues produced by such pre-established tax rate and the actual debt service coming due in that fiscal year for each year while any of the bonds of the series in question are outstanding in the form of a cash contribution or other acceptable form of security or any combination of the foregoing, which shall be bankruptcy proof, as required by the Board. A cash flow schedule illustrating the amount and the time period required to cover such shortfall will be required to be submitted as part of the feasibility report. Such amount shall be required to remain fully funded until such time as

the Board, exercising its sole discretion, determines sufficient assessed valuation has been created that the debt service will be self-supporting. At that time, the Board, exercising its sole discretion, will determine whether the collateral will be released in whole or in part. Parameters for the foregoing will be included in the development agreement described in [Procedures Section 2.h](#).

- vi. Marketing Plan for the Sale of Bonds
 - a. Publicly offered bonds must be rated in one of the four highest investment grade ratings from Standard & Poor's Corporation, a division of the McGraw-Hill Companies ("S&P"), Moody's Investors Services ("Moody's"), or other nationally recognized bond rating service. Pursuant to state statutes, the CFD will not sell non-investment grade bonds in a public offering.
 - b. Bonds not publicly offered need not be rated. However, purchasers of such bonds must be similar to those acceptable pursuant to Rule 144A of the Securities Exchange Commission ("Qualified Buyers") and must agree to hold the bonds for his/her own account and not to resell the bonds except to Qualified Buyers.
 - c. Bonds offered through a limited public offering must be sold only to "Qualified Institutional Buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended) or "Accredited Investors" (as defined in Section 2(a) (15) of the Securities Act of 1933, as amended). Initial purchasers of the Bonds will be deemed to have represented by such purchase that such purchaser is either a Qualified Institutional Buyer or an Accredited Investor, and understands the bonds may not be reoffered, resold, pledged, or otherwise transferred except to Qualified Institutional Buyers or Accredited Investors.
- h. Assessment bonds shall be secured by first lien (subject only to the lien for general taxes and prior special assessments) on the property benefited and shall be issued only if arrangements are made to have the applicable assessments collected on a tax bills by the Treasurer of Maricopa County, Arizona. The Applicant must describe for assessment bonds in each project feasibility report, along with the statutory requirements, the following:
 - i. The current direct and overlapping tax and assessment burdens on real property to comprise the CFD and the full cash value and assessed valuation of that property as shown on the most recent assessment roll. The Applicant shall provide a current appraisal of the fair market value of the property within the proposed CFD that is to be assessed, prepared by a person who is designated as an MAI Appraiser, such appraisal to be in form and substance acceptable to the Board, in its sole discretion. Generally, the appraisal shall be based on the wholesale, bulk value of the Property. The appraisal shall not be required if sufficient collateral is to be provided by the Applicant so that land value is not a determinative issue.
 - ii. The amount and timing of CFD assessment bonds to be issued

- iii. The expected market absorption of development within the CFD
- iv. The estimated assessment amount to be placed on prospective assessed parcels
- v. Whether the assessments will be paid upon sales of lots by the Applicant or will remain on the property after sale
- vi. Marketing Plan for Sale of Bonds
 - a. Publicly offered bonds must be rated in one of the four highest investment grade ratings from S&P, Moody's or other nationally recognized bond rating service, or an appraisal of the property within the proposed CFD to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the Board, in its sole and absolute discretion, shall indicate a minimum land value to debt ratio of 3 to 1, on an assessed parcel by assessed parcel basis, prior to the issuance of debt.
 - b. Bonds not publicly offered need not be rated. However the purchasers of such bonds must be Qualified Buyers and agree to hold the bonds for his/her own account and not to resell the bonds except to Qualified Buyers. Further, in connection with the sale of unrated bonds, the 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 Board, in its sole and absolute discretion, indicating a preferred minimum land value to debt ratio of 4 to 1, on an assessed parcel by assessed parcel basis, prior to the issuance of debt.
 - c. Bonds offered through a limited public offering must be sold only to "Qualified Institutional Buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended) or "Accredited Investors" (as defined in Section 2(a) (15) of the Securities Act of 1933, as amended). Initial purchasers of the Bonds will be deemed to have represented by such purchase that such purchaser is either a Qualified Institutional Buyer or an Accredited Investor, and understands the bonds may not be reoffered, resold, pledged, or otherwise transferred except to Qualified Institutional Buyers or Accredited Investors.
- i. Revenue bonds shall be payable from a specified revenue source. The Applicant must describe in each project feasibility report, along with the statutory requirements, the following:
 - i. The revenue source from which bonds will be payable. The CFD Board reserves the right to require that independently prepared financial feasibility studies or reports be provided as it deems necessary to confirm the amount and availability of revenues.
 - ii. The expected market absorption of development within the CFD
 - iii. The amount and timing of CFD revenue bonds to be issued
 - iv. The financial impact of the proposed issue(s) on prospective residents

- v. Any plan for subsidizing revenues to meet obligations with respect to the bonds
- vii. Marketing Plan for Sale of Bonds
 - a. Publicly offered bonds must be rated in one of the four highest investment grade ratings from S&P, Moody's or other nationally recognized bond rating service. Pursuant to state statutes, the CFD will not sell non-investment grade bonds in a public offering.
 - b. Bonds not publicly offered need not be rated. However, purchasers of such bonds must be Qualified Buyers and must agree to hold the bonds for his/her own account and not to resell the bonds except to Qualified Buyers.
 - c. Bonds offered through a limited public offering must be sold only to "Qualified Institutional Buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended) or "Accredited Investors" (as defined in Section 2(a) (15) of the Securities Act of 1933, as amended). Initial purchasers of the Bonds will be deemed to have represented by such purchase that such purchaser is either a Qualified Institutional Buyer or an Accredited Investor, and understands the bonds may not be reoffered, resold, pledged, or otherwise transferred except to Qualified Institutional Buyers or Accredited Investors.

4. Financing Considerations

- a. The Applicant (or such other third party acceptable to the CFD Board) shall indemnify the City and the CFD and their agents, officers, and employees and shall hold the City and the CFD and their agents, officers and employees harmless for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred with respect 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.
- b. In addition, if such insurance is not otherwise available from another source, the Applicant shall be responsible for the cost of a Director's and Officers (D&O) insurance policy to cover all actions and activities taken by the Board and officers of the CFD relating to the CFD formation, financing, administrative actions and other related activities and for depositing the amount of any deductible in escrow with the CFD or for providing a plan for providing for such deductible. The amount of the D&O coverage will be determined by the CFD at the time of formation.
- c. Unless otherwise provided to the CFD pursuant to other requirements, prior to CFD financing and construction and/or acquisition of any public infrastructure, the CFD and the City will be provided with 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 with respect to any public infrastructure, if necessary, and a proposed form of indemnity agreement with respect to all environmental law liability.