

POLICY GUIDELINES AND APPLICATION PROCEDURES
FOR THE ESTABLISHMENT OF
COMMUNITY FACILITIES DISTRICTS

Lake Havasu City, Arizona

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**POLICY GUIDELINES AND APPLICATION PROCEDURES
FOR THE ESTABLISHMENT OF
COMMUNITY FACILITIES DISTRICTS**

In order to secure for Lake Havasu City, Arizona (the “City”), the public benefits of the Community Facilities Act (the “Act”) originally enacted by the Arizona Legislature in 1988 and to promote the best interests of the City, the following Policy Guidelines and Application Procedures are adopted by the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 when being utilized by the City to assist in development of land owned by developers. (All terms used herein and not otherwise defined shall have the meaning given to them in the Act.) These policy guidelines are in accordance with ARS §§ 48-701 through 725 in addition to all other applicable laws and regulations concerning the Community Facilities District process.

**ARTICLE 1.
General Policies**

- 1.1 Community facilities districts (“CFD”) in the City may provide a funding mechanism to finance acquisition or construction of public infrastructure that benefits the real property comprising the CFD (the “Property”) and its ultimate owners and thereafter a mechanism to provide for the operation and maintenance of such infrastructure if necessary and can also be utilized by the City to provide enhanced municipal services, benefiting the users of the real property within the CFD. The City Council recognizes the ability of a CFD to provide for the acquisition or construction of public infrastructure that might otherwise be more costly or, in some instances, not be provided at all.
- 1.2 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.
- 1.3 CFDs should be utilized primarily in connection with the financing of acquisition or construction of public infrastructure for development of master planned communities or projects involving substantial commercial development. The types of facilities generally eligible to be financed are:
 - a. Streets and roads (thoroughfares, arterials, major streets, major collector streets), bridges, street lighting, traffic signals and safety lighting
 - b. Public utilities, including but not limited to, water, sewer and drainage related facilities
 - c. Recreation facilities, including but not limited to, parks and recreational facilities, community centers, sports facilities and complexes, bikeways, and golf courses
 - d. Public safety facilities, including but not limited to police stations, sub-stations, and other facilities, fire stations and facilities

The City has final determination as to any facility's eligibility for financing and the prioritization of facilities to be included within a district financing.

- 1.4 Any public infrastructure financed by a CFD should be in conformance with the General Plan of the City in order to encourage orderly growth and development. Special consideration should be given to CFDs that provide an enhanced level of infrastructure amenities and/or municipal services.
- 1.5 All costs incurred by the City and/or the CFD in connection with the application, formation and subsequent activities of a CFD will be paid by the applicant/landowner/developer or any successor thereto (such entity generically referred to herein as the "Applicant") through a series of monetary deposits as provided herein. Such deposits will be applied to pay amounts due for services rendered by the City staff, CFD staff and outside consultants who may be retained by the City and/or the CFD, including but not limited to bond counsel, financial advisors, engineers, appraisers and attorneys. 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.
- 1.6 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 is a decision of the City Council to be made 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.
- 1.7 Unless the City Council determines otherwise, each CFD will be governed by a Board which will be comprised of the members of the City Council, *ex officio*. The day-to-day administrative responsibilities of the CFD will be performed pursuant to a contract by outside personnel or by the City staff. At the option of the Board, advisory committees may be utilized.
- 1.8 Unless otherwise agreed 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 or the taxing power of the City will be pledged to or otherwise secure the payment of any CFD obligation or indebtedness.
- 1.9 After review of the project feasibility report, property appraisals and other required pertinent information, the Board will determine, in its sole and absolute discretion, the amount, timing and form of financing, if any, to be used by a CFD.

- 1.10 All public infrastructure to be acquired or constructed by a CFD will be required to utilize statutory public procurement procedures in accordance with applicable laws, rules and regulations as would be applied by the City in a construction project for the City.
- 1.11 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.
- 1.12 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, will be the responsibility of the CFD, the Applicant, applicable homeowners associations, or any combination of the foregoing, as may be acceptable to the Board.
- 1.13 The City recognizes, and potential users of these policy guidelines must also recognize, that these policy guidelines will not necessarily produce a marketable general obligation, revenue or special assessment bond, especially if reliance is placed solely or heavily on the value of the underlying real estate as security for the bonds. Since investors in such bonds fully expect to receive principal and interest on these bonds in full when due, and do not expect to have to resort to, and await, real estate foreclosures or tax lien sales for their money, one or more levels of additional security – such as cash deposits, letters of credit, certificates of deposit, bond insurance, and the like – may be required to market the bonds successfully. Accordingly, it is incumbent upon any developer desiring to utilize these policy guidelines to consult with an investment banker or other financial advisor knowledgeable and experienced in special district financings to determine whether and what type of additional security will be required and whether that security can be provided or obtained within a reasonable time and on reasonable terms. If not, the time and expense invested in this project by the City and the developer will be wasted.
- 1.14 These Policy Guidelines and Application Procedures may be modified from time to time by the City as well as to make exceptions or changes for specific financing projects, as facts or circumstances so warrant.

The City may find in limited and exceptional instances that a waiver to any of the provisions contained in this document is reasonable given identified special City benefits to be derived from such waiver. Such waivers are granted only by action of the City Council and based upon specific public purpose and/or health and safety findings.

ARTICLE 2. Contents of Applications

An “Application” for the formation of a CFD must be completed prior to any determination that a CFD will be formed. The Application shall, at a minimum, contain the following information and be organized in the manner described below.

Applicant Information

- 2.1 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 whether or not directly related or associated with the proposed development of the Property and the proposed CFD.
- 2.2 Contact(s). The name, address, phone number and other relevant information for the primary contact for the Applicant. This information should list the names (and other relevant information) of any attorneys, engineers, architects, financial consultants and/or other consultants significantly involved with the Application.
- 2.3 Experience. A general description of the Applicant's experience with similar types of development projects as the Property.
- 2.4 Financial Capability. Evidence demonstrating the Applicant's financial ability (including financial statements if necessary) to undertake and complete the proposed development.

Proposed CFD and Public Infrastructure Description

- 2.5 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 should 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.
- 2.6 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 real property comprising the proposed CFD boundaries. This description must include an analysis of the appropriateness of the CFD boundaries.
- 2.7 Land Use and Zoning. Verification that the properties to be included in the proposed CFD possess a land use determination such that proposed development land uses and specific facility requirement can be adequately assessed. Properties must possess approved City zoning or site plan approval prior to application.
- 2.7 Ownership Interests. The identity and address of all persons or entities with any interest in the property 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 Mohave County Assessor or, if not accurate, a current title report and certificate from the Mohave County Elections Department shall be submitted as evidence of names or persons with any interest in the land and qualified electors, respectively.

- 2.8 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.
- 2.9 Status of Entitlements and Source of Water, Sewer Treatment and Other Utilities/Services. The status of all entitlements with respect to the Property as well as the plan for providing water, sewer treatment and other utilities and services (fire, police, education, etc.) to the Property.

Proposed Improvements

- 2.10 Description of Public Infrastructure. A detailed description of the types of public infrastructure to be acquired or constructed by the CFD.
- 2.11 Estimated Costs. An estimate of the acquisition or construction costs of the public infrastructure to be completed by the CFD. This information shall include a detailed list of the estimated cost of each component of the public infrastructure. The Applicant should take note of the fact that the public infrastructure to be acquired or constructed cannot be the subject of a statutory development fee assessed by the City.
- 2.12 Development Timetable. A detailed timetable describing the scheduling, timing or phasing and completion of the public infrastructure and the private development. This schedule should include a timetable for acquiring or constructing both the public and private components of the overall development with respect to the Property. Each phase of the development should be shown separately.

Financing Plan

- 2.13 Description of Financial Plan. A detailed description of the capital financing plan for the public infrastructure and the private development with respect to the Property, including both public and private components of such development. This description should include the proposed types of tax-exempt/taxable bonds to be issued for the public infrastructure 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.
- 2.14 Sources and Uses of Funds. A detailed sources and uses of funds for the public infrastructure with respect to the Property. This schedule should include the description of components of the public infrastructure that will be financed by the type of bonds to be issued.
- 2.15 Financial Feasibility. An independent 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 Property, including both the public infrastructure and the private development. This feasibility study should include, if possible, a preliminary market absorption study for the private development.
- 2.16 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 should also be provided

- 2.17 Value-to-Lien Ratio Analysis. Based on the estimated value of the Property, including proposed construction of the public improvements, an analysis of the value-to-lien ratios of the proposed public financing if in the form of general obligation or assessment bonds.
- 2.18 Operation and Maintenance Costs. A detailed description and a financial pro-forma of the estimated annual operation and maintenance costs of the public infrastructure, including provision for replacement reserves, if appropriate. The Application must clearly detail the specific entities, such as the CFD, homeowners associations, the Applicant, etc. that will be responsible for funding the on-going operation and maintenance costs for all CFD improvements, including provision for replacement reserves, if appropriate. This section should also provide a description of the revenue source of each.

Miscellaneous Information

- 2.19 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.
- 2.20 Disclosure to Prospective Property Owners. Information regarding the proposed disclosure form and methodology that will be used to describe to prospective buyers the potential tax, assessment and fee implications of the CFD. Such forms shall have provisions for the signed acknowledgement of receipt of such disclosure form. (Landowners/developers are required to describe in their promotional materials the financial and other relative impacts of the development being in a CFD and should note that acknowledged disclosure forms will be required to be filed with the City Clerk of the City.) The Applicant should also describe the process and record-keeping processes to be used for retaining all signed homeowner CFD acknowledgement disclosure statements. (Upon each sale of property in the CFD, the developer/landowner shall file with the City a receipt, signed by the purchaser that acknowledges the purchaser's receipt of the disclosure form.)
- 2.21 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 \$0.25 in infrastructure or community improvements benefiting the Property by the Applicant for each \$1.00 of debt to be issued by a CFD to finance public infrastructure purposes. If agreed to by the Board, in its sole and absolute discretion, prior infrastructure and community improvements constructed or acquired by the Applicant and benefiting the Property may be included in calculating the Applicant's compliance with this requirement.
- 2.22 Development Agreements. As an appendix, any Development Agreements entered into between the City and the Applicant relating to this proposed development.

ARTICLE 3.
Application Procedures

- 3.1 Ten copies of the Application for the formation of a CFD shall be submitted to the Finance Department of the City who will coordinate an inter-departmental analysis of the Application.
- 3.2 At the time of submission of the Application, the Applicant shall pay a non-refundable Application fee of \$20,000 and shall deposit an additional \$25,000 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 the CFD. The City will provide for the timely payment of all such costs and expenses. When such \$25,000 deposit (and each subsequent \$25,000 amount hereinafter described) is expended, an accounting will be made to the Applicant for all costs incurred by the City and an additional \$25,000 will be requested in writing and must be paid within fifteen (15) business days of receipt of such request. If the applicant fails to make any deposit of additional funds, the City may suspend all proceedings until receipt of such additional deposit.

The deposits shall be used by the City to pay for actual costs and expenses incurred by the City relative to the proceedings, including but not limited to, legal, engineering, appraisal, special tax consultant and financial advisory expenses; documented City staff time, administrative costs and expenses; required notifications; and printing and publication of legal matters.

The City shall refund any unexpended portion of the deposits upon the following conditions:

- a. The District is not formed;
 - b. Bonds are not issued and sold by the District;
 - c. The proceedings for the formation of the District or issuance of bonds is disapproved by the City; or
 - d. The proceedings for formation of the District or issuance of bonds are abandoned in writing by the applicant.
 - e. The formation of the District and issuance of bonds.
- 3.3 After the Application fee and deposit are submitted, the Finance Department of the City shall arrange a pre-application conference with the appropriate City staff, for the purpose of reviewing the Application for conformity with City policies.
- 3.4 If, following the pre-application conference or at any other time during the application process City staff requests additional information, the Applicant shall provide any and all

supplemental information requested prior to proceeding to the next step of the review process.

- 3.5 The review, analysis and implementation of the Application will be generally conducted in four sequential phases.
- a. Phase 1 will consist of a preliminary review of the Application to identify missing or incomplete information and to identify and discuss any initial concerns prior to the City undertaking a more complete review of the Application.
 - b. Phase 2 will consist of a detailed review of the Application, as amended. The review will include, but will not be limited to, examining the feasibility, financing analyses and evaluation of community benefits relating to the CFD. This phase may include several iterations of review, comment and re-review. Under the direction of the City, a report may be prepared including 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 Application and any additional requirements that will be placed on the Applicant and/or the CFD.
 - c. Phase 3, if undertaken, will consist of the planning, development, creation, financing and bond issuance for the CFD.
 - d. Phase 4, if necessary, will consist of the continuing administration, oversight and management of the CFD.
- 3.6 If the requirements of 3.2 are then being satisfied and the Application meets the qualifications provided herein, the Application, along with any report and recommendations by City staff, will be forwarded to the City Council.
- 3.7 If the City Council approves an Application, the Applicant and the staff of the City shall coordinate a schedule of events for formation of the CFD. Simultaneously with formation of the CFD, the Applicant and the City shall enter into a development agreement incorporating 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. 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 development agreement.

ARTICLE 4.

CFD Financial Operations and Debt Financing

- 4.1 Upon formation of a CFD, the Applicant shall deposit with the CFD a nonrefundable administrative expense fee in the amount of \$25,000. 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 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 may request, and the Applicant shall promptly deposit with the CFD, additional \$10,000 deposits to be applied to the purposes contemplated herein.

- 4.2 The Board may impose an ad valorem property tax upon the taxable property in the district 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.
- 4.3 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. The amount of the debt incurred by the CFD cannot exceed 5% of the total secondary assessed value of the property included in the CFD boundaries.
- 4.4 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.
- 4.5 Proceeds of the sale of each bond issue shall, 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.
- 4.6 A general obligation bond authorization for a CFD shall expire no later than seven (7) years from the date of voter authorization.
- 4.7 If general obligation bonds are to be issued by the CFD, those general obligation bonds will be secured by an ad valorem tax on all taxable property located within the CFD. The maximum permitted tax rate will not exceed \$3.00 per \$100 of assessed valuation. Prior to the issuance of general obligation bonds by the CFD, the Applicant shall describe in the project feasibility report, in addition to the statutory requirements, the following:
 - a. The current direct and overlapping tax and assessment burden on the Property 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 that is to be taxed, 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 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. The appraisal, if required, will be submitted according to the schedule of events coordinated under Section 3.7.

- b. The amount and timing of CFD general obligation bonds to be issued.
- c. The expected market absorption of development within the CFD.
- d. The effect of the CFD bond issuance on CFD property 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 public infrastructure to be financed, as applicable.
- e. 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 of secondary assessed valuation of property within the boundaries of the CFD as indicated on the tax roll for the then current tax year not to exceed the rate described in this section. For purposes of the foregoing, a delinquency factor for tax collections equal to the greater of five percent (5%) or the historic, 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, or owning or controlling, as applicable, 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, if possible, 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 homebuilder to whom the Applicant or any entity owned or controlled by the Applicant sells property within the boundaries of the District. 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. If, despite the best efforts of the Applicant, the tax collections are insufficient to provide funds for the debt service necessary with respect to such general obligation bonds when due, the Applicant or other credit worthy entity acceptable

to the Board will be required to guarantee the shortfall between the tax collected and the amount of the actual debt service payments coming due in that fiscal 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. Applicant or other credit worthy entity acceptable to the Board will maintain a minimum net worth equal to three times the amount of the guarantee. "Soft assets" such as intellectual property or goodwill cannot account for more than twenty percent of the total net worth.

The Board at its discretion may consider issuing bonds in greater amounts than described in the preceding paragraphs. 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 general obligation bonds when due, the Applicant or other credit worthy entity acceptable to the Board will be required to provide collateral sufficient to pay 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. Applicant or other credit worthy entity acceptable to the Board will maintain a minimum net worth equal to three times the amount of the guarantee. "Soft assets" such as intellectual property or goodwill cannot account for more than twenty percent of the total net worth.

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 3.7.

- f. The marketing plan for the sale of the bonds.

Publicly offered bonds must first receive 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.

Bonds that are not publicly offered need not be rated. However, purchasers of such bonds must be either "qualified institutional buyers" or "accredited investors" within the meaning of Rules 144A or 501, respectively, adopted pursuant to the Securities Act of 1933, as amended, who must agree in writing to hold the bonds for their own accounts and not resell them except to other

“qualified institutional buyers” or “accredited investors” who will enter into similar agreements.

In connection with the sale of bonds not publicly offered, the Applicant must provide documentation in form and substance acceptable to the Board, in its sole and absolute discretion, indicating the proposed debt does not exceed 25% of the secondary assessed valuation of any individual unimproved parcel or lot comprising the real property within the CFD.

4.8 Assessment bonds shall be secured by first lien (subject only to the lien for general taxes and prior special assessments) on the property benefited. The Applicant must describe for assessment bonds in each project feasibility report, along with the statutory requirements, the following:

- a. The current direct and overlapping tax and assessment burdens on real property to comprise the CFD and the full cash values and assessed valuations 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 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 should be based on the wholesale, bulk value of the Property. The appraisal may be waived by the Board if sufficient other collateral is to be provided by the Applicant so that land value is not a determinative issue. The appraisal, if required, will be submitted according to the schedule of events coordinated under Section 3.7.
- b. The amount and timing of CFD assessment bonds to be issued.
- c. The expected market absorption of development within the CFD.
- d. The estimated assessment amount to be placed on prospective assessed parcels.
- e. Whether the assessments will be paid upon sales of lots by the Applicant or will remain on the property after sale.
- f. The marketing plan for sale of the bonds.

Publicly offered bonds must first receive 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, or an appraisal of the Property 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 4 to 1, on an assessed parcel by assessed parcel basis, prior to the issuance of debt.

Bonds that are not publicly offered need not be rated. However, purchasers of such bonds must be either “qualified institutional buyers” or “accredited investors” with the meaning of Rules 144A or 501, respectively, adopted pursuant to the Securities Act of 1933, as amended, who must agree in writing to hold the bonds for their own account and not resell them except to other “qualified institutional buyers” or “accredited investors” who will enter into similar agreements.

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 minimum land value to debt ratio of 4 to 1, on an assessed parcel by assessed parcel basis, prior to the issuance of debt.

- 4.9 Revenue bonds shall be payable from a specified revenue source. The Applicant must describe in each project feasibility report, along with the statutory requirement, the following:
- a. The revenue source from which bonds will be payable. The 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.
 - b. The expected market absorption of development within the CFD.
 - c. The amount and timing of CFD revenue bonds to be issued.
 - d. The financial impact of the proposed issue(s) on prospective residents.
 - e. Any plan for subsidizing revenues to meet obligations with respect to the bonds.
 - f. The marketing plan for sale of the bonds.

Publicly offered bonds must first receive 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.

Bonds that are not publicly offered need not be rated. However, purchasers of such bonds must be either “qualified institutional buyers” or “accredited investors” within the meaning of Rules 144A or 501, respectively, adopted pursuant to the Securities Act of 1933, as amended, who must agree in writing to hold the bonds for their own accounts and not resell them except to other

“qualified institutional buyers” or “accredited investors” who will enter into similar agreements.

- 4.10 The term of any bonds issued cannot exceed 30 years, and in any event, cannot be longer than the expected useful economic life of the property financed.

ARTICLE 5.
Financing Considerations

- 5.1 The Applicant (or a third party acceptable to the CFD) 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.

In addition, 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. The amount for the first five years of coverage will be deposited in escrow, either in cash or other security instruments acceptable to the Board, and remaining years will be paid for with District operating funds. Coverage will remain in effect for the entire term of the District.

- 5.2 Unless otherwise provided to the CFD pursuant to other requirements, prior to CFD financing and acquisition or construction of any public infrastructure, the CFD 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.