CITY OF PEORIA, ARIZONA
STAFF REPORT

RPT #: SS2

Date Prepared: September 18, 2009 **Council Meeting Date:** October 6, 2009

TO: Carl Swenson, City Manager

THROUGH: Susan Thorpe, Deputy City Manager SKT
Susan Daluddung, Deputy City Manager SJD

FROM: Brent Mattingly, Finance Director/CFO BDM

SUBJECT: Community Facilities District Policy

SUMMARY:

At the Study Session on February 17, 2009 staff provided the Mayor and Council with an overview of Community Facilities Districts (CFDs) in Arizona. The presentation included a discussion of the history, purpose and characteristics of CFDs and their use as a financing tool for the construction of a wide variety of public infrastructure.

At the conclusion of the February study session Council directed staff to bring back recommended revisions to the City's existing CFD policy at a future study session. Staff reviewed CFD policies from other Arizona cities and drafted some initial changes to Peoria's current policy.

The Economic Development Advisory Board (EDAB), as their goals indicated, wanted to provide more substantive policy recommendations to City Council on matters of economic development. The board felt an understanding of the "financing toolbox" could be useful in addressing future economic development projects in Peoria. As such, staff met with EDAB on June 18, 2009 to provide a background of infrastructure financing including impact fees, bonds, improvement districts, dedicated sales taxes, state funding programs, CFDs and project specific development agreements. An additional discussion was set for September to develop a policy recommendation on CFDs in particular.

Staff met again with the EDAB on September 10, 2009 with an agenda item to specifically discuss staff's proposed changes to the City's current CFD policy. In advance of the meeting staff provided the board with an outline of policy considerations along with a draft amended CFD policy. After discussion, the EDAB proposed some modifications to the draft. The proposed changes focus on the "General Policies" section of the current CFD policy and include:

- Adding a new section referencing the use of CFDs to help attain Council's general policy objectives, such as economic development objectives and

preservation of large areas of open space. The draft now includes examples of current objectives. The language is as follows:

> *1.1 It is prudent that Peoria utilize a CFD where significant Council public policy objectives are facilitated by providing this financing mechanism. Examples of significant economic development policy objectives might include the creation of significant numbers of permanent, high wage jobs in Peoria, large projects that provide an appropriate mix of new retail, office and/or industrial development, location of major universities/higher education facilities, or attraction of a major corporate campus. An example of policy objectives related to preserving our natural environment might include projects that facilitate the donation and preservation of large areas of open space.*

- Revising reference to the primary use of CFDs from "development of master planned communities" to "extraordinary projects that bring significant additional revenue and benefits to the City".

- Clarifying that special consideration should be given to CFDs that provide infrastructure that is significantly beyond what is normally expected and/or required in a similar project.

- Insuring the new policy does not specifically exclude any particular type of development. The policy would remain flexible and could be used for extraordinary commercial, industrial, residential, educational, or other types of development where the prudent use of a CFD could help achieve Council's policy objectives.

- Although not included in the new draft policy, staff and the board discussed having the EDAB provide an initial recommendation on CFD applications submitted to the City from developers requesting consideration of CFD financing for their development project.

A copy of the draft revised CFD policy is attached. The revisions are on page 1 of the document. After Council discussion and direction, staff could bring a final policy to a future Council meeting for formal adoption.

CITY OF PEORIA, ARIZONA
POLICY GUIDELINES AND APPLICATION PROCEDURES
FOR THE ESTABLISHMENT OF
COMMUNITY FACILITIES DISTRICTS

In order to secure for the City of Peoria, Arizona (the "City") the benefits of the Community Facilities Act (the "Act") 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.

A community facilities district ("CFD") provides a funding mechanism to finance construction, acquisition, operation and maintenance of public infrastructure that benefits the real property comprising the CFD and its ultimate users, and to better enable the City to provide municipal services benefiting the users of the real property within the CFD. ~~The City Council recognizes the ability of the CFD to allow the construction and/or acquisition of infrastructure that might otherwise not be provided.~~

Recognizing a CFD is a statutory special taxing district with municipal taxing and borrowing powers created within the boundaries of the City, the City Council believes that the formation of each CFD should be entered into carefully in order to ensure its lasting success.

It is for these reasons that the City Council has established the following Policy Guidelines and Application Procedures.

ARTICLE 1.
General Policies

1.1 It is prudent that Peoria utilize a CFD where significant Council public policy objectives are facilitated by providing this financing mechanism. Examples of significant economic development policy objectives might include the creation of significant numbers of permanent, high wage jobs in Peoria, large projects that provide an appropriate mix of new retail, office and/or industrial development, location of major universities/higher education facilities, or attraction of a major corporate campus. An example of policy objectives related to preserving our natural environment might include projects that facilitate the donation and preservation of large areas of open space.

1.2 CFDs should be utilized primarily in connection with the financing of infrastructure for ~~development of master planned communities or projects involving substantial commercial development~~ extraordinary projects that bring significant additional revenue and benefits to the City.

1.3 Special consideration should be given to CFDs that provide ~~an enhanced level of infrastructure amenities and/or municipal services.~~ infrastructure that is significantly beyond what is normally expected and/or required in a similar project. Any public infrastructure financed by a CFD should be in conformance with the City's General Plan in order to encourage orderly growth and development.

1.4 All costs incurred by the City and/or the CFD in connection with the CFD application and formation will be paid by the applicant/landowner (the "Applicant") through a series of monetary deposits as provided herein. These deposits shall be applied to payments for services rendered by the City staff, CFD staff and services rendered by 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 or financing of the CFD. If authorized by the CFD board of directors, 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.

1.5 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. This policy is adopted to facilitate ease of administration and to create the largest tax/revenue base possible. The decision to form a CFD shall be determined by the City Council exercising its sole and absolute discretion.

1.6 Unless otherwise agreed to by the City Council, and pursuant to state statutes, the CFD will be governed by a board of directors comprised of the members of the City Council. The day-to-day administrative responsibilities of the CFD will be performed pursuant to a contract by outside personnel or by the City staff. The City will determine that adequate safeguards and controls are in place 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. At the option of the CFD board of directors and with approval by the City Council, advisory committees may be utilized.

1.7 Unless otherwise agreed to by the City, the CFD must be self-supporting from the standpoint of financing, operations and maintenance and no City funds will be used for CFD purposes. Notwithstanding anything contained herein, neither the property, the full faith and credit nor the taxing power of the City shall be pledged to the payment of any CFD obligation or indebtedness.

1.8 After review of the project feasibility report, property appraisals and other required pertinent information, the CFD board of directors will determine, in its sole and absolute discretion, the amount, timing and form of financing to be used by a CFD.

1.9 All public infrastructure constructed or acquired by the CFD will utilize statutory public procurement procedures in accordance with applicable laws, rules and regulations, as applicable.

1.10 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 Applicant's property.

1.11 Unless otherwise agreed to by the City, all costs of administration and operation of the CFD and the operation and maintenance of public infrastructure in the CFD, including replacement reserves if appropriate, shall be the responsibility of the CFD, the Applicant, applicable homeowners associations, or any combination of the foregoing, as may be acceptable to the City and the CFD board of directors.

1.12 These Policy Guidelines and Application Procedures may be modified from time to time by the City. 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 a CFD to the City Council.

ARTICLE 2.
Content of Application

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

Applicant Information

2.1 Applicant Information. 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 also include the names of all officers and/or corporate directors directly related or associated with the proposed development and the proposed CFD.

2.2 Applicant Contact. The name, address, phone 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 Application.

2.3 Experience. A general description of the Applicant's experience with similar types of projects.

2.4 Financial Capability. Evidence demonstrating the Applicant's ability and capacity (including financial statements if necessary) to undertake the proposed development.

Proposed CFD and Project Description

2.5 General Description. The Application shall provide a general description of the CFD, its purpose, proposed improvements 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 also 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. The Applicant shall provide 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.

2.7 Ownership Interests. The Applicant shall provide the identity and address of all persons or entities with any interest in the property, including lien holders and purchasers under pending sales contracts, and the names and addresses of any qualified electors located within the proposed boundaries of the CFD. 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.

Proposed Improvements

2.8 Description of Project. The Application shall contain a detailed description of the types of public infrastructure to be financed 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.

2.9 Estimated Costs. The Application shall provide an estimate of the construction and/or acquisition 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 improvements.

2.10 Development Timetable. A detailed timetable describing the scheduling, timing or phasing of the improvements shall be provided in the Application. This schedule should include a timetable for constructing/acquiring both the public and private components of the overall development. Each phase of the development should be shown separately.

Financing Plan

2.11 Description of Financial Plan. The Application shall include a detailed description of the capital financing plan for the public infrastructure and the private development, including both public and private components of the development. This description should include

the proposed types of tax-exempt/taxable bonds to be issued for the public improvements as well as the financing plan of the Applicant for the private developments and the sources of the proposed financing of debt or equity.

2.12 Sources and Uses of Funds. The Application shall include a detailed sources and uses of funds for the public improvements. This schedule should include the description of components of the public improvements that will be financed by the type of bond to be issued.

2.13 Financial Feasibility. The Application should include a 20-year financial feasibility study for the entire project 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.

2.14 Fiscal Impact. The Application shall provide an analysis of the taxes, assessments and utilities fee impact on the property owners/residents/users within the CFD, specifically, projected property tax rates and levies, special assessments, fees, charges and any other costs to be borne by the property owners/residents/users in the CFD. A comparative analysis of such taxes, assessments and fees of similar or adjoining areas and/or CFDs should also be provided.

2.15 Value-to-Lien Ratio Analysis. Based on the estimated value of the property within the development, including the acquisition and/or construction of the public improvements within the CFD, the Application shall include an analysis of the value-to-lien ratios of the proposed public financing.

2.16 Operation and Maintenance Costs. The Application shall provide a detailed description and a financial pro-forma of the estimated annual operation and maintenance cost of the public infrastructure along with the governmental approvals that will be required for both the public and private improvements to be constructed and operated. The Application must clearly detail the specific entities such as CFD, Homeowners Associations, Applicant, City, etc that will be responsible for funding the on-going operation and maintenance costs for all CFD improvements. This section should also provide a description of the revenue source of such operations.

Miscellaneous Information

2.17 Marketing Plan. The Application shall provide a detailed description of the proposed marketing plan to be used by the Applicant to market the property within the CFD. This information may include comparisons of the proposed CFD to similar CFDs in the area.

2.18 Disclosure to Prospective Property Owners. The Application shall include information regarding the proposed disclosure forms 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 forms. The Applicant and any subsequent developer/builder are required to describe in their

promotional materials the financial and other relative impacts of the development being in a CFD. The Applicant should also describe the process and record-keeping processes to be used for retaining all signed homeowner CFD acknowledgement disclosure statements.

2.19 Operating Plan. The Application shall include an operating plan for the CFD, describing the functions of the CFD and how the operation and maintenance of the infrastructure and any other services will be provided.

2.20 Development Agreements. The Application shall include (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 Chief Financial Officer 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 $5,000 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. When such $25,000 (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 and must be paid forthwith.

3.3 After the application fee and deposit are submitted, the Chief Financial Officer shall arrange a pre-review conference with the appropriate City staff, for the purpose of reviewing the Application for conformity with City policies.

3.4 If, following the pre-review conference or 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 an 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 project feasibility, financing analyses and evaluation of community benefits. This phase may include several iterations of review, comment and re-review. Under the direction of the Chief Financial Officer, 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, developer/landowner, builder 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 All costs must be paid by the Applicant and received by the City at least fourteen (14) days prior to the date of the City Council meeting at which the Application is to be considered. If 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 for formation of a CFD, the Applicant and the staff of the City shall coordinate a schedule of events for formation of the CFD. Prior to 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.

3.8 If the City Council approves the formation of a CFD and there are existing agreements with the Applicant and/or any other developers/landowners for the provision of infrastructure proposed to be furnished by the CFD, then those agreements will be amended to reflect the agreements and conditions pertaining to the CFD. The amendments will reflect that such infrastructure improvements will be provided (including by acquisition) by either the Applicant, developer/landowner or the CFD.

ARTICLE 4.
CFD 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 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. These deposits shall be applied to payments for services rendered by the City staff, CFD staff and services rendered by

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. From time to time, upon depletion of the administrative expense fee, the CFD may request, and the Applicant shall promptly deposit with the CFD, additional $25,000 deposits to be applied to the purposes contemplated in this Section.

4.2 The City and CFD may require the imposition of an ad valorem tax per $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 agree to impose any necessary tax for the operation and maintenance of the CFD will relieve the City and the CFD from undertaking any obligations or operations.

4.3 In connection with any request for debt financing, unless otherwise agreed 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 person hereafter referred to as an "MAI 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.

4.4 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.

4.5 If general obligation bonds are to be issued by the CFD, those general obligation bonds will be secured by an unlimited ad valorem tax on all taxable property located within the CFD. 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 information:

a. The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed and the full cash value and assessed valuation of the taxable property as shown on the most recent assessment roll.

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 project to be financed, as applicable.

e. The CFD board of directors may attempt to limit the total tax rates of the CFD. If the pre-established debt service tax rate is not sufficient to pay the entire debt

service in respect of outstanding General Obligation Bonds when due, the Applicant/Developer will be required to contribute an amount annually sufficient to pay the difference between the revenues produced by the pre-established tax rate and the actual CFD debt service coming due in that fiscal year. Security for the Applicant/Developer's payment of this contribution may be in the form of a cash contribution, standby contribution agreement or other acceptable form of security, which shall be bankruptcy proof, as required by the City and the CFD board of directors. A cash flow schedule illustrating the security amount and the time period required to cover such shortfall will be required to be submitted by the Applicant prior to the issuance of General Obligation Bonds. The security shall remain in full force and effect until such time as the CFD board of directors, exercising their sole discretion, determines the assessed value of real property in the CFD is sufficient to generate ad valorem taxes at the pre-established CFD tax rate sufficient to pay the actual CFD debt service. At that time, the CFD board of directors, exercising their sole discretion, will determine whether the Applicant's security will be released in whole or in part.

f. 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 CFD financing.

g. The marketing plan for the issuance of bonds shall be described. The plan should include a statement of whether the bonds will be publicly offered or privately placed.

Publicly offered bonds must be rated in one of the four highest investment grade ratings from Standard & Poor's Corporation, Moody's Investors Services, Inc., or other nationally recognized bond rating services. Pursuant to state statutes, the CFD will not issue non-investment grade bonds in a public offering.

Privately placed bonds need not be rated. However, purchases of such general obligation bonds must be "qualified buyers" (similar to those acceptable pursuant to the Securities Exchange Commission) and must agree to hold the bonds for their own account and not to resell the bonds except to "qualified buyers" in a private placement.

4.6 Revenue bonds shall be payable from a specified revenue source. An Applicant for revenue bonds must describe in each project feasibility report, along with the statutory requirement, 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 assessed valuation of that taxable property as shown on the most recent assessment roll.

b. The revenue source from which bonds will be payable. The City reserves the right to require the applicant to produce such independently prepared financial

feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.

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

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

e. The financial impact of the proposed issue(s) on prospective residents.

f. Any plan for subsidizing revenues to meet obligations.

g. Whether the bonds will be publicly offered or privately placed.

Publicly offered revenue bonds must be rated in one of the four-highest investment grade ratings from either Standard & Poor's Corporation, Moody's Investors Service, Inc., or other nationally recognized bond rating services. Pursuant to state statutes, the CFD will not issue non-investment grade bonds in a public offering.

Privately placed bonds need not be rated. However, purchasers of such revenue bonds must be "qualified buyers" (similar to those acceptable pursuant to the Securities Exchange Commission) and must agree to hold the bonds for their own account and not to resell the bonds except to "qualified buyers" in a private placement.

4.7 Assessment bonds shall be secured by first lien (subject only to the lien for general taxes and prior special assessments) on the property benefited. Applicants for assessment bonds should describe in each project feasibility report, the following:

a. 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.

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 the sale of lots by the Applicant or will remain on the property after sale.

f. Whether the assessment bonds will be publicly offered or privately placed.

Publicly offered assessment bonds must be rated in one of the four highest investment grade ratings from Standard & Poor's Corporation, Moody's Investors

Service, Inc., or other nationally recognized bond rating services. Pursuant to state statutes, the CFD will not issue non-investment grade bonds in a public offering. In a public offering, an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the CFD board of directors, in its sole and absolute discretion, shall indicate a minimum land value to debt ratio of 4 to 1 prior to the issuance of debt.

Privately placed bonds need not be rated. However the purchasers of such assessment bonds must be "qualified buyers" (similar to those acceptable pursuant to the Securities Exchange Commission) and agree to hold the bonds for their own account and not to resell the bonds except to "qualified buyers" in a private placement. Further, in connection with the sale of unrated privately placed assessment bonds, the CFD board of directors must have received an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the City, in its sole discretion, indicating a minimum land value to debt ratio of 4 to 1 as of a date prior to the issuance of debt. If a 4 to 1 ratio is not achieved, a scaling down of the proposed debt and phasing of the infrastructure is expected.

4.8 Notwithstanding the restrictions pertaining to public sales and private placements of the bonds set forth in this Article 4, the restrictions may be modified if other financing structures are presented which, in the sole discretion of the CFD board of directors, provide other means to address the CFD board of director concerns.

ARTICLE 5.
Financing Considerations

5.1 The Applicant or developer/landowner shall provide 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. If agreed to by the CFD board of directors, in its sole and absolute discretion, prior infrastructure and community improvements constructed or acquired by the Applicant or the developer/landowner and benefiting the property within the CFD may be included in calculating the Applicant's or developer/landowner's compliance with this Section 5.1.

As described in ARTICLE 2. "Content of Application", the Applicant shall provide a detailed description of how the Applicant will provide the equity contribution of the proposed total costs of the Project. This description should include details of whether the developer is using cash and/or debt and the source of such equity contribution.

5.2 If allowed by law, all bond issues shall include a reasonable debt service reserve fund or acceptable debt service surety in an amount acceptable to the CFD board of directors. The City and/or CFD board of directors reserves the right to require the applicant to fund a reserve account in such amounts as determined by the City or CFD board of directors to

insure payment. The City or CFD board of directors will determine whether the reserve shall be funded through bond proceeds, project revenues or directly be the applicant.

5.3 Unless otherwise agreed, it is expected that general obligation bond authorization for a CFD shall expire no later than fifteen (15) years from the date of voter authorization.

5.4 The applicant or developer/landowner (or such other third party acceptable to the City and CFD) for any CFD bonds, 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 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.

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 of Directors and officers of the CFD relating to the CFD formation, financing, administrative actions of other related activities. The Applicant shall be responsible 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.

5.5 Unless otherwise provided to the City pursuant to other requirements, prior to CFD financing and acquisition by the CFD or City, the CFD or 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.