



MUNICIPAL OFFICE COMPLEX
8401 W. MONROE STREET
PEORIA, AZ 85345

**CITY COUNCIL SPECIAL MEETING
AND STUDY SESSION
NOTICE & AGENDA
Tuesday, May 10, 2011
5:00 PM
PINE CONFERENCE ROOM**

**CONVENE:
ROLL CALL:**

CITY COUNCIL:

Mayor

Bob Barrett

Mesquite District

Cathy Carlat, Vice Mayor

Acacia District

Tony Rivero

Ironwood District

Dave Pearson

Palo Verde District

Ron Aames

Pine District

Carlo Leone

Willow District

Joan Evans

City Manager

Carl Swenson

**FINAL CALL TO SUBMIT SPEAKER REQUEST
FORMS:**

CONSENT AGENDA

CONSENT AGENDA: All items listed with "C" are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

CONSENT – New Business:

1C Authorization to Hold an Executive Session

Pursuant to A.R.S. § 38-431.03: Discussion and possible action to authorize the holding of an Executive Session for the purpose of:

- a) Consultation with legal counsel regarding the possible acquisition of real property located in the vicinity of 83rd Avenue and Mariners Way for a public purpose. (Pursuant to A.R.S. § 38-431.03(A)(7)).
- b) Discussion with Legal Counsel for legal advice pertaining to Economic Development Incentive and Investment Agreement for an environmental technology firm pursuant to the City's Economic Development Incentive and Investment Policy (EDIIP). (Pursuant to A.R.S. § 38-431.03(A)(4)).

City Council Special Meeting & Study Session Agenda
Tuesday, May 10, 2011
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STUDY SESSION AGENDA

Subjects for Discussion Only:

1. The Meadows Community Facilities District (CFD) Application
2. Home Detention

CALL TO THE PUBLIC: (NON-AGENDA ITEMS)

Your comments pertaining to City Council business are welcome. However, if you wish to address the City Council, please complete a Speaker Request Form and return it to the clerk before the call to order for this meeting. The City Council is not authorized by state law to discuss or take action on any issue raised by public comment until a later meeting.

ADJOURNMENT

NOTE: Documentation (if any) for items listed on the Agenda is available for public inspection, a minimum of 24 hours prior to the Council Meeting, at any time during regular business hours in the Office of the City Clerk, 8401 W. Monroe Street, Room 150, Peoria, AZ 85345.

Accommodations for Individuals with Disabilities. Alternative format materials, sign language interpretation, assistive listening devices or interpretation in languages other than English are available upon 72 hours advance notice through the Office of the City Clerk, 8401 West Monroe Street, Room 150, Peoria, Arizona 85345 (623)773-7340, TDD (623)773-7221, or FAX (623) 773-7304. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request.

**CITY OF PEORIA, ARIZONA
STAFF REPORT**

RPT#: SS1

Date prepared: April 19, 2011

Council Meeting Date: May 10, 2011

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, AICP, Deputy City Manager

FROM: Chris M. Jacques, AICP, Acting Planning & Community Development Director

SUBJECT: The Meadows Community Facilities District (CFD)

SUMMARY:

The purpose of this Study Session is to initiate discussion with the Mayor and City Council on the use of the Community Facilities District (CFD) infrastructure finance tool, with specific applicability to a request by Communities Southwest to consider a revised CFD application for *The Meadows*.

The Meadows is a 694-acre (1.1 sq. miles) master-planned, detached single-family residential community generally bounded by Pinnacle Peak Road (north), Deer Valley Road (south), Lake Pleasant Parkway (west) and 91st Avenue (east). The Meadows received its zoning entitlement in January, 2008 for a maximum of 1,508 units (2.17 du/ac) with lots ranging in size between 5,000 SF and 24,000 SF.

CONTACT: Chris M. Jacques, AICP, Acting PCD Director, (623) 773-7609

April 12, 2011

Susan J. Daluddung
Deputy City Manager
City of Peoria
8401 W. Monroe Street
Peoria, AZ 85345

RE: The Meadows – Community Facilities District

Dear Susan,

Pursuant to your request contained within your letter dated March 28th, 2011, enclosed are ten copies the “Revised and Amended Application for the Formation of The Meadows Community Facilities District.” Your letter contained a specific list of topics that you wanted us to update in this fourth version of the application. This letter includes a description of how we responded to each of these requests. To help clarify some misunderstanding of our proposed CFD, I have also included a very general overview below describing how we intend for this proposed CFD to function.

Overview: The current form of CFD proposed for this project can be described as an “Assessment Bond Acquisition District.” This is quite different from Peoria’s other CFD at Vistancia, which can be described as a “General Obligation Bond Construction District.” As such, The Meadows CFD Board will first authorize an assessment, then the improvements will be installed by the developer through cash or private financing and then only after the completion and City acceptance of the improvements will assessments be collected and bonds issued. The assessment authorization will be for only that portion of The Meadows specifically benefited by the improvements, as determined by a licensed engineer. Proceeds from these bonds will be utilized to repay the developer for the cost of the CFD improvements. This is quite different from the Vistancia district which may issue bonds in advance of construction. The post construction assessment bonds issued for The Meadows will be bifurcated amongst the benefited lots based on a benefit study completed by an independent licensed engineer. This structure also allows each benefited owner the flexibility to separately pay off the assessment amount at any time, if they choose to do so, and therefore remove the assessment lien against their property. This bifurcation of the bonds is also advantageous to the individual benefited owners as one owner’s default under their repayment obligation will not affect the other owners within the district, as it would in a general obligation bond district like Vistancia. The “Acquisition District” component of The Meadows proposed CFD structure also protects the owners and the City by only imposing the assessment after the improvements are complete for a particular phase of the project and accepted by the City. This structure will allow the CFD Board to refuse the issuance of bonds if the developer does not complete all of its stated obligations.

Subsequent to the planned study session, the next major step in the CFD process will be for the Peoria City Council to approve the financing agreement and authorize the formation of The Meadows CFD. It is important to understand that the formation of The Meadows CFD does not in itself authorize the issuance of the assessment bonds. Those authorizations will come later in the process and are at the complete and total discretion of the CFD Board, which in this case will be the City Council Members.

The following is a list of the particular items requested within your letter and how we responded to these requests in the revised application document:

1) *Timing of land sales to home builders:*

The projected timing of land sales for The Meadows is located within section 2.17 of the application. This section of the Application has been updated to include our current estimate of the timing of these sales events.

2) *Detail regarding the specific housing products to be constructed in each specific phase:*

Housing product at The Meadows will be proposed by the individual builders who purchase property within this master planned community. In addition to the City of Peoria's housing product design review process, The Meadows HOA and the developer will conduct housing product design reviews to ensure a high quality and cohesive design theme throughout the master plan.

3) *Projected average home prices based on current housing sales in the project area:*

Appendix D, Schedule One includes information regarding the projected initial home values for each of the lot products contained within The Meadows in the period in which they will be sold. We believe these price assumptions are reasonable for each of the projected future sales dates based on our extensive experience in the residential real estate industry. It should be noted that given the assessment bond district structure proposed for The Meadows CFD, conformance with the City's policy on value to lien ratio will be confirmed at the time the assessments are authorized by the District Board.

4) *Absorption assumptions of the earlier phases considering the current housing market.*

Appendix D, Schedule One includes information regarding the projected absorption for The Meadows. The absorption assumptions contained within the application are reasonable based on current and projected market conditions. The absorption velocity was not modified from the last version of the application. Further, given the recent volatility in the housing market, we have proposed a bond issuance structure that will adjust to the actual absorption that occurs within the planned district.

5) *Projected demand and absorption assumptions of the low density future phases:*

Appendix D, Schedule One includes information regarding the projected absorption for low density future phases.

6) *Timing and phasing of infrastructure construction:*

Our current projection of the timing and phasing of the infrastructure construction is included within section 2.8 of the application.

7) *Infrastructure that will be beyond what is typically required from a developer:*

Section 2.5 of the application addresses this topic and has not been updated from the prior version of the application. The information provided addresses the City's CFD Policy Guidelines regarding the topic of "enhanced" improvements. The concept of "typically expected/required improvements" is not defined and is completely subjective. As a result, there is no legitimate basis upon which we could calculate the incremental improvements and costs. We believe that our application meets the requirements of the City's CFD Policy and the statutory requirements governing CFDs. There is no requirement to calculate incremental costs and benefits and, frankly, we do not believe it is possible to accurately measure such incremental costs and benefits.

8) *An updated Table 1 reflecting the above assumptions based on market conditions:*

An updated version of Table 1 is included within the application for your review.

If you have any additional questions or comments, please feel free to contact me.

Sincerely,

CAMINO A LAGO, LLC,
a Delaware limited liability company

By:



Michael J. Kern, Vice President of
Communities Southwest Management, Inc.,
the authorized agent of Camino A Lago, LLC

The Meadows CFD Application

Staff Outline

PRO'S	CON'S
<ul style="list-style-type: none">• Low legal/financial risk to City• Developer believes this will expedite housing starts in the City infusing direct revenue into the City through (a) construction sales tax; (b) impact fees; (c) annual property taxes; regional drainage improvement cost savings.• Developer believes the CFD will enable a higher-quality, amenity-driven product beyond that which would otherwise be achieved.• Indirect support of economic development initiatives in North Peoria through additional rooftops.• Consistent with State Land Department interests	<ul style="list-style-type: none">• Assessments throughout the project are not equivalent• Time frame (for occupied units) is extended beyond 7 years, as originally discussed with EDAB/City Council.• Sets a precedent on the future use of the CFD tool; Future developers may expect the City to be permissive in allowing CFD's to be used for infrastructure financing.• The City's design standards and the existing entitlement already dictate high design-quality and an amenity rich project with or without the use of the CFD tool.• Current distressed housing market requires additional absorption of existing units; Without CFD, housing will be constructed when market conditions are right.• CFD administration is time and staff intensive

Appendix B
Community Facilities District Guidelines and Procedures

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.

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 Council public policy objectives are facilitated by providing this financing mechanism.
- 1.2 CFDs should be utilized primarily in connection with the financing of infrastructure for projects that bring additional revenue or benefits to the City.
- 1.3 Special consideration should be given to CFDs that provide enhanced infrastructure and/or municipal services 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.

**CITY OF PEORIA, ARIZONA
STAFF REPORT**

RPT #: SS2

Date Prepared: May 5, 2011

Council Meeting Date: May 10, 2011

TO: Honorable Mayor and Council

FROM: Steve Kemp, City Attorney



SUBJECT: Home Detention

SUMMARY: The Council has previously held a study session on the proposal to implement Home Detention as part of the sentencing authority of the Municipal Court. Subsequently, this office provided the Council with information that had been requested. This information included studies on the operation of Home Detention Programs in a number of jurisdictions and examples of the technology and procedures used in Home Detention Programs.

At the recent City Council budget discussions, this office indicated to the Council that we would bring this item back for your consideration at a subsequent study session. In light of the fact that adoption of this program could have a positive budget impact, we wanted to proceed to bring this before Council, prior to the final budget adoption. We will be presenting a short powerpoint presentation on how the City could proceed with the program should the Council so determine.

CONTACT: Steve Kemp, City Attorney Ext. (623) 773-7321