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TOWN OF EDGEWOOD  
RESOLUTION NO. 2005-24

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**A RESOLUTION ADOPTING PUBLIC IMPROVEMENT DISTRICT GUIDELINES  
AND APPLICATION PROCEDURES**

WHEREAS the governing body recognizes the need for guidelines and procedures to facilitate its processing and evaluation of Petitions brought pursuant to the Public Improvement District Act, NMSA 1978, §§ 5-11-1 et seq. (PIDA).

And

WHEREAS the governing body has determined that the public interest supports the promulgation of such guidelines and procedures;

THEREFORE, be it resolved by and through the Town's governing body as follows:

**I. STATEMENT OF PURPOSE.**

These Public Improvement District Guidelines and Application Procedures are intended to serve as guidelines for the purpose of considering and, as appropriate, approving the establishment of public improvement districts, the issuance of bonds of such districts, and provision for payment of municipal services pursuant to the PIDA. Their purpose is to enable the Town to make a reasonable judgment concerning the terms and conditions upon which to approve the formation of a public improvement district (a "PID") and to provide procedures for the Town to consider PID applications.

**II. GUIDELINES AND PROCEDURES.**

**ARTICLE 1  
GENERAL CONCEPTS**

**SECTION 1.1. GENERAL USE.**

- a. PIDs should be utilized primarily in connection with the financing of infrastructure for development of residential projects, master planed communities or substantial commercial development and redevelopment. PIDs may also be utilized to provide an enhanced level of public infrastructure amenities and/or municipal services. In order to avoid inefficient use of the limited resources of the Town, unless otherwise agreed by the Town Council, PIDs will not be approved to finance less than \$3,000,000.
  
- b. The Town's approval of a PID shall be based on an Applicant's demonstration, to the reasonable satisfaction of the Town, that the PID will provide benefits to the

end-users of the PID-financed infrastructure or to the Town which would not otherwise be available. These benefits may include, without limitation, additional amenities, services, increased quality of development, or pricing benefits.

- c. When a fiscal impact analysis for a master planned development demonstrates that the cost of infrastructure delivery to the development will not have a net cost to the Town, that master planned development will be deemed to have met the end-user benefit requirement of the Town.
- D. Public improvements financed by a PID should conform to applicable Town policies for development.
- E. Except as expressly agreed by the Town based upon its determination that Town-owned utilities will not be adversely affected, "stand alone" utilities which compete directly or indirectly with Town services shall not be financed through PIDs. Real property dedications and conveyances required by general Town policies for development, growth management and conservation should remain in effect notwithstanding the establishment of a PID.

#### SECTION 1.2. COST AND EXPENSES: REIMBURSEMENT.

- a. Unless otherwise agreed by the Town, the Applicant shall pay through advance payments to the Town as provided herein for all costs and expenses incurred by the Town in connection with:
  - (1) Its review of a PID application; and
  - (2) The formation of a PID.
- b. These costs and expenses include the cost of Town staff, and time and services rendered by any outside consultants who may reasonably be retained by the Town, including, but not limited to, bond counsel, financial advisers, engineers, appraisers, tax consultants and attorneys, at the rates normally charged by those consultants.
- c. If authorized by the PID, all or part of such costs may be reimbursed to the Applicant from a PID tax levy, PID assessments, PID revenues or PID bond proceeds, provided that such reimbursement shall be conformity with federal law, state law, and these guidelines.
- d. Except as otherwise agreed by the Town, PIDs will construct or finance improvements on such terms and with such persons as the PID Board of Directors determines to be appropriate, in accordance with § 5-11-10 (D) of the PIDA.

- e. Unless otherwise agreed by the Town, all costs of administration and operation of the PID and the operation and maintenance of any public infrastructure constructed by the PID shall be the financial responsibility of the PID, the Applicant, applicable homeowners associations, or any combination of the forgoing, as may be acceptable to the Town and the PID.

### **SECTION 1.3. PID BOARDS OF DIRECTORS; DELEGATED AUTHORITY.**

- a. Unless otherwise agreed by the Town, a PID will initially be governed by a 5-member board of directors appointed by the Town Council and shall be composed of two members appointed by the Town Council, two persons selected by the Applicant with the approval of the Town Council, and a fifth member selected by the other 4 members.
- b. The Applicant and the Town shall nominate their respective candidates for the board of directors at least fifteen (15) days prior to any vote on formation of the PID. In the event the Applicant or the Town has reservations concerning the persons nominated for the board of directors, the Town's policy is to encourage discussion and resolution of these differences. Nothing herein limits the prerogative of the Applicant to withdraw its Petition prior to a final vote on PID formation.
- c. The Town Council may, in accordance with law, delegate certain responsibilities of governance of a PID to public officials employed by the Town.
- d. Unless otherwise agreed by the Town, the day-to-day responsibilities of a PID shall be performed by outside personnel pursuant to an agreement, including a PID Development Agreement, constituting a development agreement pursuant to Section 5-11-10 (A)(2) of the PIDA, or the Town staff.
- e. Each PID Development Agreement shall be in implementation of this Policy, and upon execution by the Town and the Applicant, it shall supersede this Policy in the event of any conflict between the Policy and the Development Agreement.
- f. On a date not more than 6 years after the formation of a PID, new PID Board members shall be elected or the governance of the PID shall revert to 5 members of the Town Council, in accordance with the PIDA.

### **SECTION 1.4. SELF-SUPPORTING; NO IMPACT ON TOWN.**

- a. Unless otherwise agreed by the Town, a PID shall be self-supporting with regard

to financing, operations and maintenance, and Town funds will not be used for PID purposes.

- b. Notwithstanding anything contained in this Policy, neither the Town's property, its full faith and credit nor its taxing power shall be pledged to the payment of any PID obligation or indebtedness.
- c. The amount and structure of debt of a PID should not have any direct negative material impact on the Town's debt ratings with Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investor Services, Inc. or any other nationally recognized bond-rated agency service that is currently rating the Town's outstanding bonds in the opinion of the Town's Financial Advisor.

#### SECTION 1.5. PID DEVELOPMENT AGREEMENT; FEASIBILITY REPORTS.

- a. The PID board shall determine the amount, timing and form of financing to be used by a PID based upon a project feasibility report.
- b. The matters to which reference is made in subsection a of this Section shall be established by agreement of the Town, the PID and the Applicant through a PID Development Agreement pursuant to Section 5-11-10(A)(2) of the PIDA.

### ARTICLE 2

#### PRE-APPLICATION MEETING WITH PID REVIEW COMMITTEE

#### SECTION 2.1 PID REVIEW COMMITTEE; PRELIMINARY TASKS.

- a. The Town shall appoint a PID Review Committee to review each PID application. A PID Review Committee shall be composed of the Town Clerk, the Town independent Financial Advisor, the Town Land Use Planning Director, the Town Public Works and/or Public Safety Adviser, and the Town Attorney, or functionally equivalent Town officials or consultants.
- b. Each PID Applicant shall meet with the PID Review Committee as reasonably necessary to allow the Committee to accomplish the following preliminary tasks:
  - (1) Make an initial determination whether the proposed PID is consistent with the Town's growth policies, land use and development policies, zoning and other applicable regulations;
  - (2) Make an initial determination whether the PID Applicant's ownership

interest, delegation of ownership rights, or other legal control of the real property proposed to be included in the PID confers standing to submit a PID application;

- (3) Establish a proposed schedule for:
  - (i) The Applicant's submittal of a PID application;
  - (ii) The Town PID Committee's review of the application for completeness; and
  - (iii) Town Council meetings for consideration of and action on the application; and
- (4) Identify any related Town approvals that will be required to permit the PID, if approved by the Town Council, to construct the proposed improvements.

#### SECTION 2.2 ROLE OF PID REVIEW COMMITTEE.

Determinations by PID Review Committee shall be of an advisory nature, for the purposes of assisting Applicants in submitting completed applications with detail and information required to enable meaningful consideration by the Town Council. Committee determinations and recommendations shall be considered by but shall not be binding on the Town Council.

#### SECTION 2.3. INVITATION TO APPLY FOR PID FORMATION.

- a. If the PID Review Committee concludes that an application is consistent with applicable Town policies and regulations, including this Policy, then an invitation to submit an application will be extended to the Applicant and the PID Review Committee or its designee will advise the Applicant on the requested application contents in the matter set fourth in Article 3.
- b. If the PID Review Committee determines that proposed PID is inconsistent with applicable Town policies and regulations, the Applicant may appeal that determination of the Town Council, which will determine whether or not an invitation to apply for a PID will be extended to the Applicant.
- c. Upon determining that the Applicant has provided the information reasonably required under these policies and procedures for PID applications, the PID Review Committee shall promptly send written notice to the Applicant and the

Town Council that the Application is complete. The date of this written notice of completion is the date on which any Petition shall be deemed to have been submitted under § 5-11-3(A) of the PIDA.

**ARTICLE 3  
APPLICATION CONTENTS**

The application should include the following information and documentation:

**SECTION 3.1 LEGAL DESCRIPTION; QUALIFIED ELECTORS' CONSENT.**

The Applicant shall provide:

- a. A description of the proposed PID, including a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the property, and the names and addresses of any qualified electors located within the proposed boundaries.
- b. A current title report on the property and a certificate from the county clerk shall be submitted as evidence of the names or persons with any interest in the land and qualified resident electors located within the proposed PID boundaries.
- c. Evidence satisfactory to the Town of the irrevocable consent of the number of property owners and qualified electors required by the Act for the creation of the PID.

**SECTION 3.2. GENERAL PLAN.**

The Applicant shall provide:

- a. A detailed description of the types of public infrastructure to be financed by the PID, including:
  - (1) The estimated construction or acquisition costs of the public infrastructure;
  - (2) Projection of working capital needs, including adequate funds for repair and replacement of infrastructure; and
  - (3) Annual operation and maintenance costs of the public infrastructure and the governmental approvals that will be required for both the public and private improvements to be constructed operated.

And/or:

- b. A detailed description of enhanced services to be financed or provided by the PID, including:
  - (1) The identity of the services to be funded or provided;
  - (2) The area in which such services are to be provided;
  - (3) The identity of the service providers or proposed service providers;
  - (4) A detailed analysis of the level and type of service necessary to be provided on a yearly basis, taking into consideration factors including geography, anticipated changes in population; and anticipated population makeup as may be relevant to the type of services to be funded or provided; and
  - (5) A detailed analysis of the cost over the proposed lifetime of the PID for the provision of these services on a yearly basis, taking into consideration the other factors listed above.
- c. The description provided pursuant to this Section shall contain adequate information to established financial parameters for the operation and financing of the PID as set forth in Article 5 of this Policy.

### SECTION 3.3 PRELIMINARY FINANCING PLAN & SCHEDULE.

The Applicant shall provide:

- a. An estimated project schedule for construction commencement and completion or provision of:
  - (1) The public infrastructure and/or enhanced services; and
  - (2) The private development, which shall include a financing plan for the public infrastructure and/or enhanced services including both capital and operating/maintenance costs for all undedicated improvements undertaken by the PID.
- b. The financing plan may include projections for a period covering the expected term of existence of the PID or the bond payment date of any Bonds issued by the PID, whichever shall be the longest.

- c. The financing plan should include a preliminary description of the improvements to be owned and maintained by the Town, the PID, or the Applicant, and shall specify the ultimate owner or maintainer of each such improvement.

#### SECTION 3.4. FEASIBILITY STUDY.

A financial feasibility study shall be prepared by an independent professional with appropriate expertise for the entire project (or such phases of the project that are expected to be constructed during the term of the development), covering the public infrastructure, any enhanced services, and the private development. The feasibility study should include:

- (a) An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other PID costs will impact the ultimate end users of the property; and
- (b) Specifically projected property taxes, property tax rates, special levies, special assessments, fees, charges and other cost that would be imposed on property in the PID, and analysis of potential the impact that such taxes, levies and charges will have on the marketability of the private development; comparison of proposed tax rates and charges in adjoining and similar areas outside of the proposed district.

#### SECTION 3.5. APPRAISAL.

To the extent applicable to a request for debt financing, the Applicant shall provide a current appraisal (the "MAI Appraisal") of the fair market value of the property within the proposed PID, including:

- (a) The improvements to be financed by the PID; and
- (b) Other improvements being constructed by the Applicant during the PID construction period, the completion of which the Applicant guarantees.

The MAI Appraisal shall be 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"). The form and substance of the MAI Appraisal shall be acceptable to the Town, in its discretion.

#### SECTION 3.6. MARKET DEMAND STUDY.

To the extent applicable, the Applicant shall provide a market demand study for private development in the PID, which shall be prepared or reviewed and concurred with by an



independent consultant acceptable to the Town. Such study shall include estimates of the revenue to be generated by the development and estimated market absorption of the development.

#### **SECTION 3.7. APPLICANT FINANCIAL INFORMATION.**

The Applicant shall provide a description of the Applicant's professional experience and evidence demonstrating its financial capability to undertake the development associated with the public infrastructure and private development. Such information may be accompanied by audited, reviewed, or, at minimum, compiled financial statements for the most recent 3 years, and a description of past projects and disclosure of any material litigation or known claims during the last ten years.

#### **SECTION 3.8. DRAFT DISCLOSURE.**

The Applicant shall provide an initial draft form of disclosure to prospective PID landowners that may be filed and recorded with the County Clerk at the time of each sale of real property within the PID. The disclosure form shall describe the anticipated and maximum tax, special levy, assessment, charge, and any other financial obligation that the Applicant anticipates will be imposed on real property within the PID. The disclosure shall be subject to Town review and approval.

#### **SECTION 3.9. OPERATING PLAN.**

The Applicant shall provide a draft Operating Plan for the PID describing:

- a. The operation and maintenance of the infrastructure and all other services in the PID,
- b. The estimated cost of the same, and
- c. Whether the Applicant proposes to provide for operation and maintenance of any infrastructure by the PID, the Town, or a third party acceptable to the Town.

#### **SECTION 3.10. COMPLIANCE CERTIFICATE.**

The Applicant shall provide a certificate that the PID will comply the Town's current zoning and planning and platting requirements.

#### **SECTION 3.11. OTHER INFORMATION.**

The Applicant shall provide such other information as the Town may reasonable require after its initial review of the Application, including:

- a. Preliminary legal opinions,
- b. Further information regarding the relationship of the plan to Town's development objectives,
- c. Additional proof of financial capability,
- d. Business references, and
- e. Term sheets for financing and financial commitment letters.

Following the application conference, the Town shall, within 15 days provide as complete as practicable a list of additional information items needed.

#### ARTICLE 4 APPLICATION AND APPROVAL PROCESS

##### SECTION 4.1. APPLICATION SUBMISSION.

Ten copies of an application for the formation of a PID and an application fee of \$30,000 (the "Application Fee") shall be submitted to the Town Clerk-Treasurer.

##### SECTION 4.2 APPLICATION FEES.

- a. The Application Fee shall be utilized by the Town for initial application review and project feasibility analysis, including the payment of the Town's financial and legal advisors, at their customary rates, to assist in the evaluation of the feasibility of the proposed PID project.
- b. \$10,000 of the Application Fee shall be non-refundable.
- c. The balance of the Application Fee shall be used by the Town in connection with its review of the application.
- d. Upon completion of the application review, or if the Applicant withdraws its application prior to the Town's completion of its application review, the Town shall remit the unused portion, if any, of the Application Fee other than the non-refundable \$10,000 portion.
- e. Upon the Applicant's request, the Town will provide an accounting of expenditures of funds advanced within a reasonable time.

- f. The Town and its financial and legal consultants shall use reasonable efforts to determine whether any features of a PID proposed in an application appear not to be feasible, and to advise the Applicant early in the review process, for the purpose of avoiding unnecessary additional costs of review.

#### SECTION 4.3. POST-APPLICATION CONFERENCE.

- a. After the Application Fee has been submitted, the Town Clerk-Treasurer will arrange a conference with the appropriate PID Review Committee for the purpose of reviewing the application and determining whether the application is complete.
- b. If, following the application conference or any other time during the application process, the PID Review Committee requests additional information, the Applicant shall provide any and all supplemental information requested, in accordance with the provisions of Section 3.11 of this Policy.

#### SECTION 4.4. PID REVIEW COMMITTEE REPORT.

- a. After analysis of an application as supplemented, PID Review Committee shall prepare a report including recommendations relating to the PID, an analysis of the impact of the formation of the PID, and its effects on the Town.
- b. The report may provide a recommended disposition of the application and any additional requirements that are recommended in connection with the Applicant and/or the PID.
- c. All costs billed to or incurred by the Town must be paid by the Applicant by a date at least 14 days prior to the date of the meeting of the Town Council at which the appropriate resolution approving the application is to be introduced.
- d. When the Committee determines that the an application meets the qualifications provided herein, the application, along with any the report and recommendations of the PID Review Committee will be forwarded to the Town Council, along with drafts of the appropriate implementing resolution.

#### SECTION 4.5 DEVELOPMENT AGREEMENT.

If the Town Council preliminarily approves an application for formation of a PID, the Applicant and the Town shall coordinate a schedule of events for formation of the PID and shall negotiate an appropriate PID Development Agreement between the Town and

the Applicant, which shall be entered into prior to formation of the PID which, if approved by the Town Council, shall incorporate the recommendations of the PID Review Committee relating to such PID, and any other restrictions, provisions and agreements by the Town.

#### SECTION 4.6 PRELIMINARY APPROVAL.

- a. Requests for Preliminary Approval will be considered following payment of the Initial Application Fee and information such as the following:
  - (1) A description of the proposed PID boundaries;
  - (2) A description of the improvements to be constructed and/or enhanced services to be funded or provided by the Applicant;
  - (3) The estimated construction costs of the improvements and anticipated completion time;
  - (4) A description, by category, of improvements and related costs to be financed by the PID;
  - (5) The estimated issuance amount of PID bonds;
  - (6) The total annual special levy amount (i.e. estimated aggregate annual debt service on bonds); and
  - (7) The maximum annual PID property tax or, in the case of a special levy, the allocation method and maximum special levy per dwelling unit (single family residences) or per acre (multi-family and commercial), and method by which the levy will be allocated from a bulk tract to finished lots.
- b. The PID Review Committee report will advise the Town Council whether Preliminary Approval is recommended, not recommended, or that no recommendation is made.

#### SECTION 4.7. ADDITIONAL FEES.

- a. An Applicant that has received Preliminary Approval may be required to make such additional advances as the Town reasonably determines are necessary to pay the costs of reviewing the Applicant's request for formal approval of the formation of the PID based on a PID Development Agreement within the meaning of the Act.

- b. An Applicant may be required to submit an additional Initial Application Fee if, in Town's determination, the application for formal approval of a PID departs substantially from the parameters set forth in the application for Preliminary Approval.

#### SECTION 4.8. APPROVAL OF PID FORMATION AND PID FINANCING.

- a. The Town Council may consider the granting of formal approval to the formation of the PID based on the terms of the PID Development Agreement, which may be approved prior to or concurrently with the approval of the formation of the PID.
- b. The Town Council may include in its approval of the formation of the PID the issuance of one or more series of PID bonds, subject to the terms and conditions of the PID Development Agreement.
- c. The Town Council's approval of PID formation and issuance of bonds shall be conditioned on the requirement that the PID shall utilize bond counsel, underwriters and/or other consultants selected by or otherwise acceptable to the Town.
- d. PID Development Agreements shall not be amended without the express written approval by the Town Council.

### ARTICLE 5 PID OPERATIONS AND DEBT FINANCING

#### SECTION 5.1. PID ADMINISTRATION EXPENSE FEE.

- a. In addition to the amounts set forth in Article 4, upon formation of a PID the Applicant shall deposit with the PID a nonrefundable administrative expense fee in the amount of \$10,000.
- b. The administrative expense fee shall be applied by the PID to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the PID or its public improvements.
- c. From time to time, upon depletion of the administrative expense fee, the PID may request, and the Applicant shall promptly deposit with the PID, additional amounts deemed by the PID to be reasonably necessary for the purposes contemplated in this Section 5.1.

- d. Nothing in this Section 5.1 shall preclude the reimbursement of such expenses from PID taxes, levies, charges or bond proceeds, as permitted by the PIDA.

#### SECTION 5.2. ADMINISTRATION, OPERATION AND MAINTENANCE CHARGE.

- a. In order to provide for the PID to be self-supporting or its administrative, operation, and maintenance expenses, and to finance services in addition to those provided by the Town, the Town may condition its approval of a PID on the PID's imposition of up to \$3.00 per \$1,000 of assessed value ad valorem tax. This tax shall not be considered as a tax or charge by the Town, but in accordance with the provisions of Section 5-11-23 of the PIDA upon the PID taxable property.
- b. To the extent permitted by law, the PID shall be entitled to charge such rates, fees and charges to property owners as are necessary to address any shortfall in the expense required to operate and maintain PID improvements, and such rates, fees and charges shall be established in the Development Agreement for the PID.

#### SECTION 5.3. GENERAL OBLIGATION BONDS.

- a. General Obligation Bonds of the PID will be payable from an unlimited ad valorem tax on taxable property located within the PID designated by the general plan for the PID as subject to the PID property tax, as required by the PIDA.
- b. An application for general obligation bonds shall describe to the PID Board of Directors in a project feasibility report the following:
  - (1) The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed, and the fair market value and assessed valuation of the taxable property as shown on the most recent assessment roll.
  - (2) The projected amount and timing of PID general obligation bonds to be used.
  - (3) The projected market absorption of the development within the PID.
  - (4) The effect of the PID bond issuance on PID tax rates calculated as of the beginning, midway through, and at the end of the market absorption period or based on the phasing of the project to be financed, as applicable.
  - (5) An estimate of the Applicant's construction costs associated with the

public improvements, in excess of the estimated PID funded costs of the project.

- (6) The necessity of the Applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant.
- c. The projected tax rate for debt service set forth in the feasibility report shall be established in the PID Development Agreement, and may include provisions which
- (1) Limit the maximum tax rate that will be imposed by the PID for the payment of debt service on PID bonds;
  - (2) Require a contribution agreement from the Applicant for the payment of debt service in the event of a shortfall in revenue from the PID tax revenues projected in connection with, and at the time of, PID formation; or
  - (3) Establish, to the Town's satisfaction, other protection for homeowners or other end-users of the property located in the PID against excessive tax rates in the event that PID indebtedness exceeds PID tax revenues available to pay debt service in any particular year.

#### SECTION 5.4. SPECIAL LEVY BONDS.

- a. Special Levy Bond shall be secured by a first lien (co-equal to the lien for general taxes and prior special assessments) on the property benefited in the manner contemplated by Section 5-11-20(G) NMSA 1978.
- b. Applicants for special levy bonds shall describe in each project feasibility report, the following:
  1. The current direct and overlapping tax, assessment burdens, and special levy on real property to comprise the PID, and the full cash value and assessed valuation of that property as shown on the most recent assessment roll.
  2. The projected amount and timing of the PID special levy bonds to be issued.
  3. The projected market absorption of development on the PID.

4. The projected special levy burden to be placed on the assessed parcels, and the anticipated methodology of assessment.
  5. An estimate of the Applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.
  6. The necessity of the Applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant.
- b. The value to lien ratio, after the issuance of the bonds and construction of the improvements to be financed by the PID, will be at least 3 to 1 based on a MAI appraisal.
  - c. At the time the PID is formed, the maximum allowable rate of special levy for residential property shall not cause the total tax and assessment obligation for such property, including projected ad valorem taxes, special levies, and special assessments, to exceed 1.99% of the anticipated market value of residential property as determined by a then-current MAI Appraisal. The 1.99% shall include all known and authorized, but unissued debt and any other anticipated fees or assessments which may be imposed by the Town or special district on a property within the PID — *i.e.*, special assessment districts, including the proposed maximum special levy, except service charges for utilities and refuse.

#### SECTION 5.5. REVENUE BONDS.

- a. Revenue Bonds shall be payable from a PID revenue source.
- b. An application for revenue bonds shall describe in each project feasibility report, the following:
  - (1) The current fee structure for comparable services or otherwise incurred by persons who would be responsible for paying the proposed rates, fees, and charges.
  - (2) The revenue source from which bonds will be payable. The Town reserves the right to require the Applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.
  - (3) The projected market absorption of development within the PID.



- (4) The projected amount and timing of PID revenue bonds to be issued.
- (5) The financial impact of the proposed rates, fees, and charges on prospective residents or other users of such rates, fees, and charges.
- (6) An estimate of the Applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.
- (7) The necessity of the Applicant and the PID entering into an appropriate contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant.

#### SECTION 5.6. SUITABILITY.

- a. The Town intends that the PID only have the power to sell the proposed bonds to suitable investors.
- b. If the proposed bond issue is not rated (either on its own merits or by the use of appropriate credit enhancement) in 1 of the 3 highest rating categories used by Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investors Services, Inc., or any other nationally recognized bond-rating agency service, then the bonds must have minimum denominations of \$25,000 and be available for purchase and restricted with respect to resale to "Qualified Institutional Buyers" (as such term is defined in Rule 144A of the Securities and Exchange Commission) or to "accredited investors" (as such term is defined in Rule 501 of Regulation D of the Rules Governing the Limited Offering and Sale Securities without Registration under the Securities Act of 1933).
- c. It is the intention of the Town to have investor suitability achieved through the rating requirements set forth in the preceding sentence or the establishment of large minimum denominations (e.g. not less than \$25,000), and, if the Town determines it is appropriate, covenants limiting secondary market sales of PID bonds through registered broker-dealers.
- d. Notwithstanding the restrictions pertaining to public sales and private placements of bonds set forth in this Article 5, the restrictions may be modified or relaxed if other financing structures or features are presented that, in the sole discretion of the Town Council, provide other means to address investor suitability concerns.
- e. The minimum denomination requirements set forth above for PID bonds which are initially issued without rating shall not continue to apply if the PID subsequently obtains a rating in one of the three highest rating categories as provided in this Section.

#### SECTION 5.7. CONTRIBUTION.

- a. At the time the PID is formed financial projections must demonstrate that the landowners shall provide over the life of the Project at least \$0.25 in infrastructure or community improvements (which may include, for example, dry utilities and other improvements for the benefit of the property owners within the PID, irrespective of whether such improvements are publicly or privately owned) for each \$1.00 of debt to be issued by a PID to finance public infrastructure purposes, except as otherwise determined by the Town in its discretion.
- b. The Town, in its discretion, may condition approval of PID formation on additional financing requirements, including, without limitation, the deposit of cash or a letter of credit (or similar credit facility) as security for completion of the infrastructure development.
- c. If agreed to by the Town or PID Board, as applicable, in the discretion of the Town or PID Board, infrastructure and community improvements constructed or acquired by the Applicant prior to, contemporaneously with, or subsequent to the formation of the PID may be included in calculating the Applicant's compliance with Section 5.7. However no improvements that have not already been constructed or acquired shall be included in this calculation unless the completion of the improvements is guaranteed or secured by an appropriate completion bond, cash deposit or other security acceptable to the Town or PID Board, as applicable.

#### SECTION 5.8. DEBT SERVICE RESERVE FUNDS.

If allowed by law (including any applicable federal laws relating to the tax exempt status of the bonds), all bond issues may include a debt service reserve fund in an amount acceptable to the PID Board.

#### SECTION 5.9. ENVIRONMENTAL SITE ASSESSMENTS.

Unless otherwise provided to the Town pursuant to the other requirements, prior to PID financing and acquisition by the PID or Town, the PID and Town 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 Town or the PID and a proposed form or indemnity agreement with respect to all environmental law liability.

#### SECTION 5.10. REFINANCING AND REFUNDING BONDS.

- a. Refinancing and refunding of bonds issued on behalf of a PID will be considered

using the same criteria set forth in Articles of this Policy and shall be subject to the review and approval of the Town Council or its designee.

- b. Refinancings and refunding will be expected to:
  - (1) Generate interest rate or net present value savings;
  - (2) Restructure payment of principal,
  - (3) Reimburse the Applicant for actual costs expended for public improvements contemplated to be part of the proposed Project, or
  - (4) Eliminate burdensome covenants.

#### SECTION 5.11. COST OF CHANGE.

Applicants shall be responsible for all additional costs and expenses incurred in any special levy or property tax modifications resulting from changes to the development not anticipated in the application.

### ARTICLE 6 MISCELLANEOUS

#### SECTION 6.1. DISCRETION AND WAIVER.

- a. Based upon the recommendations of PID Review Committee and/or financing and legal consultants retained by the Town, the Town Council may approve PID applications that do not meet the foregoing criteria, unless such criteria also are required by the PIDA or other applicable laws.
- b. In deciding whether to waive any criterion contained herein, the Town Council, in its discretion, shall determine whether the particular features of the proposed PID, likelihood that the PID projects and purposes will be successfully completed, and the mechanisms for protecting against default on bonds, warrant such relief.
- c. In making this determination, the Town Council may consider an opinion of an underwriter with a reputation satisfactory to the Town Council, or any other suitable consultant.

#### SECTION 6.2. PURCHASER DISCLOSURE; MARKETING MATERIALS.

- a. Each purchaser of real property located in the PID shall execute an

acknowledgment of the PID disclosure form.

- b. The Applicant shall also supply the Town with a copy of the acknowledgement.
- c. Applicants are required to describe in their promotional material the financial and other relative impacts on the developments being induced in a PID. Copies of the disclosure form must be placed on file with the Town.

**SECTION 6.3. INDEMNITY.**

The Applicant, or such other third party acceptable to the Town and the PID, shall indemnify the Town and the PID and their agents and employees and shall hold the Town and the PID 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 PID, the offer and sale of PID bonds, the levying by the PID of any tax, assessment, special levy or charge and the operation and maintenance of public infrastructure financed or owned by the PID.

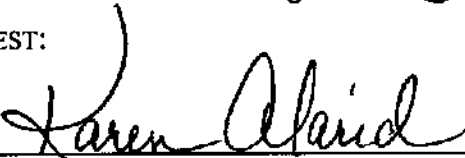
**SECTION 6.4 AMENDMENT.**

- a. All amendments to this Resolution shall have a prospective effect only and shall not in any way effect or otherwise modify the approval of a preexisting PID.
- b. The governing body must duly approve any amendment to this Resolution.
- c. Upon any such amendment, the Clerk-Treasurer shall cause a complete and accurate version of the amended Resolution to be compiled and to replace any outdated copies.

WITNESSED AND APPROVED THIS 19<sup>TH</sup> DAY OF OCTOBER, 2005:

  
\_\_\_\_\_  
Honorable Mark Lowry, Mayor-Pro tem

ATTEST:

  
\_\_\_\_\_  
Town Clerk

