

**CITY OF RIO RANCHO, NEW MEXICO  
TAX INCREMENT DEVELOPMENT DISTRICT GUIDELINES  
AND APPLICATION PROCEDURES**

The City of Rio Rancho, New Mexico (the "City"), Tax Increment Development District Guidelines and Application Procedures (the "Policy") are intended to serve as guidelines for the purpose of considering and, as appropriate, approving the establishment of tax increment development districts and the issuance of bonds of such districts pursuant to the Tax Increment for Development Act, Sections 5-15-1, *et seq.* NMSA 1978, as amended (the "Act"). The purposes of this Policy are (1) to identify City objectives to be achieved in projects that utilize tax increment financing, either to assist developers or in City-initiated projects, (2) to guide City staff in forming recommendations regarding the use of tax increment financing in City-initiated projects and developer-initiated projects and in negotiating terms with developers in developer-initiated projects, (3) to provide a framework within which the City's Governing Body can evaluate and compare proposed uses of tax increment financing, and (4) to provide public information concerning the City's evaluation of requests for and use of tax increment financing and the process by which decisions on those requests are made.

**ARTICLE 1  
GENERAL CONCEPTS**

Section 1.1 City Objectives. The City will consider formation of a tax increment development district (a "TIDD") to finance public improvements as defined in Section 5-15-3(R) of the Act ("Public Improvements") serving a project that, in the City's view, will accomplish one or more of the following goals:

- (a) Expand and diversify the City's economy and tax base;
- (b) Create job opportunities for the unemployed and underemployed residing within the City;
- (c) Attract and expand new and existing services, projects and employers that will position the City competitively within the state and region;
- (d) Provide housing choices, including affordable housing, that meet the needs of current residents and attract new residents to the City;
- (e) Support neighborhood retail services, commercial corridors and employment hubs;
- (f) Support public school creation and improvement, including the creation and improvement of facilities for charter schools;
- (g) Support businesses and suppliers within the City and increase the City's gross receipts tax base by encouraging, when feasible, the purchase of materials;

goods and services from such businesses and suppliers for the construction of Public Improvements serving a tax increment district.

Section 1.2 Minimum Size. In order to avoid inefficient use of the limited resources of the City, unless otherwise agreed by the Governing Body, TIDDs will not be approved to finance less than \$5,000,000 in Public Improvement costs.

Section 1.3 Conformity with City Standards. Public Improvements financed by a TIDD shall conform with applicable City policies for development. Except as expressly agreed by the City based upon its determination that City-owned utilities will not be adversely affected, "stand alone" utilities which compete directly or indirectly with City services shall not be financed through TIDDs. Real property dedications and conveyances required by existing City policies for development, growth management and conservation shall remain in effect notwithstanding the establishment of a TIDD.

Section 1.4 Cost and Expenses; Reimbursement. Unless otherwise agreed by the City, all costs and expenses incurred by the City in connection with (i) its review of a TIDD application and (ii) the formation of a TIDD shall be paid by the applicant through advance payments as provided in this Policy. Costs and expenses incurred by the City in connection with the application and formation of a TIDD shall not be a liability of the City. Costs and expenses shall include the costs of services rendered by City staff and services rendered by outside consultants who may be retained by the City including, but not limited to, bond counsel, financial advisers, engineers, appraisers, tax consultants and attorneys, at the rates normally charged by those consultants. To the extent permitted by law and authorized by the City, all or part of such costs may be reimbursed to the applicant from a TIDD tax levy, TIDD assessments, TIDD revenues or TIDD bond proceeds, provided, that such reimbursement shall be in conformity with federal law, state law and these guidelines. Except as otherwise agreed by the City, TIDDs will construct or finance improvements on such terms and with such persons as the TIDD Board of Directors determines to be appropriate, in accordance with Section 5-15-12(B) of the Act as amended. Unless otherwise agreed to by the City, all costs of administration and operation of the TIDD and the operation and maintenance of public infrastructure in the TIDD which has not been dedicated to and accepted by the City shall be the responsibility of the TIDD, the applicant, or a combination of the foregoing, as may be acceptable to the City and the TIDD.

Section 1.5 TIDD Boards of Directors; Delegated Authority. Pursuant to Section 5-15-10 of the Act, TIDDs will initially be governed by either the Governing Body of the City or by a five-member board of directors, four members of which shall be appointed by the Governing Body, and the fifth member of which shall be the Secretary of the Department of Finance and Administration of the State of New Mexico, as required by law. As approved by the Governing Body or the TIDD Board, the day-to-day responsibilities of a TIDD will be performed by outside personnel pursuant to an agreement (including a TIDD Development Agreement, constituting a development agreement pursuant to Section 5-15-12(A)(2) of the Act), or the City staff. Each TIDD Development Agreement shall be in implementation of this Policy and, upon execution by the City and the applicant, shall supersede this Policy in the event of any conflict

between this Policy and the Development Agreement. Three of the appointed directors shall serve an initial term of four years and two of the appointed directors shall serve an initial term of six years. The resolution forming the TIDD shall state which directors shall serve four-year terms and which shall serve six-year terms. In the case of an appointed board of directors that is not the Governing Body of the City, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Each owner shall have the number of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the TIDD by that owner. A director may simultaneously serve on more than one TIDD board.

Section 1.6 Self Supporting; No Impact on City. Unless otherwise agreed to by the City, TIDDs shall be self-supporting with regard to financing, operations and maintenance, and City funds will not be used for TIDD purposes, except with respect to tax increment revenue dedicated by the City as specifically contemplated in the Act. Notwithstanding anything contained in this Policy, neither the City's property, its full faith and credit nor its taxing power shall be pledged to the payment of any TIDD obligation or indebtedness. The amount and structure of debt of a TIDD should not have any direct negative material impact on the City's debt ratings with Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investor Services, Inc. or any other nationally recognized bond-rating agency service then rating the City's outstanding bonds.

Section 1.7 TIDD Development Agreement; Feasibility Reports. The amount, timing and form of financing to be used by a TIDD shall be determined by the TIDD board based upon a project feasibility report and established by agreement of the City, the TIDD and the applicant through a TIDD Development Agreement pursuant to Section 5-15-12(A)(2) of the Act.

Section 1.8 State or County Dedication of Tax Increment Revenue. TIDD applications shall indicate whether state gross receipts tax increment revenue or county gross receipts tax increment and/or *ad valorem* property tax increment revenue will be requested to provide a portion of project financing. In evaluating factors affecting the feasibility of proposed projects anticipating the dedication of tax increment revenue by the state or the county, the City may consider the likelihood that the state and/or county will dedicate tax increment revenue as proposed by the application. Applications shall provide information sufficient for the City to evaluate the likelihood of state or county tax increment revenue dedication and the affect on project feasibility, as provided in Sections 3.2, 3.4 and 3.10 of this Policy.

## **ARTICLE 2**

### **PRE-APPLICATION MEETING WITH CITY STAFF**

Section 2.1 TIDD Review Staff; Preliminary Tasks. The City has appointed a TIDD Review Staff, which shall be composed of the City Manager, the City Financial Services Director, the City Development Services Director, the City Public Works Director and the City Attorney, or the successors in function to those City officials. Each

member of the TIDD Review Staff may appoint a designee for purposes of this Article. Each applicant shall meet with the TIDD Review Staff in order for the TIDD Review Staff to accomplish the following preliminary tasks which, except as otherwise noted in this Policy, shall apply to TIDDs proposed by third parties and to TIDDs initiated by the City:

(a) Make an initial determination whether the proposed TIDD is consistent with the City's growth policies, land use and development policies, zoning and other applicable regulation and the objectives of this Policy;

(b) Make an initial determination whether the applicant's ownership interest, delegation of ownership rights or other legal control of the real property proposed to be included in the TIDD to have standing to submit a TIDD application;

(c) For a TIDD proposed by a third party applicant, establish a proposed schedule for (i) the applicant's submittal of a TIDD application, (ii) City TIDD staff review of the application for completeness, (iii) Governing Body of the City meeting or meetings for its consideration of and action on the application;

(d) For a City-initiated TIDD, (i) identify the information relevant to the proposed TIDD (including the application contents described in Article 3 of this Policy or, alternatively, a description of application components that are not relevant to the proposed TIDD) and the City staff responsible for assembly of that information; and (ii) establish a proposed schedule for assembly of necessary information, review by TIDD Review Staff and meetings of the Governing Body of the City for its consideration of and action on the application; and

(e) Identify any related City approvals that will be required to permit the TIDD, if approved by the Governing Body of the City, to construct the proposed improvements.

Section 2.2 Role of TIDD Review Staff. The determinations by TIDD Review Staff 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 Governing Body of the City. Staff determinations and recommendations shall be considered by but not be binding on the Governing Body.

Section 2.3 Invitation to Apply for TIDD. For a TIDD proposed by a third-party applicant, if the TIDD Review Staff concludes that an application is consistent with applicable City policies and regulations, including this Policy, then an invitation to submit an application will be extended to the applicant and the TIDD Review Staff will advise the applicant of the requested application contents in the matter set forth in Article 3. If the TIDD Review Staff determines that the proposed TIDD is inconsistent with applicable City policies and regulations, the applicant may appeal that determination to the Governing Body of the City, which will determine whether or not an invitation to apply for a TIDD will be extended to the applicant.

### ARTICLE 3 APPLICATION CONTENTS

Based on the Recommendations of the TIDD Review Staff or the Governing Body of the City, each application (including any proposal for a City-initiated TIDD, except as otherwise noted in this Article) should include the following information and documentation:

Section 3.1 Legal Description; Qualified Electors' Consent. A description of the proposed TIDD, 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. A current title report for the property shall be submitted as evidence of the names or persons with any interest in the land and qualified resident electors located within the proposed TIDD boundaries. The application shall include evidence satisfactory to the City of the irrevocable consent of the number of property owners and qualified electors required by the Act for the creation of the TIDD.

Section 3.2 Tax Increment Development Plan. Each application shall include a tax increment development plan satisfying the requirements of Section 5-15-5 NMSA 1978, including:

(a) a map depicting the geographical boundaries of the area proposed for inclusion within the TIDD;

(b) the estimated time necessary to complete the tax increment development project;

(c) a description of the Public Improvements proposed to be financed by the TIDD;

(d) a proposed plan of finance for the TIDD describing whether gross receipts tax increment revenue bond financing, *ad valorem* property tax increment revenue bond financing, or both types of financing are proposed to be utilized by the TIDD, and providing details of the proposed financing methods satisfactory to the City (e.g. debt service coverage requirements, debt service reserve fund requirements, additional parity and subordinate lien bonds test provisions, proposed marketing plan, investor suitability standards and secondary market restrictions, additional credit support features, and any other proposed financing features);

(e) the estimated annual gross receipts tax increment to be generated by the tax increment development project, and the portion of gross receipts tax increment revenue (not exceeding the legal maximum of 75% of the aggregate tax increment revenue generated within the TIDD) proposed to be dedicated to service revenue bonds proposed to be issued by the TIDD, identifying the specific gross receipts taxes from which gross receipts tax increment will be derived (e.g. municipal local option, state-shared, county local option, state gross receipts tax);

(f) the estimated annual *ad valorem* property tax increment to be generated by the tax increment development project, and the portion of *ad valorem* property tax increment revenue (not exceeding the legal maximum of 75% of the aggregate tax increment revenue generated within the TIDD) proposed to be dedicated to service revenue bonds proposed to be issued by the TIDD, identifying the specific property taxes from which property tax increment will be derived (i.e. municipal, county);

(g) a description of the proposed land uses for the tax increment development project;

(h) the number and types of jobs expected to be created by the tax increment development project;

(i) the amount and characteristics of workforce housing expected to be created by the tax increment development project, if applicable, or the manner in which the tax increment development project will promote the City's goals for providing workforce housing; and

(j) a description of the innovative planning techniques, including mixed-use transit oriented development, traditional neighborhood design or sustainable development techniques to be incorporated in the tax increment development project.

Section 3.3 Preliminary Financing Plan & Schedule -- Additional Requirements. An estimated project schedule for construction commencement and completion of (a) the Public Improvements and (b) the private development, which shall include a financing plan for the Public Improvements, including both capital and operating/maintenance costs for all undedicated improvements undertaken by the TIDD. The financing plan may include projections for a period covering (i) the expected term of existence of the TIDD, or (ii) the bond payment date of any Bonds issued by the TIDD, whichever shall be the longest. The financing plan should include (x) the estimated costs of improvements; (y) projected costs of maintenance after construction and (z) a preliminary description of the improvements to be owned and maintained by the City and the TIDD.

Section 3.4 Feasibility Study. A financial feasibility study 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 both the Public Improvements and the private development.

(a) The feasibility study provided by the applicant should include:

(i) Analysis of the direct and indirect benefits of the development to be served by the tax increment financing, which shall be quantified by the applicant. Benefits may include, but are not limited to, employment benefits (number of jobs retained or created, percentage of job held by City residents, wage and salary information, etc.), tax base benefits (estimated market value of new development, new

property taxes and gross receipts taxes generated, etc.), and other benefits relating to transportation, parking, environmental cleanup and historic preservation.

(ii) Analysis of the costs of the proposed development project to the City, which shall be identified and quantified for the expected life of the project, including but not limited to the period in which tax increment is proposed to be dedicated. Such costs include, but are not limited to, any offsite or additional infrastructure required as a result of the development project, required contributions by the City, and the impact on the City's General Fund.

(iii) For projects anticipating dedication of state gross receipts tax increment revenue, county gross receipts tax increment revenue or county property tax increment revenue, a sensitivity analysis evaluating project feasibility if the requested dedication amounts are reduced to 75%, 50%, 35%, and 25% of the amount requested, and if no tax increment revenue is dedicated by the City, state or county. Such sensitivity analysis may also evaluate feasibility under other assumed reduced dedication amounts, and may provide additional information that an applicant considers relevant.

(b) In connection with an application submitted by a third-party applicant, the City shall engage, at the applicant's expense, an economist or other professional with appropriate expertise, to review the feasibility study provided by the applicant (the "Review Economist"). The applicant shall deposit with the City an amount sufficient to pay the anticipated costs of the review. At the request of the City, the Review Economist shall evaluate the feasibility of the proposed development project as provided in the immediately preceding subsection 3.4(a)(iii).

(c) The provisions of Section 3.4(b) are not required to be applied to City-initiated TIDDs, but the City Manager may, in his discretion, request similar analysis from a Review Economist.

Section 3.5 Market Demand Study. To the extent applicable, a market demand study for private development in the TIDD prepared or reviewed and concurred with by an independent consultant acceptable to the City. Such study shall include estimates of the revenue to be generated by the development and estimated market absorption of the development.

Section 3.6 Applicant Financial Information. In connection with an application submitted by a third-party applicant, a description of the applicant's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the Public Improvements 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. The provisions of this Section 3.6 shall not apply to City-initiated TIDDs.

Section 3.7 Draft Disclosure. An initial draft form of disclosure to prospective TIDD landowners which may be filed and recorded with the County Clerk at the time of

each sale of real property within the TIDD, describing any anticipated TIDD operating levy that is anticipated to be imposed on real property within the TIDD, which shall be subject to City review and approval.

Section 3.8 Operating Plan. A draft operating plan for the TIDD describing the operation and maintenance of the Public Improvements and all other services in the TIDD, the estimated costs of the same, and whether operation and maintenance is proposed to be provided by the TIDD or the City.

Section 3.9 Compliance Certificate. In connection with an application submitted by a third-party applicant, a certificate that the TIDD will comply with the City's current zoning requirements. The provisions of this Section 3.9 shall not apply to City-initiated TIDDs; provided however, that the TIDD shall comply with applicable zoning requirements notwithstanding that no certification shall be required.

Section 3.10 State or County Dedication; Other Information.

(a) TIDD applications which anticipate a request for dedication of state gross receipts tax increment revenue or county gross receipts tax increment and/or *ad valorem* property tax increment revenue shall provide copies of the application and supporting documentation to be submitted to the State Board of Finance and/or county, as applicable and such other information as may be needed to determine that the application for dedication of state or county tax increment revenue complies with the applicable policies, procedures and regulations of the State Board of Finance and/or county.

(b) The City may request such other information as may reasonably be required after its initial review of the application, including preliminary legal opinions, further information regarding the relationship of the plan to City's development objectives, additional proof of financial capability, business references, term sheets for financing and financial commitment letters. Following the application conference, the City 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 Applicability of this Article to Third-Party Applications. Except as otherwise noted, the provisions of Article 4 shall apply to applications submitted by third-party applicants, but not to proposed City-initiated TIDDs.

Section 4.2 Application Submission. 10 copies of an application for the formation of a TIDD and an application fee of \$50,000 (the "Application Fee") shall be submitted to the City Manager.

Section 4.3 Application Fees. The Application Fee shall be utilized by the City for initial application review and project feasibility analysis, including the payment of the City's financial and legal advisors, at their customary rates, to assist in the evaluation of the feasibility of the proposed TIDD project. \$25,000 of the Application

Fee shall be non-refundable. The balance of the Application Fee shall be used by the City in connection with its review of the application. The Application Fee does not include amounts required pursuant to Section 3.4(b) of this Policy for payment of the costs of the Review Economist engaged by the City to review the feasibility study, which shall be deposited by the applicant with the City at the time the City engages the Review Economist. After notifying the applicant of the amount to be deposited pursuant to Section 3.4(b) of this Policy, the City will proceed to complete its review of an application after such amount has been deposited.

If the applicant withdraws its application prior to the City's completion of its application review, the City shall remit the unused portion, (if any), of the Application Fee (but not the non-refundable portion) to the applicant. Upon the applicant's request, the City will provide an accounting of expenditures of funds advanced. Any unused portion of advances shall be refunded to the applicant at such time as the City determines that all costs and expenses have been paid. The City and its financial and legal consultants shall use reasonable efforts to determine whether any features of a TIDD 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 4.4 Post Application Conference. After the Application Fee has been submitted, the City Manager will arrange a conference with the appropriate TIDD Review Staff for the purpose of reviewing the application and determining whether the application is complete.

If, following the application conference or any other time during the application process, TIDD Review Staff requests additional information, the applicant shall provide any and all supplemental information requested, in accordance with the provisions of Section 3.10 of this Policy.

Section 4.5 TIDD Review Staff Report. After analysis of an application as supplemented, TIDD Review Staff, under the direction of the City Manager or his/her designee will prepare a report including recommendations relating to the TIDD, an analysis of the impact of the formation of the TIDD and its effects on the City. 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 TIDD. The City Manager may direct the TIDD Review Staff to prepare a report evaluating a proposed City-initiated TIDD.

If all costs billed to or incurred by the City have been paid by the applicant by a date at least 14 days prior to the date of the meeting of the Governing Body of the City at which the appropriate resolution(s) approving the application is to be introduced, and if the application meets the qualifications provided herein, the application, along with any report and recommendations by TIDD Review Staff, will be forwarded to the Governing Body of the City, along with drafts of the appropriate implementing resolution(s).

Section 4.6 TIDD Development Agreement. In connection with applications submitted by third-party applicants, if the TIDD Review Staff invites the applicant to submit an application, the applicant and City staff shall coordinate a schedule of events for formation of the TIDD and shall negotiate an appropriate form of proposed TIDD Development Agreement between the City and the applicant addressing the obligations of the parties in connection with debt financing, construction, inspection, dedication, acceptance and operation of Public Improvements, administration of the TIDD and other related matters, which shall be entered into upon formation of the TIDD and which, if approved by the Governing Body of the City, shall incorporate the recommendations of the TIDD Review Staff relating to such TIDD, and any other restrictions, provisions and agreements required by the City. The TIDD Development Agreement shall remedial provisions satisfactory to the Governing Body addressing nonperformance by the applicant, including, without limitation, provisions for rescission the dedication of tax increment revenue and recoupment of accumulated unexpended tax increment revenue; provided, that nothing in this Policy shall be construed as authorizing the City to rescind the dedication of tax increment revenue pledged to secure outstanding tax increment revenue bonds issued by a TIDD. In connection with a proposed City-initiated TIDD, the TIDD Review Staff shall include recommendations addressing those matters in a proposed form of resolution approving the formation of the TIDD.

Section 4.7 Preliminary Approval. An applicant may request preliminary, non-binding approval of its TIDD application by the Governing Body of the City ("Preliminary Approval").

(a) A request for Preliminary Approval will be considered following payment of the Initial Application Fee and information such as the following:

- (i) A description of the proposed TIDD's boundaries;
- (ii) A description of the improvements to be constructed by the applicant;
- (iii) The estimated construction costs of the improvements and anticipated completion time;
- (iv) A description, by category, of improvements and related costs to be financed by the TIDD;
- (v) The estimated issuance amount of TIDD bonds and proposed sources for payment;
- (vi) The estimated aggregate annual debt service on bonds; and
- (vii) The maximum annual TIDD property tax and its proposed duration.

(b) The TIDD Review Staff report will advise the Governing Body of the City whether Preliminary Approval is recommended, not recommended, or that no recommendation is made.

Section 4.8 Additional Fees. An applicant that has received Preliminary Approval may be required to make such additional advances as the City Staff determines are necessary to pay the costs of reviewing the applicant's request for formal approval of the formation of the TIDD. However, an applicant may be required to submit an additional initial Application Fee if, in City Staff's determination, the application for formal approval of a TIDD departs substantially from the parameters set forth in the application for Preliminary Approval.

Section 4.9 Approval of TIDD Formation and TIDD Financing. The Governing Body of the City may consider the granting of formal approval to the formation of the TIDD based on the terms of the TIDD Development Agreement which may be approved prior to or concurrently with the approval of the formation of the TIDD. The Governing Body of the City may include in its approval of the formation of the TIDD the issuance of one or more series of TIDD bonds, subject to the terms and conditions of the TIDD Development Agreement. The Governing Body's approval of TIDD formation and issuance of bonds shall be conditioned on the requirement that the TIDD shall utilize bond counsel, underwriters and/or other consultants selected by or otherwise acceptable to the City. TIDD Development Agreements shall not be amended without the express written approval by the Governing Body of the City.

## **ARTICLE 5 TIDD OPERATIONS AND DEBT FINANCING**

Section 5.1 TIDD Administration Expense Fee. In addition to the amounts set forth in Article 4, upon formation of a TIDD the applicant shall deposit with the TIDD a nonrefundable administrative expense fee in the amount of \$25,000. The administrative expense fee shall be applied by the TIDD to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the TIDD or its public improvements. From time to time, upon depletion of the administrative expense fee, the TIDD may request, and the applicant shall promptly deposit with the TIDD, additional amounts deemed by the TIDD to be reasonably necessary for the purposes contemplated in this Section 5.1. Nothing in this Section 5.1 shall preclude the reimbursement of such expenses from available TIDD revenues or bond proceeds, to the extent permitted by the Act.

Section 5.2 Administration, Operation and Maintenance Change. In order to provide for the TIDD to be self-supporting or its administrative, operation and maintenance expenses, and to finance services in addition to those provided by the City, the City may condition its approval of a TIDD, on the TIDD's imposition of up to \$5.00 per \$1,000 of assessed value ad valorem property tax, not as tax or charge of the City, but in accordance with the provisions of Section 5-15-13 of the Act, as amended, upon the

TIDD taxable property, for the administration, operation and maintenance of property which is not City-owned infrastructure otherwise maintained by the City.

Section 5.3 Tax Increment Revenue Bonds. Gross receipts tax increment revenue bonds, *ad valorem* property tax increment revenue bonds, or bonds secured by both dedicated gross receipts tax increment revenue and dedicated *ad valorem* property tax increment revenue of the TIDD may be permitted by the City to the extent permitted by the Act. An applicant for gross receipts tax increment revenue bonds, *ad valorem* property tax increment revenue bonds, or bonds secured by a combination of such tax increment revenues, shall describe in a project feasibility report the following:

- (a) The projected amount and timing of bonds to be issued;
- (b) The projected market absorption of the development within the TIDD.
- (c) The effect of the dedication of gross receipts tax increment revenue, or *ad valorem* property tax increment revenue, or both, as applicable, and TIDD bond issuance on the City's ability to operate, maintain, repair and replace the Public Improvements to be dedicated to the City.
- (d) An estimate of the applicant's construction costs associated with the public improvements, in excess of the estimated TIDD funded costs of the project.
- (e) The necessity of the applicant and the TIDD entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the applicant.

Section 5.4 Suitability. The City intends that TIDDs only sell proposed bonds to suitable investors. 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 \$100,000 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 the applicant based upon evidence satisfactory to the Governing Body of the City that the applicant is a sophisticated investor and that the bonds will be subject to appropriate restrictions limiting the subsequent sale or other transfer of the bonds to purchasers who are Qualified Institutional Buyers. It is the intention of the City 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 \$100,000) and, if the City determines it is appropriate, covenants limiting secondary market sales of TIDD bonds through registered broker-dealers. 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 which, in the sole discretion of the Governing Body of the City, provide other means to address

investor suitability concerns. The minimum denomination requirements set forth above for TIDD bonds which are initially issued without rating shall not continue to apply if the TIDD subsequently obtains a rating in one of the three highest rating categories as provided in this Section.

Section 5.5 Required Contribution. An applicant shall provide a description of the proposed equity contribution from the applicant and a schedule showing the anticipated timing and sources of such contribution. As provided in the Act, an equity contribution shall be equal to a minimum of 20% of estimated initial infrastructure cost prior to the issuance of gross receipts or property tax increment bonds, unless the project to be financed is a redevelopment project pursuant to the Metropolitan Redevelopment Code.

Section 5.6 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 (other than short-term instruments maturing in not more than 30 days following the date of issuance) shall include a debt service reserve fund in an amount acceptable to the TIDD Board; provided, that the City or TIDD Board may, in its discretion, waive such requirements if requested to do so by a suitable investor meeting the requirements of Section 5.4 of this Policy.

Section 5.7 Environment Site Assessments. Unless otherwise provided to the City pursuant to the other requirements prior to TIDD financing and acquisition by the TIDD or City, the TIDD and 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 TIDD and a proposed form or indemnity agreement with respect to all environmental law liability.

Section 5.8 Refinancing and Refunding Bonds. Refinancings and refundings of bonds issued on behalf of a TIDD will be considered utilizing the same criteria set forth in Article 5 of this Policy and shall be subject to the review and approval of the Governing Body of the City or its designee. Refinancings and refundings will be expected to either (i) generate interest rate or net present value savings; (ii) restructure payment of principal, (iii) to or reimburse the applicant for actual costs expended for public improvements contemplated to be part of the proposed Project, or (iv) eliminate burdensome covenants.

Section 5.9 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. Based upon the recommendations of TIDD Review Staff and/or financing and legal consultants retained by the City, the Governing Body of the City may approve TIDD applications which do not meet the

foregoing criteria, if the Governing Body, in its discretion, determines that the particular features of the proposed TIDD, the likelihood that the projects and purposes of the TIDD will be successfully completed and mechanisms protecting against default on bonds, warrant that the foregoing criteria need not be applied. In making that determination, the Governing Body may consider an opinion of an underwriter with a reputation satisfactory to the Governing Body, that the particular features of the TIDD, the proposed projects and the bonds proposed to be issued can be successfully marketed and that the plan of finance is feasible.

Section 6.2 Indemnity. The applicant (or such other third party acceptable to the City and the TIDD), shall indemnify the City and the TIDD and their agents and employees and shall hold the City and the TIDD 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 TIDD, the offer and sale of TIDD bonds, the levying by the TIDD of any tax, assessment, special levy or charge and the operation and maintenance of public infrastructure financed or owned by the TIDD.

Section 6.3 Amendment. All amendments to this Policy shall have a prospective effect only and shall not in any way effect or otherwise modify the approval of a pre-existing TIDD.