

City of Albuquerque

Request for Proposals

Solicitation Number: RFP2008-020-KD

“Financial Advisory Services – Public Improvement Districts (PIDs)/ Tax increment Development Districts (TIDs)”



PROPOSAL DUE DATE:
Wednesday, February 20, 2008:
NLT 4:00 p.m. (Local Time)

The time and date proposals are due shall be strictly observed.

City of Albuquerque
Department of Finance and Administrative Services
Purchasing Division
01/09/2008

TABLE OF CONTENTS

| | |
|---|-----------|
| INTRODUCTION..... | 3 |
| PART 1 – INSTRUCTIONS TO OFFERORS..... | 4 |
| PART 2 – PROPOSAL FORMAT..... | 13 |
| PART 3 – OBJECTIVE, SCOPE OF WORK..... | 18 |
| PART 4 – EVALUATION OF OFFERS..... | 22 |
| PART 5 – PREFERENCE CERTIFICATION..... | 24 |
| PART 6 – DRAFT AGREEMENT..... | 26 |
| APPENDIX A – FEE SCHEDULE..... | 32 |

Attached PID Ordinance (O-03-84) and TIDD Ordinance (O-07-64)

INTRODUCTION

The City of Albuquerque (the "City") is requesting proposals for qualified financial advisors to assist in the formation and financing of necessary Public Improvement Districts ("PID")/Tax Increment Development Districts ("TIDD") or any other types of land-secured projects.

Given the complexity of this undertaking, the City will seek a financial advisor's assistance in the formation processes, which will include but not limited to: assist in the development of local goals and policies, work with the city staff to review and evaluate PID and TID applications; review and evaluate the Rate & Method of Apportionment RMA, assessment levy, Feasibility Study and Finance Plan, and formation and financing legislation.

It is expected that the services of the Financial Advisor will require a close positive working relationship with the City and that the personnel identified would not be changed without the prior written approval of the City. The City will reserve the right to terminate the contract if key personnel are changed or if working relationships are not satisfactory.

PART 1 - INSTRUCTIONS TO OFFERORS

1.1 RFP Number and Title: RFP2008-020-KD, "Financial Advisory Services-Public Improvement Districts (PIDS)/ Tax Increment Development Districts (TIDS)"

1.2 Proposal Due Date: **Wednesday, February 20, 2008- NLT 4:00 PM (Local Time).** The time and date proposals are due shall be strictly observed.

1.3 Purchasing Office: This RFP is issued on behalf of the City of Albuquerque by the Purchasing Office, which is the sole point of contact during the entire procurement process.

1.4 Authority: Chapter 5, Article 5 of the Revised Ordinances of the City of Albuquerque, 1994, (the "Public Purchases Ordinance"). The City Council, pursuant to Article 1 of the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, has enacted this ordinance as authorized by such provisions and for the purpose of providing maximum local self-government. To that end, it is intended that this ordinance shall govern all purchasing transactions of the City and shall serve to exempt the City from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98K, NMSA 1978.

1.5 Acceptance of Offer: Acceptance of Offer is contingent upon Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the following:

1.5.1 City Public Purchases Ordinance

1.5.2 City Purchasing Rules and Regulations: City of Albuquerque Purchasing Rules and Regulations: These Rules and Regulations (hereinafter "Regulations") are written to clarify and implement the provisions of the Public Purchases Ordinance. These Regulations establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of goods, services, and construction, as applicable, under the authority of the Ordinance.

1.5.3 Civil Rights Compliance: Acceptance of offer is contingent upon the Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances and resolutions relating to the enforcement of civil rights and affirmative action. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque

Human Rights Division, Community Services Department.

1.5.4 Americans with Disabilities Act Compliance: Offeror certifies and agrees, by submittal of its offer, to comply and act in accordance with all applicable provisions of the Americans with Disabilities Act of 1990 and Federal regulations promulgated there under.

1.5.5 Insurance and Bonding Compliance: Acceptance of offer is contingent upon Offeror's ability to comply with the insurance requirements as stated herein. Please include a copy(s) of such certification or statement of compliance in your proposal.

1.5.6 Ethics:

1.5.6.1 Fair Dealing. The Offeror warrants that its proposal is submitted and entered into without collusion on the part of the Offeror with any person or firm, without fraud and in good faith. Offeror also warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be offered or given by the Offeror, or any agent or representative of the Offeror to any officer or employee of the City with a view toward securing a recommendation of award or subsequent contract or for securing more favorable treatment with respect to making a recommendation of award.

1.5.6.2 Conflict of Interest. The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under the contract resulting from this RFP. The Offeror also warrants that, to the best of its knowledge, no officer, agent or employee of the City who shall participate in any decision relating to this RFP and the resulting contract, currently has, or will have in the future, a personal or pecuniary interest in the Offeror's business.

1.5.7 Participation/Offeror Preparation: Offeror may not use the consultation or assistance of any person, firm company who has participated in whole or in part in the writing of these specifications or the Scope of Services, for the preparation of its offer or in the management of its business if awarded the contract resulting from this RFP.

1.5.8 Debarment or Ineligibility Compliance: By submitting its offer in response to this RFP, the Offeror certifies that (i) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (ii) should any notice of debarment, suspension, ineligibility or exclusion be received by the Offeror, the Offeror will notify the City immediately.

1.5.9 Goods Produced Under Decent Working Conditions. It is the policy of the City not to purchase, lease, or rent goods for use or for resale at City owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines “under decent working conditions” as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. [Council Bill No. M-8, Enactment No. 9-1998]

1.5.10 Graffiti Free. When required the Contractor will be required to furnish equipment, facilities, or other items required to complete these services that are “graffiti free”. Failure of Contractor to comply with this requirement may result in cancellation of the contract resulting from this RFP.

1.6 City Contact: The sole point of contact for this Request for Proposals is the City of Albuquerque Purchasing Division. Contact the following individual(s) regarding this RFP:

- Kelli De Angelis, Senior Buyer, Department of Finance and Administrative Services, Purchasing Division,
- Phone: (505) 768-3333 or E-Mail: kdeangelis@cabq.gov
- Post Office Box 1293, Albuquerque, New Mexico 87103

1.7 Contract Management: The contract resulting from this RFP will be managed by the Department of Finance and Administrative Services, Treasury Division.

1.8 Clarification: Any explanation desired by an Offeror regarding the meaning or interpretation of this Request For Proposals must be requested in writing not less than ten (10) working days prior to the hour and date specified for the receipt of offers to allow sufficient time for a reply to reach Offerors before the submission of their offers. All inquiries must be directed to the Purchasing Office as stated herein. Oral explanations or instructions given before the award of the contract or at any time will not be binding. Any information given to a prospective Offeror concerning this Request For Proposals, will be furnished to all prospective Offerors as an amendment to this Request for Proposals, if such information is necessary to Offerors in submitting offers on this Request For Proposals or if the lack of such information would be prejudicial to uninformed Offerors.

1.9 Submission of Offers: The Offeror's sealed proposal must be in the format outlined in Part 2 of this Request for Proposals and mailed or delivered pursuant to the following requirements:

1.9.1 Envelope preparation. Offers and modifications thereof shall be enclosed in sealed envelopes and have the following identifying information on the outside:

- Name and address of Offeror
- Closing Date and Time
- Request for Proposals Number
- RFP Title

1.9.2 Ship, Deliver or Hand Carry Sealed Offers to: The Office of the City Clerk, City /County Government Center, Basement Level, One Civic Plaza, N.W., Albuquerque, New Mexico 87102. Mark all packages as stated above.

1.9.3 Mail Sealed Responses to: Office of the City Clerk, Post Office Box 1293, Albuquerque, New Mexico 87103. (Certified Mail is recommended). The City shall not be responsible for the failure of mailed offers to actually be received by the Office of the City Clerk by 4:00 of the day of closing.

Note: The City picks up mail at the post office **once** every morning at 7:00 AM (Local Time). **Note: ALL SEALED PROPOSALS MUST BE RECEIVED BY THE OFFICE OF THE CITY CLERK NO LATER THAN 4:00 PM, LOCAL TIME AS RECORDED IN THE CITY CLERK'S OFFICE.**

1.9.4 No other methods of offer delivery: Neither telephone, facsimile, electronic, nor telegraphic offers shall be accepted.

1.9.5 Submit Hard & Soft copies of the Proposal as follows:

- **Hard Copy – 1 original and 7 copies of your Technical Proposal. Submit 1 original and 1 copy of your Cost Proposal.**
- **Soft Copy – Submit 1 Original Technical and Cost Proposal on a CD or diskette.**

1.9.6 Modification: Offers may be modified or withdrawn by written notice provided such notice is received prior to the hour and date specified for receipt of offers.

1.10 Receipt of Proposals: The only acceptable evidence to establish the time of receipt of proposals at the City Clerk's Office is the time-date stamp of such office on the proposal wrapper or other documentary evidence of receipt maintained by the office.

1.11 Acknowledgment of Amendments To the Request For Proposals: Receipt of an amendment to the Request For Proposals by an Offeror must be acknowledged (a) by signing and returning the amendment, or (b) by letter. Such acknowledgment may be submitted with your offer. Such acknowledgment must be received prior to the hour

and date specified for receipt of offers.

1.12 Modifications to Scope of Services: In the event that sufficient funds do not become available to complete each task in the Scope of Services, the Scope of Services may be amended, based upon the cost breakdown required in the Cost Proposal.

1.13 Draft Agreement: A copy of the Draft Agreement to be entered into is attached (See Part 6) Please note that you must affirmatively accept the term and conditions of the Contract. Any additional terms and conditions proposed to be included within the terms of the contract must be submitted at the time you submit your response to this RFP, must be specifically drafted for the City and not contain any duplicate material or an material deemed "boiler plate". The City reserves the right to reject any additional terms and conditions which are outside the scope of the proposed Contract.

1.14 Evaluation period: The City reserves the right to analyze, examine and interpret any offer for a period of ninety (90) days after the hour and date specified for the receipt of offers.

1.15 Evaluation Assistance: The City of Albuquerque, in evaluating proposals, reserves the right to use any assistance deemed advisable, including City contractors and consultants.

1.16 Rejection and Waiver: The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

1.17 Debarment of Offeror: Any proposal received from an Offeror that is, at the time of submitting its proposal or prior to receipt of award of a contract, debarred by or otherwise ineligible to receive funds from any agency of the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected.

1.18 Award of Contract:

1.18.1 When Award Occurs: Award of contract occurs when a Purchase Order is issued or other evidence of acceptance by the City is provided to the Offeror. A Recommendation of Award does not constitute award of contract.

1.18.2 Award: If a contract is awarded, it shall be awarded to the responsive and responsible Offeror(s) whose offer conforming to the Request for Proposals will be most advantageous to the City as set forth in the Evaluation Criteria.

1.18.3 Contract Term: The contract term shall be for a period of 4 years from the effective date of execution of the contract and/or final execution by the City.

1.18.4 Type of Contract: Firm fixed price.

1.18.5 Debarment/Cancellation of Contract: Upon receipt of notice of

debarment of an Offeror awarded a contract as a result of this RFP (the "Contractor"), or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, the City shall have the right to cancel the contract with the Contractor resulting from this RFP for cause as provided in accordance with the terms of said contract.

1.19 Cancellation: This Request for Proposals may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interest of the City.

1.20 Negotiations: Negotiations may be conducted with the Offer or(s) recommended for award of contract.

1.21 City-Furnished Property: No material, labor, or facilities will be furnished by the City unless otherwise provided for in the Request for Proposals.

1.22 Proprietary Data: This Request for Proposals shall be open to public inspection after the recommendation of award of a contract has been signed by the Mayor, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Material so designated must be separated from the Offeror's main proposal and each page shall be clearly marked in order to consider confidential and to facilitate public inspection of the non-confidential portion of the proposal. Prices and makes and models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available regardless of any designation to the contrary. The City of Albuquerque will endeavor to restrict distribution of the material designated as confidential or proprietary to only those individuals involved in the review and analysis of the proposals. Offerors are cautioned that materials designated as confidential may nevertheless be subject to disclosure under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978).

1.23 Preferences: Preferences for local, small and resident businesses may be available under the City of Albuquerque Public Purchases Ordinance, for this procurement. See Part 5 of this Request for Proposals for additional information.

1.24 REQUEST FOR PROPOSALS (RFP) PROTEST PROCESS:

1.24.1 When: If the protest concerns the specifications for a competitive solicitation or other matters pertaining to the solicitation documents, it must be received by the Purchasing Officer no later than ten working days prior to the deadline for the receipt of offers.

1.24.2 Recommendation of Award: If the protest concerns other matters relating to this solicitation, the protest must be filed within ten working days after the receipt of notice of the Recommendation of Award.

1.24.3 Timely Protests: Protests must be received by the Purchasing Officer

prior to the appropriate deadline as set out herein, or they will not be considered valid. The Purchasing Officer may waive the deadline for good cause, including a delay caused by the fault of the City. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.

1.24.4 How to File: The protest shall be addressed to the Purchasing Officer, must be submitted in written form and must be legible. Protests may be hand-delivered or mailed. Facsimile, telephonic, telegraphic or electronic protests will not be accepted.

1.24.5 Required Information: The protest shall contain at a minimum the following;

- The name and address of the protesting party;
- The number of the competitive solicitation;
- A clear statement of the reason(s) for the protest;
- Details concerning the facts, which support the protest;
- Attachments of any written evidence available to substantiate the claims of the protest; and
- A statement specifying the ruling requested.

1.24.6 Address Letters and Envelopes as Follows:

- City of Albuquerque RFP Number
- Purchasing Division PROTEST
- PO Box 1293
- Albuquerque, New Mexico 87103

1.24.7 Protest Response by Purchasing Officer: All protests will be responded to by the Purchasing Officer upon evaluation. The Purchasing Officer will, after evaluation of a protest, issue a response. Only the issues outlined in the written protest will be considered by the Purchasing Officer.

1.24.8 Protest Hearing: If a hearing is requested, the request must be included in the protest and received within the time limit to be allowed. The filing fee of twenty dollars (\$20.00) must accompany the request for hearing. Only the issues outlined in the protest will be considered by the Purchasing Officer, or may be raised at a protest hearing. The granting of a hearing shall be at the discretion of the Purchasing Officer following review of the request.

1.25 BONDS and INSURANCE:

1.25.1 General Conditions: The City will require that the successful Offeror,

referred to as the Contractor, procure and maintain at its expense during the term of the contract resulting from the RFP, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the contract. Upon execution of the contract and on the renewal of all coverage, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. The City shall be named an additional insured for all coverages and the coverages afforded shall be primary with respect to operations provided.

1.25.2 Approval of Insurance: Even though the Contractor may have been given notice to proceed, it shall not begin any work under the contract resulting from this RFP until the required insurance has been obtained and the proper certificates (or policies) filed with the City. Neither approval nor failure to disapprove certificates, policies, or the insurance by the City shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part of the contract is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

1.25.3 Coverage Required: The kinds and amounts of insurance required are as follows:

1.25.3.1 Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

| | |
|-------------|---|
| \$1,000,000 | Per Occurrence |
| \$1,000,000 | Policy Aggregate |
| \$1,000,000 | Products Liability/Completed Operations |
| \$1,000,000 | Personal and Advertising Injury |
| \$ 50,000 | Fire Legal |
| \$ 5,000 | Medical Payments |

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of the contract resulting from this RFP.

1.25.3.2 Automobile Liability Insurance. A comprehensive automobile

liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

1.25.3.3 Workers' Compensation Insurance. Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor employs fewer than three employees and has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of the contract resulting from this RFP.

1.25.4 Increased Limits: During the life of the contract the City may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

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PART 2 - PROPOSAL FORMAT

2.1 Required Information: The following questions should be answered in detail by each offeror in order to be considered as a financial advisor for the City on Public Improvement Districts ("PIDs) and Tax Increment Development Districts ("TIDDs").

2.1.1 Qualifications – Professional qualifications of the firm and the personnel in the firm who would be assigned to the City.

2.1.1.1 List the name of the firm, address, telephone and fax number of the local office and national headquarters, Public Finance manager, and number of public finance professionals in each office.

2.1.1.2 Provide a list the specific officers who are authorized to execute agreements on behalf of the company.

2.1.1.3 Provide a brief history of your firm and its affiliations, including the date the firm was founded and how many years your firm has provided public financial advisory services.

2.1.1.4 Identify the specific individuals who will be assigned to handle the day-to-day responsibilities of this contract. Include a resume for each individual mentioned. Indicate the individual's relevant experience, relevant licenses they hold and how their particular area of expertise would benefit the City.

2.1.1.5 Describe in detail the financial advisory experience of the key individuals your firm proposes to be assigned to this contract, including but not limited to a brief resume and the role to be served. If substitutes or back-up personnel are planned on a contingency basis, they should be indicated in the staffing plan.

2.1.1.6 If your firm has a broker//dealer operation, indicate how long it has been operating and explain your activity in the municipal bond market and its significance to the services you provide.

2.1.1.7 Describe in detail your firm's experience working with an issuer that issues PIDS/TIDDs or any other types of land-secured projects.

2.1.1.8 Indicate how long your firm has been operating and explain your activity in the municipal market and its significance to the services you provide.

2.1.1.9 Describe how your firm is organized including any material developments in your firm (changes in the management, ownership, public finance or municipal staff etc.) over the past three years.

2.1.1.10 Disclose all contractual or informal business arrangements/agreements, including fee arrangement and consulting agreements between your firm and others as they may relate to Rule G-38 requirements.

2.1.2 Firms Knowledge and History – Knowledge and history of PIDs, TIDDs or any other types of land-secured projects.

2.1.2.1 Indicate similar engagements your firm services in the past three (3) years. Please provide the date, par value, and the name of the issuer and a description of the transaction.

2.1.2.2 Describe your prior experience working on high-density, mixed use, green-fields, in-fill or any other types of land-secured projects. Please discuss any challenges that you feel that the City may face.

2.1.2.3 Describe your experience working on multi-phase, land-secured financing projects.

2.1.2.4 Describe 2 case studies of a land-secured financing that involved multiple projects within a district and required coordination among several developers/landowners or parties.

2.1.2.5 Describe your experience with land-secured projects in combination with redevelopment projects such as recreational and sport facilities (i.e. Stadiums, Arenas, Sports Complexes).

2.1.2.6 Describe any challenges that the City may face in selling land – secured bonds, and how your firm will address these concerns.

2.1.2.7 Describe your firm's process for ensuring the client receives the best price for any bonds.

2.1.2.8 Describe your views on the state of the credit markets as it relates to both municipal taxable and tax-exempt securities and what structuring techniques would be required to provide the lowest possible yield on the one hand and flexibility for refinance or early retirement of debt on the other hand.

2.1.2.9 Describe your view on the importance of the interaction between the business agreement between the [developer/owner/tenant] and the City, the construction arrangements for the project, and the financing arrangements for the project.

2.1.2.10 Identify and state any potential or perceived conflicts of interest that would occur if your firm served as a Financial Advisor for the City.

2.1.3 **References** – A list of references that can be contracted to ascertain an evaluation of past service to other clients.

2.1.3.1 Provide a list of five current or recent clients that have utilized the services being proposed to the City. Include the following information:

Name:
Address:
Contact:
Telephone Number:
Scope of Work Performed:
Date of Contract & Services

The Offeror should advise the reference that he/she will be contacted by the City. The City's inability to contact the reference could negatively impact the scoring of the proposal.

2.1.4 **Approach & Work Plan** – Innovative ideas for the formation and financing PIDs/TIDDs or other types of land-secured financing.

2.1.4.1 Summarize the firm's plan and innovative approach for providing services as Financial Advisor. This section should summarize the key points of your submittal and why your firm should be selected as the City's Advisor. Include specific examples of advice and services provided to other similar issuers, a statement of how work will be organized, managed and implemented.

2.1.4.2 Summarize the firm's support service capability (e.g. computer, printing, word processing, graphics, etc). In-house or contracted services? Demonstrate your preference and provide a detailed discussion of the firm's approach to providing the required scope of services, including a statement of how the work would be organized, managed and implemented, including who would do the work and their background.

2.1.4.3 Provide an affirmative statement that during the term of this agreement your firm, either in a firm or individual capacity, will not perform financial advisory, investment banking, or other similar services for any entity other than the City in transactions involving a City financial commitment (debt or otherwise).

2.1.4.4 Each firm providing or involved with a submittal shall submit a list of and describe any lawsuits filed against the firm during the preceding five (5) years, or currently pending or threatened in conjunction with the types of services described herein.

2.1.4.5 Describe in detail, any arrangement or understandings between the firm and any underwriters, investment product providers or other parties which may provide services, products or advice to the City with future bond financings.

2.1.4.6 Provide an affirmative statement that during the term of this agreement your firm will not request the City's written consent to participate as a member of the syndicate which submits a bid to purchase bond on PIDs/TIDDs located within the City of Albuquerque.

2.1.4.7 Provide an affirmative statement that during the term of this agreement your firm will not request the City's written consent to participate as either lead underwriter or a member of the syndicate for negotiated special limited bond sales.

2.1.5 Fees – Fees for services performed.

2.1.5.1 For the performance of services in Section 3.2, the financial advisor shall be compensated on the basis of the fee schedule shown in Appendix A.

2.1.5.1.1 Printing Costs. The fee schedule in Appendix A does not include printing of the Official Statements and bond certificates, which will be paid out of bonds proceeds.

2.1.5.1.2 Out of Pocket Expenses. The fee schedule in Appendix A does cover miscellaneous issuance costs and financial advisor out of pocket expenses related to bond issues.

2.1.5.1.3 Payment Due. The financial advisor's fees and any allowable reimbursement for out of pocket costs shall be due and payable upon receipt of proceeds of the issue.

2.1.5.1.3.1 Fees for other services performed, special projects or any other services. Fees for the performance of services will be negotiated by the City and the financial advisor and cannot exceed the hourly rates shown in Appendix A.

2.2 No Joint Proposals Will Be Accepted. Each proposal submitted shall represent only one financial advisory firm. Joint proposals will not be considered.

2.2 **Length Twenty (20) Pages.** Proposals are limited to 20 single sided pages with one (1) inch margins. Minimum font size shall be 12 points. Be succinct and avoid using "off-the-shelf" fill. Résumés should be attached as exhibits and will not be counted against this page limitation which otherwise will be strictly enforced.

Any additional Cost Proposal information to the provided format in Appendix A – Fee Schedule, is to be provided under separate cover and attached as Exhibits and will not be counted against this page limitation.

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PART 3 - OBJECTIVE, SCOPE OF WORK, PROJECTED FINANCINGS & COMPENSATION

3.1 Objective. The City of Albuquerque (the "City") is requesting proposals for qualified financial advisors to assist in the formation and financing of necessary Public Improvement Districts ("PIDs") and Tax Increment Development Districts ("TIDDs").

Given the complexity of this undertaking, the City will seek a financial advisor's assistance in the formation processes, which will include but not limited to: assist in the development of local goals and policies, work with the city staff to review and evaluate PID and TIDD applications; review and evaluate the Rate & Method of Apportionment RMA, assessment levy, Feasibility Study and Finance Plan, and formation and financing legislation.

It is expected that the services of the Financial Advisor will require a close positive working relationship with the City and that the personnel identified would not be changed without the prior written approval of the City. The City will reserve the right to terminate the contract if key personnel are changed or if working relationships are not satisfactory.

3.1.1 Background. The New Mexico Legislature enacted separate laws in 2001 and 2006, the Public Improvement District Act (Sections 5-11-1 through 27 NMSA 1978) and the Tax Increment for Development Act (Sections 5-15-1 through 28, NMSA 1978, the purposes of which are to create a mechanism for providing financing for public infrastructure and supporting economic development and job creation.

In 2003, the City of Albuquerque enacted an Ordinance (O-03-84) for approving and adopting policy guidelines and application procedures for the establishment of public improvement districts (PIDs) within the City of Albuquerque, New Mexico. In 2004, the first PID (Ventana Ranch) was formed and financed. Since then several other PIDS have applied for formation and financing and are currently being reviewed and evaluated by City staff.

In 2007, the City of Albuquerque enacted an Ordinance (O-07-64) for establishing guidelines for the establishment of Tax Increment Development Districts in the City of Albuquerque. Currently, the City has approved one TIDD – Mesa Del Sol LLC and is expecting another TIDD application in the near future.

3.1.2 General Conditions:

- 3.1.2.1 Only proposals from individual firms will be accepted.
- 3.1.2.2 Recommendations for assignment as Financial Advisor will be based upon the evaluation and ordinal ranking of proposals by the City's Ad Hoc Advisory Committee (See Part 4 Evaluation of Offerors for more detail). Multiple recommendations of awards may result from this RFP.
- 3.1.2.3 This RFP does not commit the City of Albuquerque to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a proposal in response to this RFP.
- 3.1.2.4 The financial advisor chosen will be precluded by the term of the agreement from participating as an underwriter or any manner other than as the Financial Advisor for the City.

3.2 Scope of Work – The City will be reviewing proposals for the purpose of selection a firm to provide financial advisory services to the City. The financial advisor(s) will be expected to perform services as required by the City in a professional and timely manner. Services will include, but are not limited to the following tasks:

- 3.2.1 Assist City staff and bond counsel in reviewing and evaluating PID/TIDD application proposals submitted by developers. Ensure application is complete with information required by the PID and TIDD ordinances.
- 3.2.2 Work with the City, its bond counsel to develop a financing program for all PIDs/TIDs projects inside the City.
- 3.2.3 Attend pre-application discussions with developers to determine whether the proposed PID/TIDD appears to be consistent with the City's land use and development policies, zoning and other applicable regulation.
- 3.2.4 Identify issues specific to the developer's proposed project that should be addressed in its application, such as compliance with the City's growth policies, utility expansion policies or other policies, rules and regulations.
- 3.2.5 Assist in developing a preliminary schedule for the developer's submittal of a PID/TID, City staff review of the application for completeness and City Council meetings for its consideration of and action on the application.
- 3.2.6 Assist in the preparation of disclosure documents and other relevant financing documents.
- 3.2.7 Review and evaluate the developer's financial feasibility study which will

include but not limited to: (1) an analysis of the percentage of tax increment revenues that should be dedicated to each TID district, (2) an analysis on how the proposed debt financing, operation and maintenance costs, user charges and other PID cost could impact the ultimate end user of the property, (3) a financing plan for any private development in the PID, (4) an appraisal acceptable to the City, (5) a description and timing of the proposed equity contribution from the developer. The Feasibility study must meet a minimum contribution by the developer of at least 20% of the initial cost of the project; the projected value to lien ratio must be not less than 3 to 1 and the maximum allowable rate of special levy for property owner shall not exceed 1.95% of the anticipated market value of property.

- 3.2.8 Review and evaluate the developer's financing plan presented in their feasibility study. Run cash flows analysis needed for the sale of bonds based upon the agreed financing program and compare to cash flow analysis submitted by the developer.
- 3.2.9 Review and evaluate the developers application for a proposed PID/TIDD to ensure that the district meets the existing development objectives of the City, including the degree to which the PID is (1) consistent with the goals of promoting orderly development, (2) consistent with Albuquerque/Bernalillo County Comprehensive Plan, (3) consistent with growth management policies and zoning requirements, long range development polices.
- 3.2.10 Review and evaluate the Rate & Method of Apportionment and assessment levies for the districts.
- 3.2.11 Assist in preparing reports after staff review of an application, to include recommendations relating to the PIDs/TIDDs and an analysis of the impact of the formation of the PIDs/TIDDs and its effects on the City. The report may provide a recommended disposition of the application and any additional requirements that shall be placed on the developer/landowner and the PIDs/TIDDs.
- 3.2.12 Assist in coordinating a schedule of events for formation and financing of PIDs/TIDDs.
- 3.2.13 Assist in negotiating an appropriate development agreement between the City and the developer.
- 3.2.14 Assist in assessing "no new net expense" to the City and/or quantifying the City's contribution and how we relate to other jurisdiction's contributions.
- 3.2.15 When requested, assist in assessing/calculating whether the City's "no net expense" policy is being satisfied.
- 3.2.16 Work closely with all transaction professionals to insure the financing schedule is followed and all formation and financing legislation is consistent with all City enacted legislation.
- 3.2.17 Assist in reviewing and making recommendation on policy changes on legislation regarding PIDs/TIDDs.
- 3.2.18 Review all documents necessary to implement formation and financing

of PIDs/TIDDs, including but not limited to authorizing resolutions and ordinances, bond purchase agreements, and preliminary and final official statements distributed to potential investors are required.

3.2.19 Respond to day-to-day questions from City administrators and staff, which may require research and analysis

3.2.20 Assist in preparing and presenting reports for Debt Committee, Administration and Council.

3.3.5 Compensation

3.3.5.1 General. The selected Financial Advisors will only be compensated through proposed fees from the actual sale of bonds. No other compensation is proposed. **In the event a bond transaction or sale does not close for whatever reason, the City will not compensate the financial advisor(s) on any fees or expenses incurred.**

However, for work done on special projects approved by the City in advance and in writing, a separate fee may be approved prior to commencement of the work.

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PART 4 - EVALUATION OF OFFERS

4.1 Selection Process. The Mayor of Albuquerque shall name, for the purpose of evaluating the proposals, an Ad Hoc Advisory Committee. On the basis of the evaluation criteria established in this RFP, the committee shall submit to the Mayor a list of qualified firms in the order in which they are recommended. Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Offeror concerning the type of documentation that will be used by the Ad Hoc Advisory Committee. Offerors should be prepared to respond to requests by the Purchasing Office on behalf of the Ad Hoc Advisory Committee for oral presentations, facility surveys, demonstrations or other areas deemed necessary to assist in the detailed evaluation process. Offerors are advised that the City, at its option, may award this request on the basis of the initial offers.

4.2 Evaluation Criteria. The following general criteria, not listed in order or significance, will be used by the Ad Hoc Advisory Committee in recommending contract award to the Mayor. The proposal factors will be rated on a scale of **0-1000** with weight relationships as stated below.

| Maximum Points | Evaluation Criteria |
|----------------|---|
| 300 | Qualifications: Professional qualifications of the firm and the personnel in the firm who would be assigned to the City. |
| 300 | Firm's Knowledge and History: Knowledge and history of the general financial character and environment of the City. |
| 25 | References: A list of references that can be contacted to ascertain in evaluation of past service to other clients. |
| 300 | Approach: Innovative ideas for the formation and financing of PIDs/TIDDs or any other type of land-secured projects. |
| 75 | Fees: (See Appendix A - Fee Schedule) |

4.2.2 Cost/Price Factors: The evaluation of cost factors in the selection will be determined by a cost/price analysis using your proposed figures. Please note that the lowest cost is not the sole criterion for recommending contract award.

4.2.3 Cost Evaluation. The cost/price evaluation will be performed by the City Purchasing Division or designee. A preliminary cost review will ensure that each Offeror has complied with all cost instructions and requirements. In addition, proposals will be examined to ensure that all proposed elements are priced and clearly presented. Cost proposals that are incomplete or reflect significant inconsistencies or inaccuracies will be scored accordingly or may be rejected by the Ad Hoc Advisory Committee if lacking in information to determine the value/price/cost relative to the services proposed.

4.3 Preferences. Preferences for local, small and resident (state) businesses may be available under the City of Albuquerque Public Purchases Ordinance, for this procurement. See Part 5 of this Request for Proposals for additional information. For those Offerors qualifying for a preference, a 1.05 or 1.10 multiplier, whichever applies, will be applied to the total raw score assigned to its proposal by the ad hoc evaluation committee.

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**PART 5 - Instructions for PREFERENCE CERTIFICATION FORM
For Local, Small or Resident Business Preferences
(Goods & Services)**

1. ALL INFORMATION MUST BE PROVIDED. A 5% small business preference and a 5% local preference or resident business preference are available for this procurement. To qualify, an Offeror **MUST** complete and submit this Form **WITH ITS OFFER**. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. **THE FORM OR A CORRECTED FORM WILL NOT BE ACCEPTED AFTER THE DEADLINE FOR RECEIPT OF BIDS OR PROPOSALS.**

2. PHYSICAL LOCATION MUST BE STATED. To qualify for the small business or local preference, a business must have its principal office and place of business in the Greater Albuquerque Metropolitan Area. The business location inserted on the Form must be a physical location, street address or such. **DO NOT** use a post office box or other postal address.

3. FORM MUST BE COMPLETED BY PRINCIPAL OFFEROR. This Form must be completed for the Principal Offeror, or one of the Principal Offerors if the Offeror is a joint venture or partnership, by an individual authorized to sign for the Offeror. Subcontractors of the Offeror may not qualify an offer for a preference and should not complete or submit the Form.

4. APPLICATION OF PREFERENCES. The small business preference and the local business preference will be applied to all offers submitted by eligible small businesses. The local preference only will be applied to all offers submitted by eligible local businesses which are not small businesses. If there are no offers submitted in response to a solicitation that are eligible for the local preference, then the Resident Business Preference will be applied to any offers submitted which have provided a valid, State of New Mexico-issued, Resident Business or Resident Manufacturer Certification Number.

5. DEFINITIONS. The following definitions apply:

- The Greater Albuquerque Metropolitan Area includes all locations within the City of Albuquerque and Bernalillo County.
- A local business is a business with its principal office and place of business in the Greater Albuquerque Metropolitan Area.
- A small business is a local business which employs an average of fewer than 20 full-time employees in a calendar year. The calendar year immediately prior to the request for the preference should be used.
- A principal office is the main or home office of the business as identified in tax returns, business licenses and other official business documents.
- A place of business is a location where the business conducts its daily operations, for the general public, if applicable.
- A full-time employee is an employee of the business who is hired to work at least forty (40) hours per week, whether in a permanent, temporary or seasonal status. If all full-time employees of the business are hired to work a shorter work week, the City's Purchasing Officer may reduce this requirement, upon receipt of adequate documentation.

6. ADDITIONAL DOCUMENTATION. If requested, a business will be required to provide, within three working days of receipt of the request, documentation to substantiate the information provided on the Form. The City's Purchasing Officer shall determine the sufficiency of such documentation.

PREFERENCE CERTIFICATION FORM
For Local, Small or Resident Business Preferences
(Goods & Services)

RFP/RFB NO: _____

Business Name: _____

Principal Office:

| | | |
|----------------|-------|---------|
| Street Address | State | Zipcode |
|----------------|-------|---------|

Place of Business:

| | | |
|----------------|-------|---------|
| Street Address | State | Zipcode |
|----------------|-------|---------|



If your Principal Office and Place of Business are in the Greater Albuquerque Metropolitan Area (see definitions in Instructions attached), please provide the following information:

A. Average Number of Full-time Employees over the Prior Calendar Year: SELECT ONE

- 0 – 19 employees.
- 20 employees or more.



If applicable, insert State of New Mexico Resident Business or Resident Manufacturer Certification Number: _____

CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City, will provide, within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: _____

Printed Name: _____

Title: _____

Date: _____

YOU MUST RETURN THIS FORM WITH YOUR OFFER.

PART 6
FINANCIAL ADVISOR AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2008, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City"), and _____ (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the City issued a Request for Proposals for its Department of Finance and Administrative Services, Treasury Division, Procurement No. RFP2008-020-KD, titled Financial Advisory Services, dated February 20, 2008; which is attached hereto as Exhibit A, and by this reference made a part of this Agreement; and

WHEREAS, the Contractor submitted its proposal dated February 20, 2008, in response to RFP No. 2008-020-KD, which proposal is attached hereto as Exhibit B and by this reference made a part of this Agreement; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **Scope of Services.** The Contractor shall perform the following services (hereinafter referred to as the "Services") in a satisfactory and proper manner, as determined by the City:

Provide Financial Advisory Services in accordance with Exhibit A as supplemented by Exhibit B.

2. **Time of Performance.** Services of the Contractor shall commence on _____, 20____, and shall continue for four (4) years. Services shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed by _____, 20 ____.

3. **Compensation and Method of Payment.**

A. **Compensation.** For performing the Services specified in Section 1 hereof, the City agrees to pay the Contractor the transaction fees identified in Contractor's cost proposal attached hereto and incorporated herein as Exhibit C, which fees include any applicable gross receipts taxes. Contractor understands that if a bond transaction does not close, for any

reason, it will not be compensated on any work in connection with the bond transaction. However, for work done on special projects approved by the City in advance, a separate fee may be approved prior to commencement of the work at the rates set out in Exhibit B.

B. **Method of Payment and Disbursements.** In addition to the compensation set forth in Section 3, entitled Compensation, Contractor shall be reimbursed, so long as the bond transaction closes, for its reasonable costs incurred in connection with this Agreement. Such expenses must be approved in advance and include: traveling expenses, out of state long distance telephone call charges, reproduction costs, printing charges and like expenditures. Payments shall be made to the Contractor upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.

C. **Appropriations.** Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current fiscal year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

4. **Independent Contractor.** Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. **Personnel.**

A. _____ and _____ are assigned to the performance of duties under this Agreement. They may consult with or use other employees as they deem necessary, but they shall remain committed to this Agreement unless the City consents to a substitution, which consent shall be in the City's sole discretion. The personnel assigned shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be

subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. **Indemnity.** The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. **Insurance.** The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is cancelled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. **Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

| | |
|-------------|---|
| \$1,000,000 | Per Occurrence |
| \$1,000,000 | Policy Aggregate |
| \$1,000,000 | Products Liability/Completed Operations |
| \$1,000,000 | Personal and Advertising Injury |
| \$ 50,000 | Fire - Legal |
| \$ 5,000 | Medical Payments |

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. **Automobile Liability Insurance.** An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and

other equipment both on and off work.

C. **Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico.

D. **Increased Limits.** If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

8. **Discrimination Prohibited.** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

9. **ADA Compliance.** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

10. **Reports and Information.** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

11. **Open Meetings Requirements.** Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of §2-5-1 *et seq.* R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

12. **Establishment and Maintenance of Records.** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

13. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of

the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

14. **Publication, Reproduction and Use of Material.** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

15. **Compliance With Laws.** In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments.

16. **Changes.** The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

17. **Assignability.** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

18. **Termination for Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

19. **Termination for Convenience of City.** The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the

Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

20. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

21. **Enforcement.** The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

22. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

23. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

24. **Approval Required.** This Agreement shall not become effective or binding until approved by the Chief Administrative Officer.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

CONTRACTOR:

Approved By:

By: _____

Tanda Meadors
Director, DFAS

Title: _____

State Taxation and Revenue Department
Taxpayer Identification Number

Date: _____

Federal Taxpayer Identification Number

Bruce J. Perlman, Ph.D
Chief Administrative Officer

Date: _____

APPENDIX A – FEE SCHEDULE

A. Financial Advisory (FA) Fee (Dollars per \$1,000 bond): \$ _____

B. Minimum FA Fee per transaction: \$ _____

C. Maximum FA Fee per transaction: \$ _____

D. Out of pocket expenses for travel, lodging, communications, computer and copying would be billed at cost; however, these expenses will not exceed \$_____ in any fiscal year.

E. For any special projects authorized by the City, which are not intended to result in the issuance of bonds, the City would propose to be compensated upon the following hourly rates.

- **President** \$ _____
- **Vice President** \$ _____
- **Professional** \$ _____
- **Clerical** \$ _____

F. Minimum fee per special project (non-bond): \$ _____

G. Maximum fee per special project (non-bond) \$ _____

ATTACHMENTS

1 No. 34-2002, the Ordinance adopting elements of a Planned Growth Strategy; City Resolution
2 No. F/S R-02-111(A) relating to the Planned Growth Strategy Report, including the maps setting
3 forth the current service areas contained in Exhibit A thereto; the current City enactment relating
4 to the Capital Implementation Program; and all supplements and subsequent enactments
5 relating to these measures.

6 (B) All costs and expenses incurred by the City in connection with the
7 application, formation, and operation of a PID shall be paid by the applicant/landowner through
8 advance payments as provided in Sections 4(B) and 5(A) hereof. Costs and expenses incurred
9 by the City in connection with the application and formation of a PID shall not be liabilities of the
10 City. Advance payments shall include payments for services rendered by City staff, services
11 rendered by outside consultants who may be retained by the City including, but not limited to,
12 bond counsel and other attorneys, financial advisers, engineers, appraisers, and tax
13 consultants. If the City uses outside consultants as “staff,” such as attorneys or engineers,
14 those consultants shall be paid their normal rate for services.

15 (C) Subsequent to the approval of an application for formation of a PID by the
16 City Council, and after authorization by the PID exercising its sole discretion, all or part of such
17 advance payments may be reimbursed to the developer/landowner. Reimbursements from
18 bond proceeds may be made to the developer/landowner to the extent permitted by law,
19 including federal tax law providing for the issuance of tax exempt bonds. Reimbursement from
20 PID bond proceeds, PID levies, PID assessments, PID revenues or developer/landowner equity
21 contributions may be made to the developer/landowner, but in any event the minimum equity
22 contributions required in Sections 5(D)(5), 5(E)(5), 5(F)(6) and 6(A) shall be maintained.

23 (D) This policy is adopted to provide ease of administration and the largest
24 tax/revenue base possible. The decision to form a PID shall be a legislative enactment of the
25 City Council and Mayor exercised in accordance with law. The City shall encourage an area to
26 be governed by as few PIDs as possible, and a preference shall be given to one master PID.

27 (E) The PID shall be governed by a Board of Directors comprised of
28 members of the City Council, ex officio, or, at the option of the City Council, five directors
29 appointed by the City Council, (the “PID Board”). The City Council may, in accordance with law,
30 delegate certain responsibilities of governance of the PID to a committee as approved by the
31 City Council. The day-to-day responsibilities of the PID shall be performed pursuant to an
32 agreement with outside personnel (including a development agreement entered into pursuant to
33 the Act), or City staff. Advisory committees may, at the option of the PID Board, be utilized.

1 (F) The PID must be self-supporting. Except as set forth in Section 1(J), no
2 City funds shall be used for PID purposes including financing, operations or maintenance.
3 Notwithstanding anything to the contrary which may be contained herein, neither the property,
4 the full faith and credit nor the taxing power of the City shall be pledged to the payment of any
5 PID obligation or indebtedness.

6 (G) The PID Board shall determine, in accordance with its policies and
7 procedures , the amount, timing and form of financing to be used by a PID after review of the
8 financial feasibility study required by Sections 3(E) and 3(F) of this Ordinance. All bond
9 proceeds generated by the financing must be spent on project costs in accordance with the
10 bond documents and the policies and procedures of the PID Board. No financing shall be
11 undertaken in which any individual property owner shall be liable for more than its equitable
12 individual portion of the cost of the improvements. No water or wastewater utility system, or any
13 portion thereof, which is billed for separate and apart from a City water or wastewater utility shall
14 be financed. All financings shall be subject to final review and approval by the City Council.

15 (H) Unless the City Council shall decide otherwise, the PID shall construct or
16 finance improvements on such terms and with such persons as the PID Board determines to be
17 appropriate, in accordance with Section 5-11-10(D) NMSA 1978, as amended. The PID shall
18 otherwise construct and finance improvements in accordance with applicable public works acts.
19 Construction, performance, and payment bonds shall be furnished in accordance with the City
20 policies and procedures governing subdivision improvement agreements.

21 (I) Existing City policies for development, growth management and
22 conservation shall remain in effect and shall not be waived or relaxed upon the creation of a
23 PID. The PID may use bond proceeds or other PID funds to purchase public rights-of-way or
24 other real property to be used for public infrastructure improvements, unless such real property
25 would be required to be dedicated and conveyed to the City by the developer/landowner upon
26 development of the developer's/landowner's property. Any agreements with the City regarding
27 the pro rata repayment of any charges shall require that such repayments be used to reduce the
28 principal of any financing.

29 (J) Until the dedication of the infrastructure to the City, and acceptance by
30 the City, all costs of administration and operation of the PID and the operation and maintenance
31 of public infrastructure in the PID shall be the responsibility of the PID, the developer/landowner,
32 applicable homeowners' association, or any combination of the foregoing, as may be acceptable
33 to the City and the PID. After dedication, in any unserved areas, the developer/landowner,

1 applicable homeowners' association, or any combination of the foregoing, shall continue to bear
2 such costs until the PID is no longer within an unserved area.

3 (K) Notwithstanding any other provisions of this Ordinance, a PID may be
4 created in an area not served by City water, wastewater, or storm drainage utilities. Any PID
5 created in an area not served by existing water, sewer or storm drainage utilities shall be
6 consistent with the parameters of the No Net Expense Policy set forth in Section 6 of City
7 Ordinance Enactment No. 34-2002, and Section 14-13-1-3 Revised Ordinances of Albuquerque,
8 New Mexico, 1994. Developers in unserved areas shall be required to pay 100% of all on-site
9 and off-site charges associated with the PID.

10 (L) The City's consent to any PID proposed to be formed in the City by
11 Bernalillo County shall be conditioned upon the PID following the procedures set forth in this
12 Ordinance. Any PID established by Bernalillo County outside of the boundaries of the City but
13 intending to rely upon City water, sewer or storm drainage utilities shall be required to follow the
14 procedures set forth in this Ordinance in order to be served by City utilities. The provisions of
15 this Ordinance do not alter the line extension policy of the City.

16 SECTION 2. PRE-APPLICATION DISCUSSION WITH CITY STAFF.

17 Potential applicants for a PID are encouraged to schedule and conduct a pre-application
18 meeting and discussion with City staff. Input provided by City staff shall be of an advisory
19 nature, for the purposes of assisting applicants in submitting completed applications with detail
20 and information required to enable meaningful consideration by the City Council. The purposes
21 of the pre-application meeting shall be to:

22 (A) Make an initial assessment whether the proposed PID appears to be
23 consistent with the City's land use and development policies, zoning and other applicable
24 regulation;

25 (B) To help identify any related City approvals that will be required to permit
26 the PID.

27 (C) To identify other issues specific to the applicant's proposed project that
28 should be addressed in its application, such as compliance with the City's growth policies, utility
29 expansion policies, or other policies, rules or regulations; and

30 (D) To establish a preliminary schedule for (i) the applicant's submittal of a
31 PID application, (ii) City PID staff review of the application for completeness, (iii) City Council
32 meeting or meetings for its consideration of and action on the application.

1 SECTION 3. CONTENT OF APPLICATION. All applications for the formation
2 of a PID shall be submitted to the City. Each application shall, at a minimum, contain
3 the following:

4 (A) A description of the proposed PID, including a legal description of its
5 boundaries, identity and addresses of all persons or entities with any interest in the property,
6 and the names and addresses of any qualified electors (as defined in Section 3-1-2(K) NMSA
7 1978) located within the proposed boundaries. The description must contain an analysis of the
8 appropriateness of the PID boundaries.

9 (B) Evidence satisfactory to the City of the unanimous consent of owners of
10 real property within the proposed boundaries of the PID to the creation of the PID. A current title
11 report on the property and a certificate from the county clerk shall be submitted as evidence of
12 the names of persons with any interest in the land and qualified electors. In the event that any
13 owner of property with the proposed District withdraws consent to the creation of a PID, the
14 applicant shall have the opportunity to submit a revised application and shall not be required to
15 submit a new application fee as provided in Section 4 of this Ordinance; provided, that the City
16 may request that the applicant deposit additional funds to pay costs reasonably incurred by the
17 City in reviewing an application which has been revised as a result of a property owner's
18 withdrawal of consent to the creation of a PID.

19 (C) A detailed description of the types of public infrastructure to be financed
20 by the PID, including the estimated construction or acquisition costs of the public infrastructure,
21 projection of working capital needs, including adequate funds for repair and replacement of
22 infrastructure, the annual operation and maintenance costs of the public infrastructure and the
23 governmental approvals and licenses that shall be required for both the public and private
24 improvements to be constructed and operated. The description shall contain adequate
25 information to establish financial parameters for the operation and financing of the PID as set
26 forth in Section 5 of this Ordinance. The description also shall contain information regarding the
27 future ownership and maintenance of infrastructure.

28 (D) A proposed project schedule for commencement and completion of (a)
29 the public infrastructure and (b) the private development, which shall include the financial
30 feasibility study required by Section 3(E) of this Ordinance for the public infrastructure, including
31 both capital and operating/maintenance costs for all improvements undertaken by the PID. The
32 financial feasibility study shall include projections for a period which shall be the longer of (i) the

1 expected term of existence of the PID, (ii) thirty years following the creation of a tax upon the
2 PID taxable property, or (iii) the final maturity date of any bonds issued by the PID. The
3 financial feasibility study shall include at least: (a) estimated costs of improvements; (b)
4 projected costs of maintenance after construction; and (c) a complete description of the
5 improvements to be owned and maintained by the City or the PID.

6 (E) A financial feasibility study (which shall be satisfactory to the City and
7 prepared by an independent professional with appropriate expertise) for the entire project (or
8 such phases of the project that are expected to be constructed during the term of the
9 development) covering both the public infrastructure and the private development. The financial
10 feasibility study shall include:

11 (1) An analysis of how the proposed debt financing, operation and
12 maintenance costs, user charges and other PID costs shall impact the ultimate end users of the
13 property, specifically projected property taxes, property tax rates, special levies, special
14 assessments, fees, charges and other costs that would be borne by property in the PID. The
15 analysis should also address the impact these costs shall have on the marketability of the
16 private development and a comparison of proposed tax rates and charges in adjoining and
17 similar areas outside of the proposed PID.

18 (2) A financing plan for any private development in the PID which
19 shall not be dedicated to the City.

20 (3) A market absorption study for the private development in the PID
21 prepared by an independent consultant acceptable to the City. Such study shall include
22 estimates of the revenue to be generated by the development, an estimate of the ability of the
23 market to absorb the development, and a market absorption calendar for the private
24 development.

25 (4) An appraisal as described in Section 5(C) acceptable to the City.
26 The City's acceptance of the appraisal shall be conditioned upon a review and approval of the
27 appraisal prepared by a person who is designated as a Member Appraisal Institute ("MAI") and
28 a certified general real estate appraiser (such person hereafter referred to as an "MAI
29 Appraiser" chosen by the City at the cost of the developer). In the event that the MAI Appraiser
30 chosen by the City cannot approve the appraisal, the appraisal shall be rejected and a new
31 appraisal presented by the MAI Appraiser chosen by the City shall be provided.

32 (F) A description of the proposed equity contribution from the applicant/
33 landowner and a calendar showing the timing and sources of such equity contribution. The

1 equity contributions shall be at least equal to those minimum standards established in Section 5
2 and Section 6 of this Ordinance.

3 (G) A description of the applicant's professional experience and evidence
4 demonstrating its financial capacity to undertake the development associated with the public
5 infrastructure and private development. The application shall also describe the direct and
6 indirect benefits of all parties with financial interest in the proposed development. If available,
7 such information shall be accompanied by three-year audited financial statements, along with a
8 description of past projects and disclosure of any material litigation.

9 (H) A disclosure form explaining the expected and possible tax, levy,
10 assessment and other financial burdens of the PID on prospective PID landowners. Upon each
11 sale of property in the PID, the applicant shall file and record with the County Clerk a receipt,
12 signed by the purchaser, that acknowledges the purchaser's receipt of the disclosure form. The
13 applicant shall also supply the City with a copy of the receipt. Landowners/developers are
14 required to describe in their promotional material the financial and other relative impacts on the
15 development being included in a PID. Copies of the disclosure form must be placed on file with
16 the City. The City reserves the right to reject any unacceptable version of the form. The
17 disclosure form shall inform all affected property owners that the PID will be fiscally self-
18 sufficient and will receive no direct or indirect financial support from the City.

19 (I) An operating plan for the PID, i.e., what functions the PID shall provide
20 and how the operation and maintenance of the infrastructure and all other services in the PID
21 shall be provided.

22 (J) A description of how the proposed PID meets the existing development
23 objectives of the City, including the degree to which the PID is (1) consistent with the goals of
24 promoting orderly development, (2) consistent with the Albuquerque/Bernalillo County
25 Comprehensive Plan; (3) consistent with growth management policies and zoning requirements,
26 and (4) the degree to which the land use plan for the PID is consistent with the City's applicable
27 long-range policies for development, growth management and conservation, including the
28 growth and infrastructure plan and zoning categories contained in City Resolution No. F/S R-02-
29 111(A).

30 (K) Such other information as the City may reasonably require after its initial
31 review of the application, including but not limited to preliminary legal opinions, further
32 information regarding the relationship of the application to City's development objectives,
33 additional proof of financial capability, business references, term sheets for financing and

1 financial commitment letters.

2 SECTION 4. APPLICATION PROCEDURES.

3 (A) Ten (10) copies of the application for the formation of a PID shall be
4 submitted to the Mayor's Office, which shall coordinate an interdepartmental analysis of each
5 application.

6 (B) At the time of submission of the application, the applicant shall pay a
7 \$20,000 non-refundable application fee and shall deposit an additional \$30,000 as an advance
8 deposit on account to be applied by the City in its sole discretion to the initial costs incurred in
9 connection with the processing and review of the application and the formation of the PID in
10 accordance with the provisions of Section 1(B) of this Ordinance. In calculating costs incurred
11 by the City, the City may include reasonable costs associated with the pre-application
12 discussion contained in Section 2 of this Ordinance. An accounting of all costs incurred by the
13 City shall be made to the applicant at its request and if reasonably necessary, additional funds
14 may be requested by the City and must be paid by the applicant. If an applicant withdraws its
15 application, the City shall return the unexpended portion of the advance deposit; provided, that
16 the City shall retain from those funds the amounts necessary to pay costs incurred by the City
17 but not yet paid by the City at the time the application is withdrawn.

18 (C) At the Applicant's request, the City staff shall present to the City Council a
19 non-binding resolution expressing the City's intent to proceed with the formation of the PID.
20 Such a resolution may be based upon a preliminary application outline, containing, at a
21 minimum, the following information: (i) ownership of property proposed to be included in the
22 PID; (ii) location and boundaries of the proposed PID; (iii) general description of improvements
23 to be constructed with PID financing and estimated costs of construction; (iv) estimated principal
24 amount of PID bonds proposed to be issued; (v) estimated maximum annual debt service on
25 PID bonds, and (vi) estimated maximum annual PID levy per parcel of real property located
26 within the PID. The City Council may, in its discretion and prior to the formation of the PID,
27 adopt a resolution expressing its intent to proceed with the formation of the PID, subject to such
28 conditions as may be set forth in the resolution. In the event that this resolution is not passed by
29 the Council, the Applicant may receive a refund of all of its advance deposit.

30 (D) If the City approves the formation of a PID and there are existing
31 agreements with developers/landowners for the provision of infrastructure proposed to be
32 furnished by the PID, then those agreements shall be deemed amended to reflect the

1 agreements and conditions pertaining to the PID. The amendments shall reflect that either the
2 developer/landowner or the PID shall provide such infrastructure improvements.

3 (E) After the application fee and deposit are submitted, City staff shall
4 arrange an initial conference with the applicant and the appropriate City staff, for the purpose of
5 reviewing the application for conformity with City policies. The City staff shall use its best efforts
6 to review the application and conduct the initial conference within thirty days following payment
7 of application fee and deposit.

8 (F) If at any time during the application process City staff requests additional
9 information, the applicant shall provide any and all supplemental information requested, in
10 accordance with the provisions of Section 3(K) of this Ordinance.

11 (G) After analysis of an application as supplemented, City staff, under the
12 direction of the Mayor's Office, may prepare a report including recommendations relating to the
13 PID and an analysis of the impact of the formation of the PID and its effects on the City. The
14 report may provide a recommended disposition of the application and any additional
15 requirements that shall be placed on the developer/landowner and the PID. The City shall use
16 its best efforts to complete the analysis and report concerning the application within 90 days
17 following the initial application conference.

18 (H) If all costs billed to or incurred by the City have been paid by the applicant
19 by a date at least fourteen (14) days prior to the date of the meeting of the City Council at which
20 the appropriate legislation approving the application is to be introduced and if the application
21 meets the qualifications provided herein as determined by City staff, the application, along with
22 any report and recommendations by City staff, shall be presented by the Applicant and City staff
23 to the Debt Committee established by City Ordinance Enactment No. 20-2001 and thereafter to
24 the City Council, along with appropriate implementing legislation. Final approval of the City
25 Council shall be conditioned on the City Council's conclusion that all matters necessary to be
26 completed prior to the formation of the PID have been completed.

27 (I) If the City Council approves an application for formation of a PID, the
28 applicant/developer/landowner and the City staff shall coordinate a schedule of events for
29 formation of the PID and shall negotiate an appropriate development agreement between the
30 City and the developer/landowner which shall be entered into prior to formation of the PID,
31 which development agreement shall incorporate the requirements of any report,
32 recommendations of the City staff relating to such PID, the requirements of this Ordinance and
33 any other restrictions, provisions and agreements required by the City in its discretion.

1 SECTION 5. PID OPERATIONS AND DEBT FINANCING.

2 (A) In addition to the amounts set forth in Section 4(B), upon formation of a
3 PID the developer/landowner shall deposit with the PID a nonrefundable administrative expense
4 fee in the amount of \$15,000. The administrative expense fee shall be applied by the PID to the
5 costs and expenses incurred in connection with the formation, review of any feasibility study,
6 election costs, administration, operation and maintenance of the PID or its public improvements.
7 From time to time, upon depletion of the administrative expense fee, the PID may request, and
8 the developer/landowner shall promptly deposit with the PID, additional amounts deemed by the
9 City to be necessary for the purposes contemplated in this Section 5(A).

10 (B) In order to provide for the PID to be self-supporting for its administrative,
11 operation and maintenance expenses, and to finance services in addition to those provided by
12 the City, the City and the PID, unless otherwise agreed, may require the imposition of up to
13 \$3.00 per \$1,000 of assessed value ad valorem tax, not as a tax or charge of the City, but in
14 accordance with the provisions of Section 5-11-23 NMSA 1978, as amended, upon the PID
15 taxable property, for the administration of the PID, and the operation and maintenance of
16 property which is not City-owned infrastructure otherwise maintained by the City. Failure to
17 impose such tax shall not impose upon the City any obligations for operations.

18 (C) The amount and structure of debt of a PID shall not have any direct or
19 indirect negative impacts on the debt or financing capabilities of the City. The debt imposed on
20 the PID shall not impose an unreasonably high financial burden on any future property owners
21 in the PID. Any debt issued shall be in accordance with the provisions of Section 1(G) of this
22 Ordinance. In connection with any request for debt financing the applicant shall provide a
23 current appraisal (subject to update to remain current at the time of any debt financing) of the
24 fair cash market value of the property within the proposed PID which shall be taxed, assessed
25 or levied upon, prepared by an MAI Appraiser, such appraisal to be in form and substance
26 acceptable to the City, in its sole and absolute discretion. All requested debt financings shall be
27 reviewed by the City Debt Committee.

28 (D) General obligation bonds of the PID shall be payable from an ad valorem
29 tax on all taxable property located within the PID. An applicant for general obligation bonds
30 shall describe in each financial feasibility study required in Section 3(E) of this Ordinance, the
31 following:

32 (1) The current direct and overlapping tax and assessment burden on

1 the taxable property that is proposed to be taxed and the full cash value and assessed valuation
2 of the taxable property as shown on the most recent assessment roll.

3 (2) The amount and timing of PID general obligation bonds to be
4 issued.

5 (3) The expected market absorption of development within the PID.

6 (4) The effect of the PID bond issuance on PID tax rates, calculated
7 at the beginning, middle and end of the market absorption period or based on the phasing of the
8 project to be financed, as applicable.

9 (5) Whether the bonds shall be publicly offered or privately placed.
10 Publicly offered bonds shall either (i) be rated (either on their own merits or by use of
11 appropriate credit enhancement) in one of the four highest investment grade ratings from
12 Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Fitch Ratings, or other
13 nationally recognized bond-rating services, or (ii) be issued in connection with a transaction
14 which meets all of the following criteria unless otherwise determined by the City, in its discretion,
15 based upon recommendations made by underwriters or financial consultants acceptable to the
16 City:

17 (a) the minimum equity contribution, excluding real property, of
18 the developer is at least 20% of the initial cost of the project;

19 (b) the projected value to lien ratio, after the completion of the
20 improvements constructed with bond proceeds, shall be at least 4 to 1, but in no event and
21 notwithstanding any other provision of this section, less than 3 to 1; and

22 (c) the developer and the PID shall enter into an appropriate
23 contribution agreement, which may require a letter of credit or other third-party guarantee of the
24 bonds by the developer.

25 Privately placed bonds need not be rated; however, the purchasers of
26 such bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the
27 Securities Exchange Commission) and must agree not to resell the bonds except to "qualified
28 institutional buyers" in a private placement.

29 If appropriate, the applicant shall enter into a "Continuing Disclosure
30 Undertaking" (as required by Rule 15c2-12 of the Securities Exchange Commission) or relating
31 to the issuance of the bonds.

32 (E) Special levy bonds shall be secured by a tax lien on the property
33 benefitted. Applicants for special levy bonds shall describe in each financial feasibility study as

1 required by Section 3(E) of this Ordinance, the following:

2 (1) The current direct and overlapping tax assessment burdens and
3 special levy on real property to comprise the PID and the full cash value and assessed valuation
4 of that property as shown on the most recent assessment roll.

5 (2) The amount and timing of PID special levy bonds to be issued.

6 (3) The expected market absorption of development within the PID.

7 (4) The special levy burden to be placed on the prospective assessed
8 parcels.

9 (5) Whether the bonds shall be publicly offered or privately placed.
10 Publicly offered bonds shall either (i) be rated (either on their own merits or by use of
11 appropriate credit enhancement) in one of the four highest investment grade ratings from
12 Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Fitch Ratings, or other
13 nationally recognized bond-rating services, or (ii) be issued in connection with a transaction
14 which meets all of the following criteria unless otherwise determined by the City, in its discretion,
15 based upon recommendations made by underwriters or financial consultants acceptable to the
16 City:

17 (a) the minimum equity contribution, excluding real property, of
18 the developer is at least 20% of the initial cost of the project;

19 (b) the projected value to lien ratio, after the completion of the
20 improvements constructed with bond proceeds, shall be at least 4 to 1, but in no event and
21 notwithstanding any other provision of this section, less than 3 to 1; and

22 (c) the developer and the PID shall enter into an appropriate
23 contribution agreement, which may require a letter of credit or other third-party guarantee of the
24 bonds by the developer.

25 Privately placed bonds need not be rated; however, the purchasers of
26 such bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the
27 Securities Exchange Commission) and must agree not to resell the bonds except to "qualified
28 institutional buyers" in a private placement.

29 If appropriate, the applicant shall enter into a "Continuing Disclosure
30 Undertaking" (as required by Rule 15c2-12 of the Securities Exchange Commission) relating to
31 the issuance of the bonds.

32 (F) Revenue bonds shall be payable from a PID revenue source. An
33 applicant for revenue bonds shall describe in each financial feasibility study as required in

1 Section 3(E) of this Ordinance, the following;

2 (1) The current direct and overlapping tax and assessment burdens
3 on the property within the PID and the full cash value and assessed valuation of that taxable
4 property as shown on the most recent assessment roll.

5 (2) The revenue source from which bonds shall be payable. The City
6 reserves the right to require the applicant to produce such independently prepared feasibility
7 studies or reports as it deems necessary to confirm the amount and availability of revenues.

8 (3) The expected market absorption of development within the PID.

9 (4) The amount and timing of PID revenue bonds to be issued.

10 (5) The financial impact of the proposed issue(s) on prospective
11 property owners.

12 (6) Whether the bonds shall be publicly offered or privately placed.
13 Publicly offered bonds shall either (a) be rated (either on their own merits or by use of
14 appropriate credit enhancement) in one of the four highest investment grade ratings from
15 Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Fitch Ratings, or other
16 nationally recognized bond-rating services, or (b) be issued in connection with a transaction
17 which meets all of the following criteria unless otherwise determined by the City, in its discretion,
18 based upon recommendations made by underwriters or financial consultants acceptable to the
19 City::

20 (a) the minimum equity contribution, excluding real property, of
21 the developer is at least 20% of the initial cost of the project;

22 (b) the projected value to lien ratio, after the completion of the
23 improvements constructed with bond proceeds, shall be at least 4 to 1, but in no event and
24 notwithstanding any other provision of this section, less than 3 to 1; and

25 (c) the developer and the PID shall enter into an appropriate
26 contribution agreement, which may require a letter of credit or other third-party guarantee of the
27 bonds by the developer.

28 Privately placed bonds need not be rated; however, the purchasers of
29 such bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the
30 Securities Exchange Commission) and must agree not to resell the bonds except to "qualified
31 institutional buyers" in a private placement.

32 If appropriate, the applicant shall enter into a "Continuing Disclosure
33 Undertaking" (as required by Rule 15c2-12 of the Securities Exchange Commission) relating to

1 the issuance of the bonds.

2 (G) The special levies imposed on real property in the PID shall be
3 apportioned based on parcel size or front footage basis. The maximum allowable rate of special
4 levy for property, however, shall not cause the total tax and assessment obligation for such
5 property, including projected ad valorem taxes and special assessments, to exceed one and
6 ninety-five one hundredths percent (1.95%) of the anticipated market value of property as
7 determined by an MAI Appraiser. The 1.95% shall include unissued debt and any other
8 anticipated fees or assessments which may be imposed by the City or special district on a
9 property within the PID – i.e., special assessment districts, including the proposed maximum
10 special levy, except service charges for utilities and refuse.

11 (H) Unless otherwise determined by the City, the City shall retain its own
12 bond counsel to act as bond counsel in connection with the issuance of any PID bonds. From
13 time to time the City may request from bond counsel such opinions as it deems necessary in
14 connection with the formation and activities of the PID.

15 SECTION 6. FINANCIAL CONSIDERATIONS.

16 (A) The applicant shall independently provide at least \$0.25 in additional
17 infrastructure or community improvements for each \$1.00 of debt to be issued by a PID to
18 finance public infrastructure. The City may in its discretion impose additional financing
19 requirements, including the deposit of cash or a letter of credit (or similar credit facility) as
20 security for completion of the infrastructure development. If agreed to by the PID Board, in its
21 sole and absolute discretion, prior infrastructure and community improvements constructed or
22 acquired by the applicant or the developer/landowner may be included in calculating the
23 applicant's or developer's/landowner's compliance with this Section 6(A).

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

27 (C) The applicant or the developer/landowner (or such other third party
28 acceptable to the City and the PID), shall indemnify the City and the PID and their agents and
29 employees and shall hold the City and the PID and their agents, officers and employees
30 harmless for, from and against any and all liabilities, claims, costs and expenses, including
31 attorneys' fees, incurred in any challenge or proceeding relevant to the formation, operation,
32 administration of the PID, the offer and sale of PID bonds, the levying by the PID of any tax,

1 assessment, special levy or charge and the operation and maintenance of public infrastructure
2 financed or owned by the PID.

3 (D) Unless otherwise provided to the City pursuant to other requirements
4 prior to PID financing and acquisition by the PID or City, the PID and City shall require an
5 independent environmental report or assessment of any real property which shall be dedicated
6 to or otherwise owned, leased or operated by the City or the PID and a proposed form of
7 indemnity agreement with respect to all environmental liability.

8 (E) Refinancings and refundings of bonds issued on behalf of a PID shall be
9 considered utilizing the same criteria set forth in this Ordinance and in particular Sections 5(D),
10 5(E) and 5(F). Refinancings and refundings shall be expected to either (i) generate industry
11 accepted interest rate savings; (ii) restructure payment of principal or (iii) eliminate burdensome
12 covenants. Any refinancing or refunding shall be subject to the final review and approval of the
13 City Council and the PID Board.

14 (F) Developers shall be responsible for all costs and expenses incurred in
15 any special levy or property tax modifications resulting from changes to the development not
16 anticipated in the application.

17 SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, clause or
18 provision of this Ordinance shall for any reason be held to be invalid or unenforceable,
19 the invalidity or unenforceability of such section, paragraph, clause or provision shall not
20 affect any of the remaining provisions of this Ordinance.

21 SECTION 8. REPEALER CLAUSE. All bylaws, orders, resolutions and
22 ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent
23 only of such inconsistency. This repealer shall not be construed to revive any bylaw,
24 order, resolution or ordinance, or part thereof, heretofore repealed.

25 SECTION 9. EFFECTIVE DATE. Upon its final passage, this Ordinance shall
26 be recorded in the book of ordinances in the City kept for that purpose, authenticated by
27 the signatures of the President of the City Council and the Mayor and attested by the
28 City Clerk, shall be published one time in a newspaper which maintains an office in the
29 City and which is of general circulation in the City, in accordance with law, and this
30 Ordinance shall be in full force and effect five days after such publication as provided by
31 law.

1 SECTION 10. COMPILATION. This Ordinance shall be incorporated in and
2 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

3 SECTION 11. PUBLICATION. This Ordinance shall go into effect after
4 publication in general summary.

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1 (B) Areas. The “Unserved Area”, “Partially Served Area” and “Fully
2 Served Area” are defined initially in Bill No. F/S R-02-111. The “Reserve Area”
3 and “Rural Area” are defined in the Albuquerque/Bernalillo County
4 Comprehensive Plan.

5 SECTION 3. GENERAL POLICIES.

6 (A) This ordinance is intended to serve as guidelines for the purpose of
7 considering and, as appropriate, approving the establishment of tax increment
8 development districts and the issuance of bonds of such districts pursuant to
9 the Act. The purpose of this policy is to enable the City to make a reasoned
10 judgment concerning the terms and conditions upon which to approve the
11 formation of a TIDD and to provide procedures for the City to consider TIDD
12 applications. Capitalized terms not otherwise defined herein are as defined in
13 the Act.

14 (B) This policy is adopted to provide ease of administration and to
15 assure that the City's tax base is not compromised, taking into account the
16 overall economic benefits of the TIDD, which are demonstrated to the
17 reasonable satisfaction of the City. The decision to form a TIDD shall be a
18 legislative enactment of the City Council and Mayor exercised in accordance
19 with law. The City shall encourage an area to be governed by as few TIDDs as
20 practicable, taking into account however the need to finance discrete
21 infrastructure projects to serve separate but related land uses and the need to
22 utilize discrete financing approaches.

23 (C) TIDDs should be utilized for the financing of public infrastructure for
24 economic development or redevelopment that facilitates and supports
25 development and job creation. Public infrastructure financed by a TIDD shall
26 (i) enhance the sustainability of the local, regional or statewide economy, (ii)
27 support the creation of jobs, schools and workforce housing, and (iii) generate
28 tax revenue for the provision of public improvements and (iv), if located in a
29 Rural or Reserve Area, be consistent with the No Net Expense policy set out in
30 the Planned Communities Criteria including the provision that interim revenue
31 generation shortfall for public service costs shall be borne by the
32 development so as to prevent net expense to the City as required by policy
33 adopted by the Albuquerque/Bernalillo County Comprehensive Plan, and, if

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1 located in an Unserved Area, be consistent with the No Net Expense policy set
2 out in Revised Ordinances of Albuquerque, New Mexico, 1994, including the
3 provision of Section 14-13-2-3(C)(3) that developers of properties in the
4 Unserved Area shall be required to assure fiscal self-sufficiency.

5 (D) Public improvements financed by a TIDD should be in conformance
6 with applicable long-range City policies for development, including, but not
7 limited to, the Albuquerque/Bernalillo County Comprehensive Plan, applicable
8 Rank 2 and Rank 3 Plans, the Subdivision Ordinance, the Zoning Code, §14-
9 13-2-3 R.O.A. 1994, and §§14-13-1-1 et seq., R.O.A. 1994, the Ordinance
10 adopting elements of a Planned Growth Strategy; the current City enactment
11 relating to the Capital Implementation Program; the Impact Fee Component
12 Capital Improvement Program; other ordinances applicable to the affected
13 land including annexation ordinances and any related annexation agreements,
14 if any; and all supplements and subsequent enactments relating to these
15 measures.

16 (E) All costs and expenses incurred by the City in connection with the
17 application, formation, and operation of a TIDD shall be paid by the
18 applicant/landowner through advance payments as provided in §6(B) and 7(A)
19 hereof. Costs and expenses incurred by the City in connection with the
20 application and formation of a TIDD shall not be liabilities of the City. Advance
21 payments shall include payments for services rendered by City staff, services
22 rendered by outside consultants who may be retained by the City including,
23 but not limited to, bond counsel and other attorneys, financial advisers,
24 planners, urban designers, engineers, appraisers, and tax consultants. If the
25 City uses outside consultants as "staff," such as attorneys or engineers, those
26 consultants shall be paid their normal rate for services.

27 (F) Subsequent to the approval of an application for formation of a TIDD
28 by the City, and after authorization by the TIDD exercising its sole discretion,
29 all or part of such advance payments may be reimbursed to the
30 developer/landowner or to the TIDD to the extent permitted by state or federal
31 law, from the proceeds of bonds, tax increment revenues or other legally
32 available revenues of the TIDD. The City may, in its discretion, based on a
33 particular applicant's development plan and financing plan, authorize the TIDD

1 to reimburse 100% of the applicant's equity contribution based on a
2 demonstration satisfactory to the City that the goals served by the TIDD are
3 not compromised by such reimbursement. Section 20(B) of the Act requires
4 property owners to contribute a minimum of 20% of initial infrastructure cost
5 prior to the issuance of gross receipts or property tax increment bonds,
6 unless the project to be financed is a redevelopment project pursuant to the
7 Metropolitan Redevelopment Code.

8 (G) The TIDD shall be governed by a Board of Directors comprised of
9 members of the City Council, ex officio, or, at the option of the City Council,
10 five directors appointed by the City Council, (the "TIDD Board"). The City
11 Council may, in accordance with law, delegate certain responsibilities of
12 governance of the TIDD to a committee as approved by the City Council. The
13 day-to-day responsibilities of the TIDD may be performed pursuant to an
14 agreement with outside personnel (including a development agreement
15 entered into pursuant to the Act), or City staff. Advisory committees may, at
16 the option of the Council or the TIDD Board, be utilized. An applicant may
17 request the formation of a single TIDD or multiple TIDDs which are designed to
18 finance discrete infrastructure projects to serve separate but related land
19 uses, and which rely on discrete tax increment financing approaches.

20 (H) The TIDD shall be self-supporting. Except as set forth in §3(K), no
21 City funds shall be used for TIDD purposes including financing, operations or
22 maintenance. Notwithstanding anything to the contrary which may be
23 contained herein, neither the property, the full faith and credit nor the taxing
24 power of the City shall be pledged to the payment of any TIDD obligation or
25 indebtedness.

26 (I) The TIDD Board shall determine, in accordance with its policies and
27 procedures, the amount, timing and form of financing to be used by a TIDD
28 after review of the financial feasibility study required by §5(E) and 5(F) of this
29 Ordinance. All bond proceeds generated by the financing must be spent on
30 project costs in accordance with the bond documents and the policies and
31 procedures of the TIDD Board. No water or wastewater utility system, or any
32 portion thereof, which is billed for separate and apart from the City/County
33 water and wastewater utility shall be financed. All financings shall be subject

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1 to final review and approval by the City Council, provided, however, that
2 financings which contemplate the issuance of a multiple series of bonds shall
3 be approved at the time of the approval of the first issuance of bonds and the
4 TIDD Board shall not be required to receive further approvals from City
5 Council except when there is a material change affecting the financial stability
6 of the bond such as the amount and timing of issuance in relation to the
7 projected build-out of the TIDD project.

8 (J) Except as otherwise determined by the City Council, the TIDD shall
9 construct or finance improvements on such terms and with such persons as
10 the TIDD Board determines to be appropriate, in accordance with Section
11 12(B) of the Act, as amended. The TIDD shall otherwise construct and finance
12 improvements in accordance with applicable public works acts excluding
13 those related to architecture / engineering, profession / technical services, and
14 construction contractor selection. Construction, performance, and payment
15 bonds shall be furnished in accordance with the City policies and procedures
16 governing subdivision improvement agreements.

17 (K) Existing City policies for development, growth management and
18 conservation shall remain in effect and shall not be waived or relaxed upon
19 the creation of a TIDD. The TIDD may use bond proceeds or other TIDD funds
20 to purchase public rights-of-way or other real property to be used for public
21 infrastructure improvements, unless such real property would be required to
22 be dedicated and conveyed to the City by the developer/landowner upon
23 development of the developer's/landowner's property.

24 (L) Until the dedication of the infrastructure to the City, and acceptance
25 by the City, all costs of administration and operation of the TIDD and the
26 operation and maintenance of public infrastructure in the TIDD shall be the
27 responsibility of the TIDD, the developer/landowner, applicable homeowners'
28 association, or any combination of the foregoing, as may be acceptable to the
29 City and the TIDD. For developments located in Reserve, Rural, and Unserved
30 Areas, except as demonstrated to the City to be consistent with the
31 requirements that TIDD-financed improvements result in No Net Expense to
32 the City as defined herein, after dedication and acceptance, all costs of
33 operating and maintaining public infrastructure serving an area not otherwise

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1 served by the City shall be borne by the TIDD, the developer/landowner or the
2 applicable homeowner's association, or any combination of the foregoing,
3 until the area in which the public infrastructure is located in a Partially Served
4 or Served Area.

5 (M) Notwithstanding any other provisions of this Ordinance, a TIDD may
6 be created in an area for which neither the City nor the Albuquerque Bernalillo
7 County Water Utility Authority provides water, wastewater, or storm drainage
8 utilities. Any TIDD created in an area not served by existing water, sewer or
9 storm drainage utilities shall be consistent with the parameters of the No Net
10 Expense Policy set forth in §14-13-2-3 R.O.A. 1994, and §§14-13-1-1 et seq.,
11 R.O.A. 1994. For developments located in Reserve, Rural, and Unserved
12 Areas, except as demonstrated to the City to be consistent with the
13 requirements that TIDD-financed improvements result in No Net Expense to
14 the City as defined herein, developers shall be required to pay 100% of all on-
15 site charges associated with the TIDD-financed improvements. As provided in
16 the Development Agreement, developers of Unserved Areas shall be required
17 to pay off-site charges attributable to the development's impact.

18 SECTION 4. PRE-APPLICATION DISCUSSION WITH CITY STAFF. Potential
19 applicants for a TIDD are encouraged to schedule and conduct a pre-
20 application meeting and discussion with City staff. Input provided by City
21 staff shall be of an advisory nature only, for the purposes of assisting
22 applicants in submitting completed applications with detail and information
23 required to enable meaningful consideration by the City Council. The
24 purposes of the pre-application meeting shall be to:

25 (A) Make an initial assessment whether the proposed TIDD appears to be
26 consistent with the City's land use and development policies, zoning and other
27 applicable regulations, including applicable policies relating to economic
28 development and job growth;

29 (B) ~~To~~ Help identify any related City approvals that will be required to
30 permit the TIDD;

31 (C) ~~To~~ Identify other issues specific to the applicant's proposed project
32 that should be addressed in its application in order for the City to make the
33 findings required by Section 1(C) of the Act, such as compliance with

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1 applicable City policies, rules or regulations, and the proposed project's
2 facilitation or support of economic development, job growth and job creation,
3 work force housing, public school facility development and enhancement,
4 mixed-use transit-oriented development, traditional neighborhood design or
5 sustainable development;

6 (D) Identify the proposed improvement of the specific property within
7 the proposed TIDD, including the expectation of the future obligations of the
8 owner or developer and the City concerning the zoning, subdivisions,
9 improvement, impact fees, financial responsibilities and other matters relating
10 to the development, improvement and use of the real property within the
11 proposed TIDD; and

12 (E)(D) To Establish a preliminary schedule for (i) the applicant's submittal
13 of a TIDD application, (ii) City staff review of the application for completeness,
14 (iii) City Council meeting or meetings for its consideration of and action on the
15 application.

16 SECTION 5. CONTENT OF APPLICATION. All applications for the
17 formation of a TIDD shall be submitted to the City's Chief Administrative
18 Officer. Each application shall, at a minimum, contain the following:

19 (A) A description of the proposed TIDD, including a legal description of
20 its boundaries, identity and addresses of all persons or entities with any
21 interest in the property, and the names and addresses of any qualified electors
22 (as defined in Section 3-1-2(K) NMSA 1978) located within the proposed
23 boundaries. The description must contain an analysis of the appropriateness
24 of the TIDD boundaries.

25 (B) If the TIDD is proposed to be formed without an election through the
26 waiver of election provided for in the Act, evidence satisfactory to the City of
27 the unanimous consent of owners of real property within the proposed
28 boundaries of the TIDD to the creation of the TIDD. A current title report on
29 the property shall be submitted as evidence of the names of persons with any
30 interest in the land and qualified electors. In the event that any owner of
31 property within the proposed TIDD withdraws consent to the creation of a
32 TIDD, the applicant shall have the opportunity to submit a revised application
33 and shall not be required to submit a new application fee as provided in §4;

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1 provided, that the City may request that the applicant deposit additional funds
2 to pay costs reasonably incurred by the City in reviewing an application which
3 has been revised as a result of a property owner's withdrawal of consent to
4 the creation of a TIDD.

5 (C) If the TIDD is proposed to be formed by election, evidence
6 satisfactory to the City of the applicant's ability to pay for an election, whether
7 or not an all mail-in election, and a proposed election timetable.

8 (D) A detailed description of the types of public infrastructure to be
9 financed by the TIDD, including the estimated construction or acquisition
10 costs of the public infrastructure, projection of working capital needs,
11 including adequate funds for repair and replacement of infrastructure, the
12 annual operation and maintenance costs of the public infrastructure and the
13 governmental approvals and licenses that shall be required for both the public
14 and private improvements to be constructed and operated. The description
15 shall contain adequate information to establish financial parameters for the
16 operation and financing of the TIDD as set forth in §7 of this Ordinance. The
17 description shall include a representation concerning the future ownership
18 and maintenance of the public infrastructure.

19 (E) A proposed project schedule for commencement and completion of
20 (a) the public infrastructure and (b) the private development, which shall
21 include the financial feasibility study required by §5(G) of this Ordinance for
22 the public infrastructure, including both capital and operating/maintenance
23 costs for all improvements undertaken by the TIDD. The financial feasibility
24 study shall include projections for a period which shall be the longest of (i) the
25 expected term of existence of the TIDD, (ii) the anticipated period during which
26 tax increment is to be collected by the TIDD, or (iii) the proposed final maturity
27 date of any bonds issued by the TIDD. The financial feasibility study shall
28 include at least: (a) estimated costs of improvements; (b) projected costs of
29 maintenance after construction; and (c) a complete description of the
30 improvements to be owned and maintained by the City or the TIDD.

31 (F) A tax increment development plan that includes the following
32 information:

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- 1 (1) Whether gross receipts tax increment bonds or property tax
2 increment bonds or both are proposed;
- 3 (2) The public improvements proposed to be financed by each
4 type of bond financing proposed along with a description of the public
5 improvements and an estimate of the costs of completion;
- 6 (3) The estimated annual gross receipts tax increment to be
7 generated by the TIDD project; and the portion of that gross receipts tax
8 increment proposed to be pledged as security for gross receipts tax increment
9 bonds, (which portion may not exceed seventy-five percent of the gross
10 receipts tax increment) if applicable;
- 11 (4) The estimated annual property tax increment to be generated
12 by the TIDD project and the portion of that property tax increment proposed to
13 be pledged as security for property tax increment bonds (which portion may
14 not exceed seventy-five percent of the property tax increment), if applicable;
- 15 (5) Any proposed use of gross receipts tax increment revenues or
16 property tax increment revenues other than to secure the payment of bonds;
- 17 (6) The proposed land uses for the TIDD project including a map
18 depicting the geographic boundaries of the TIDD;
- 19 (7) The number and types of jobs expected to be created by the
20 TIDD project during build-out of the TIDD and after completion of the TIDD;
- 21 (8) The amount and characteristics of workforce housing
22 expected to be created by the TIDD project;
- 23 (9) The location and characteristics of public school facilities
24 expected to be created, improved, rehabilitated or constructed by the TIDD
25 project;
- 26 (10) A description of innovative planning techniques, including
27 mixed-use transit-oriented development, traditional neighborhood design or
28 sustainable development techniques, that the City should find to be beneficial
29 and that are proposed to be incorporated into the TIDD project; and
- 30 (11) The amount, type and source of private investment in the TIDD
31 project.
- 32 (G) A financial feasibility study (which shall be satisfactory to the City
33 and prepared by an independent professional with appropriate expertise) for

1 the entire project (or such phases of the project that are expected to be
2 constructed during the term of the TIDD) covering both the public
3 infrastructure and the private development and including appropriate cash
4 flow analysis addressing projected tax increment revenues. The financial
5 feasibility study shall include:

6 (1) An analysis of the financing and the estimated costs of the
7 improvements, services and benefits to result from the formation of the
8 proposed TIDD (including the time estimated to be necessary to complete the
9 TIDD improvements).

10 (2) A financing plan for any private development in the TIDD
11 which is not expected to be dedicated to the City.

12 (3) A market absorption study for the development in the TIDD
13 prepared by an independent consultant acceptable to the City. Such study
14 shall include estimates of the revenue to be generated by the development, an
15 estimate of the ability of the market to absorb the development, and a market
16 absorption projection for the private development including an identification
17 of market share for different land uses within competitive projects in the
18 market area. This study shall take into account the effect, if any, that the
19 proposed debt financing, operation and maintenance costs, and other TIDD
20 costs are expected to have on the marketability of the private development.

21 (H) A description of the proposed equity contribution from the applicant
22 and a calendar showing the anticipated timing and sources of such
23 contribution. An equity contribution shall be equal to a minimum of 20% of
24 estimated initial infrastructure cost prior to the issuance of gross receipts or
25 property tax increment bonds, unless the project to be financed is a
26 redevelopment project pursuant to the Metropolitan Redevelopment Code.

27 (I) A description of the applicant's professional experience and
28 evidence demonstrating its financial capacity to undertake the development
29 associated with the public infrastructure and private development. The
30 application shall also describe the direct and indirect benefits to all parties
31 with financial interest in the proposed development. Such information shall
32 be accompanied by three-year audited financial statements, if available, or
33 comparable information attesting to the financial strength and experience of

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1 the development parties along with a description of past projects and
2 disclosure of any material litigation.

3 (J) An operating plan for the TIDD, describing the extent of the TIDD's
4 responsibilities for and anticipated costs of operation and maintenance, the
5 method of carrying out those responsibilities, and specifying whether the
6 TIDD or another entity will be responsible for operation and maintenance of
7 specific public infrastructure or improvements.

8 (K) A description of how the proposed TIDD meets the existing
9 development objectives of the City, including the degree to which the TIDD is
10 (1) consistent with the goals of promoting orderly development, (2) consistent
11 with the Albuquerque/Bernalillo County Comprehensive Plan; (3) consistent
12 with growth management policies, and zoning requirements, and (4) the
13 degree to which the land use plan for the TIDD is consistent with the City's
14 applicable long-range policies for development, growth management and
15 conservation set forth in Section 3(D) herein.

16 (L) Consistent with the policies set forth in this Ordinance, a description
17 of the proposed terms of a Development Agreement including the
18 improvement of the specific property within the proposed TIDD, including the
19 expectation of the future obligations of the owner or developer and the City
20 concerning the zoning, subdivisions, improvement, impact fees, financial
21 responsibilities and other matters relating to the development, improvement
22 and use of the real property within the proposed TIDD. The description of
23 proposed development agreement terms shall not be required to include the
24 level of detail expected to be included in the proposed development
25 agreement itself and shall not be binding on the City or the developer and
26 shall not constitute a legal cause of action or create vested rights.

27 (M) For developments in the "Unserved Area", as provided in City
28 Resolution No. F/S R-02-111(A), evidence shall be provided by the developer
29 that sufficient public funds are being appropriated to address the
30 infrastructure and facility rehabilitation and deficiency correction needs in the
31 existing community and that phasing and interim approvals shall be provided
32 in the context of generally stabilized or improved conditions in the established
33 area of Albuquerque.

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1 (N) A proposed resolution which shall address those items set forth in
2 Section 4(C) and 7(C) of the Act.

3 (O) Such other information as the City may reasonably require after its
4 initial review of the application, including but not limited to preliminary legal
5 opinions, appraisals, further information regarding the relationship of the
6 application to the City's development objectives, additional proof of financial
7 capability, business references, term sheets for financing and financial
8 commitment letters.

9 SECTION 6. APPLICATION PROCEDURES.

10 (A) Ten (10) copies of the application for the formation of a TIDD shall be
11 submitted to the City's Chief Administrative Officer, who shall coordinate an
12 interdepartmental analysis of each application.

13 (B) At the time of submission of the application, the applicant shall pay a
14 \$20,000 non-refundable application fee and shall deposit an additional \$30,000
15 as an advance deposit on account to be applied by the City in its sole
16 discretion to the initial costs incurred in connection with the processing and
17 review of the application and the formation of the TIDD in accordance with the
18 provisions of §3. In calculating costs incurred by the City, the City may
19 include reasonable costs associated with the pre-application discussion
20 contained in §4. An accounting of all costs incurred by the City shall be made
21 to the applicant at its request and if reasonably necessary, additional funds
22 may be requested by the City and must be paid by the applicant. If an
23 applicant withdraws its application, the City shall return the unexpended
24 portion of the advance deposit; provided, that the City shall retain from those
25 funds the amounts necessary to pay costs incurred by the City but not yet
26 paid by the City at the time the application is withdrawn.

27 (C) At the applicant's request, City staff may, in its discretion, present to
28 the City Council a non-binding resolution expressing the City's intent to
29 proceed with the formation of the TIDD. Such a resolution may be based upon
30 a preliminary application outline, containing, at a minimum, the following
31 information:

- 32 (1) Ownership of property proposed to be included in the TIDD;
33 (2) Location and boundaries of the proposed TIDD;

1 (3) General description of improvements to be constructed with
2 TIDD financing and estimated costs of construction;

3 (4) Estimated principal amount of TIDD bonds proposed to be
4 issued;

5 (5) Estimated maximum annual debt service on TIDD bonds;

6 (6) Estimated annual gross receipts tax increment to be generated
7 by the TIDD project and the portion of such increment to be allocated during
8 the time necessary to complete the payment of the TIDD project;

9 (7) Estimated annual property tax increment to be generated by
10 the TIDD project and the portion of such increment to be allocated during the
11 time necessary to complete the payment of the TIDD project;

12 Any resolution adopted pursuant to this section shall express the City's
13 non-binding intent to proceed with the formation of the TIDD, subject to such
14 conditions as may be set forth in the resolution. In the event that this
15 resolution is not passed by the Council, the applicant may receive a refund of
16 all of its advance deposit.

17 (8) No Net Expense Analysis. A No Net Expense analysis shall be
18 conducted if the TIDD is located in an Area as defined in Section 2(B) herein.

19 (a) Project Revenues. This part of the analysis will restate the
20 information provided in §7(C)(6) and (7) related to estimated TIDD revenues.
21 The No Net Expense analysis also may include estimated indirect rate and tax
22 revenues resulting from net new growth assumed to result from the
23 development.

24 (b) Project Costs. Project development creates on-site and
25 off-site operating, capital, and debt service costs. Some of these costs are
26 incurred on a short-term and some on a long-term basis by the TIDD and
27 some are incurred by the City of Albuquerque. The No Net Expense analysis
28 will provide a multi-year, as specified in this ordinance, annual financial
29 analysis of the total on-site and off-site public and private capital, operating,
30 and debt service costs of the development (identified separately); the
31 distribution of the costs to the City rate payers and taxpayers, the TIDD
32 utilized Gross Receipts Tax Increment revenues and Property Tax Increment
33 revenues, and to other parties and agencies.

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1 (c) No Net Expense Summary. This summary shall
2 demonstrate and identify the extent to which the development represents No
3 Net Expense to City rate payers and tax payers who live outside the
4 development. The No Net Expense analysis shall be produced by an
5 individual or firm approved by the applicant and the TIDD Board. The City
6 Council shall secure a consultant to produce an independent professional
7 evaluation of the No Net Expense analysis.

8 (D) If the City approves the formation of a TIDD and there are existing
9 agreements with developers/landowners for the provision of infrastructure
10 proposed to be furnished by the TIDD, then those agreements shall be deemed
11 amended to reflect the agreements and conditions pertaining to the TIDD. The
12 amendments shall reflect that either the developer/landowner or the TIDD shall
13 provide such infrastructure improvements. Any existing agreements with
14 developers/landowners for the provision of infrastructure proposed to be
15 furnished by the TIDD shall be identified in the application and how they will
16 be modified will be described.

17 (E) After the application fee and deposit are submitted, City staff shall
18 arrange an initial conference with the applicant and the appropriate City staff,
19 for the purpose of reviewing the application for conformity with City policies.
20 City staff shall use its best efforts to review the application and conduct the
21 initial conference within thirty business days following payment of the
22 application fee and advance deposit.

23 (F) If at any time during the application process City staff requests
24 additional information, the applicant shall provide any and all supplemental
25 information requested, in accordance with the provision of §5(N) of this
26 Ordinance.

27 (G) After analysis of an application as supplemented, City staff under the
28 direction of the Chief Administrative Officer, may prepare a report including
29 recommendations relating to the TIDD and an analysis of the impact of the
30 formation of the TIDD. The report may provide a recommended disposition of
31 the application and any additional requirements that shall be placed on the
32 developer/landowner and the TIDD. The City shall use its best efforts to

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1 complete the analysis and report concerning the application within ninety (90)
2 business days following the submission of a fully complete application.

3 (H) If all costs billed to or incurred by the City have been paid by the
4 applicant by a date at least fourteen (14) calendar days prior to the date of the
5 meeting of the City Council at which the appropriate legislation approving the
6 application is to be introduced and if the application meets the qualifications
7 provided herein as determined by City staff, the application, along with any
8 report and recommendations by City staff, shall be presented by the Applicant
9 and City staff to the Debt Committee established by the City of Albuquerque
10 Debt Management Policy and Debt Committee Ordinance, §§ 4-6-1 et seq.,
11 R.O.A. 1994, and thereafter to the City Council, along with appropriate
12 implementing legislation. Implementing legislation shall consist of the
13 following:

14 (1) a resolution of intent to form the proposed TIDD (a) providing
15 that the tax increment development plan included with the Application is
16 approved pursuant to Section 5-15-4(A) NMSA 1978, subject to the further
17 proceedings of the City Council in connection with the formation of the
18 proposed TIDD, and (b) directing publication of notice of a public hearing
19 concerning the formation of the TIDD shall be held no sooner than 30 days
20 and no later than 60 days after the adoption of the resolution of intent, in
21 accordance with Sections 5-15-(E) and 5-15-6 NMSA 1978; and

22 (2) a resolution ordering that the TIDD be formed and setting the
23 matter for an election or declaring that the election is waived as provided in
24 Section 5-15-7 NMSA 1978. This formation resolution shall occur upon
25 completion of the public hearing referenced above.

26 Final approval of the City Council shall be conditioned on the City Council's
27 conclusion that all matters necessary to be completed prior to the formation of
28 the TIDD have been completed.

29 (I) If the City Council approves an application for formation of a TIDD,
30 the applicant/developer/landowner and the City staff shall coordinate a
31 schedule of events for formation of the TIDD including either the setting of an
32 election for the matter or declaring that the election is waived, and shall
33 negotiate an appropriate Development Agreement between the City and the

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1 developer/landowner, which Development Agreement shall incorporate the
2 requirements of any report, recommendations of the City staff relating to such
3 TIDD, the requirements of this Ordinance and any other restrictions,
4 provisions and agreements required by the City in its discretion. The
5 Development Agreement shall be subject to approval by the City Council.

6 SECTION 7. TIDD OPERATIONS AND DEBT FINANCING.

7 (A) In addition to the amounts set forth in §6(B), upon formation of a
8 TIDD the developer/landowner shall deposit with the TIDD a nonrefundable
9 administrative expense fee in the amount of \$15,000. The administrative
10 expense fee shall be applied by the TIDD to the costs and expenses incurred
11 in connection with the formation, review of any feasibility study, election
12 costs, administration, operation and maintenance of the TIDD or its public
13 improvements. From time to time, upon depletion of the administrative
14 expense fee, the TIDD may request, and the developer/landowner shall
15 promptly deposit with the TIDD, additional amounts deemed by the City to be
16 necessary for the purposes contemplated in this section.

17 (B) In order to provide for the TIDD to be self-supporting for its
18 administrative, operation and maintenance expenses, and to finance services
19 in addition to those provided by the City, the City and the TIDD, unless
20 otherwise agreed, may require the imposition of up to \$5.00 per \$1,000 of
21 assessed net taxable value ad valorem tax, not as a tax or charge of the City,
22 but in accordance with the provisions of Sections 12(A)(11) and 13(A) of the
23 Act, as amended, upon the TIDD taxable property, for the administration of the
24 TIDD, and the operation and maintenance of property which is not City-owned
25 infrastructure otherwise maintained by the City. Failure to impose such tax
26 shall not impose upon the City any obligations for operations.

27 (C) The amount and structure of debt of a TIDD shall not have a net
28 negative impact on the debt or financing capabilities of the City, taking into
29 account the basic purposes and operation of a TIDD as provided in the Act.
30 Any debt issued shall be in accordance with the provisions of §3(H). The
31 specific terms of each debt financing shall be set forth in the Development
32 Agreement and shall include, but not be limited to, the following:

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- 1 (1) The maturities, principal amounts and maximum interest rate
- 2 on the bonds;
- 3 (2) Whether the bonds shall be publicly offered or privately
- 4 placed;
- 5 (3) Whether the bonds will be issued, in whole or in part, in book-
- 6 entry form;
- 7 (4) Whether the bonds are subject to prior redemption;
- 8 (5) Those items listed in §7(D) and 7(E) of this Ordinance;
- 9 (6) The form of all material documents to be used in connection
- 10 with the issuance of the bonds, including, but not limited to, the TIDD Board
- 11 bond resolution and prior to the actual issuance, the bond indenture; and
- 12 (7) Such other additional terms and provisions as may be
- 13 determined necessary for inclusion by City staff.
- 14 (D) **Gross Receipts Tax Increment Bonds** shall be payable from the
- 15 authorized gross receipts tax increment from the gross receipts taxes
- 16 generated from taxable activities located within the TIDD. An applicant for
- 17 gross receipts tax revenue bonds shall describe in each financial feasibility
- 18 study required in §5(E), the following:
- 19 (1) The amount and timing of TIDD gross receipts tax increment
- 20 bonds to be issued.
- 21 (2) The expected production of gross receipts tax increment
- 22 within the TIDD, and its relationship to anticipated absorption of developed
- 23 real property.
- 24 (3) The sources of gross receipts taxes or portions thereof to be
- 25 pledged to the repayment of the gross receipts tax increment bonds.
- 26 (4) Whether the bonds shall be publicly offered or privately
- 27 placed. Publicly offered bonds shall either (i) be rated (either on their own
- 28 merits or by use of appropriate credit enhancement) in one of the four highest
- 29 investment grade ratings from Standard & Poor's Ratings Group, Moody's
- 30 Investors Service, Inc., Fitch Ratings, or other nationally recognized bond-
- 31 rating services, or (ii) be issued in connection with a transaction which meets
- 32 all of the following criteria: (a) the minimum equity contribution, excluding
- 33 real property, of the developer is at least 20% of the estimated initial cost of

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1 the project; and (b) the developer and the TIDD shall enter into an appropriate
2 contribution agreement, which may require a letter of credit or other third-
3 party guarantee of the bonds by the developer.

4 Privately placed bonds need not be rated; however, the purchasers of such
5 bonds must be "qualified institutional buyers" (as such term is defined in Rule
6 144A of the Securities Exchange Commission) and must agree not to resell the
7 bonds except to "qualified institutional buyers" or "accredited investors", as
8 such terms are defined by the SEC, in a private placement.

9 If appropriate, the applicant shall enter into a "Continuing Disclosure
10 Undertaking" (as required by Rule 15c2-12 of the Securities Exchange
11 Commission) relating to the issuance of the bonds.

12 (E) Property Tax Increment Bonds shall be payable from the authorized
13 property tax increment from taxable property located within the TIDD.
14 Applicants for Property Tax Increment Bonds shall describe in each financial
15 feasibility study as required by §5(E), the following:

16 (1) The amount and timing of TIDD property tax increment bonds
17 to be issued.

18 (2) The expected market absorption of development within the
19 TIDD.

20 (3) The sources of the property taxes or portions thereof to be
21 pledged to the repayment of the property tax increment bonds.

22 (4) Whether the bonds shall be publicly offered or privately
23 placed. Publicly offered bonds shall either (i) be rated (either on their own
24 merits or by use of appropriate credit enhancement) in one of the four highest
25 investment grade ratings from Standard & Poor's Ratings Group, Moody's
26 Investors Service, Inc., Fitch Ratings, or other nationally recognized bond-
27 rating services, or (ii) be issued in connection with a transaction which meets
28 all of the following criteria: (a) the minimum equity contribution, excluding
29 real property, of the developer is at least 20% of the estimated initial cost of
30 the project; and (b) the developer and the TIDD shall enter into an appropriate
31 contribution agreement, which may require a letter of credit or other third-
32 party guarantee of the bonds by the developer.

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3 144A of the Securities Exchange Commission) and must agree not to resell the
4 bonds except to "qualified institutional buyers" or "accredited investors", as
5 such terms are defined by the SEC, in a private placement.

6 If appropriate, the applicant shall enter into a "Continuing Disclosure
7 Undertaking" (as required by Rule 15c2-12 of the Securities Exchange
8 Commission) relating to the issuance of the bonds.

9 (F) Unless otherwise determined by the City, the City shall retain its own
10 counsel to advise it in connection with the formation of a TIDD and all
11 activities taken by a TIDD formed by the City, the cost of which shall be paid
12 by the TIDD and the City's bond counsel shall be bond counsel for the
13 issuance of TIDD bonds. From time to time the City may request from bond
14 counsel such opinions as it deems necessary in connection with the formation
15 and activities of the TIDD.

16 SECTION 8. FINANCIAL CONSIDERATIONS.

17 (A) If allowed by law (including any applicable federal laws relating to
18 the tax free status of bonds), all bond issues shall include a debt service
19 reserve fund in an amount acceptable to the TIDD Board.

20 (B) Until the improvements are accepted by the City and all warranty
21 periods have expired, the developer/landowner shall be solely responsible for
22 maintaining the premises upon which the improvements are being
23 constructed in a safe condition. The applicant or the developer/landowner (or
24 such other third party acceptable to the City and the TIDD), shall indemnify the
25 City and the TIDD and their agents and employees and shall hold the City and
26 the TIDD and their agents, officers and employees harmless for, from and
27 against any and all liabilities, claims, costs and expenses, including attorneys'
28 fees, incurred in any challenge or proceeding relevant to the formation,
29 operation, administration of the TIDD, the offer and sale of TIDD bonds, the
30 levying by the TIDD of any property tax or charge and the operation and
31 maintenance of public infrastructure owned by the TIDD.

32 (C) Unless otherwise provided to the City pursuant to other
33 requirements prior to TIDD financing and acquisition by the TIDD or City, the

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1 TIDD and City shall require an independent environmental report or
2 assessment of any real property which shall be dedicated to or otherwise
3 owned, leased or operated by the City or the TIDD and a proposed form of
4 indemnity agreement with respect to all environmental liability.

5 (D) Refinancings and refundings of bonds issued on behalf of a TIDD
6 shall be considered utilizing the same criteria set forth in this Ordinance and
7 in particular §7(D) and 7(E). Refinancings and refundings shall be expected to
8 either (i) generate industry accepted interest rate savings; (ii) restructure
9 payment of principal or (iii) eliminate burdensome covenants. If the
10 refinancing or refunding is intended to address a material adverse change
11 affecting the financial stability of the bonds or the intent of the original
12 Development Agreement, the refinancings and refundings shall be submitted
13 to the City Council for approval. Any refinancing or refunding shall be subject
14 to the final review and approval of the TIDD Board.

15 (E) The applicant shall be responsible for all costs and expenses
16 incurred in connection with proposed changes to a TIDD application after the
17 City has begun its review process pursuant to this Ordinance.

18 SECTION 9. SEVERABILITY CLAUSE. If any section, paragraph, clause or
19 provision of this Ordinance shall for any reason be held to be invalid or
20 unenforceable, the invalidity or unenforceability of such section, paragraph,
21 clause or provision shall not affect any of the remaining provisions of this
22 Ordinance.

23 SECTION 10. REPEALER CLAUSE. All bylaws, orders, resolutions and
24 ordinances, or parts thereof, inconsistent herewith are hereby repealed to the
25 extent only of such inconsistency. This repealer shall not be construed to
26 revive any bylaw, order, resolution or ordinance, or part thereof, heretofore
27 repealed.

28 SECTION 11. EFFECTIVE DATE. This Ordinance shall take effect five days
29 after publication by title and general summary.

30 SECTION 12. COMPILATION. This Ordinance shall be incorporated in and
31 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

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