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The Rocky Mountain Land Use Institute  
*Thirteenth Annual Conference*  
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Session Handouts  
To Accompany Home Study Audio CD  
*for*

***The Use of Special Districts as a Financial Tool to  
Accomplish Major Regional Improvements***

Original Presentation  
Friday, March 12, 2004

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*Thirteenth Annual Conference*

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PRESENTER BIOGRAPHIES

**MaryAnn M. McGeady, Esq.**, was born in Bellport, New York, February 16, 1957, and was admitted to the Colorado bar in 1982. Her education includes the Long Island University (B.A. summa cum laude, 1979; Pi Gamma Mu) and the University of Southern California (J.D. 1982). She is a member of the Colorado, Denver and American Bar Associations, the Special District Association, Women Leaders of Colorado (1992-1993), and the Colorado Municipal Bond Supervision Advisory Board. Her areas of practice are Special Districts, Land Use, Land Development, Municipal Finance, Municipal Law, and Real Estate.

Ms. McGeady represents Special Districts in all matters including negotiation with other governments for cost-sharing improvements, negotiations with district developers, commercial builders and homebuilders regarding infrastructure development and dedication, district financing, construction issues, elections statutory compliance, and budgeting and strategic planning. Her real estate experience includes coordination of due diligence on small and large parcels for master planned communities and assistance in the evaluation of the availability of infrastructure and the financing of infrastructure to support new development.

**Charles W. Lotzar, Esq.**, is a partner in Kutak Rock LLP's Scottsdale office. Mr. Lotzar is involved in all phases of debt and equity financing. Mr. Lotzar's work in developing an innovative manner of financing affordable single-family housing was recognized as one of *Institutional Investor's* "Deals of the Year". He has a diversified practice with representation of clients in various forms of tax-exempt and taxable bond financings, low income housing tax credit financings, administrative proceedings, and commercial and real estate transactions. Mr. Lotzar has extensive experience in dealing with public contracts and issues related to public officials. He has been involved in bond financings having an aggregate value in excess of \$6 billion.

Mr. Lotzar's education includes a Bachelor of Arts in Business from Michigan State University in 1982 and Juris Doctorate from the University of Detroit School of Law in 1985.

Mr. Lotzar is a member of the National Association of Bond Lawyers, the American Bar Association, the State Bar of Arizona, the State Bar of Michigan, the Council of Development Finance Agencies, the National Council of State Housing Agencies, and the Association of Local Housing Agencies. He is also a member of the Arizona Business Leadership's Board of Directors and serves as its Vice President for Membership. He is a former member of the City of Scottsdale Planning Commission, Developmental Review Board, and Board of Adjustment.

**Samuel R. Sharp** serves as Vice President of the Special District Group in the Public Finance Department of Kirkpatrick Pettis, working primarily with special districts in Colorado, Arizona, New Mexico, and Florida. Over the past five years, Mr. Sharp has served as Underwriter for over \$1 billion in Special District debt. Mr. Sharp served three years as a Board Member of the Colorado Municipal Bond Dealers Association (CMBDA) including one year as the President. Clients served by Mr. Sharp in the Special District Group range from land investors and homebuilders to more established water and sanitation districts. Mr. Sharp's holds an M.P.A. from Columbia University and a B.A. from Occidental College in Los Angeles.

**THE USE OF SPECIAL DISTRICTS AS A FINANCING TOOL TO  
ACCOMPLISH MAJOR REGIONAL IMPROVEMENTS IN  
ARIZONA AND NEW MEXICO  
MARCH 12, 2004**



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## REVIEW OF MATERIALS IN ATTENDEES BOOKLETS

- Steps To Create a Community Facilities District ("CFD") in Arizona;
- An Overview of Arizona CFD Financing;
- An Overview of Arizona City Improvement District Financing;
- An Overview of Arizona County Improvement District Financing;
- An Overview of Arizona's Property Tax System;

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## REVIEW OF MATERIALS IN ATTENDEES BOOKLETS

(continued)

- Steps to Create a Public Improvement District ("PID") in New Mexico;
- An Overview of New Mexico Public Improvement District Financing;
- An Overview of New Mexico's Property Tax System; and
- An Overview of Federal Tax Law Rules for Public Infrastructure Financing.

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## WHAT DOES COLORADO HAVE, THAT ARIZONA AND NEW MEXICO DO NOT HAVE?

- A Meaningful Joint Powers Authority
  - Arizona and New Mexico have intergovernmental agreements; provided that the governments involved intend to use 100% overlapping powers
- No Tax Increment Financing
  - Arizona had tax increment financing for sports facilities, but recently eliminated from State statutes. State Constitutional concerns also exist.
  - New Mexico – Adverse Attorney General Opinion on State Constitution grounds

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## WHAT DOES COLORADO HAVE, THAT ARIZONA AND NEW MEXICO DO NOT HAVE?

(continued)

- Limited to Jurisdiction Boundaries
  - Arizona effectively in cities only. Historical bias against a county's expansion of services.
    - "Wildcat" Subdivisions
    - Incentive for Annexation
    - Building Standards and Codes

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### WHAT HAS ARIZONA HISTORICALLY DONE FOR FINANCING?

- Communities Facilities Districts ("CFD") – See Exhibit "A"
  - single family master planned communities
  - generally public water & sewer facilities and roads
  - not used for commercial projects
  - Generally less than \$15,000,000
  - Generally economics work with at least 360 acres or 600-700 units
- City Improvement Districts
  - Contingent backing of City
  - Assessment bonds – adjacent property owners assessed based on benefit received

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### WHAT HAS ARIZONA HISTORICALLY DONE FOR FINANCING? (continued)

- County Improvement Districts
  - No backing of the County
  - Assessment bonds
- Development Agreements related to oversized infrastructure and certain commercial activities
  - Scottsdale Nordstrom's garage
  - Sales tax rebates generally tied to actual performance
- Ordinances requiring reimbursement for oversizing infrastructure
  - Connection fees or hook up fees
  - Developer reimbursement versus Bond Fund deposits

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### WHAT HAS ARIZONA HISTORICALLY DONE FOR FINANCING? (continued)

- Regional Transportation has historically been handled by Arizona Department of Transportation
  - Maricopa Association of Governments ("MAG") – Transportation Plan
  - Regional – Public Transportation Authority ("RPTA")
    - voter approval required
    - light rail

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### WHAT HAS NEW MEXICO HISTORICALLY DONE FOR FINANCING?

- Special Assessment Districts ("SADs")
  - Public roads, water, wastewater, etc.
  - Albuquerque has recently financed its 227<sup>th</sup> SAD
- Industrial Development
  - Revenue Bonds ("IDBS")
    - Allows for Waivers of:
      - Gross Receipts Tax/Compensating
      - Property Taxes

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**WHAT HAS NEW MEXICO HISTORICALLY  
DONE FOR FINANCING? (Continued)**

- Public Improvement Districts (“PIDs”)
- Relatively recently authorized – See Exhibit B - broad range
  - general obligation
  - special levy
  - revenue bonds
- No PID bonds issued yet; only one PID formed to date

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**WHAT HAS NEW MEXICO HISTORICALLY  
DONE FOR FINANCING? (Continued)**

- Initial applicants are large single family master planned communities although statutes would allow use with commercial projects

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**GOVERNOR RICHARDSON'S INVESTMENT  
PARTNERSHIP (“GRIP”)**

- \$1.4 Billion funding program for 41 identified transportation projects over an 8 year period
- Bonds to be issued by New Mexico Finance Authority instead of New Mexico Department of Transportation

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**General Obligation vs. Assessment Lien**

- General Obligation (G.O.)
  - G.O. is a cross collateralized tax pledge where a property owner's obligation is determined annually based on assessed value
  - Pros:
    - Stronger credit quality at build out
    - Lower cost of borrowing
    - Freedom from strict benefit analysis
    - Does not jeopardize mortgage lender
    - Enforceable through existing Property Tax mechanisms
  - Cons:
    - Can concentrate debt obligation if little assessed value exists
    - Collects little revenue from vacant land

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## General Obligation vs. Assessment Lien

(Continued)

- **Assessment Lien**
  - Assessment Liens allocate a specific principal obligation to each parcel based on benefit analysis at issuance.
  - Pros:
    - Stronger credit quality for vacant land
    - Freedom from strict benefit analysis
    - Each taxpayers burden is defined regardless of development
  - Cons:
    - Requires a benefit analysis
    - May impact Mortgage market
    - Not cross-collateralized
    - Enforcement/foreclosure can be cumbersome

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## Allocation of Risk

- **G.O.**
  - Unlimited G.O. can overburden initial taxpayers if growth does not occur as projected
  - Undeveloped parcels have low assessed value
  - Limited Tax G.O. (mill levy cap) prevents this development risk transfer to taxpayers, leaving the risk analysis to institutional investors and developers.

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## Allocation of Risk

- **Assessment Lien**
  - Lien based on benefit per parcel
  - Undeveloped land can be assessed regardless of Assessor's value
  - Prevents transfer of development risk

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**EXHIBIT A**  
**EXISTING COMMUNITIES**  
**FACILITIES DISTRICTS ("CFDs") IN ARIZONA**

**City of Apache Junction**

- 1994 Superstition Mountain CFD (WW) - \$20,000,000 (Revenue)
- 1995 Superstition Mountain CFD (WW) - \$10,200,000 (Revenue)
- 1997 Water Utilities CFD (Water) - \$6,750,000 (Revenue)

**Town of Buckeye**

- 2003 Sundance CFD Assessment District No. 2 (Hancock) - \$7,175,000 (Assessment)
- 2003 Verrado District No. 1 CFD (DMB) - \$24,000,000 (GO)
- 2002 Sundance CFD Assessment District No. 1 (Hancock) - \$11,300,000 (Assessment)
- West Park (Roston Co.)\*

**Town of Carefree**

- Town of Carefree Utilities CFD\* (WIFA)

**City of Casa Grande**

- Copper Mountain CFD (Water)
- Mission Royale (Hancock)\*

**Town of Fountain Hills**

- 1996 Eagle Mountain CFD- \$ 4,435,000 (GO)

**City of Glendale**

- CFD No. 1.\* (Arizona Cardinals Stadium)

**City of Goodyear**

- 2003 Community Facilities General District No. 1- \$5,295,000 (GO) (Palm Valley/ Pebble Creek-SunCor/Robson)
- 2003 Community Facilities Utilities District No. 1- \$7,870,000 (GO)
- 2003 Cottonflower CFD- \$1,760,000 (GO)
- 2002 Estrella Mountain Ranch CFD (Sunchase) - \$4,950,000 (Assessment)
- 2001 Wildflower Ranch CFD District No. 2 (Roston) - \$770,000 (GO)
- 2001 Estrella Mountain Ranch CFD (Sunchase) - \$8,088,00 (Assessment)
- 2001 Estrella Mountain Ranch CFD (Sunchase) - \$200,000 (GO)
- 2000 Community Facilities Utilities District No. 1- \$7,075,000 (GO)
- 2000 Community Facilities General District No. 1- \$5,725,000 (GO)
- 2000 Wildflower Ranch Community Facilities District No. 2 (Roston) - \$720,000 (GO)
- 1998 Wildflower Ranch CFD No. 1 (Roston) - \$750,000 (GO)
- 1998 Community Facilities Utilities District No. 1- \$6,975,000 (GO)

- 1998 Community Facilities General District No. 1- \$2,150,000 (GO)
- 1997 Wildflower Ranch CFD (Roston) - \$650,000 (GO)
- 1996 CFD District No. 1- \$6,670,000 (Assessment)
- 1996 Community Facilities General District No. 1- \$500,000 (GO)
- 1996 Community Facilities Utilities District No. 1- \$1,470,000 (GO)
- 1994 Community Facilities General District No. 1- \$230,000 (GO)
- 1994 Community Facilities Utilities District No. 1- \$145,000 (GO)
- 1994 Community Facilities General District No. 1- \$2,950,000 (Assessment)
- Centerra CFD - \$10,000,000

#### **City of Litchfield Park**

- 2001 The Village at Litchfield Park CFD- \$6,600,000 (GO)

#### **Town of Marana**

- 2001 Dove Mountain Resort CFD (Forrest City) - \$11,905,000 (Assessment)  
(part of CFD lies within Red Hawk Canyon CFD No. 1)
- 1998 Red Hawk Canyon Community Facilities District No. 2 (Cottonwood Properties) - \$6,730,000 (Assessment)
- 1995 Red Hawk Canyon Community Facilities District No. 1 (Cottonwood Properties) - \$16,785,000 (Assessment)
- Gladden Farms CFD \*

#### **City of Peoria**

- 2002 Vistancia CFD (Shea/Sunbelt) - \$21,250,000 (GO)

#### **City of Phoenix**

- 1998 Tatum Ranch CFD (SunCor) - \$7,705,000 (GO Refunding)
- 1991 Tatum Ranch CFD ((SunCor) - \$6,100,000 (GO)
- 1991 Tatum Ranch CFD (SunCor) - \$570,000 (GO)

#### **City Prescott**

- 2000 Hassayampa CFD No. 2 (Troon) - \$1,240,000 (Assessment)
- 1996 Hassayampa CFD No. 1 (Troon) - \$7,315,000 (Assessment)

#### **Town of Prescott Valley**

- 2003 Eastridge CFD (Water) - \$2,500,000 (Assessment)
- 2002 Pronghorn Ranch CFD (Brown Family Facilities) - \$3,000,000 (GO)
- 2001 StoneRidge CFD (SunCor) - \$14,800,000 (GO)

#### **City of Sedona**

- Summitt II – Sedona CFD\*

#### **City of Scottsdale**

- 2002 DC Ranch CFD (DMB) - \$12,165,000 (GO)
- 2002 Scottsdale Mountain CFD (SunCor) - \$5,375,000 (GO Refunding)

- 1999 DC Ranch CFD (DMB) -\$ 3,085,000 (GO)
- 1999 McDowell Mountain Ranch CFD (Sunbelt) -\$20,245,000 (GO Refunding)
- 1999 Via Linda Road CFD (SunCor) - \$3,225,000 (GO)
- 1998 DC Ranch CFD (DMB) - \$4,750,000 (GO)
- 1997 McDowell Mountain Ranch CFD (Sunbelt) -\$ 6,910,000 (GO)
- 1995 Scottsdale Mountain CFD Phase 2 (SunCor) - \$1,925,000 (GO)
- 1994 McDowell Mountain Ranch CFD Phase 2 (Sunbelt) - \$2,845,000 (GO)
- 1994 McDowell Mountain Ranch CFD Phase 1 (Sunbelt) - \$9,105,000 (GO)
- 1993 Scottsdale Mountain CFD Phase 1 (SunCor) - \$3,000,000 (GO)

**City of Surprise**

- 2002 Sahuaro Acres CFD- \$150,000 (GO)
- 2001 Sahuaro Acres CFD-\$400,000 (GO)
- Marley Park CFD (DMB)\*

**City of Tempe**

- Rio Salado CFD (Tempe Town Lake)\*

\*Note: CFD formed, but no bonds issued.

**EXHIBIT B**  
**EXISTING OR PROPOSED PUBLIC IMPROVEMENT**  
**DISTRICTS IN NEW MEXICO**

Albuquerque – Policy In Place

- Ventana West Public Improvement District
  - Proposed Special Levy authorized up to \$7 Million with expected issuance prior to May 1, 2004
- Rio Rancho – Policy in Place
  - Mariposa – Preapplication Stage
  - Cabezon – Preapplication Stage
- Las Cruces – Policy in Development
- Other cities and counties are beginning to consider policy development

**EXHIBIT C  
SPECIAL DISTRICTS IN COLORADO**

| <b>Colorado Special District Financing Experience<br/>2001 to Present</b> |                      |                             |
|---|----------------------|-----------------------------|
| <b>Year</b>   | <b>Issues Closed</b> | <b>Par Amount (\$ mils)</b> |
| <b>2001</b>   | 49                   | 429                         |
| <b>2002</b>   | 38                   | 341                         |
| <b>2003</b>   | 59                   | 443                         |

| <b>Colorado Special District Financings - 2003</b> |                            |                                  |
|--|----------------------------|----------------------------------|
| <b>Sale Date</b>                                   | <b>Par Amount (\$mils)</b> | <b>Issuer Name</b>               |
| 1/6/2003   | 7.78                       | Silver Peaks Metro Dt #1         |
| 1/9/2003   | 15.00                      | Sand Creek Metropolitan Dt       |
| 1/10/2003  | 0.35                       | Elbert Co Local Improvement Dt   |
| 1/15/2003  | 5.68                       | Pagosa Area Water and Sanit Dt   |
| 2/10/2003  | 1.55                       | Polo Reserve Metro Dt            |
| 2/12/2003  | 4.55                       | Fronterra Vllg Metro Dt #2       |
| 2/26/2003  | 3.79                       | Beaver Creek Metropolitan Dt     |
| 3/4/2003   | 2.50                       | Buckhorn Valley Metro Dt #2      |
| 3/5/2003   | 1.47                       | Penrose Water Dt                 |
| 3/21/2003  | 9.50                       | Bromley Park Metro Dt #2         |
| 4/4/2003   | 1.43                       | Arabian Acres Metro Dt           |
| 4/8/2003   | 10.00                      | Central Colorado Wtr Conserv Dt  |
| 4/9/2003   | 4.00                       | Tablerock Metro Dt               |
| 4/11/2003  | 5.13                       | Crown Mountain Park & Recr Dt    |
| 4/17/2003  | 6.30                       | Antelope Heights Metro Dt        |
| 4/24/2003  | 0.60                       | Northside Water and Sewer Dt     |
| 4/24/2003  | 2.98                       | Heritage Hills Metropolitan Dt   |
| 4/28/2003  | 8.89                       | Colorado Tech Center Metro Dt    |
| 4/29/2003  | 1.67                       | Upper Yampa Wtr Conservancy Dt   |
| 4/30/2003  | 4.70                       | Laredo Metro Dt                  |
| 5/13/2003  | 10.06                      | Cherry Creek South Metro Dt #1   |
| 5/27/2003  | 2.76                       | Todd Creek Farms Metro Dt #2     |
| 5/28/2003  | 3.44                       | Cordillera Metropolitan Dt       |
| 6/3/2003   | 12.50                      | Boulder Central Area Genl Imp Dt |
| 6/5/2003   | 1.50                       | Heritage Greens Metro Dt         |
| 6/10/2003  | 13.94                      | Parker Jordan Metro Dt           |
| 6/16/2003  | 2.51                       | Stetson Ridge Metro Dt #2        |

**Colorado Special District Financings - 2003**

| <b>Sale Date</b> | <b>Par Amount (\$mils)</b> | <b>Issuer Name</b>                         |
|------------------|----------------------------|--|
| 6/16/2003        | 8.80                       | Conservatory Metroploitan Dt               |
| 6/18/2003        | 13.10                      | Maher Ranch Metro Dt #4                    |
| 6/19/2003        | 3.98                       | Grand Junction Rimrock Mkt Imp Dt          |
| 6/25/2003        | 8.34                       | Trailmark Metro Dt                         |
| 6/30/2003        | 5.75                       | Grand Elk Ranch Gen Imp Dt                 |
| 7/11/2003        | 3.57                       | Woodmoor Wtr & Sanitation Dt #1            |
| 7/24/2003        | 7.97                       | Western Eagle Co Metro Rec Dt              |
| 8/13/2003        | 18.12                      | Fiddlers Business Imp Dt                   |
| 8/20/2003        | 1.16                       | Chaparral Metro Dt                         |
| 8/21/2003        | 3.54                       | Piney Creek Metropolitan Dt                |
| 9/4/2003         | 25.33                      | Bowles Metropolitan Dt                     |
| 9/9/2003         | 3.59                       | Plum Creek Metro Dt                        |
| 9/24/2003        | 3.97                       | Cons Bell Mountain Ranch Metro Dt          |
| 10/8/2003        | 37.87                      | Denver West Metro Dt                       |
| 11/12/2003       | 2.13                       | Beaver Creek Metropolitan Dt               |
| 11/17/2003       | 7.49                       | Superior Metropolitan Dt #2                |
| 11/17/2003       | 3.57                       | Superior Metropolitan Dt #3                |
| 11/18/2003       | 15.00                      | Triview Metropolitan Dt                    |
| 11/19/2003       | 21.18                      | Eagle Bend Metro Dt #2                     |
| 11/19/2003       | 3.48                       | Church Ranch Metro Dt                      |
| 11/19/2003       | 4.88                       | Eagle Ranch Metropolitan Dist              |
| 11/20/2003       | 10.00                      | Broomfield Village Metro Dt #2             |
| 11/24/2003       | 9.57                       | Castle Pines North Metro Dt                |
| 11/25/2003       | 9.62                       | Castle Pines North Metro Dt                |
| 11/26/2003       | 9.72                       | Broomfield Village Metro Dt #2             |
| 12/1/2003        | 7.50                       | Red Sky Ranch Metro Dt                     |
| 12/2/2003        | 16.28                      | Broomfield Village Metro Dt #2             |
| 12/4/2003        | 10.13                      | Buffalo Ridge Metro Dt                     |
| 12/8/2003        | 2.01                       | Castle Pines Metropolitan Dt               |
| 12/17/2003       | 10.00                      | Tallyns Reach Metropolitan Dt #3           |
| 12/18/2003       | 4.66                       | Pine Bluffs Metro Dt                       |
| 12/30/2003       | 6.04                       | CO General Obligation Limited Tax<br>Bonds |
| <b>TOTAL</b>     | <b>442.83</b>              |  |

# NEW MEXICO PUBLIC IMPROVEMENT DISTRICT FINANCING

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# Outline of Presentation

- PART I - Overview of Powers and Governance
- PART II - Formation Process
- PART III - Statutory Restrictions of Terms of PID Bonds
- PART IV - Financing Alternatives

# PART I

## What are Public Improvement Districts (“PIDs”)?

- PIDs are special tax levying districts permitted by statute that allow municipalities to pass infrastructure costs to landowners within an area on a tax-exempt basis without burdening the rest of the community.

# What are Public Improvement Districts? (cont'd)

- PID's are political subdivisions of the State, separate and apart from the municipality or county forming it.
- Created to provide public improvements to undeveloped areas.

# CFDs in Other States

- Similar to other states' laws
  - Community Facilities Districts in Florida
  - Mello-Roos Community Facilities Districts in California
  - Municipal Utilities Districts in Texas
  - Metropolitan Districts in Colorado
  - Community Facilities Districts in Arizona

# Benefits for Developers

- PIDs can provide infrastructure that developers would otherwise have to provide through the issuance of PID debt at tax-exempt rates.
- PIDs are a source of off-balance sheet financing for a wide range of infrastructure projects at tax-exempt rates.

# Benefits for Developers (cont'd)

- PIDs can provide alternative sources of financing that may not normally be available to individual landowners or private developers.
- PIDs create a marketing advantage for developers through lower purchase prices.

# Benefits for Ultimate Purchasers

- Because infrastructure costs are not included in property purchase prices, PIDs permit more potential purchasers to qualify for financing.
- Infrastructure is financed at tax-exempt rates saving thousands of dollars for ultimate purchasers.
- More amenities may be furnished, improving the quality of life for residents.

# Benefits for Municipalities

- PIDs provide municipalities with an efficient mechanism to encourage residential, commercial and industrial development.

# Where can PIDs be formed?\*

- PIDs are usually formed by a city or town.
- Can be formed by a county:
  - In an unincorporated area; or
  - In an incorporated area with consent of the municipality.

\* This presentation will assume formation by a city.

# How are PIDs Governed?

- PIDs are managed by:
  - a Board of Directors which may be composed of the city council members; or
  - by 5 independent directors appointed by the municipality until replaced by elected directors, which shall occur within 6 years after formation of the district.

# Board of Directors

- Terms are staggered; 2 directors will initially serve 4-year terms and 3 will initially serve 6-year terms. Thereafter, terms are 6 years.
- The city council appoints replacements.

# PID Officers

- Treasurer – appointed by the City Clerk or PID Board.
- Clerk – appointed by the City Clerk or PID Board.

# Operation and Maintenance

- The PID Board can control and maintain the infrastructure or can enter into inter-governmental agreements for the design, ownership, control or maintenance of the public infrastructure.

# Procurement

- The PID Board may enter into contracts to carry out any of the district's powers with a contractor, an owner or other person or entity on such terms and with such persons as the board deems appropriate, notwithstanding the provisions of the New Mexico Procurement Code.

# Binding Development Agreements

- Municipalities and property owners may enter into mutually binding development agreements to achieve systematic, quality growth.

# DISTRICT TAXES

- Property taxes for operation and maintenance of PID shall not exceed \$3.00/\$1,000 of net taxable value of real and personal property in the district, unless resident qualified electors and owners approve a higher rate.
- The PID Board files with the PID Clerk estimates of operation and maintenance expenses, capital costs and other expenses to be paid from the levy plus amount of debt service.

# Generally, what Public Infrastructure can be financed through PIDs?

- Acquisition of land, but not land for private uses.
- Planning, design, engineering, construction, acquisition or installation of public infrastructure.
- Acquiring, converting, renovating or improving existing facilities for public infrastructure.
- Establishing, maintaining and replenishing reserves to secure debt service payments for bonds issued.

# What else can be financed through PIDs (cont'd)?

- Timely paying debt service on bonds or indebtedness of the district.
- Refinancing any matured or unmatured bonds.

# Specifically, What Public Infrastructure Improvements Can Be Financed Through PIDs?

- Public infrastructure improvements:
  - Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge.
  - Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge.

# Public Infrastructure Improvements (cont'd)

- Water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes including production, collection, storage, treatment, transport, delivery, connection and dispersal.
- Highways, streets, roadways, bridges, crossing structures and parking facilities including all areas for vehicular use for travel, ingress, egress and parking.

# Infrastructure Improvements (cont'd)

- Areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking.
- Pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation.
- Lighting systems.

# Infrastructure Improvements (cont'd)

- Landscaping including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems.
- Public buildings, public safety facilities and fire protection facilities.
- Electrical generation, transmission and distribution facilities.
- Natural gas distribution facilities.
- Traffic control systems and devices including signals, controls, markings and signage.
- Cable or other telecommunications lines and related equipment.

# Infrastructure Improvements (cont'd)

- School sites and facilities with the consent of the governing board of the school district for which the site or facility is to be acquired, constructed or renovated.
- Equipment, vehicles, furnishings and other personalty related to such items.
- Library and other public educational or cultural facilities.
- Inspection, construction management and program management costs.

# PART II

## How is a PID formed?\*

- Filing of Petition: Owners of at least 25% of land area within the proposed PID petition the municipality to establish a PID.
  - A general plan must be also be filed with the city clerk describing planned public infrastructure improvements.

\* This example assumes formation by a city.

# Resolution of Intent to Form PID

- Adoption of Resolution: The municipality declares an intention to form a PID.
- Resolution must state:
  - Area to be included
  - Purpose of PID
  - Hearing information and objection process
  - Governance
  - Potential for tax levy

# Notice of Resolution

- Notice: Once a resolution is adopted, notice must be given to all of the landowners within the proposed PID and to others who have requested notice.
  - Posted by the City Clerk.
  - Mailed to all landowners within PID.
  - Published once a week for 2 consecutive weeks in official city newspaper or a newspaper of general circulation.

# Objections

- Hearing on Objections: Any person claiming an interest in the real property within the proposed PID may object to the City Council with respect to the formation of the PID.
  - Written objections may be based upon persons seeking to have property excluded or to have the general plan modified and specific objections to the PID's formation.

# Resolution Ordering Formation

- Formation: After the hearing on objections, the City Council adopts a resolution ordering the formation of a PID or determining that it should not be formed.
  - City council may modify PID boundaries and general plan based on the objections.

# PID BOARD OF DIRECTORS

- If formed, the City Council generally serves as the PID's Board of Directors, but the City Council may elect to appoint 5 independent directors and the City Council submits formation to an election of owners of property within the District.

# Notice of Election

- Notice must be:
  - Posted in at least 3 public places within the boundaries of the PID.
  - Published in a newspaper of general circulation once a week for two consecutive weeks.
  - If the election includes a bond election, the amount of the bonds authorized, and the maximum tax rate and term, must be included in the notice.

# Formation Election

- Election:
  - The City Council submits the formation of the PID to an election of owners of land in the district (unless waiver applies).
  - Each owner has the number of votes or portion of votes equal to the number of acres or portion of acres owned rounded upward to the nearest  $\frac{1}{5}$  of an acre.

# Waiver of Formation Election

- If a formation petition is signed by the owners of all of the land to be included in the proposed PID and the Formation is approved by the City Council, all election requirements (with respect to formation) may be waived.

Note: Waivers are not allowed for general obligation bonds elections authorizing the issuance.

# Final Formation

- If at least 75% of the votes are cast in favor, the PID is formed. Then:
  - A map of the PID must be delivered to the county assessor, the county and the New Mexico Department of Finance and Administration.
  - A legal description of the PID is recorded by the county recorder.

# Dissolution of the PID

Mandatory upon determination that:

(i) all improvements owned by district have been, or provision has been made for all improvements to be, conveyed to city in which district located;

(ii) either district has no outstanding bond obligations or city has assumed all such obligations; and

(iii) all obligations of district pursuant to any development agreement with the city have been satisfied.

# PART III

## Statutory restrictions on terms of PID bonds

- Bond Limit: The amount of indebtedness may not exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of the bonds, including credit enhancement and liquidity support fees and costs.

# Statutory restrictions on terms of PID bonds (cont'd.)

- Debt Limit: The total aggregate outstanding amount of bonds and any other indebtedness for which the full faith and credit of the PID are pledged shall not exceed 60% of the aggregate of the estimated market value of the real property and improvements in the PID after the public infrastructure of the PID is completed plus the value of the public infrastructure owned or to be acquired by the PID with the proceeds of the bonds.

# Statutory restrictions on terms of PID bonds (cont'd.)

- The term of bonds must not exceed 30 years.
- The forming municipality is not liable for debt service on the bonds.

# Feasibility Study

- Prior to the issuance of bonds and construction of projects, the PID Board of Directors must approve a feasibility study of the public infrastructure prepared by engineers prior to construction or acquisition which should include the following 6 requirements:

# Feasibility Study Requirements

1. Description of the public infrastructure to be constructed or acquired and all other information useful to understand the project;
2. A map showing the general location of the project;
3. An estimated schedule for completion of the project;

# Feasibility Study Requirements (cont'd.)

4. An estimate of the cost to construct, acquire, operate and maintain the project;
5. A map or description of the area to be benefited by the project; and
6. A plan of financing for the project.

# Hearing on Feasibility Study

- The PID Board of Directors must hold a public hearing on the feasibility report after which the PID Board of Directors may reject, amend or approve the report.
  - If the report is amended, there must be a new hearing.
  - If the report is approved, the PID board of Directors will adopt a resolution approving the public infrastructure of the project, identifying the areas benefited, the expected method of financing and an appropriate system of providing revenues to operate and maintain the project.

# PART IV

## Financing Alternatives

- There is great flexibility in financing infrastructure through PIDs. Following are some mechanisms that may be used alone or in conjunction with one another to yield the most efficient result:
  - General Obligation Bonds
  - Revenue Bonds
  - Special Levy Bonds
  - Ad Valorem Taxes (for operation and maintenance)

# Financing Alternatives (cont'd)

- User Fees and Charges
- State or Federal Grants
- Developer or other Private Contributions

# PID Bonds

- This outline will discuss the advantages and disadvantages of the 3 types of bonds a PID could issue:
  1. General Obligation Bonds (“G.O. Bonds”)
  2. Special Levy Bonds
  3. Revenue Bonds

# 1. G.O. Bond Financing

- G.O. Bonds are bonds backed by a tax lien on all of the taxable real and personal property located within the PID.
- PID shall annually levy and cause an ad valorem tax to be collected on all taxable property in the PID to repay general obligation bonds.

# G.O. Bond Mechanics/Requirements

- Tax is billed via the regular county tax statement.
- Bonds may be sold in public offering or private sale.

# Acceleration

- Bonds may not be prepaid by individual property owners therefore the end users of the property will generally be liable for the full term of the bonds.
- Frequently, G.O. Bonds are supported by credit enhancement which requires the developer and the project to meet various performance hurdles or face the need to obtain a substitute credit facility or otherwise deal with the acceleration of debt.

# Authorizing Election Required

- PID holds an election to approve issuance of general obligation bonds (which may be held at the same time as the formation election); if approved, general obligation bonds of the district may be issued and sold.
- No election is required to issue refunding bonds (G.O. Bonds refunding previously issued G.O. Bonds).

# Foreclosure

The lien created by the levy of property taxes to repay G.O. Bonds may be foreclosed in the same manner as other property tax liens (i.e., the property is subject to sale 3 years after the date of delinquency, subject to the owner's right, on or before 5:00 p.m. the date prior to sale, to either pay the delinquent taxes, penalties and interest, or to enter into an installment agreement for the payment of same).

# Advantages of G.O. Bonds

- Normally provide the strongest credit and carry a lower interest rate making them easier to market.
- Relatively easy to structure and administer the assessment and collection of ad valorem taxes used to repay the bonds.
- The taxes paid by the landowners to service the bonds are tax-deductible and are tax-exempt to the bondholders.

# Disadvantages of G.O. Bonds

- Assessed value of unimproved land is low therefore a “preference proof” form of additional credit enhancement from the developer may be required.
- Credit enhancement will usually carry with it acceleration risk to the developer.

# Disadvantages of G.O. Bonds (cont'd)

- Remaining landowners may be responsible for defaulting parties' portions through an increase in the tax rate.
- Required elections can result in added delay and expense for the developer.

## 2. Special Levy Bond Financing

- Special levy bonds are secured by specific liens placed upon land parcels benefited by the improvements.
- The assessments can pay for the costs of any public infrastructure purpose consistent with the general plan.

# Special Levy Bonds (cont'd)

- Assessments may be based on frontage, square footage, the development status of the property, or other factors identified by the PID Board of Directors as appropriate assessment mechanisms.
- Billed under special assessment billing, but at same time and in same manner as with the regular county taxes.

# Special Levy Bonds (cont'd)

- PID holds an election to approve issuance of special levy bonds (which may be held at the same time as the formation election); if approved, special levy bonds of the district may be issued and sold.
- No election is required to issue refunding bonds (special levy bonds refunding previously issued special levy bonds).

# Special Levy Bonds (cont'd)

- The assessment shall be a first lien on the property co-equal to general property taxes.
- The PID may issue refunding bonds to refund any of its special assessment bonds.

# Foreclosure

A special levy is subject to foreclosure by the district at any time after 6 months following delivery of notice to the property owner of the delinquency, subject to the owner's right to pay off the delinquency, interest and penalties.

# Advantages of Special Levy Bonds

- Bonds do not have to be rated for public offering.
- Defaults by one landowner do not have an impact on other landowners.

# Advantages of Special Levy Bonds

- Landowners know from the outset how much their assessments will be, providing more certainty than G.O. Bonds.
- Landowners or ultimate purchasers may be able to prepay the assessment.

# Disadvantages of Special Levy Bonds

- Generally, special levy bonds are weaker credit and have higher interest rates.
- An assessment formula must be worked out for each issue and the assessment for each parcel calculated.
- Payments made by homeowners are not tax deductible. Therefore, ultimate purchasers are denied the benefits of tax-exempt infrastructure financing.

### 3. Revenue Bond Financing

- Revenue bonds are secured by the revenue stream generated by PID-financed public improvements.
- The PID shall prescribe fees and charges, and shall revise them, when necessary, to generate revenue sufficient, together with its other income, to pay principal and interest on the bonds when due.

## Revenue Bonds (cont'd)

- The PID Board of Directors may pledge its revenues or any revenues collected by the city in trust for the PID.
- The PID Board of Directors may limit, in its bond resolution, the types of revenues to be pledged to the bonds.

# Revenue Bonds (cont'd)

- Revenue bonds are payable only from the revenues pledged to their payment.
- The PID Board of Directors authorizes issuance of revenue bonds by resolution after a public hearing, at any time after the hearing on formation of the district.
- No public election is required to authorize issuance.

## Revenue Bonds (cont'd)

- PID Board must increase fees, rates and charges to users at a level sufficient to service bond debt.
- Bonds sold to the public must receive one of the four highest ratings (e.g., no lower than “BBB-” or “Investment Grade”).
- The PID may issue revenue refunding bonds.

# Advantages of Revenue Bonds

- Revenue bonds are viable as a refunding mechanism where the project has been established and is already producing the cash flow required to service the bonds.
- Neither a tax nor an assessment will encumber the property.
- No public vote is required to issue revenue bonds therefore saving time and expense.

# Disadvantages of Revenue Bonds

- Not all infrastructure lends itself to the collection of user charges or fees so revenue bonds are the least used.
- If the improvements are located in a newly developed area there will not be sufficient revenue to service the debt until the area is built out and cash flow has entirely developed.

# Disadvantages of Revenue Bonds (cont'd)

- The developer may have to provide debt service until revenues are sufficient.
- The PID may have to raise rates, fees and charges in order to meet the debt service.

# FEDERAL TAX LAW RULES FOR PUBLIC INFRASTRUCTURE FINANCING

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# Context

- This outline only discusses federal tax law and does not cover state tax laws; which may have a different treatment.

# General Rule

- Federal tax law rules regarding the tax-exempt financing of infrastructure are fairly generous and can include:
  - Costs of forming the improvement district.
  - Sewage, solid waste disposal or hazardous waste disposal facilities.

# Tax-Exempt Improvements (cont'd)

- Municipal water facilities for the furnishing of water.
- Sidewalks, streets, and streetlights.
- Electric, telephone and cable television systems.

# Tax-Exempt Improvements (cont'd)

- Other types of facilities for which the service provided by the facility is customarily performed by governmental units with general taxing powers. For instance:
  - Parks owned by governmental persons and available for use by the general public.

# Tax-Exempt Improvements (cont'd)

- Municipal facilities open to the public, e.g., golf courses open to the public.
  - Concerns arise when public use is restricted or ownership is transferred, including to home owner associations.

# Taxable Improvements

- Taxable Improvements include:
  - Private golf courses.
  - Single family lots.
  - On site single family lot improvements.

# Taxable Improvements (cont'd)

- Private business use facilities. (See Private Business Use slide number 13)
- Commercial or industrial facilities and improvements to property owned by non-governmental persons are generally not tax-exempt uses for federal law purposes.

# Basic Requirements for Tax-Exemption

- Must be a state or local governmental issuer including political subdivisions.
- Must be debt issued as a valid exercise of government's borrowing power.
- Bond proceeds must be used for governmental bonds or qualified private activity bonds.

# Debt

- In order to be viewed as “debt” there must be a reasonable expectation that debt will be paid in accordance with its terms, e.g., third party feasibility report buttressed by a developer’s certificate.

# Governmental Bonds

- Infrastructure that serves an “essential governmental function” including improvements to utilities and systems owned by governmental entities and are available for use by the general public are generally tax exempt.
- Federal tax status of bonds generally will be determined by the ultimate use of the facilities after the initial development period.

# Private Activity Bonds

- 2 part test for Private Activity Bonds: Private activity bonds are bonds where:
  1. More than 10% of the proceeds are used for a private business use; AND
  2. There is more than 10% private payment or security for the bonds.

# Private Business Use

- “Private business use” means use by nongovernmental persons such as the federal government, section 501(c)(3) organizations, and other private entities (corporations, partnerships or other limited liability companies).
- Use by the general public of bond-financed property where the property is intended and available for use by persons not engaged in a trade or business is not private business use.

# Private Security

- “Private security” is an interest in property that is used for private business use and that secures the bonds.
- Any interest in property such as a right, claim, title or legal share is included.

# Private Loans

- “Private loans” are used to make or finance loans to nongovernmental persons for more than the lesser of: (i) 5% of the bond proceeds; or (ii) \$5,000,000.
- There is an exception, under certain conditions, for tax assessment loans where a governmental person requires property owners to finance an essential governmental function with a tax or assessment.

# Private Payment

- “Private payments” are payments made by private business users allocable to the private business use.
- Operating expenses and “Generally Applicable Taxes” are not private payments.

# User Rates, Fees and Charges

- User rates, fees and charges for district services are not considered a private payments so long as the “general public use” exception is met.
- Under the “general public use” exception:
  - Services must be available to the general public.
  - Rates, fees and charges must be generally applicable.
  - Rates, fees and charges must be uniformly applied.

# Additional Credit Support

- Agreements to provide additional credit support, such as a third party guarantee, or to pay unanticipated shortfalls are impermissible agreements and therefore do not constitute Generally Applicable Taxes.

## Additional Credit Support (cont'd)

- Tax practitioners can address the apparent adverse affects of additional credit support agreements by demonstrating that there is not a reasonable expectation that there will be draws under the credit support agreement, e.g., feasibility reports which buttress developer certificates.

# Generally Applicable Taxes

- “Generally Applicable Taxes” must have a uniform tax rate that is applied to all persons of the same classification and a generally applicable manner of determination and collection.

# Generally Applicable Taxes (cont'd)

- Generally Applicable Taxes are distinguished from Special Charges for privileges granted, such as taxes or payments in lieu of taxes that are limited to the property or persons benefited by an improvement.
  - Payments in lieu of taxes designated for a public purpose may be treated as Generally Applicable Taxes if the payment is commensurate with the amounts imposed by statute for a tax of general application.
  - Payments made for the use of bond-financed property are treated as special charges and are not generally applicable taxes.

# When can the Issuer be Reimbursed?

- IRS Reimbursement regulations apply to governmental bonds, qualified 501(c)(3) bonds, and private activity bonds.
- Regulations will apply if bond proceeds are used to reimburse an expenditure paid before bonds are issued.

# Reimbursement Requirements

- 3 general requirements must be met for a reimbursement to qualify as an expenditure of bond proceeds:
  1. Official Intent Requirement
  2. Reimbursement Period Requirement
  3. Capital Expenditure Requirement

# Official Intent Requirements (cont'd)

- Not later than 60 days before the date the expenditure is paid by the issuer, the issuer must issue a Declaration of Intention to reimburse the expenditure from bond proceeds.
  - A Declaration is not necessary for the reimbursement of de minimus amounts not to exceed the lesser of \$100,000 or 5% of the issue.

# Official Intent Requirements (cont'd)

- A Declaration is not necessary for the reimbursement of for preliminary expenditures reimbursed with the proceeds of the bond that also finances the project as long as the preliminary expenses do not exceed 20% of the issue price.
  - Preliminary expenditures can include architects, engineers and soil testing.
  - Does not include expenditures “incident to the commencement of construction” like land acquisition and site preparation.

# Reimbursement Period Requirements

- The reimbursement allocation must be made no later than 18 months after the later of: (i) the expenditure is paid or (ii) the date the property is placed in service, but in no event more than 3 years after the expenditure is paid.

# Capital Expenditure Requirement

- The expenditure reimbursed must be a capital expenditure.
  - Capital expenditures are defined as costs properly chargeable to a capital account.
  - An issuer may only reimburse itself for “working capital expenditures” not to exceed the lessor of \$100,000 or 5% of the issue.

# Qualified Management Contracts

- Issuers can enter into qualified management contracts for the operation and maintenance of the infrastructure.
- No percentage of compensation can be based on NET profit.
- Contract terms cannot exceed 15 years including all renewal options.

# Qualified Management Contracts (cont'd)

- For 5 year contracts at least 50% of the compensation must be fixed fee.
- For 10 year contracts at least 80% of the compensation must be fixed fee.
- For 15 year contracts 95% of the compensation must be a fixed fee
- The remainder can be based on a percentage of GROSS revenue.

# Useful Life Provision

- The average life of the bonds cannot exceed 120% of the life of the asset financed.

# Capitalized Interest

- Issuers can finance capitalized interest up to the longer of:
  - (i) 3 years or
  - (ii) 1 year after the date the project is placed in service.

# Sizing of Reserve Funds

- Reserve Funds cannot exceed the larger of:
  - (i) 10% of the par value of the bonds;
  - (ii) the maximum annual amount of principal and interest in any year;  
or
  - (iii) 125% of the average annual debt service.

# Rebatable Arbitrage

- Amounts invested at a yield in excess of the bond yield must be rebated to the federal government unless certain rebatable exceptions are met. Generally, there are 3 exceptions:
  - 6 month exception
  - 18 month exception
  - 2 year exception

# 6 Month Exception

- Amounts invested at a yield in excess of the bond yield is not rebated to the federal government if all money is spent within 6 months of the date of issuance.

# 18 Month Exception

- Amounts invested at a yield in excess of the bond yield is not rebated to the federal government if:
  - (i) 15% is spent within 6 months of issuance;
  - (ii) 60% is spent within 12 months; and
  - (iii) all money is spent within 18 months of the date of issuance.

# 2 Year Exception

- Amounts invested at a yield in excess of the bond yield is not rebated to the federal government if:
  - (i) 10% is spent within 6 months of issuance;
  - (ii) 45% is spent within 12 months;
  - (iii) 75% is spent within 18 months; and
  - (iv) all money is spent within 2 years of the date of issuance.

# Common Concerns

- A. Issue Price: If bonds are not publicly marketed, the issue price is frequently based upon the fair value of the property acquired by the district, e.g., third party expert with respect to the value or demonstration of actual cost.

# Common Concerns (cont'd)

- B. Negative Arbitrage: Negative arbitrage based on the disparity between short-term taxable investments and longer term liability for payments on bonds, e.g. draw down programs based on binding commitments to purchase.

# ARIZONA COUNTY IMPROVEMENT DISTRICT FINANCING

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# Outline of Presentation

- PART I - Overview
- PART II - Formation Process
- Part III – Procurement Requirements
- PART IV - Financing Alternatives

# PART I

## What are County Improvement Districts (“County IDs”)?

- County IDs are political subdivisions of the State with limited governmental powers of municipal corporations.
- County IDs may be formed within the unincorporated area of a County.
- County IDs have broad authority to construct, acquire, operate and maintain public infrastructure.

# What are County Improvement Districts? (cont'd)

- A single County ID can provide various services and improvements (e.g., roads, water system, sanitary sewage, and parks); **and/or**
- Multiple County IDs that assess the same property may be formed to provide different services (e.g., a County ID for roads, a County ID for water system, a County ID for sanitary sewage and a County ID for parks).

# How are County IDs Governed?

- County IDs are governed by:
  - the County Board of Supervisors or
  - in the case of domestic water County IDs or wastewater County IDs **ONLY**, the Board of Supervisors may provide that the County ID be governed by an elected board of directors

# County ID Governance (cont'd)

- The Board of Supervisors may at any time revoke the authority of an elected board of directors in order to protect the residents of the County ID and either
  - call for new elections of the board of directors;  
or
  - govern the County ID as the Board of Supervisors.

# What public infrastructure improvements may be financed by County IDs?

- Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge.
- Water systems for domestic, industrial, irrigation, municipal or fire protection purposes including production, collection, storage, treatment, transport, delivery, connection and dispersal.

# Public infrastructure that may be financed by County IDs (cont'd)

- Highways, streets, roadways and parking facilities including all areas for vehicular use for travel, ingress, egress and parking.
- Public buildings, public safety facilities and fire protection facilities.
- Drainage and flood control systems, including collection, transport, diversion, storage, retention, dispersal, use and discharge.

# Public infrastructure that may be financed by County IDs (cont'd)

- Lighting systems, including lighting plants, poles, lamps and standards.
- Traffic control systems and devices including signals, controls, markings and signage.

# Public infrastructure that may be financed by County IDs (cont'd)

- Equipment, vehicles, furnishings and other personalty related to such items.
- Sidewalks, paths and trails, including areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking.
- Common Areas, including community centers, parks and other recreation areas.

# PART II

## How is a County ID formed?

- Filing of Petition: An applicant files a petition with the County Board of Supervisors. The petition must be joined by either:
  - 1) A majority of persons owning real property within the proposed County ID (e.g., 5 of 9 property owners, regardless of acreage); or
  - 2) The owners of 51% or more of the real property within the limits of the proposed County ID (e.g., 5,000 of 9,000 acres, regardless of whether a majority of the landowners join).

# Treatment of State Lands

- The State Land Commissioner may consent to the formation of a County ID that includes state lands within its boundaries, but those lands are not counted for determining whether the requisite number of landowners have joined the petition. See A.R.S. § 48-902(B). See also Ariz. Op. Atty. Gen. No. 71-33.

# Hearing Requirements

- Hearing Date: The Board of Supervisors sets a hearing on the petition to be held within 40 days of filing. The time and location of the hearing is set by the Board of Supervisors.
- Notice of Hearing: Notice of the hearing must be published 2 times in a newspaper of general circulation in the County and be mailed at least 20 days prior to the hearing to all owners of real property within the proposed County ID.
- Waiver of Hearing: A hearing is not required and the Board of Supervisors can summarily order the formation of the County ID if the Petition is signed by all of the owners of the real property in the proposed County ID, (i.e. 100%).

# Petitioner's Bond

- Petitioner's Bond: Petitioners must post a bond sufficient to pay the expenses of the County in connection with the formation proceedings if the Board of Supervisors fails to establish the County ID.

# Objections

- Objections: Any person may object to the establishment of the County ID at the hearing or file a written objection in advance of the hearing.
- Formation: After the hearing, the Board of Supervisors, in its discretion, may order the County ID formed.

# Appeal Rights and Subsequent Changes

- Limited Appeal Right: Anyone aggrieved by any act of the Board of Supervisors in the establishment of the County ID must bring an action contesting such act in the Superior Court within 20 days of the establishment of the County ID.
- Subsequent Changes: Additions to or alterations of an established County ID may be made using the same procedures by filing additional petitions.

# Land that cannot be Included in a County ID:

- Territory lying within an incorporated city or town (A city may consent to the inclusion of territory within its boundary for certain limited purposes related to improvements and maintenance of streets and waterworks);
- Lands owned by any common carrier for use in connection with interstate or intrastate commerce; or
- Unpatented mining claims.

# Owners of the following Land may Opt-out of a proposed County ID:

- Lands owned or held for mining or metallurgical purposes; or
- Any tract of land of 20 or more acres in area actually used for commercial farming or commercial stock raising, or
- any subdivided lands of which lots or blocks have not been offered generally for sale since the lands were subdivided.

# Opt-out Procedure

- A qualified landowner may opt out by filing a verified statement of objection with the Board of Supervisors prior to the formation of the County ID.

# PART III

## Procurement

- The Superintendent of Streets shall invite sealed bids by publication twice in a daily newspaper or once in a weekly or semi-weekly newspaper and by publication at the Board of Supervisor's meeting place.
- Alternative plans and specifications may require separate bids.
- Design/Build agreements are permitted.

# Notice and Protest

- Notice of award to the lowest responsible bidder shall be published twice in a daily newspaper or once in a weekly or semi-weekly newspaper.
- Persons with an interest in lots liable to assessment have a 15 day protest period from the initial publication to protest proceedings.

# Objections

- If no objections have been filed, or after hearing protests and objections the County executes the construction contract.
- If objections are valid, the Board of Supervisors may abandon proceedings or correct or modify any portion and proceed as in the first instance.

# PART IV

## Financing Alternatives

- County IDs can finance **construction and acquisition** of public infrastructure with:
  - assessment lien bonds; or
  - revenue bonds (only available to domestic water County IDs).
- County IDs can finance **operation and maintenance** of public infrastructure with:
  - property tax levies; or
  - operating revenues

# Assessment Lien Bond Financing

- The County ID adopts a resolution of its intention to levy a special assessment against land in the County ID to pay for the costs to acquire or construct public infrastructure.

# Assessment Lien Bonds (cont'd)

- The resolution must be based on plans and specifications that includes:
  - 1.) A diagram of the assessment district.
  - 2.) A breakdown of the assessment by parcel.
  - 3.) Estimated costs (including a breakdown of costs for services and the costs of the assessment and bonds).

# Assessment Lien Bonds (cont'd)

- The assessment on each property in the County ID must be proportionate to the benefit received. The County ID has some flexibility in determining benefit for each parcel.
- After making the special assessment, the County ID may issue special assessment lien bonds payable from the collection of the special assessments.

# Assessment Lien Bonds (cont'd)

- The assessment is a first lien on the property subject only to general property taxes and prior special assessments.
- The term of any assessment bonds issued by the County ID may not exceed 20 years and 3 months.
  - Assessment bonds for domestic water County IDs and domestic wastewater County IDs shall not exceed 40 years.

# Assessment Lien Bonds (cont'd)

- Annual installments of principal and interest of the assessments are collected on the county tax roll.
- The County ID may issue refunding bonds to refund any of its special assessment bonds.

# Revenue Bonds (only for Domestic Water County IDs)

- The County ID must hold an election to approve issuance of revenue bonds.
  - A majority of the electors of the County ID must approve the bonds.
  - The County ID conducts the election.
  - Notice must be posted 20 days in advance in at least 3 public places in each election precinct of the County ID and published once a week for two weeks in a newspaper of general circulation.

# Revenue Bonds (cont'd)

- No election is required to refund revenue bonds.
- The County ID Board may pledge its revenues, and may limit, in its bond resolution, the types of revenues to be pledged to the bonds
- The County ID shall prescribe water user fees and charges, and shall revise them, when necessary, to generate revenue sufficient, together with its other income, to pay principal and interest on the bonds when due.

# Property Tax Levies

- A County ID may levy an ad valorem tax on all real and personal property in the County ID to cover the County ID's general obligations.
  - The amount of this tax is generally limited to the cost of the operation, maintenance and repair of existing improvements.
  - The tax is collected by the Board of Supervisors as part of the general County taxes levied against property located within the County ID.

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# Outline of Presentation

- PART I - Overview
- PART II - Formation Process and Procurement Concerns
- PART III - Financing Alternatives

# PART I

## What are City Improvement Districts (“City IDs”)?

- City IDs are a mechanism for designing, constructing, and financing public infrastructure improvements.

# PART I

## What are City Improvement Districts (“City IDs”)? (cont’d)

- The municipality may provide up-front financing but costs associated with design and administration of City ID are assessed to property owners benefiting from improvements.

## What are “City IDs”? (cont’d)

- A single City ID can provide various services and improvements (e.g., roads, water system, sanitary sewage, and parks); **and/or**
- Multiple City IDs that assess the same property may be formed to provide different services (e.g., a City ID for roads, a City ID for water system, a City ID for sanitary sewage and a City ID for parks).

# What public infrastructure improvements may be financed by City IDs?

- Streets, roadways, and parking facilities including all areas for vehicular use for travel, ingress, egress, and parking.
- Wastewater treatment facilities, drinking water facilities or nonpoint source project with monies borrowed from or financial assistance including forgivable principal provided by the Water Infrastructure Finance Authority of Arizona.

# Public infrastructure that may be financed by City IDs (cont'd)

- Sidewalks, crosswalks, curbs, gutters, culverts, bridges, tunnels, siphons, manholes, steps, parking, parkways, pedestrian malls, pipes, hydrants and appliances for fire protection.
- Sewers, ditches, drains, conduits, pipelines and channels for sanitary and drainage purposes, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits and channels.

# Public infrastructure that may be financed by City IDs (cont'd)

- Waterworks, ditches, canals, channels, pipelines and siphons, together with the necessary or usual appurtenances for carrying storm water or water from irrigation ditches, watercourses, streams or springs.
- Breakwater levees, walls, docks, wharves, marinas, boat harbors and related facilities.

# Public infrastructure that may be financed by City IDs (cont'd)

- Lighting plants and poles, wires, conduits, lamps, for lighting and beautifying the streets and off-street parking areas improved;
- Enhanced municipal services, including such services as public safety, fire protection, refuse collection, street or sidewalk cleaning or landscape maintenance in public areas, planning, promotion, transportation and public parking.

# PART II

## How is a City ID formed?

The City or Town Council:

- Prepares and files with the City Clerk. preliminary plans (including location, character and estimates of cost and expenses of proposed improvements).
- Must pass and give notice of resolution of intent to order improvements, briefly describing the improvements and specifying the boundaries of the assessment district and the maximum interest rate on bonds.

# Notice

- Upon adoption of a resolution of intent, notice must be posted and published showing the affected properties within the City ID.
  - Publication Requirement - Notice must be published 5 times in a daily newspaper or 2 times in a weekly or semi-weekly newspaper.
  - Posting Requirement - At least 3 specifically formatted notices must be posted along the boundary of the City ID no more than 300 feet apart.

# Protests and Objections

- Within 15 days of final posting a majority of the property owners included in the City ID may protest against the proposed improvement and potentially bar proceedings for 6 months.
  - If any protests are sustained, a new resolution of intention for the same improvement must be passed.

# Resolving Protests and Objections

- If any protests are sustained, a new resolution of intention for the same improvement must be passed.
- If the protests are deemed insufficient, and objections are denied, then the City Council will review final construction plans, adopt a resolution ordering improvements and invite sealed bids for the improvements through.

# Inviting Bids

- Invitations for bidding must:
  - Be published 2 times in daily newspapers or 1 time in a weekly or semi-weekly publication;
  - Be posted 5 days at the City Council's office;
  - Give at least 10 days for proposals to be submitted.

# Bidding

- City Council may require separate bids for each alternative plan and specification.
- City Council may combine improvement projects by resolution in order to allow the construction of multiple improvements under one contract and one series of bonds.

# Bidding Process

- Bids must be accompanied by a bond for at least 10% of the aggregate bid (or at least 10% of the highest proposal for alternative bids).
- The City Council will award a construction contract to the lowest and best responsible bidder.

# Alternative Bids

- When the resolution provides for alternative plans and specifications, the City Council must wait 15 days before awarding a contract to allow owners of a majority of property within the City ID to choose, in writing, a particular plan for construction. The award will then go to the lowest and best responsible bidder for that plan.

# Notice and Protests

- Notice of the award must be published 2 times in a daily newspaper or once in a weekly or semi-weekly newspaper.
- Persons with an interest in lots liable to assessment have a 15 day protest period from the initial publication to protest proceedings.

# Objections and Hearing

- If no objections have been filed, or after hearing protests and objections the municipality executes the construction contract.
- If objections are valid, the City Council may abandon proceedings or correct or modify any portion and proceed as in the first instance.

# Assessments

- Assessing Property within the City ID: The City Council adopts a resolution approving an Assessment Diagram and the levy of assessments.
  - Approved prior to the execution of the construction contract.
  - Establishing the assessments and warrants to be recorded and delivered to the Superintendent of Streets.

## Assessments (cont'd)

- Assessments are mailed to all property owners within the City ID with a cash demand letter is provided to property owners requesting payment within 30 days.
- Thereafter, the warrant is to be returned to the superintendent.

# Assessments (cont'd)

- List of unpaid assessments is filed with the City Clerk.
- Property owners may pay the assessment in cash at any time. However, if they choose to pay the assessment after the cash collection period and the bonds have been sized issued, then the property owner will be responsible for a pro rata share of (a) capitalized interest, (b) interest to the date established by the municipality, and (c) other bond expenses.

# PART III

## 3 General Financing Alternatives

- Special Assessments
- Bond Anticipation Notes
- Refunding Bonds

# 1. Special Assessments

- The governing body, determines whether certain public/private lots are to be included in the City ID assessment.
- Total assessment levied against the lot can be included in improvement bonds issued, bearing same interest as bonds and payable by the municipality in installments as assessments against property.

# Special Assessments (cont'd.)

- The assessment shall not exceed its proportion of engineer's estimate initially filed with City Clerk.
- Superintendent of Streets must make assessments upon assessed on lots proportionate to benefits received by each lot covering sum due for total amount of actual and incidental costs and expenses of improvement work.

# Collection of Special Assessments

- The governing body can pass an ordinance providing for the collection of assessments for bond payment in a manner consistent with collection of general taxes levied by the municipality, state or county as part of the tax rolls and tax bills issued by county treasurer.
- Issuance must be made pursuant to a resolution specifying the maximum rate of interest and that the bonds will be paid from a special fund.

# Bond Terms

- The bonds are issued in municipality's name; payable only from the special assessment fund.
- Funds may not be used for purposes other than payment of bond's principal and interest.
- Bond maturity cannot exceed approximately 25 years.
- Principal may only be paid annually or January 1 of each year.

## Bond Terms (cont'd)

- Issuance must be made pursuant to a resolution specifying the maximum rate of interest and that the bonds will be paid from a special fund.
- The bonds are issued in municipality's name; payable only from the special assessment fund.
- Funds may not be used for purposes other than payment of bond's principal and interest.

# Construction

- After the bonds are issues the contractor is given notice to proceed with the construction of improvements.
- Payments to the contractor will be based on 90% of the value of work performed.

# Recapitulation of Assessments

## Publication:

- Notice of the hearing must be published 5 days in a daily newspaper or 2 times in a weekly or semi-weekly newspaper.
- Upon the completion of construction, a hearing will be held on the City ID proceedings and the quality of work performed to recapitulate and modify individual assessments.

# Collection of Assessments

- Assessments will be billed and collected every 6 months for as long as the bonds are outstanding.
- If assessment is not paid a notice of delinquency and pending sale is published for 10 days in a daily newspaper or 2 weeks in a weekly newspaper.

# Delinquent Assessments

- Property may be sold for the amount of outstanding assessments
- If there is no purchaser, the assessment is struck off to the city and the city's contingent obligation to pay assessments is triggered.
- The City may sell all or part of the assessed land to pay the balance of the assessment.

## 2. Bond Anticipation Notes

- Bond anticipation notes can be issued by resolution and sold after the construction contract is awarded.
- Bond anticipation notes must be paid solely from proceeds of the sale of improvement bonds and monies collected from property owners.
- Limited utility given time constraints.

## 3. Refunding Bonds

- The City Council can resolve to issue refunding bonds under statutory provisions.
  - The amount for which the refunding bonds shall be issued may include the total amount remaining due on the principal of the original issue and all interest delinquencies existing at the time of the adoption of the resolution.
  - The rate of interest of the refunding bonds may be less but shall not exceed the rate of interest on the original bonds.

# ARIZONA COMMUNITY FACILITIES DISTRICT FINANCING

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# Outline of Presentation

- PART I - Overview of Powers and Governance
- PART II - Formation Process
- PART III - Statutory Restrictions of Terms of CFD Bonds
- PART IV - Financing Alternatives

# PART I

## What are Community Facilities Districts (“CFDs”)?

- CFDs are special tax levying districts permitted by statute that allow municipalities to pass infrastructure costs to landowners within an area on a tax-exempt basis without burdening the rest of the community.

# What are Community Facilities Districts? (cont'd)

- CFD's are political subdivisions of the State, separate and apart from the municipality or county forming it.
- Created to provide public improvements to undeveloped areas.

# CFDs in Other States

- Similar to other states' laws
  - Community Facilities Districts in Florida
  - Mello-Roos Community Facilities Districts in California
  - Municipal Utilities Districts in Texas
  - Metropolitan Districts in Colorado

# Benefits for Developers

- CFDs can provide infrastructure that developers would otherwise have to provide through the issuance of CFD debt at tax-exempt rates.
- CFDs are a source of off-balance sheet financing for a wide range of infrastructure projects at tax-exempt rates.

# Benefits for Developers (cont'd)

- CFDs can provide alternative sources of financing that may not normally be available to individual landowners or private developers.
- CFDs create a marketing advantage for developers through lower purchase prices.

# Benefits for Ultimate Purchasers

- Because infrastructure costs are not included in property purchase prices, CFDs permit more potential purchasers to qualify for financing.
- Infrastructure is financed at tax-exempt rates saving thousands of dollars for ultimate purchasers.
- More amenities may be furnished, improving the quality of life for residents.

# Benefits for Municipalities

- CFDs provide municipalities with an efficient mechanism to encourage residential, commercial and industrial development.
- Unlike City Improvement Districts (“City ID”), CFDs do not require municipalities to provide sufficient funds to purchase property subject to assessments.

# CFDs vs. City Improvement Districts

- Although the purpose of City IDs and CFDs are the same, they differ in the following ways:
  - CFDs can issue bonds paid for by ad valorem taxes, revenues or special assessments.
  - CFDs can finance a broader range of projects.
  - CFDs have broader power to renovate or acquire existing facilities

# CFDs vs. City Improvement Districts (cont'd)

- CFD bonds are not backed by the contingent general obligation of the city or town.
- A CFD can establish debt service reserve funds, more easily refund bonds, charge user fees and have an ongoing budget and tax levy for general operations, capital improvements and maintenance.

# Where can CFDs be formed?\*

- CFDs are usually formed by a city or town.
- Can be formed by a county:
  - In an unincorporated area; or
  - In an incorporated area with consent of the municipality for the sole purpose of financing school sites and facilities.

\* This presentation will assume formation by a city.

# How are CFDs Governed?

- CFDs are managed by:
  - a Board of Directors which may be composed of the city council members; or
  - by 5 independent directors appointed by the municipality if the CFD is larger than 600 acres.

# Board of Directors

- Directors cannot be:
  - Landowners owning more than 40 acres
  - An elected, city official or an agent of the city
  - An agent of the master planner or developer who owns more than 40 acres within the district.
- Terms are 6 years.
- The city council appoints replacements.

# CFD Officers

- Manager – city manager or designee or any person appointed by the CFD Board.
- Treasurer – city treasurer or any person appointed by the CFD Board.
- Clerk – city clerk or any person appointed by the CFD Board.

# Operation and Maintenance

- The CFD Board can control and maintain the infrastructure or can enter into inter-governmental agreements for the design, ownership, control or maintenance of the public infrastructure.

# Procurement

- The CFD Board may enter into contracts for the performance of CFD projects, including construction, with landowners within the CFD after calling for public bids but before publishing notice of the award of a contract if the following conditions are met:

# Procurement (cont'd)

- The landowner (or landowners) owns at least 3/4 of the total land in the CFD.
- The landowner contracts to perform the work at a cost which does not exceed the cost of the otherwise winning bidder.
- The work for which the contract was let is to be financed pursuant to the CFD statute.
- Design/Build Agreements

# Procurement (cont'd)

- The CFD may also acquire already constructed infrastructure that has not yet been dedicated to the city.
- These facilities may be phased in as needed and either: (i) dedicated to the city which will then operate and maintain the infrastructure; or (ii) the CFD can elect to operate and maintain the infrastructure separate and apart from utilities provided by the city.

# Enhanced Municipal Services

- The CFD Board can enter into Intergovernmental Agreements with the city to provide enhanced municipal services a higher level than provided to the rest of the city.
  - Only in areas designated by the city.
  - Services may include police and fire protection, street cleaning and landscape maintenance.

# Binding Development Agreements

- Municipalities and property owners may enter into mutually binding development agreements to achieve systematic, quality growth.
- Agreements may be binding whether or not CFD is formed.
- If and when formed, the CFD automatically becomes a party to be bound by the terms of the agreement.

# Binding Development Agreements (cont'd)

- Development Agreement terms can include:
  - Permitted land uses
  - Density and intensity of uses
  - Building heights and sizes
  - Annexations and deannexation
  - Dedications and reservation
  - Phasing of development
  - CFD formation
  - Infrastructure requirements and terms
  - Historical preservation
  - Other development terms

# Administrative Duties

- Annual Budget and Levy Process
  - The CFD Board files with the CFD Clerk estimates of operation and maintenance expenses, capital costs and other expenses to be paid from the levy plus amount of debt service.
  - On or before July 15 each year, the CFD Treasurer must prepare and submit a budget to the CFD Board.

# Budget and Levy (cont'd)

- CFD Board adopts a resolution approving the budget and sets hearing on the budget and potential levy.
- Notice of hearing is published and mailed to the city 10 days before the hearing.
- Hearing is conducted.

# Budget and Levy (cont'd)

- The CFD Board adopts budget and sets tax rate and rates for all user fees and charges related to services before October 1 of each year.
- The Clerk delivers certified copies of the budget to the County Board of Supervisors and the Arizona Department of Revenue.

# Budget and Levy (cont'd)

- Property tax rate shall not exceed \$0.30/\$100 of assessed valuation, unless a higher maximum rate is approved by voters.
  - Future elections are required to change the maximum tax rate.
  - Voter approval to change rate must be obtained within 3 years of formation of the CFD.

# Annual Reports

- The CFD Treasurer should, but is not legally required to, complete an annual audit of the CFD's financial position.
- If bonds are issued continuing disclosure is required and reports must include significant events affecting the bonds' status.
- An annual report of the CFD's outstanding indebtedness submitted to the Arizona Department of Revenue is also required.

# Generally, what Public Infrastructure can be financed through CFDs?

- Acquisition of land, but not land for private uses.
- Planning, design, engineering, construction, acquisition or installation of public infrastructure.
- Acquiring, converting, renovating or improving existing facilities for public infrastructure.

# What else can be financed through CFDs?

- Establishing, maintaining and replenishing reserves to secure debt service payments for bonds issued.
- Operations and maintenance expenses for public infrastructure.

# What else can be financed through CFDs (cont'd)?

- Funding and paying interest accruing on bonds for a period of not to exceed 3 years from bond issuance.
- Refinancing any matured or unmatured bonds.

# Specifically, what Public Infrastructure Improvements can be financed through CFDs?

- Public infrastructure improvements:
  - Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge.
  - Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge.

# Public Infrastructure Improvements (cont'd)

- Water systems for domestic, industrial, irrigation, municipal or fire protection purposes including production, collection, storage, treatment, transport, delivery, connection and dispersal, but generally *not* including facilities for agricultural irrigation purposes.
- Highways, streets, roadways and parking facilities including all areas for vehicular use for travel, ingress, egress and parking.

# Infrastructure Improvements (cont'd)

- Areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking.
- Pedestrian malls, parks, recreational facilities other than stadiums, and open space areas for the use of members of the public for entertainment, assembly and recreation.
- Lighting systems.

# Infrastructure Improvements (cont'd)

- Landscaping including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems.
- Public buildings, public safety facilities and fire protection facilities.
- Traffic control systems and devices including signals, controls, markings and signage.

# Infrastructure Improvements (cont' d)

- School sites and facilities with the consent of the governing board of the school district for which the site or facility is to be acquired, constructed or renovated.
- Equipment, vehicles, furnishings and other personalty related to such items.
- Water Infrastructure Finance Authority financed facilities.

# PART II

## How is a CFD formed?\*

- Filing of Petition: Owners of at least 25% of land area within the proposed CFD petition the municipality to establish a CFD.
  - A general plan must be also be filed with the city clerk describing planned public infrastructure improvements.

\* This example assumes formation by a city.

# Resolution of Intent to Form CFD

- Adoption of Resolution: The municipality declares an intention to form a CFD.
- Resolution must state:
  - Area to be included
  - Purpose of CFD
  - Hearing information and objection process
  - Governance
  - Potential for tax levy

# Notice of Resolution

- Notice: Once a resolution is adopted, notice must be given to all of the landowners within the proposed CFD and to others who have requested notice.
  - Posted by the City Clerk.
  - Mailed to all landowners within CFD.
  - Published at least once in official city newspaper or a newspaper of general circulation.

# Objections

- Hearing on Objections: Any person claiming an interest in the real property within the proposed CFD may object to the City Council with respect to the formation of the CFD.
  - Written objections may be based upon persons seeking to have property excluded or to have the general plan modified and specific objections to the CFD's formation.

# Resolution Ordering Formation

- Formation: After the hearing on objections, the City Council adopts a resolution ordering the formation of a CFD or determining that it should not be formed.
  - City council may modify CFD boundaries and general plan based on the objections.

# CFD BOARD OF DIRECTORS

- If formed, the City Council generally serves as the CFD's Board of Directors, but if the District is larger than 600 acres, the City Council may elect to appoint 5 independent directors and the City Council submits formation to an election of owners of property within the District.

# Notice of Election

- Notice must be:
  - Posted in at least 3 public places within the boundaries of the CFD.
  - Published in a newspaper of general circulation once a week for two consecutive weeks.
  - If the election includes a bond election, the amount of the bonds authorized, the maximum tax rate and term, and the purposes of the bonds must be included in the notice.

# Formation Election

- Election:
  - The City Council submits the formation of the CFD to an election of owners of land in the district (unless waiver applies).
  - Each owner has the number of votes or portion of votes equal to the number of acres or portion of acres owned rounded upward to the nearest 1/5 of an acre.

# Waiver of Formation Election

- If a formation petition is signed by the owners of all of the land to be included in the proposed CFD and the Formation is approved by the City Council, all election requirements (with respect to formation) may be waived.

Note: Waivers are not allowed for general obligation bonds elections authorizing the issuance.

# Final Formation

- Any objector to the CFD's formation may file a special action with the Court of Appeals. If not overturned by the Court, the CFD is formed. Then:
  - A map of the CFD must be delivered to the county assessor, the county board of supervisors and the Arizona Department of Revenue.
  - A legal description of the CFD is recorded by the county recorder.

# Dissolution of the CFD

- Voluntary—Provided that the City will take over all of the CFD's property and assume its obligation, if any, for operation and maintenance.
- Mandatory—If approved by qualified voters of a CFD that has been inactive for at least 5 years and has no future purpose.
  - CFD may hold its own election or be petitioned to do so by 10% of the qualified electors of the CFD.

# PART III

## Statutory restrictions on terms of CFD bonds

- Bond Limit: The amount of indebtedness may not exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of the bonds, including credit enhancement and liquidity support fees and costs.

# Statutory restrictions on terms of CFD bonds (cont'd.)

- Debt Limit: The total aggregate outstanding amount of bonds and any other indebtedness for which the full faith and credit of the CFD are pledged shall not exceed 60% of the aggregate of the estimated market value of the real property and improvements in the CFD after the public infrastructure of the CFD is completed plus the value of the public infrastructure owned or to be acquired by the CFD with the proceeds of the bonds.

# Statutory restrictions on terms of CFD bonds (cont'd.)

- The term of bonds must not exceed 25 years.
- The forming municipality is not liable for debt service on the bonds.

# Feasibility Study

- Prior to the issuance of bonds and construction of projects, the CFD Board of Directors must approve a feasibility study of the public infrastructure prepared by engineers prior to construction or acquisition which should include the following 6 requirements:

# Feasibility Study Requirements

1. Description of the public infrastructure to be constructed or acquired and all other information useful to understand the project;
2. A map showing the general location of the project;
3. An estimated schedule for completion of the project;

# Feasibility Study Requirements (cont'd.)

4. An estimate of the cost to construct, acquire, operate and maintain the project;
5. A map or description of the area to be benefited by the project; and
6. A plan of financing for the project.

# Hearing on Feasibility Study

- The CFD Board of Directors must hold a public hearing on the feasibility report after which the CFD Board of Directors may reject, amend or approve the report.
  - If the report is amended, there must be a new hearing.
  - If the report is approved, the CFD board of Directors will adopt a resolution of intent identifying the public infrastructure of the project, the areas benefited, the expected method of financing and an appropriate system of providing revenues to operate and maintain the project.

# PART IV

## Financing Alternatives

- There is great flexibility in financing infrastructure through CFDs. Following are some mechanisms that may be used alone or in conjunction with one another to yield the most efficient result:
  - General Obligation Bonds
  - Revenue Bonds
  - Assessment Lien Bonds
  - Ad Valorem Taxes (for operation and maintenance)

# Financing Alternatives (cont'd)

- User Fees and Charges
- State or Federal Grants
- Developer or other Private Contributions

# CFD Bonds

- This outline will discuss the advantages and disadvantages of the 3 types of bonds a CFD could issue:
  1. General Obligation Bonds (“G.O. Bonds”)
  2. Assessment Lien Bonds
  3. Revenue Bonds

# 1. G.O. Bond Financing

- G.O. Bonds are bonds backed by a tax lien on all of the taxable real and personal property located within the CFD.
- CFD shall annually levy and cause an ad valorem tax to be collected on all taxable property in the CFD to repay general obligation bonds.

# G.O. Bond Mechanics/Requirements

- Tax is billed via the regular county tax statement.
- Bonds sold to the public must receive one of the four highest ratings (e.g. no lower than “BBB” or “Investment Grade”).
- A CFD formed by a county may not issue general obligation bonds.

# Acceleration

- Bonds may not be prepaid by individual property owners therefore the end users of the property will generally be liable for the full term of the bonds.
- Frequently, G.O. Bonds are supported by credit enhancement which requires the developer and the project to meet various performance hurdles or face the need to obtain a substitute credit facility or otherwise deal with the acceleration of debt.

# Authorizing Election Required

- CFD holds an election to approve issuance of general obligation bonds; if approved, general obligation bonds of the district may be issued and sold.
- No election is required to issue refunding bonds (G.O. Bonds refunding previously issued G.O. Bonds).

# Advantages of G.O. Bonds

- Normally provide the strongest credit and carry a lower interest rate making them easier to market.
- Relatively easy to structure and administer the assessment and collection of ad valorem taxes used to repay the bonds.
- The taxes paid by the landowners to service the bonds are tax-deductible and are tax-exempt to the bondholders.

# Disadvantages of G.O. Bonds

- Assessed value of unimproved land is low therefore a “preference proof” form of additional credit enhancement from the developer may be required.
- Credit enhancement will usually carry with it acceleration risk to the developer.

# Disadvantages of G.O. Bonds (cont'd)

- Remaining landowners may be responsible for defaulting parties' portions through an increase in the tax rate.
- Required elections can result in added delay and expense for the developer.

## 2. Assessment Lien Bond Financing

- Special assessment lien bonds are secured by specific liens placed upon land parcels benefited by the improvements.
- The assessments can pay for the costs of any public infrastructure purpose, any operation and maintenance of public infrastructure or any enhanced municipal services based on the benefit determined by the CFD to be received by the land.

# Assessment Lien Bonds (cont'd)

- Assessments may be based on frontage, square footage, the development status of the property, or other factors identified by the CFD Board of Directors as appropriate assessment mechanisms.
- The assessment may be based on *estimated* costs and amended to reflect *actual* costs.
- Billed under special assessment billing, not with the regular county taxes.

# Assessment Lien Bonds (cont'd)

- After making the special assessment, the CFD may issue special assessment lien bonds payable from the collection of the special assessments or issue bond anticipation notes.
- Assessment lien bonds are authorized by a resolution of the CFD Board and do not require elector approval.

## Assessment Lien Bonds (cont'd)

- The assessment shall be a first lien on the property subject only to general property taxes and prior special assessments.
- The CFD may issue refunding bonds to refund any of its special assessment bonds.

# Advantages of Assessment Lien Bonds

- Bonds do not have to be rated for public offering and do not require elections saving time and expenses.
- Defaults by one landowner do not have an impact on other landowners.
- Remedies in the event of default are easier to enforce than a default on ad valorem taxes.

# Advantages of Assessment Lien Bonds

- Landowners know from the outset how much their assessments will be providing more certainty than G.O. Bonds.
- Landowners or ultimate purchasers can elect to pay the assessment off at the time of acquisition or can repay it over time.

# Advantages of Assessment Lien Bonds

- Flexible assessment process allows for a more equitable allocation of costs among landowners.
  - If the fair market value is used, the special assessment lien bond may provide significant funds to finance the improvements without additional security requirements from the developer.

# Disadvantages of Assessment Lien Bonds

- Generally, assessment lien bonds are weaker credit and have higher interest rates.
- An assessment formula must be worked out for each issue and the assessment for each parcel calculated.
- Payments made by homeowners are not tax deductible. Therefore, ultimate purchasers are denied the benefits of tax-exempt infrastructure financing.

### 3. Revenue Bond Financing

- Revenue bonds are secured by the revenue stream generated by CFD-financed public improvements.
- The CFD shall prescribe fees and charges, and shall revise them, when necessary, to generate revenue sufficient, together with its other income, to pay principal and interest on the bonds when due.

## Revenue Bonds (cont'd)

- The CFD Board of Directors may pledge its revenues or any revenues collected by the city in trust for the CFD.
- The CFD Board of Directors may limit, in its bond resolution, the types of revenues to be pledged to the bonds.

## Revenue Bonds (cont'd)

- Revenue bonds are payable only from the revenues pledged to their payment.
- The CFD Board of Directors authorizes issuance of revenue bonds by resolution after a public hearing.
- No public election is required to authorize issuance.

## Revenue Bonds (cont'd)

- CFD Board must increase fees, rates and charges to users at a level sufficient to service bond debt.
- Bonds sold to the public must receive one of the four highest ratings (e.g., no lower than “BBB-” or “Investment Grade”).
- The CFD may issue revenue refunding bonds.

# Advantages of Revenue Bonds

- Revenue bonds are viable as a refunding mechanism where the project has been established and is already producing the cash flow required to service the bonds.
- Neither a tax nor an assessment will encumber the property.
- No public vote is required to issue revenue bonds therefore saving time and expense.

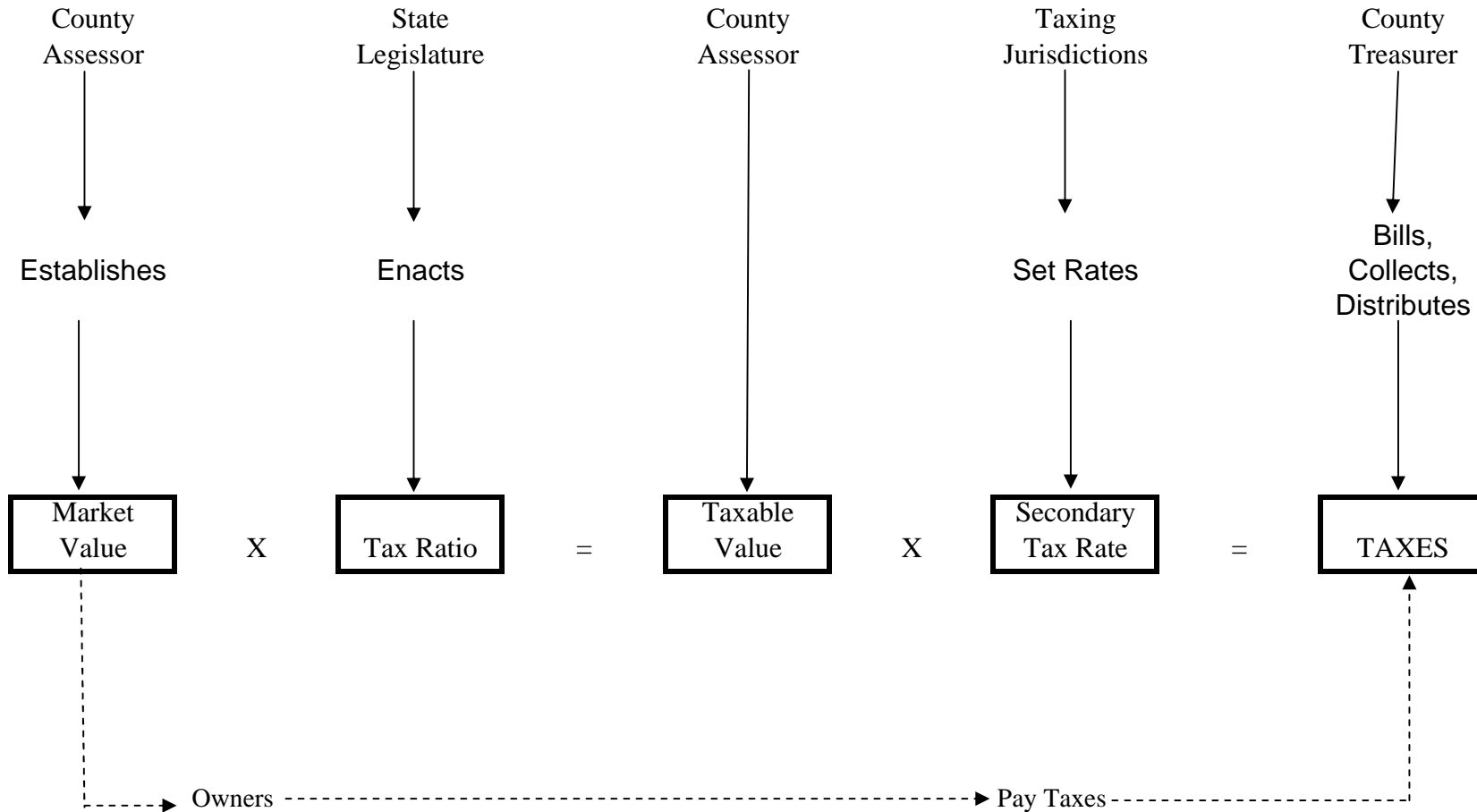
# Disadvantages of Revenue Bonds

- Not all infrastructure lends itself to the collection of user charges or fees so revenue bonds are the least used.
- If the improvements are located in a newly developed area there will not be sufficient revenue to service the debt until the area is built out and cash flow has entirely developed.

# Disadvantages of Revenue Bonds (cont'd)

- The developer may have to provide debt service until revenues are sufficient.
- The CFD may have to raise rates, fees and charges in order to meet the debt service.

# An Overview of New Mexico's Property Tax System



**General Procedural Steps Involved in  
the Creation of a Community Facilities District ("CFD")**

| Statute Reference                                      | Activity  | General Time Period                                    | Responsible Parties  |
|--|---|--|--|
| <b>STEP 1: REVIEW OF PROCEDURES</b>                    | <ul style="list-style-type: none"> <li>• Review jurisdiction's CFD policies and procedures</li> <li>• Prepare Application for Formation of CFD (if necessary)</li> <li>• Prepare initial General Plan and Development Agreement</li> </ul>  | (Depends on Scope of District)                         | Applicant/Developer<br>City Representative<br>Financial Advisor  |
| <b>STEP 2: PETITION TO FORM DISTRICT</b>               | <ul style="list-style-type: none"> <li>• File petition with City (Town) Clerk signed by owners of 25% of land proposed to be included within the CFD</li> <li>• File General Plan with the City (Town) Clerk for the proposed CFD describing the infrastructure to be financed and/or acquired, constructed and the area to be improved</li> </ul>  |  | Applicant/Developer<br><br>Applicant/Developer   |
| <b>STEP 3: REVIEW AND DUE DILIGENCE OF THE PROJECT</b> | <ul style="list-style-type: none"> <li>• Preparation of all draft financing documents</li> <li>• Review of project's public purpose, project demographics, cost of infrastructure, absorption, financing structure, etc.</li> </ul>   | (Depends on complexity of District and infrastructure) | Bond Counsel,<br>Applicant's Counsel<br><br>Applicant/Developer,<br>City Representatives,<br>Financial Advisor,<br>Underwriter |
| 48-702(A)  | <b>STEP 4: ADOPTION OF RESOLUTION OF INTENT TO FORM DISTRICT</b> <ul style="list-style-type: none"> <li>• Resolution must include: <ul style="list-style-type: none"> <li>○ Area to be included within the proposed CFD</li> <li>○ Purpose of the CFD</li> <li>○ General Plan filing</li> <li>○ Setting Public Hearing on formation of District</li> <li>○ Location for filing objections to formation</li> <li>○ Acknowledgement that ad valorem taxes may be imposed</li> <li>○ District Board make-up</li> </ul> </li> </ul> | (7-15 days to place on Council agenda)                 | Bond Counsel,<br>City Clerk  |

**General Procedural Steps Involved in  
the Creation of a Community Facilities District ("CFD"), con't.**

| <b>Statute Reference</b> | <b>Activity</b>   | <b>General Time Period</b>                    | <b>Responsible Parties</b>  |
|--------------------------|---|---|-----------------------------|
|                          | <b>STEP 5: NOTICE OF RESOLUTION AND HEARING</b>   |   |                             |
| 48-703                   | <ul style="list-style-type: none"> <li>• Mail notice and Resolution of Intent to Property Owners at least 20 days prior to hearing</li> <li>• Publish notice and Resolution of Intent one time at least 20 days prior to hearing</li> <li>• File affidavits of mailing and publication</li> <li>• Objections to formation of CFD must be filed prior to 5:00 p.m. on the day preceding the hearing date</li> </ul>  | 20 days after adoption of Resolution          | Bond Counsel,<br>City Clerk |
| 48-704(A)                |   |   | City Clerk                  |
|                          | <b>STEP 6: PUBLIC HEARING</b>   |   |                             |
| 48-704(B)                | <ul style="list-style-type: none"> <li>• Conduct Public Hearing to receive protests for formation of CFD</li> <li>• Review Financial Feasibility Study</li> </ul>   | Within 30 days form end of posting period     | City Council                |
|                          | <b>STEP 7: CITY COUNCIL ACTION</b>  |   |                             |
| 48-705(A)                | <ul style="list-style-type: none"> <li>• Resolution Ordering Formation of CFD; Resolution may delete property, change General Plans, etc.</li> </ul>  | May be at same meeting as Public Hearing      | City Council                |
| 48-705(B)                | <ul style="list-style-type: none"> <li>• Order election of property owners to form CFD                             <ul style="list-style-type: none"> <li>○ All qualified landowner electors and any resident qualified electors</li> <li>○ Acreage voting, rounded up to the nearest 1/5 acre</li> </ul> </li> </ul>   |   | City Council                |
|                          | <b>STEP 8: ELECTION PROCEDURES AND ELECTION</b>   |   |                             |
| 48-707                   | <ul style="list-style-type: none"> <li>• Post notice of election at 3 locations within District not less than 20 days prior to election</li> <li>• Publish notice of election once a week for 2 weeks stating:                             <ul style="list-style-type: none"> <li>○ Location of polling place</li> <li>○ Hours poles are open</li> <li>○ Boundaries of District</li> <li>○ Bond election to include amount of bond authorization; term of bonds (not to exceed 25 years); maximum interest rate and purpose of financing</li> </ul> </li> </ul> | At least 20 days after adoption of Resolution | Bond Counsel,<br>City Clerk |

**General Procedural Steps Involved in  
the Creation of a Community Facilities District ("CFD"), con't.**

| Statute Reference  | Activity  | General Time Period                 | Responsible Parties         |
|--|---|-------------------------------------|-----------------------------|
| <b>STEP 8: ELECTION PROCEDURES AND ELECTION, CON'T.</b>  |   |                                     |                             |
| <ul style="list-style-type: none"> <li>o If ad valorem tax election-maximum tax rate an purpose of levy</li> <li>o General Plan filed</li> </ul>   |   |                                     |                             |
| 48-707   | <ul style="list-style-type: none"> <li>• Conduct election</li> </ul>  | No later than 20 days after posting | Bond Counsel,<br>City Clerk |
| 48-707(D)  | <ul style="list-style-type: none"> <li>• Canvass election</li> </ul>  | Within 14 days after election       | Bond Counsel,<br>City Clerk |
| <b>STEP 9: RESOLUTION ORDERING FORMATION</b>   |   |                                     |                             |
| 48-708   | <ul style="list-style-type: none"> <li>• Upon approval at the election, City Council adopts resolution ordering formation of the CFD</li> <li>• Appoints Board of Directors</li> <li>• Deliver order forming CFD to County Assessor, Supervisors and Arizona Department of Revenue</li> </ul> | 7-10 days after election            | City Council                |
| <ul style="list-style-type: none"> <li>• Record Notice of Formation</li> </ul>   |   |                                     |                             |
| <b>STEP 10: SALE OF BONDS (TYPE OF BONDS ISSUED DETERMINES BOND SALE PROCESS)</b>  |   |                                     |                             |
| <ul style="list-style-type: none"> <li>• Preparation of all financing documents and offering document</li> <li>• Sale of bonds/or private placement</li> <li>• Closing of bond issue; delivery of bond proceeds</li> </ul> |   |                                     |                             |
| <ul style="list-style-type: none"> <li>• Bond Counsel, Developer's Counsel, City Staff, Financial Advisor, Underwriter</li> </ul>  |   |                                     |                             |

General Procedural Steps Involved in  
the Creation of a New Mexico Public Improvement District (“PID”)

| Statute Reference | Activity   | General Time Period                                    | Responsible Parties   |
|-------------------|--|--|---|
|                   | <p><b><u>Step 1: Review of Procedures</u></b></p> <ul style="list-style-type: none"> <li>• Review jurisdiction’s PID policies and procedures</li> <li>• Prepare Application for Formation of PID (if necessary)</li> <li>• Prepare initial General Plan and Development Agreement)</li> </ul>  | (Depends on Scope of District)                         | Applicant/Developer<br>City Representative<br>Financial Advisor   |
| 5-11-3(A)         | <p><b><u>Step 2: Petition to Form District</u></b></p> <ul style="list-style-type: none"> <li>• File petition with City (Town) Clerk signed by owners of 25% of land (by assessed valuation) proposed to be included within the PID (if petition is signed by all owners of land within the proposed district and is approved by the City, the City may waive notice, publication, hearing and election – 5-11-7(I))</li> </ul>  |  | Applicant/Developer   |
| 5-11-3(A)(3)      | <ul style="list-style-type: none"> <li>• File General Plan with the City (Town) Clerk for the proposed PID describing the infrastructure to be financed and/or acquired a map of the boundaries of the District, cost estimates, proposed financing methods and anticipated tax levies, special levies or charges</li> </ul>   |  | Applicant/Developer   |
|                   | <p><b><u>Step 3: Review and Due Diligence of the Project</u></b></p> <ul style="list-style-type: none"> <li>• Preparation of all draft financing documents</li> <li>• Review of project’s public purpose, project demographics, cost of infrastructure, absorption, financing structure, etc.</li> </ul>   | (Depends on complexity of District and infrastructure) | Bond Counsel,<br>Applicant’s Counsel<br><br>Applicant/Developer, City Representatives, Financial Advisor, Underwriter |
| 5-11-3(A)         | <p><b><u>Step 4: Adoption of Resolution of Intent to Form District</u></b></p> <ul style="list-style-type: none"> <li>• Resolution must include: <ul style="list-style-type: none"> <li>○ Area to be included with the proposed PID</li> <li>○ Purpose of the PID</li> <li>○ General Plan filing</li> <li>○ Rate, method of apportionment and manner of collection of special levy, if proposed</li> <li>○ Setting Public Hearing on formation of District</li> <li>○ Location for filing objections to formation</li> <li>○ Acknowledgement that ad valorem taxes, special levies or fees may be imposed</li> <li>○ District Board make-up</li> </ul> </li> </ul> | (7-15 days to place on Council agenda)                 | Bond Counsel,<br>City Clerk   |

| Statute Reference | Activity   | General Time Period                           | Responsible Parties           |
|-------------------|--|---|-------------------------------|
| 5-11-4            | <b><u>Step 5: Notice of Resolution and Hearing</u></b> <ul style="list-style-type: none"> <li>• Mail notice and Resolution of Intent to Property Owners at least 30 days prior to hearing</li> <li>• Public notice and Resolution of Intent once a week for two successive weeks, the last publication of which shall be at least 30 days prior to hearing</li> <li>• File Affidavits of mailing and publication</li> <li>• Objections to formation of PID must be filed prior to 5:00 p.m. on the day preceding the hearing date</li> </ul>   | 30 days after adoption of Resolution          | Bond Counsel,<br>City Clerk   |
| 5-11-5(A)         |  |   | City Clerk                    |
| 5-11-5            | <b><u>Step 6: Public Hearing</u></b> <ul style="list-style-type: none"> <li>• Conduct Public Hearing to receive protests for formation of PID</li> <li>• Review Financial Feasibility Study</li> </ul>   | Within 30 days from end of posting period     | City Council                  |
| 5-11-6(A)         | <b><u>Step 7: City Council Action</u></b> <ul style="list-style-type: none"> <li>• Resolution Ordering Formation of PID; Resolution may delete property, change General Plans, etc.</li> <li>• Order election of property owners to form PID <ul style="list-style-type: none"> <li>○ All qualified landowner electors and any resident qualified electors</li> <li>○ Acreage voting, rounded up to the nearest 1/5 acre</li> </ul> </li> </ul>  | May be at same meeting as Public Hearing      | City Council                  |
| 5-11-6(A) & (B)   |  |   | City Council                  |
| 5-11-7            | <b><u>Step 8: Election Procedures and Election</u></b> <ul style="list-style-type: none"> <li>• Post notice of election of 3 locations within District not less than 20 days prior to election</li> <li>• Publish notice of election once a week for 2 weeks stating: <ul style="list-style-type: none"> <li>○ Location of polling place</li> <li>○ Hours poles are open</li> <li>○ Boundaries of District</li> <li>○ Bond election to include amount of bond authorization; term of bonds (not to exceed 30 years) and maximum interest rate</li> <li>○ If ad valorem tax election-maximum tax rate, purpose of levy and maximum tax rate, if any</li> <li>○ General Plan filed</li> <li>○ That the imposition of property taxes or special levies will result in a lien on property in the district</li> </ul> </li> <li>• Conduct election (must be approved by 75% of votes cast)</li> </ul> | At least 20 days after adoption of Resolution | Bond Counsel<br>City Clerk    |
| 5-11-7            |  | No later than 20 days after posting           | Bond Counsel,<br>City Clerk   |
| 5-11-7(G)         |  | • Canvass election                            | Within 30 days after election |

| Statute Reference          | Activity   | General Time Period        | Responsible Parties  |
|----------------------------|--|----------------------------|--|
| 5-11-8<br>5-11-9<br>5-11-8 | <p><b><u>Step 9: Resolution Ordering Formation</u></b></p> <ul style="list-style-type: none"> <li>• Upon approval at the election, City Council adopts resolution ordering formation of the PID</li> <li>• City may authorize appointment of separate district board and appoint board members</li> <li>• Deliver copy of resolution forming PID to County Assessor, and to the county in which district is located and New Mexico Department of Finance and Administration</li> <li>• Record Notice of Formation with County Clerk</li> </ul> | 7-10 days after election   | City Council<br><br>Bond Counsel,<br>City Clerk<br><br>City Clerk                      |
|                            | <p><b><u>Step 10: Sale of Bonds (Type of Bonds Issued Determines Bond Sale Process)</u></b></p> <ul style="list-style-type: none"> <li>• Preparation of all financing documents and offering document</li> <li>• Sale of bonds/or private placement</li> <li>• Closing of bond issue; delivery of bond proceeds</li> </ul>   | 2-6 weeks after Resolution | Bond Counsel,<br>Developer's Counsel,<br>City Staff, Financial<br>Advisor, Underwriter |