City of Benson
City Council Communication

Regular Meeting **January 25, 2016**

To: Mayor and Council Agenda Item # 7

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 6-2016 of the Mayor and Council of the City of Benson, Arizona, adopting Policies for the Consideration of Formation of Special Taxing Districts within the City's Jurisdictional Boundaries

Discussion:

The policies for formation of special taxing districts have been presented to the Mayor and Council in several worksessions and have been discussed at several meetings. Mayor and Council have asked for input by El Dorado, as the projection is that it will be the first developer to apply for formation of districts. Staff has resolved the remaining outstanding issues to the policies, including consulting with El Dorado. The draft policies on applications to form Special Taxing Districts is now being proposed for Council consideration.

Staff Recommendation:

The adoption of the City of Benson, Arizona Policy Guidelines and Application Procedures for Special Taxing Districts

RESOLUTION 6-2016

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ADOPTING POLICIES FOR THE CONSIDERATION OF FORMATION OF SPECIAL TAXING DISTRICTS WITHIN THE CITY'S JURISDICTIONAL BOUNDARIES

WHEREAS, a development within the City of Benson has stated an intention to request that the City form one or more special taxing districts within the corporate boundaries of the City;

WHEREAS, the City is authorized pursuant to A.R.S. Title 48 to accept and form various special taxing districts if in the determination of the Mayor and Council they are beneficial for the purpose intended and to the City and its residents and future residents;

WHEREAS, Mayor and Council of the City of Benson determine that it is in the public interest to provide for policies to govern the consideration of applications to form and for certain administrative matters for special taxing districts within the City of Benson;

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council as follows:

Section 1
The Mayor and City Council approve and adopt the special taxing district policies attached to this Resolution as official policies and guidelines for the consideration of possible use of and administration of special taxing districts within the City of Benson.

Section 2
That the City Manager is authorized and directed to apply the attached policies and review any and all applications requesting the formation of special taxing districts in accordance with the adopted policies, including to recommend in connection with the Mayor and Council's consideration of any application any variations from the policies that should be considered with a specific application.

Section 3
This resolution shall become effective in the manner provided by law and the adopted policies may be used in consideration of any future application for the formation of a special taxing district.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA this 25th day of January, 2016.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MESCH, CLARK AND ROTHSCHILD, P.C.
By Gary J. Cohen
City's Attorney

MESCH
CLARK
ROTHSCHILD

MEMORANDUM

TO: Hon. Mayor King and Council

FROM: K. Guckenberger; P. Loucks

DATE: January 15, 2016

RE: CFP Application Fee

The CFD policies are provided for the consideration of the Mayor and Council in what should be their final form. The following modifications have been made from what was presented on January 11 after consultation with El Dorado:

- § 1.8: change "bidding" procedures to "procurement" procedures.
- § 1.9: Districts would be able to use bond funds to purchase off-site real estate or develop off-site improvements if approved by the District Board. This maintains the general statement that funds should primarily be used on site to conform with the law on bond sales that the funds must be spent for the purpose of improving the property, while allowing flexibility for improvements like constructing a well off site to provide water for the development.
- § 3.2: the fee structure has been modified closer to the Council's direction from December 14 and not as Council instructed on December 21. After speaking with Dustin DeSpain, he is comfortable with a $50,000 FLAT reimbursement for staff time and costs plus a $50,000 DEPOSIT for the reimbursement of third-party fees. The definition of third-parties remains as it did before – anyone who is not employed by the City.
- § 4.3: the City will be provided with financial records prior to the sale of bonds and given an opportunity to comment to the Board (if the Mayor and Council at the time of establishing a District that an independent board is appropriate).
- § 4.8(e): allowing more debt to be issued against the property in private placement if a third-party feasibility report provides an opinion that repayment is feasible.
- Other typographic and clarifying changes

We recommend approval of the policies as now presented.

CITY OF BENSON ARIZONA
POLICY GUIDELINES AND APPLICATION PROCEDURES
FOR
SPECIAL TAXING DISTRICTS

In order to secure for the City of Benson, Arizona (the "City") the benefits of Title 48 of the Arizona Revised Statutes, including benefits arising from the creation of Community Facilities Districts ("CFDs") and Revitalization Districts ("RDs") and to support projects that address a public need and provide a public benefit as well as to promote the best interests of the City, the following Policy Guidelines and Application Procedures are adopted by the City Council.

CFDs and RDs (either of which may be referred to generally as a "District") can provide a funding mechanism to finance construction, operation, and maintenance of public infrastructure within the boundaries of the District and to better enable the provision of public services within District boundaries. The underlying principles behind this policy are the protection of the public interest and benefit, assuring fairness in the application of special taxes, incurring creditworthiness of any formed special taxing districts and issued bonds, protecting the City's creditworthiness and financial position, and assuring that applicants for special taxing districts pay all costs associated with the formation of the District. It is for these reasons that the City Council has established these Policy Guidelines and Application Procedures.

Considering that the establishment of a Special Taxing District is the legal equivalent of the establishment of an entirely new municipal entity within the boundaries of the City, the City Council believes that the formation of a District should be entered into carefully, to ensure its lasting success.

ARTICLE 1
General Policies

1.1 Special Taxing Districts should be utilized primarily in connection with the financing of public infrastructure and improvements for development of master planned developments, whether residential or commercial.

1.2 Priority should be given to Districts that provide an enhanced level of public infrastructure amenities and/or public services. Public Improvements financed by a District should be in conformance with the City's General Development Plan in order to encourage orderly growth and development. Districts will be considered primarily for the financing of public facilities for which a public entity will be the owner or will have maintenance and operating responsibilities.

1.3 The composition of a District's governing Board shall be determined as provided by State Statute, as applicable.

1.4 The City will encourage an area to be governed by as few Districts as possible, and a preference will be given to one master District. This policy is adopted to provide ease of administration and the largest tax/revenue base possible. The decision to form a District shall be a decision of the City Council exercised in its sole and absolute discretion, as provided by State Statute.

1.5 The day-to-day responsibilities of the District will be performed as the governing Board determines appropriate, including by hiring staff or by contracting with the City to

perform work. The City Council will accept an application to allow an outside board of directors to govern a District where the applicant can demonstrate to the satisfaction of the City, reviewing the application with its absolute discretion, that adequate safeguards and controls are in place to ensure the soundness of any District financing program.

1.6 Unless otherwise agreed to by the City, every District formed by the Mayor and Council must be self-supporting from the standpoints of financing, operations and maintenance, and no City funds will be used (except on a reimbursement basis for a term of less than thirty days as otherwise approved by the Mayor and Council) for District purposes. Notwithstanding anything contained herein, none of the City's property, full faith and credit, or taxing power or any other revenues of the City shall be pledged or utilized for the payment of any District obligation or indebtedness.

1.7 The District board will determine, in its sole and absolute discretion, the amount, timing and form of financing to be used by a District after review of the project feasibility report. Advisory committees may, at the sole option of the District board, be utilized for all lawful purposes.

1.8 The District will construct all improvements utilizing public procurement procedures mandated by applicable law.

1.9 The District will not use bond proceeds to purchase rights-of-way or other real property (including easements) to be used for infrastructure improvements without the express approval of its Board.

1.10 Unless otherwise agreed to by the City, all costs of administration and operation of the District and the operation and maintenance of public infrastructure in the District shall be the responsibility of the District, the developer/landowner, applicable homeowners associations, or any combination of the foregoing, as may be acceptable to the City and the District. The City will consider accepting public roadways and other improvements only after the completion of applicable warranty periods.

1.11 These Policy Guidelines and Application Procedures may be modified from time to time by the City Council to address special circumstances. Any applicant will be given the opportunity to propose alternative approaches to those provided herein, with the understanding that concerns of the City must be adequately addressed before the staff of the City will recommend approval of a District to the City Council.

1.12 The City will not consider an application to form a District on a property on which the City Manager determines that a Development Agreement is necessary to identify any factor allowed by State statute until after the Development Agreement is adopted by all parties.

ARTICLE 2
Content of Application

The application to the City to form a Special Taxing District shall submit the following information to the City. The purpose of these submittals is to allow City staff and the Mayor and Council to better understand the proposed development and District(s) and is not intended to be a guaranty of how the development will proceed. The City recognizes that the District's governing Board will be required to make additional decisions about financing improvements as the project is developed.

2.1 A description of the proposed District including a legal description of its boundaries and addresses of all persons or entities with any ownership interest in the property, and the names and addresses of any qualified electors located within the proposed boundaries. A current title report and a certificate from the county elections department shall be submitted as evidence of the names of persons with ownership interests and for the purpose of identifying qualified electors, respectively. The description must contain an analysis of the appropriateness of the District boundaries and discuss public need and benefit. A single application may request the formation of multiple Districts to serve a single project.

2.2 A general description of the types of public infrastructure to be financed by the District, including the estimated construction or acquisition costs of the public infrastructure, the annual operation and maintenance costs of public infrastructure such as traffic control, water, or wastewater and the governmental approvals that will be required for both the public and private infrastructure improvements to be constructed and operated.

2.3 A proposed project schedule for commencement and completion of (a) the public infrastructure and (b) the private development.

2.4 A financing plan for the public infrastructure, including both capital and operating/maintenance costs.

2.5 A pro forma financing plan for the entire project (or such phases of the project that are expected to be constructed within five (5) years of submission of the Application) covering both the public infrastructure and the private development. The study may be conducted by the Developer and should include:

a. An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other District costs will be allocated and what will be the impact to the ultimate end users of the property, specifically projected property taxes and property tax rates, special assessments, fees, charges and any other costs that would be borne by property in the District. The analysis should also address the impact these costs will have on the marketability of the private development and a comparison of proposed tax rates or charges within the proposed District contrasted to the tax rates and charges in adjoining and similar areas outside of the proposed District. It will be necessary to include within this analysis a proposed schedule for the sale of bonds.

b. A financing plan for the private development in the District.

c. A market absorption study for the private development in the District. Such study shall include estimates of the revenue to be generated by the development and an estimate

of the ability of the market to absorb the development as well as a market absorption calendar for the private development.

d. A $.30 per $100 of assessed value ad valorem tax upon the District taxable property as a projection of the District's administrative, operation and maintenance expenses.

2.6 If not otherwise included in the financing plan, a description of the proposed equity contribution(s) from the applicant/landowner and a calendar showing the timing and sources of such equity contribution(s).

2.7 A description of the applicant's professional experience and evidence demonstrating its financial capacity (including financial statements) to undertake the development associated with the public infrastructure and the private development.

2.8 A disclosure form that will be used to explain the expected and possible tax, assessment and other financial impacts of the debt financing to prospective landowners with the District. (Landowners/developers are required to describe in their promotional material the financial and other relative impacts on the development being included in a District.)

2.9 An operating plan for the District, i.e., what functions the District would provide and how the operation and maintenance of the infrastructure and all other services in the District would be provided.

2.10 Unless the applicant has already submitted such information through a zoning, plan amendment, CMP or other similar process, a description of how the proposed District meets the existing development objectives of the City, including the degree to which the District is consistent with the goals of the City's General Development Plan for promoting orderly development, consistent with growth management policies and zoning requirements and the degree to which the land use plan for the District is consistent with the City's General Development Plan Map for the area.

2.11 The City shall not reimburse a developer for any construction costs for improvements constructed by or reimbursed by a District. If reimbursement is subject to alternative methods of financing, the Applicant's financing plan shall clarify under which method it will seek reimbursement to guaranty that no double payments will be made.

ARTICLE 3
Application Procedures

3.1 Five copies of the application for the formation of a District shall be submitted to the City Manager of the City who will coordinate an inter-departmental analysis of each application.

3.2 At the time of submission of the application, the applicant shall pay the following fees to the City to be applied by the City in its sole discretion to the City's costs incurred in connection with processing and reviewing the application and the formation of the District: a non-refundable application fee of $50,000, to pay the City for all internal staff time and expenses and a refundable deposit of $50,000, including the costs incurred by the City for any third-party review of the application, including its consultants, financial advisors, and legal advisors (the "Reimbursement

Funds"). When the Reimbursement Funds are expended, an accounting will be made to the applicant for all costs incurred by the City and an additional $25,000 will be requested and must be promptly paid as additional Reimbursement Funds. In a single application requesting the formation of multiple districts to serve one project, the City shall charge only one Non-Refundable Application Fee per proposed financing plan. The unexpended balance of the Reimbursement Funds will be transferred to the District following its formation as a basis for its operating fund.

3.33 After the application fees and deposit are submitted, the City Manager shall arrange a pre-application conference with the appropriate City staff (and/or consultants) for the purpose of reviewing the available information for conformity with City policies. The pre-application conference may be waived by mutual agreement between the City Manager and the applicant.

3.44 If, following the pre-application conference or any other time during the application process City staff requests additional information reasonably related to the formation of a District on applicant's property, the applicant shall provide such supplemental information requested.

3.5 After analysis of an application as supplemented, City staff, under the direction of the City Manager shall prepare a report including recommendations relating to the District and an analysis of the impact of the formation of the District and its effects on the City. This report may provide a recommended disposition of the application and any additional requirements that will be placed on the developer/landowner and the District.

3.65 If all costs billed have been paid and all other required agreements are submitted by the applicant to the City by a date at least fifteen days prior to the date of the meeting of the council at which the application is to be considered and if the application meets the qualifications provided herein, the application, along with any report and recommendations by City staff, will be forwarded to the City Council.

3.76 If the City Council approves an application for formation of a District, the applying developer/landowner and the staff of the City shall coordinate a schedule of events for formation of the District.

3.8 For new development, the applicant or property owner must demonstrate its financial plan for the property within the District and ability to pay all special taxes during the build-out period. Additional security such as credit enhancement may be required by the City in certain instances. If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution in a form and upon terms and conditions satisfactory to the City. All fees payable on the letter of credit or other security shall be the sole responsibility of the applicant or developer, not the City or District. In its discretion, the City Manager may deem satisfied any requirement that the applicant submit financial submittals if the manager determines that an appropriate inspection of the applicant's (and any related entity necessary to review) financial records and information satisfies the requirements of these policies.

ARTICLE 4

District Operations and Debt Financing

4.1 Upon formation of a District the applicant/landowner shall deposit with the District a nonrefundable administrative expense fee in the amount of $50,000 for a first District covering a designated parcel and an additional $10,000 for each additional District covering serving the same development. The administrative expense fee shall be applied by the District to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the District or its public improvements. A District development agreement shall address subsequent funding sources for administrative costs and other issues as the parties may agree.

4.2 In order to assist the District to be self-supporting for its administrative, operation and maintenance expenses, the City, unless otherwise agreed by the District Board, will require the imposition of a $.30 per $100 of assessed value ad valorem tax upon the District taxable property. Failure to impose such tax will relieve the City and the District from undertaking any obligations or operations. Any unexpended administrative assessment will be used to pay down the outstanding balance of issued bonds.

4.3 In connection with any request for debt financing, applicant shall provide a current appraisal of the fair cash market value of the property within the proposed District which is to be taxed or assessed, prepared by a person who is designated as a Member Appraisal Institute ("MAI") and a certified general real estate appraiser (such person hereafter referred to as an "MAI Appraiser"), with a copy to the City, which shall be afforded the ability within 30 days to comment on the appraiser and the appraisal. Generally, the appraisal shall be based on the wholesale, bulk sale of the property in the District.

4.4 The amount of debt of a District may not have any substantial direct or indirect negative impacts on the debt or financing capabilities of the City.

4.5 The debt imposed on the District shall not impose an unreasonable financial burden on future owners of property included within the district. If an applicant seeks to establish multiple Districts for the same development (either in separate zones or overlapping districts), the financial impact of all District-proposed debt financing shall not impose disparate financial burdens on similarly-situated properties.

4.6 General obligation bonds of the District are secured by an ad valorem tax on all taxable property located within the District. An applicant for general obligation bonds should describe in each project feasibility report the following:

a. The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed and the full cash value and assessed valuation of the taxable property as shown on the most recent assessment roll.

b. The amount and timing of District general obligation bonds to be issued.

c. The expected market absorption of development within the District.

d. The effect of the District bond issuance on District tax rates, calculated as of the beginning, midway through and at the end of the market absorption period or based on the phasing of the project to be financed, as applicable.

e. Estimated savings, if any, to residents in the form of reduced sales prices which are projected to result from District financing.

f. Any plan for subsidizing District tax rates.

g. Whether the bonds will be publicly offered or privately placed. Publicly offered bonds must be rated in one of the four highest investment grade ratings from either Standard & Poor's Corporation, Moody's Investors Services, Inc., or other nationally recognized bond rating services. Privately placed bonds need not be rated; however, the purchasers of such general obligation bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the Securities and Exchange Commission), an "accredited investor" (as such term is defined in Rule 501 of Regulation D of the Securities and Exchange Commission) or a sophisticated municipal market participant ("SMMP") and must agree not to resell the bonds except to such entities in a private placement, provided, however, that a purchaser of general obligation bonds in a private placement may sell the bonds in a public offering if the District board approves the public sale and the bonds have an investment grade rating.

4.7 Revenue bonds shall be payable from a District revenue source. An applicant for revenue bonds must describe in each project feasibility report, the following:

a. The current direct and overlapping tax and assessment burdens on the taxable property within the District and the full cash value and assessed valuation of that taxable property as shown on the most recent assessment roll.

b. The revenue source from which bonds will be payable. The City reserves the right to require the applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.

c. The expected market absorption of development within the District.

d. The amount and timing of District revenue bonds to be issued.

e. The financial impact of the proposed issue(s) on prospective residents.

f. Whether the bonds will be publicly offered or privately placed. Publicly offered revenue bonds must be rated in one of the four highest investment grade ratings from either Standard & Poor's Corporation, Moody's Investors Service, Inc., or other nationally recognized bond rating services. Privately placed bonds need not be rated; however, the purchasers of such revenue bonds must be "qualified institutional buyers" or an "accredited investor" (as such term is defined in Rule 501 of Regulation D of the Securities and Exchange Commission) and must agree not to sell the bonds except to qualified institutional buyers, an accredited investor or SMMP in a private placement, provided, however, that a purchaser of a revenue bond in a private placement may sell the bonds in a public offering if the District board approves the public sale and the bonds have an investment grade rating.

4.8 Assessment bonds shall be secured by first lien (subject only to the lien for general taxes and prior special assessments) on the property benefited. Applicants for assessment bonds should describe in each project feasibility report, the following:

a. The current direct and overlapping tax and assessment burdens on real property to comprise the District and the full cash value and assessed valuation of that property as shown on the most recent assessment roll.

b. The amount and timing of District assessment bonds to be issued.

c. The expected market absorption of development within the District.

d. The assessment burden to be placed on prospective residents.

e. Whether the assessment bonds will be publicly offered or privately placed. Publicly offered assessment bonds must be rated in one of the four highest investment grade ratings from either Standard & Poor's Corporation, Moody's Investors Service, Inc., or other nationally recognized bond rating services or in an unrated public offering, an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the District board, in its sole discretion, shall indicate a land value (prior to improvements being installed) to debt ratio of at least 4 to 1 prior to the issuance of debt. Privately placed bonds need not be rated; however the purchasers of such assessment bonds must be "qualified institutional buyers", an "accredited investor" (as such term is defined in Rule 501 of Regulation D of the Securities and Exchange Commission) or a SMMP, who must agree to hold the bonds for their own account or agree not to sell the bonds except to "qualified institutional buyers", "accredited investor" or SMMP. Further, in connection with the sale of unrated privately placed assessment bonds, the District board must have received an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the District, in its sole discretion, indicating a land value to debt ratio of at least 4 to 1 as of a date prior to the issuance of debt. Provided, however, such ratio may be lowered to 3:1 if the bonds are sold in a private placement and the District delivers to the City before the sale of any such Bonds and independent third party feasibility report that taking into account housing and commercial building absorption, appraised values, that, in the opinion of such independent 3rd party, such valuations and absorption rates are reasonable and the underwriter of such Bonds believes that based upon the assumptions in the feasibility report, the Bonds will be repaid.

4.9 Notwithstanding the restrictions pertaining to public sales and private placements of the bonds set forth in this Article 4, the restrictions may be modified if other financing structures are presented which, in the sole discretion of the District board, provide other means to address District concerns.

ARTICLE 5
Financing Considerations

5.1 The applicant or developer/landowner shall provide at least $0.25 in infrastructure or community improvements for each $1.00 of debt to be issued by a District to finance

public infrastructure purposes. If agreed to by the District, prior infrastructure and community improvements constructed or acquired by the applicant or the developer/landowner and benefiting the property within the District may be included in calculating the applicant's or developer/landowner's compliance with this Section 5.1.

5.2 If allowed by law, all bond issues shall include a debt service reserve fund in an amount acceptable to the District board.

5.3 A District's general obligation bond authorization District shall expire no later than thirty years from the date of voter authorization.

5.4 The applicant, developer/landowner (or such other third party acceptable to the City and District) for any District bonds, shall indemnify, defend, and hold harmless the City and the District and their agents, consultants, officers and employees for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, administration of the District, the offer and sale of District bonds, the levying by the District of any tax, assessment or charge and the operation and maintenance of public infrastructure financed or owned by the District.

5.5 Unless otherwise provided to the City pursuant to other requirements, prior to District financing and acquisition by the District or City, the District or City will require an independent environmental report or assessment of any real property which will be dedicated to or otherwise owned, leased or operated by the City or the District and a proposed form or indemnity agreement with respect to all environmental law liability.

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