



VILLAGE OF LOS LUNAS ORDINANCE 448

An Ordinance Amending the Village of Los Lunas Code of Ordinances by Adding a New Title 19, Establishing a Title for Special Improvement Districts, and Establishing Application Procedures and Review Criteria for Public Improvement Districts

WHEREAS, the Village of Los Lunas, New Mexico (the "Village") is a unit of local government under the laws of the State of New Mexico (the "State"); and

WHEREAS, NMSA 1978 Chapter 5, Article 11 (the Public Improvement District Act) allows for the creation of Public Improvement Districts within municipalities in the State; and

WHEREAS, the Village Council ("Council"), the governing body of Los Lunas, desires to establish application procedures for Public Improvement Districts, or PIDs, submitted to the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF LOS LUNAS, COUNTY OF VALENCIA, STATE OF NEW MEXICO THAT,

TITLE 19 (SPECIAL IMPROVEMENT DISTRICTS), CHAPTER 19.04 (PUBLIC IMPROVEMENT DISTRICTS) OF THE MUNICIPAL CODE BE ESTABLISHED AND CODIFIED AS FOLLOWS:

Chapter 19.04: Public Improvement Districts

§19.04.010 – General policies.

- A. *General use.* PIDs should be utilized primarily in connection with the financing of infrastructure for development of residential projects, master planned communities or substantial commercial development and redevelopment. PIDs may also be utilized to provide an enhanced level of public infrastructure amenities and/or municipal services. In order to avoid inefficient use of the limited resources of the Village, unless otherwise agreed by the Council, PIDs will not be approved to finance less than three million dollars (\$3,000,000.00). The Village's approval of a PID shall be based on an applicant's demonstration, to the reasonable satisfaction of the Village, that the PID will provide benefit to the end-users of the PID-financed infrastructure or to the Village which would not otherwise be available, which benefit may include, without limitation, additional amenities, services, increased quality of development or pricing benefits. A master planned

development which has had a fiscal impact analysis which demonstrates that the cost of infrastructure delivery to the development will not have a net cost to the Village will be deemed to have met the end-user benefit requirements of the Village. Public improvements financed by a PID shall conform to applicable Village policies for development. Except as expressly agreed by the Village based upon its determination that Village-owned utilities will not be adversely affected, "stand alone" utilities which compete directly or indirectly with Village services shall not be financed through PIDs. Real property dedications and conveyances required by existing Village policies for development, growth management and conservation shall remain in effect notwithstanding the establishment of a PID. The Council may agree to participate in various projects depending on project type, location and cost when such factors have a clear benefit to the public. Public infrastructure proposed for the PID shall be concurred to by the Council and must be of the type specified in §5-11-2(M) NMSA 1978 as amended, namely:

1. Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
2. Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;
3. 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;
4. Highways, streets, roadways, bridges, crossing structures and parking facilities including all areas for vehicular use for travel, ingress, egress and parking;
5. Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;
6. Pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation;
7. Landscaping, including earthworks, structure, lakes and other water features, plants, trees and related water delivery systems;
8. Public buildings, public safety facilities and fire protection and police facilities;
9. Electrical generation, transmission and distribution facilities;
10. Natural gas distribution facilities;
11. Lighting systems;
12. Cable or other telecommunications lines and related equipment;
13. Traffic control systems and devices, including signals, controls, markings and signage;
14. School sites and facilities with the consent of the governing board of the public school district for which the site or facility is to be acquired, constructed or renovated;
15. Library and other public educational or cultural facilities;
16. Equipment, vehicles, furnishings, and other personally related to the items listed in this subsection; and
17. Inspection, construction management and program management costs.

B. *Cost and Expenses.* Unless otherwise agreed by the Village, all costs and expenses incurred by the Village in connection with (i) its review of a PID application; and (ii) the formation of a PID shall be paid by the applicant through advance payments as provided

in this chapter. Costs and expenses incurred by the Village in connection with the application and formation of a PID shall not be a liability of the Village. Costs and expenses shall include the costs of services rendered by Village staff and services rendered by outside consultants who may be retained by the Village including, but not limited to, bond counsel, financial advisers, engineers, appraisers, tax consultants and attorneys, at the rates normally charged by those consultants.

- C. *Reimbursement.* If authorized by the PID, all or part of such advanced payments may be reimbursed to the applicant from a PID tax levy, PID assessments, PID revenues or PID bond proceeds, provided that such reimbursement shall be in conformity with federal law, state law and these guidelines.
- D. *Construction or Finance of Improvements.* Except as otherwise agreed by the Village, PIDs will construct or finance improvements on such terms with such persons as the PID board of directors determines to be appropriate, in accordance with §5-11-10(D) NMSA 1978, as amended.
- E. *Cost of Administration and Operation.* Unless otherwise agreed by the Village, all costs of administration and operation of the PID and the operation and maintenance of public infrastructure in the PID which has not been dedicated to and accepted by the Village, shall be the responsibility of the PID, the applicant, applicable homeowners' associations, or any combination of the foregoing, as may be acceptable to the Village and the PID.
- F. *PID Boards of Directors—Delegated Authority.* PIDs will initially be governed by a five-member board of directors appointed by the Council in accordance with §5-11-9(A) NMSA 1978 which shall be composed of two full-time employees of the Village, two persons selected by the applicant with the approval of the Council, and a fifth member selected by the other four members. The Council may, in accordance with the Public Improvement District Act (“Act”), delegate certain responsibilities of governance of PIDs to public officials employed by the Village. Day-to-day responsibilities of PIDs will be performed by outside personnel pursuant to a PID development agreement entered into pursuant to section 5-11-10(A)(2) NMSA 1978 or Village staff. In order to avoid confusion with other development agreements entered into by the parties with respect to real property within the Village, a development agreement entered into regarding the administration of a PID may be denominated as a “PID Development Agreement”. Each PID Development Agreement shall be in implementation of this chapter and upon execution by the Village and the applicant. In the event of a conflict between this chapter and the PID Development Agreement, the PID Development Agreement shall supersede this chapter. On a date not more than six years after the formation of a PID, in accordance with the Act, new PID board members shall be elected or the governance of the PID shall revert to five members of the Council.
- G. *Self-Supporting—No impact on Village.* Unless otherwise agreed to by the Village, PIDs shall be self-supporting with regard to financing, operations and maintenance, and Village funds will not be used for PID purposes. Notwithstanding anything contained in this chapter, neither the Village’s property, its full faith and credit nor its taxing power

shall be pledged to the payment of any PID obligation or indebtedness. The amount and structure of debt of a PID shall not have any direct negative material impact on the Village's debt ratings with Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investor Services, Inc., or any other nationally recognized bond rating agency service then rating the Village's outstanding bonds.

- H. *PID development agreement—feasibility reports.* The amount, timing and form of financing to be used by a PID shall be determined by the PID board based upon a project feasibility report and established by agreement of the Village, the PID and the applicant through a PID Development Agreement pursuant to Section 5-11-10(A)(2) NMSA 1978.

§19.04.020 – Pre-application meeting with village staff.

- A. *PID Pre-application with Village Staff.* The Village has appointed a PID review staff, which shall be composed of the Village administrator, the Village finance director, the Village community development director, the Village public works director and the Village attorney, or successors in function to those Village officials. Potential applicants for a PID are required to meet with Village staff for pre-application meeting in order for the PID review staff to accomplish the following preliminary tasks:
1. Make an initial determination whether the proposed PID is consistent with the Village's growth policies, land use and development policies, zoning and other applicable regulation;
 2. Make an initial determination whether the PID applicant's ownership interest, delegation of ownership rights or other legal control of the real property proposed to be included in the PID to have standing to submit a PID application;
 3. Establish a proposed schedule for (i) The applicant's submittal of a PID application, (ii) Village PID staff review of the application for completeness, (iii) the Planning and Zoning Commission (the "Commission") meeting for review and recommendation to Council, and (iv) Council meeting for consideration of and action on the application; and
 4. Identify any related Village approvals that will be required to permit the PID, if approved by the Council, to construct the proposed improvements.
- B. *Role of PID review staff.* The determinations by PID review staff shall be of an advisory nature, for the purposes of assisting applicants in submitting completed applications with detail and information required to enable meaningful consideration by the Council. Staff determinations and recommendations shall be considered by but not be binding on the Council.

§19.04.030 – Application contents.

After the applicant has met with the Village PID review staff, the applicant may submit a PID application to the Village. Each application shall, at a minimum, contain the following:

- A. *Legal description—Qualified Electors' consent.* A description of the proposed PID, including a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the property and the names and addresses of any qualified electors, as defined in §3-1-2(K) NMSA 1978, who are located within the proposed PID boundaries. A current title report on the property shall be submitted as evidence of the names of persons or entities with any interest in the land. The applicant shall also submit a list of qualified resident electors provided by the county board of elections residing within the proposed PID boundaries. The application shall include evidence satisfactory to the Village of the irrevocable consent of the number of property owners and qualified electors required by the Act for the creation of the PID.
- B. *General plan.* A detailed description of the types of public infrastructure to be financed by the PID, including the estimated construction or acquisition costs of the public infrastructure projection of working capital needs, including adequate funds for repair and replacement of infrastructure, the annual operation and maintenance costs of the public infrastructure and the governmental approvals that will be required for both the public and private improvements to be constructed and operated. The description shall contain adequate information to establish financial parameters for the operation and financing of the PID as set forth in §19.04.050 of this chapter.
- C. *Preliminary Financing Plan and Schedule.*
1. An estimated project schedule for construction commencement and completion of (1) The public infrastructure; and (2) The private development, which shall include a financing plan for the public infrastructure, including both capital and operating/maintenance costs for all undedicated improvements undertaken by the PID.
 2. The financing plan may include projections for a period covering (i) the expected term of existence of the PID; (ii) thirty (30) years following the creation of a PID property tax or special levy; or (iii) the bond payment date of any bonds issued by the PID, whichever shall be the longest. The financing plan should include (1) the estimated cost of improvements; (2) projected costs of maintenance after construction; and (3) a preliminary description of the improvements to be owned and maintained by the Village and the PID.
- D. *Feasibility study.* A financial feasibility study prepared by an independent professional with appropriate expertise for the entire project (or such phases of the project that are expected to be constructed during the term of the development), covering both the public infrastructure and the private development. The feasibility study should include:
1. An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other PID costs will impact the ultimate end-users of the property; and
 2. Specifically projected property taxes, property tax rates, special levies, special assessments, fees, charges and other costs that would be imposed on property in the PID, and analysis of potential the impact that such taxes, levies and charges will

have on marketability of the private development; comparison of proposed tax rates and charges in adjoining the similar areas outside of the proposed district.

- E. *Appraisal.* To the extent applicable to a request for debt financing, the applicant shall provide a current appraisal (the "MAI appraisal") of the fair market value of the property within the proposed PID, including (i) The improvements to be financed by the PID; (ii) Other improvements being constructed by the applicant during the PID construction period, the completion of which is guaranteed by the applicant. The MAI appraisal shall be prepared by a person who is designated as a Member Appraisal Institute ("MAI") and a certified general real estate appraiser (such person hereafter referred to as an "MAI appraiser"). The form and substances of the MAI appraisal shall be acceptable to the Village, in its discretion.
- F. *Market Demand Study.* To the extent applicable a market demand study for private development in the PID shall be prepared or reviewed and concurred in by an independent consultant acceptable to the Village. Such study shall include estimates of the revenue to be generated by the development and estimated market absorption of the development.
- G. *Applicant financial information.* A description of the applicant's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the public infrastructure and private development. Such information may be accompanied by audited, reviewed or at a minimum, compiled financial statements for the most recent three years and a description of past projects and disclosure of any material litigation.
- H. *Draft Disclosures.* An initial draft form of disclosure to prospective PID landowners which may be filed and recorded with the county clerk at the time of each sale of real property within the PID, describing the anticipated and maximum tax, special levy, assessment, charge, and any other financial obligation that is anticipated to be imposed on real property within the PID, which shall be subject to Village review and approval.
- I. *Operating plan.* A draft operating plan for the PID describing the operation and maintenance of the infrastructure and all other services in the PID, the estimated costs of the same, and whether operation and maintenance is proposed to be provided by the PID or the Village.
- J. *Compliance Certificate.* A certificate that the PID will comply with the Village's current zoning requirements.
- K. *Other information.* Such other information as the Village may reasonably require after its initial review of the application, including preliminary legal opinions, further information regarding the relationship of the plan to Village's development objectives, additional proof of financial capability, business references, and term sheets for financing and financial

commitment letters. Following the application conference, the Village shall, within fifteen (15) days, provide as complete as practicable a list of additional information items needed.

§19.04.040 – Application and approval process.

- A. *Application submission.* One print copy and one digital pdf version of an application for the formation of a PID and an application fee of thirty thousand dollars (\$30,000.00) (the “application fee”) shall be submitted to the Village administrator.
- B. *Application fees.* The application fee shall be utilized by the Village for initial application review and project feasibility analysis, including the payment of the Village's financial and legal advisors, at their customary rates, to assist in the evaluation of the feasibility of the proposed PID project. Ten thousand dollars (\$10,000.00) of the application fee shall be nonrefundable. The balance of the application fee shall be used by the Village in connection with its review of the application. If the applicant withdraws its application prior to the Village's completion of its application review, the Village shall remit the unused portion (if any), of the application fee (but not the nonrefundable ten thousand dollars (\$10,000.00) portion) to the applicant. Upon the applicant's request, the Village will provide an accounting of expenditures of funds advanced. Any unused portion of advances shall be refunded to the application at such time as the Village determines that all costs and expenses have been paid. The Village and its legal consultants shall use reasonable efforts to determine whether any features of a PID proposed in an application appear not to be feasible, and to advise the applicant early in the review process, for the purpose of avoiding unnecessary additional costs of review.
- C. *Post-application conference.* After the application and the application fee has been submitted, the Village administrator, or designee thereof, will arrange a conference with the appropriate PID review staff for the purpose of reviewing the application and determining whether the application is complete. If, following the application conference or any other time during the application process, PID review staff requests additional information, the applicant shall provide any and all supplemental information requested, in accordance with the provisions of §19.04.030 (K).
- D. *PID review staff report.* After analysis of an application is supplemented, PID review staff, under the direction of the Village administrator, or designee thereof, will prepare a report including recommendations relating to the PID, an analysis of the impact of the formation of the PID and its effects on the Village. The report may provide a recommended disposition of the application and any additional requirements that are recommended in connection with the applicant and/or the PID. If all costs billed to or incurred by the Village have been paid by the applicant by a date at least fourteen (14) days prior to the date of the meeting of the Council at which the appropriate resolution(s) approving the application is to be introduced, and if the application meets the qualifications provided herein, the application, along with any report and recommendations by PID review staff, will be forwarded to the Council, along with drafts of the appropriate implementing resolution(s).

- E. *PID development agreement.* If the Council approves an application for formation of a PID, the applying applicant and the staff of the Village shall coordinate a schedule of events for the formation of the PID and shall negotiate an appropriate PID development agreement between the Village and the applicant which shall be entered into in connection with the formation of the PID which, if approved by the Council, shall incorporate the recommendations of the PID review staff relating to such PID, and any other restrictions, provisions and agreements required by the Village.
- F. *Preliminary Approval.* An applicant may request preliminary, nonbinding approval of its PID application by the Council (“preliminary approval”).
1. A request for preliminary approval will be considered following payment of the initial application fee and information such as the following:
 - a. A description of the proposed PID's boundaries;
 - b. A description of the improvements to be constructed by the applicant;
 - c. The estimated construction costs of the improvements and anticipated completion time;
 - d. A description, by category, of improvements and related costs to be financed by the PID;
 - e. The estimated issuance amount of PID
 - f. The total annual special levy amount (i.e., estimated aggregate annual debt service on bonds); and
 - g. The maximum annual PID property tax or, in the case of a special levy, the allocation method and maximum special levy per dwelling unit (single-family residences) or per acre (multifamily and commercial), and method by which the levy will be allocated from bulk tract to finished lots.
 2. The PID review staff report will advise the Council whether preliminary approval is recommended, not recommended, or that no recommendation is made.
 3. Preliminary approval shall not require review by the Commission, and such approval shall be made by simple motion rather than by resolution.
- G. *Additional Fees.* An applicant that has received preliminary approval may be required to make such additional advances as the Village staff determines are necessary to pay the costs of reviewing the applicant's request for formal approval of the formation of the PID based on a PID development agreement within the meaning of the Act. However, an applicant may be required to submit an additional initial application fee if, in Village staff's determination, the application for formal approval of a *PID* departs substantially from the parameters set forth in the application for preliminary approval.
- H. *Notice of Public Hearing.* Pursuant to §5-11-4 NMSA 1978, no PID application shall be acted on without a duly noticed public hearing. The notice of public hearing shall be mailed by registered or certified United States mail, postage prepaid, to all owners of real property in the proposed district at least thirty days prior to the date of the hearing. In addition, notice shall be published once each week for two successive weeks in a newspaper of general circulation in the Village. The last publication shall be at least three days before the date of the hearing. The notice shall comply with requirements of Subsections B and C of §5-11-4 NMSA 1978.

- I. *Planning and Zoning Commission Review.* The Commission shall issue a recommendation to Council on any PID application. This recommendation shall certify that the PID application has met the criteria established in §19.04.030 – Application contents, and shall note any comments or concerns regarding the PID application for Council’s review. The Commission shall review the PID application at a regularly scheduled bi-monthly Commission meeting. The Commission may review a draft of the PID application rather than the final version, if delaying the Commission review would cause the application review to exceed the 90 day review period described in 5-11-3(A) NMSA 1978.
- J. *Approval of formation and PID financing.* The Council may consider the granting of formal approval to the formation of the PID development agreement that may be approved prior to or concurrently with the approval of the formation of the PID. The Council may include in its approval of the PID formation the issuance of one or more series of PID bonds, subject to the terms and conditions of the PID development agreement. The Council’s approval of PID formation and issuance of bonds shall be conditioned on the requirement that the PID shall utilize bond counsel, underwriters and/or other consultants selected by or otherwise acceptable to the written approval by the Council.
- K. *Extension of application review period beyond 90 days.* In the event that the Village is unable to take formal action on the PID application within the 90 day review period described in §5-11-3(A) NMSA 1978, the developer will withdraw and resubmit its application with no penalty or additional fee.

§19.04.050 – PID operations and debt financing.

- A. *PID administration expense fee.* In addition to the amounts set forth in §19.04.040 (B), upon formation of a PID the applicant shall deposit with the PID a nonrefundable administrative expense fee in the amount of five thousand dollars (\$5,000.00). The administrative expense fee shall be applied by the PID to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the PID or its public improvements. From time to time, upon depletion of the administrative expense fee, the PID may request, and the developer/landowner shall promptly deposit with the PID, additional amounts deemed by the Village to be necessary for the purposes contemplated in this section. Nothing in this subsection preclude the reimbursement of such expenses from PID taxes, levies, charges or bond proceeds, as permitted by the Act.
- B. *Administration, operation and maintenance charge.* In order to provide for the PID to be self-supporting of its administrative, operation and maintenance expenses, and to finance services in addition to those provided by the Village, the Village may condition its approval of a PID, on the PID's imposition of up to three dollars (\$3.00) per one thousand dollars (\$1,000.00) of assessed value ad valorem tax, not as tax or charge of the Village, but in accordance with the provisions of section 5-11-23 NMSA 1978, as amended, upon the PID

taxable property which is not Village-owned infrastructure otherwise maintained by the Village; provided, however, that to the extent permitted by law the PID shall be entitled to charge such rates, fees, and charges to property owners as are necessary to address any shortfall in the expense required to operate and maintain the PID's improvements, and that such rates, fees and charges shall be established in the development agreement for the PID.

C. *General obligation bonds.* General obligation bonds of the PID will be payable from an unlimited valorem tax on taxable property located within the PID, designated by the general plan for the PID, as subject to the PID property tax, as required by the Act.

1. An applicant for general obligation bonds shall describe to the PID board of directors in a 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 fair market value and assessed valuation of the taxable property as shown on the most recent assessment roll;

b. The projected amount and timing of PID general obligation bonds to be used;

c. The projected market absorption of the development within the PID;

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

e. An estimate of the applicant's construction costs associated with the public improvements, in excess of the estimated PID -funded costs of the project; and

f. The necessity of the applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the applicant.

2. The value to lien ratio, after the issuance of the bonds and construction of the improvements to be financed by the PID, will be at least three to one based on an MAI appraisal.

3. The projected tax rate for debt service set forth in feasibility report shall be established in the PID development agreement, and may include provisions which (i) Limit the maximum tax rate that will be imposed by the PID for payment of debt service on PID bonds, (ii) Require a contribution agreement from the applicant for the payment of debt service in the event of a shortfall in revenue from the PID tax revenues projected in connection with, and all the time of, PID formation, or (iii) Establish, to the Village's satisfaction, other protection for homeowners or other end-users of the property located in the PID against excessive tax rates in the event that PID indebtedness exceeds PID tax revenues available to pay debt service in any particular year.

D. *Special levy bonds.* Special levy bond shall be secured by a first lien (co-equal to the lien for general taxes and prior special assessments) on the property benefited in the manner contemplated by section 5-11-20(G) NMSA 1978.

1. Applicants for special levy bonds shall describe in each project feasibility report, the following:
 - a. The current direct and overlapping tax and assessment burden and special levy on real property to comprise the PID and the full cash value and assessed valuation of that property as shown on the most recent assessment roll;
 - b. The projected amount and timing of the PID special levy bonds to be issued;
 - c. The projected market absorption of development on the PID;
 - d. The projected special levy burden to be placed on the assessed parcels and the anticipated mythology of assessment;
 - e. An estimate of the applicant's construction cost associated with the public improvements in excess of the estimated PID -funded costs of the project; and
 - f. The necessity of the applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the applicant.
2. The value to lien ratio, after the issuance of the bonds and construction of the improvements to be financed by the PID, will be at least three to one based on an MAI appraisal.
3. At the time the PID is formed, the maximum allowable rate of special levy for residential property shall not cause the total tax and assessment obligation for such property, including projected ad valorem taxes, special levies and special assessments, to exceed 1.99 percent of the anticipated market value of residential property as determined by a then current MAI appraisal. The 1.99 percent shall include all known and authorized, but unissued debt and any other anticipated fees or assessments which may be imposed by the Village or special district on a property within the PID, i.e., special assessment districts, including the proposed maximum special levy, except service charges for utilities and refuse.

E. *Revenue bonds.* Revenue bonds shall be payable from a PID revenue source.

1. An applicant for revenue bonds shall describe in each project feasibility report, the following:
 - a. The current fee structure for comparable services or otherwise incurred by persons who would be responsible for paying the proposed rates, fees, and charges;
 - b. The revenue source from which bonds will be payable. The Village 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 projected market absorption of development within the PID;
 - d. The projected amount and timing of PID revenue bonds to be issued;
 - e. The financial impact of the proposed rates, fees, and charges on prospective residents or other users of such rates, fees and charges;

- f. An estimate of the applicant's construction cost associated with the public improvements in excess of the estimated PID -funded costs of the project; and
- g. The necessity of the applicant and the PID shall enter into an as appropriate contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the applicant.

- F. *Suitability.* The Village intends that the PID only have the power to sell the proposed bonds to suitable investors. If the proposed bond issue is not rated (either on its own merits or by the use of appropriate credit enhancement) in one of the three highest investment grade ratings issued by the Standards & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investors Services, Inc. or any other nationally recognized bond-rating agency service, then the bonds must have minimal denominations of one hundred thousand dollars (\$100,000.00) and be available for purchase and restricted with respect to resale to "Qualified Institutional Buyers" (as such term is defined in Rule 144A of the Securities and Exchange Commission) or to "accredited investors" (as such term is defined in Rule 501 of Regulation D of the Rules Governing the Limited Offering and Sale Securities without Registration under the Securities Act of 1933). It is the intention of the Village to have investor suitability achieved through the rating requirements set forth in the preceding sentence or the establishment of large minimum denominations (e.g., not less than one hundred thousand dollars (\$100,000.00)) and, if the Village determines it is appropriate, covenants limiting secondary market sales of PID bonds through registered broker-dealers. Notwithstanding the restrictions pertaining to public sales and private placements of bonds set forth in this section, the restrictions may be modified or relaxed if other financing structures or features are presented which, in the sole discretion of the Council, provide other means to address investor suitability concerns. The minimum denomination requirements set forth above for the PID bonds which are initially issued without rating shall not continue to apply if the PID subsequently obtains a rating in one of the three highest rating categories as provided in this section.
- G. *Contribution.* At the time the PID is formed financial projections must demonstrate that the landowners shall provide over the life of the project at least twenty-five cents (\$0.25) in infrastructure or community improvement (which may include, for example, dry utilities and other improvements for the benefit of the property owners within the PID, irrespective of whether such improvements are publicly or privately owned) for each one dollar (\$1.00) of debt to be issued by a PID to finance public infrastructure purposes, except as otherwise determined by the Village in its discretion. The Village, in its discretion, may condition approval of PID formation on additional financing requirements, including, without limitation, the deposit of cash, or letter of credit (or similar credit facility) as security for completion of the infrastructure development. If agreed to by the Village or PID board, as applicable, in the discretion of the Village or PID board, infrastructure and community improvement constructed or acquired by the applicant prior to, contemporaneously with or subsequent to the formation of the PID may be included in calculating the applicants compliance with this subsection; provided, that no improvements which have not already been constructed or acquired shall be included in that calculation unless the completion of

the improvements is guaranteed or secured by an appropriate completion bond, cash deposit or other security acceptable to the Village or PID board, as applicable.

- H. *Debt service reserve funds.* If allowed by law (including any applicable federal laws relating to the tax-exempt status of the bonds), all bond issues may include a debt service reserve fund in an amount acceptable to the PID board.
- I. *Environment Site Assessments.* Unless otherwise provided to the Village pursuant to the other requirements prior to PID financing and acquisition by the PID or Village, the PID and Village 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 Village or the PID and a proposed form or indemnity agreement with respect to all environmental law liability.
- J. *Refinancing and refunding bonds.* Refinancing and refunding of bonds issued on behalf of a PID will be considered utilizing the same criteria set forth in this section and shall be subject to the review and approval of the Council or its designee. Refinancing and refunding will be expected to either (1) Generate interest rate or net present value savings; (2) Restructure payment of principal; (3) Reimburse the applicant for actual costs expended for public improvements contemplated to be part of the proposed project; or (4) eliminate burdensome covenants.
- K. *Cost of change.* Applicants shall be responsible for all additional costs and expenses incurred in any special levy or property tax modifications resulting from changes to the development not anticipated in the application.

§19.04.060 – Miscellaneous

- A. *Discretion and waiver.* Based upon the recommendations of PID review staff and/or financing legal consultants retained by the Village, the Council may approve the PID applications which do not meet the foregoing criteria, if the Council, in its discretion, determines that the particular features of the proposed PID, likelihood that the PID's projects and purposes will be successfully completed and mechanisms protecting against default on bonds, warrant that the foregoing criteria need not be applied. In making that determination, the Council may consider an opinion of an underwriter with a reputation satisfactory to the Council that the particular features of the PID, the proposed projects and the bonds proposed to be issued can be successfully marketed and that the plan of finance is feasible.
- B. *Timeframe to commence PID development activities.* The Village will require any PID within its boundary make an annual report to Council on the status of development. The report shall include the estimated construction periods for any and all infrastructure expected to be constructed within the boundaries of the PID. Annual reports shall be made at the first Council meeting of each calendar year. If construction has not begun prior to

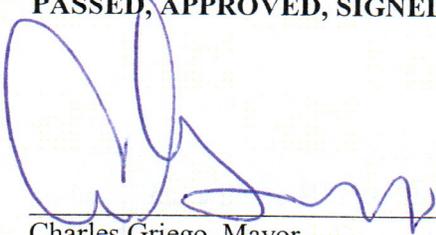
the presentation of the fifth annual report, then Council may review the parameters established by the PID formation resolution.

- C. *Purchaser disclosure—marketing materials.* Each purchaser of real property located in the PID shall execute an acknowledgement of the PID disclosure form. The applicant shall also supply the Village with a copy of the receipt. (Applicants are required to describe in their promotional material the financial and other relative impacts on the development being induced in a PID. Copies of the disclosure form must be placed on file with the Village.)

- D. *Indemnity.* The applicant (or such other third party acceptable to the Village and the PID), shall indemnify the Village and the PID and their agents and employees and shall hold the Village and the PID and their agents, officers and employees harmless for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, administration of the PID, the offer and sale of PID bonds, the levying by the PID of any tax, assessment, special levy or charge and the operation and maintenance of public infrastructure financed or owned by the PID.

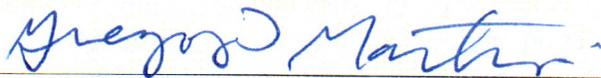
- E. *Amendment.* All amendments to this chapter shall have a prospective effect only and shall not in any way effect or otherwise modify the approval of preexisting PID.

PASSED, APPROVED, SIGNED, AND ADOPTED THIS 10th DAY OF OCTOBER, 2019.



Charles Griego, Mayor
Village of Los Lunas

ATTEST:



Gregory D. Martin, Village Administrator
Village of Los Lunas