

## **Chapter X - DEVELOPMENT IMPACT FEE ORDINANCE**

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### **Sec. X-1. - Title.**

This chapter shall be known as the “2011 Development Impact Fee Ordinance of the [City/Town] of \_\_\_\_\_,” and may be cited as such.<sup>1</sup>

### **Sec. X-2. - Legislative intent and purpose.**

This Chapter is adopted for the purpose of promoting the health, safety and general welfare of the residents of the [City/Town] by:

- A. Requiring new development to pay its proportionate share of the costs incurred by the [City/Town] that are associated with providing Necessary Public Services to new development.

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<sup>1</sup> Each City or Town should select either Option 1 (w/o advisory committee) or Option 2 (w/advisory committee).

- B. Setting forth standards and procedures for creating and assessing development impact fees consistent with the requirements of Arizona Revised Statutes (“A.R.S.”) § 9-463.05, including requirements pursuant to A.R.S. § 9-463.05, subsection K that, on or before August 1, 2014, the [City/Town] replace its development impact fees that were adopted prior to January 1, 2012 with development impact fees adopted pursuant to the requirements of A.R.S. § 9-463.05 as amended by the state legislature in SB 1525, Fiftieth Legislature, First Regular Session.
- C. Providing for the temporary continuation of certain development impact fees adopted prior to January 1, 2012 until otherwise replaced pursuant to this Chapter, or longer where such development impact fees were pledged to support Financing or Debt for a Grandfathered Facility.
- D. Setting forth procedures for administering the development impact fee program, including mandatory offsets, Credits, and refunds of development impact fees. All development impact fee assessments, offsets, Credits, or refunds must be administered in accordance with the provisions of this Chapter.

This Chapter shall not affect the [City/Town]’s zoning authority or its authority to adopt or amend its General Plan, provided that planning and zoning activities by the [City/Town] may require amendments to development impact fees as provided in Section X-7 of this Chapter.

### **Sec. X-3. - Definitions.**

When used in this chapter, the terms listed below shall have the following meanings unless the context requires otherwise. Singular terms shall include their plural.

*Applicant:* A person who applies to the [City/Town] for a Building Permit.

*Administrative Charge:* A non-refundable fee for the administration of the development impact fee program that is charged at the time a building permit or service connection is obtained pursuant to Section X-11 of this Chapter.

*Appurtenance:* Any fixed machinery or equipment, structure, or other fixture associated with a Capital Facility that is necessary or convenient to the operation, use, or maintenance of a Capital Facility.

*Aquatic Center:* A facility primarily designed to host non-recreational competitive functions generally occurring within water, including, but not limited to, water polo games, swimming meets, and diving events. Such facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities, including but not limited to, locker rooms, offices, snack bars, bleacher seating, and shade structures.

*Building Permit:* Any permit issued by the [City/Town] that authorizes vertical construction, increases square footage, authorizes changes to land use, or provides for the addition of a residential or non-residential point of demand to a water or wastewater system.

*Capital Facility:* An asset having a Useful Life of three or more years that is a component of one or more Categories of Necessary Public Service provided by the [City/Town]. A Capital Facility may include any associated purchase of real property, architectural and engineering services leading to the design and construction of buildings and facilities, improvements to existing facilities, improvements to or expansions of existing facilities, and associated financing and professional services. Wherever used herein, “infrastructure” shall have the same meaning as “Capital Facilities.”

*Category of Necessary Public Service:* A category of Necessary Public Services for which the [City/Town] is authorized to assess development impact fees, as further defined in Section X-8(A)(1) of this Chapter.

*Category of Development:* A specific category of residential, commercial, or industrial development against which a development impact fee is calculated and assessed. The [City/Town] assesses development impact fees against the following categories of development: [at a minimum include commercial, residential, and industrial categories].

[City: The City of \_\_\_\_\_, Arizona.]

*Commercial Land Use:* [definition to be inserted by City/Town based on definition used in planning and/or zoning classifications].

*Credit:* A reduction in an assessed development impact fee resulting from developer contributions to, payments for, construction of, or dedications for capital facilities included in an Infrastructure Improvements Plan pursuant to Section X-12 of this Chapter (or as otherwise permitted by this Chapter).

*Credit Agreement:* A written agreement between the [City/Town] and the developer(s) of a subject development that allocates Credits to the development pursuant to Section X-12 of this Chapter. A Credit Agreement may be included as part of a Development Agreement pursuant to Section X-13 of this Chapter.

*Credit Allocation:* A term used to describe when Credits are distributed to a particular development or parcel of land after execution of a Credit Agreement, but are not yet issued.

*Credit Issuance:* A term used to describe when the amount of an assessed development impact fee attributable to a particular development or parcel of land is reduced by applying a Credit allocation.

*Developer:* An individual, group of individuals, partnership, corporation, limited liability company, association, municipal corporation, state agency, or other person or entity undertaking land development activity, and their respective successors and assigns.

*Development Agreement:* An agreement prepared in accordance with the requirements of Section X-13 of this Chapter and Section 9-500.05, Arizona Revised Statutes.

*Direct Benefit:* A benefit to an EDU resulting from a Capital Facility that: (a) addresses the need for a Necessary Public Service created in whole or in part by the EDU; and that (b)

meets any one of the following criteria: (i) the Capital Facility is located in the immediate area of the EDU; (ii) the Capital Facility substitutes for, or eliminates the need for a Capital Facility that would have otherwise have been needed in the immediate area of the EDU to maintain the [City/Town]’s level of service; or (iii) the Capital Facility is a regional facility designed to provide services proportional to the demand created by the EDU in the portion of the community within which the EDU is located, and such services are not otherwise provided by a Capital Facility in the Service Area.

*Dwelling Unit:* A house, apartment, mobile home or trailer, group of rooms, or single room occupied as separate living quarters or, if vacant, intended for occupancy as separate living quarters.

*Equipment:* Machinery, tools, materials, and other supplies, not including vehicles, that are needed by a Capital Facility to provide the level of service specified by the Infrastructure Improvement Plan.

*Equivalent Demand Unit (EDU):* A standardized measure of the demand that a particular Category of Development places on each Category of Necessary Public Services, in relation to the demand placed on the same Category of Necessary Public Services by a detached single-family Dwelling Unit. The EDU factor for a detached single-family Dwelling Unit is one (1), and the EDU factor for another other land use type is represented as a ratio determined by dividing an indicator of the use type demand by an indicator of the detached single-family Dwelling Unit demand. An EDU shall be a “service unit” for purposes of paragraph (T), subparagraph (10) of A.R.S. § 9-463.05.

*Excluded Library Facility:* Library facilities for which development impact fees may not be charged pursuant to A.R.S. § 9-463.05, including that portion of any Library facility that exceeds 10,000 square feet, and Equipment, Vehicles or Appurtenances associated with Library operations.

*Excluded Park Facility:* Park and recreational facilities for which development impact fees may not be charged pursuant to A.R.S. § 9-463.05, including amusement parks, aquariums, Aquatic Centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, or zoo facilities.

*Fee Study:* A written report developed pursuant to Section X-9 of this Chapter that identifies the methodology for calculating the amount of each development impact fee, explains the relationship between the development impact fee to be assessed and the Plan-Based Cost per EDU calculated in the Infrastructure Improvements Plan, and which meets other requirements set forth in A.R.S. § Section 9-463.05.

*Financing or Debt:* Any debt, bond, note, loan, interfund loan, fund transfer or other obligation utilized to finance the construction or expansion of a Capital Facility.

*Fire Protection:* A Category of Necessary Public Services that includes fire stations, fire Equipment, fire Vehicles and all Appurtenances for fire stations. Fire Protection does not include Vehicles or Equipment used to provide administrative services, or helicopters or airplanes. Fire Protection does not include any facility that is used for training firefighters from more than one station or substation.

*Grandfathered Facilities:* Capital Facilities provided through Financing or Debt incurred before June 1, 2011 for which a development impact fee has been Pledged towards repayment as described in Section X-11(D) of this Chapter.

*General Plan:* Refers to the overall land-use plan for the [City/Town] establishing areas of the [City/Town] for different purposes, zones and activities adopted pursuant to [City/Town] Resolution XXXX, as amended, and including [specific area plans] adopted pursuant to [City/Town] Resolution XXXX.

*Gross Impact Fee:* The total development impact fee to be assessed against a subject development on a per unit basis, prior to subtraction of any Credits.

*Industrial Land Use:* [definition to be inserted by City/Town consistent with that used in planning and/or zoning classifications].

*Infrastructure Improvements Plan:* A document or series of documents that meet the requirements set forth in A.R.S. § 9-463.05, including those adopted pursuant to Section X-9 of this Chapter to cover any Category or combination of Categories of Necessary Public Services.

[Other Potential Land Use Definitions: Multifamily, Religious, Retail, Office, Warehouse, Manufacturing]

*Institutional Land Use:* [Blank: to be inserted by City/Town].

*Interim Fee Schedule:* Any development impact fee schedule adopted prior to January 1, 2012 in accordance with then-applicable law, and which shall expire not later than August 1, 2014 pursuant to Section X-11 of this Chapter.

*Land Use Assumptions:* Projections of changes in land uses, densities, intensities and population for a Service Area over a period of at least ten years as specified in Section X-7 of this Chapter.

*Level of Service:* A quantitative and/or qualitative measure of a Necessary Public Service that will be provided by the [City/Town] to development in a particular Service Area, defined in terms of the relationship between service capacity and service demand, accessibility, response times, comfort or convenience of use, or other similar measures or combinations of measures. Level of Service may be measured differently for different Categories of Necessary Public Services, as identified in the applicable Infrastructure Improvements Plan.

*Library Facilities:* A Category of Necessary Public Services in which literary, musical, artistic, or reference materials are kept (materials may be kept in any form of media such as electronic, magnetic, or paper) for non-commercial use by the public in a facility providing a

Direct Benefit to development. Libraries do not include Excluded Library Facilities, although a Library may contain, provide access to, or otherwise support an Excluded Library Facility.

*Necessary Public Services:* “Necessary Public Services” shall have the meaning prescribed in A.R.S. 9-463.05, subsection T, paragraph 5.

*Offset:* An amount which is subtracted from the overall costs of providing Necessary Public Services to account for those capital components of infrastructure or associated debt that have been or will be paid for by a development through taxes, fees (except for development impact fees), and other revenue sources, as determined by the [City/Town] pursuant to Section X-8 of this Chapter.

*Parks and Recreational Facilities:* A Category of Necessary Public Services including but not limited to parks, swimming pools and related facilities and equipment located on real property not larger than 30 acres in area, as well as park facilities larger than 30 acres where such facilities provide a Direct Benefit. Parks and Recreational Facilities do not include Excluded Park Facilities, although Parks and Recreational Facilities may contain, provide access to, or otherwise support an Excluded Park Facility.

*Plan-Based Cost Per EDU:* The total future capital costs listed in the Infrastructure Improvements Plan for a Category of Necessary Public Services divided by the total new equivalent demand units projected in a particular Service Area for that Category of Necessary Public Services over the same time period.

*Pledged:* Where used with reference to a development impact fee, a development impact fee shall be considered “pledged” where it was identified by the [City/Town] as a source of payment or repayment for a Necessary Public Service for which a development impact fee was assessed pursuant to the then-applicable provisions of A.R.S. § 9-463.05.

*Police Facilities:* A Category of Necessary Public Services, including Vehicles and Equipment, that are used by law enforcement agencies to preserve the public peace, prevent crime, detect and arrest criminal offenders, protect the rights of persons and property, regulate and control motorized and pedestrian traffic, train sworn personnel, and/or provide and maintain police records, vehicles, equipment, and communications systems. Police Facilities do not include Vehicles and Equipment used to provide administrative services, or helicopters or airplanes. Police Facilities do not include any facility that is used for training officers from more than one station or substation.

*[Optional] Private School:* [Insert definition if the City/Town will not charge development impact fees against Private Schools] An institution of learning offering education for children which charges students tuition, including some or all of the grades from kindergarten through 12th grade. The site may contain athletic, dining, assembly and recreation facilities.

*[Optional] Public School:* [Insert definition if the City/Town will not charge development impact fees against Public Schools] An institution of learning offering free education for all children, including some or all of the grades from kindergarten through 12th grade. The site may contain athletic, dining, assembly and recreation facilities.

*Qualified Professional:* Any one of the following: (a) a professional engineer, surveyor, financial analyst or planner, or other licensed professional providing services within the scope of that person's education or experience related to [City/Town] planning, zoning, or impact development fees and holding a license issued by an agency or political subdivision of the State of Arizona; (b) a financial analyst, planner, or other non-licensed professional that is providing services within the scope of the person's education or experience related to [City/Town] planning, zoning, or impact development fees; or (c) any other person operating under the supervision of one or more of the above.

*Residential Land Use:* [definition to be inserted by City/Town consistent with definitions in other planning and/or zoning classifications].

*Service Area:* Any specified area within the boundaries of the [City/Town] within which: (a) the [City/Town] will provide a Category of Necessary Public Services to development at a planned Level of Service; and (b) within which (i) a Substantial Nexus exists between the Capital Facilities to be provided and the development to be served, or (ii) in the case of Library Facilities or a Park Facility larger than 30 acres, a Direct Benefit exists between the Library Facilities or Park Facilities and the development to be served, each as prescribed in the Infrastructure Improvements Plan. Some or all of the Capital Facilities providing service to a Service Area may be physically located outside of that Service Area provided that the required Substantial Nexus or Direct Benefit is demonstrated to exist.

*Street Facilities:* A Category of Necessary Public Services including arterial or collector streets or roads, traffic signals, rights-of-way, and improvements thereon, bridges, culverts, irrigation tiling, storm drains, and regional transportation facilities.<sup>2</sup>

*Storm Drainage:* A Category of Necessary Public Services including but not limited to storm sewers constructed in sizes needed to provide for stormwater management for areas beyond major street projects and stormwater detention/retention basins, tanks, pump stations and channels necessary to provide for proper stormwater management, including any appurtenances for those facilities.

*Subject Development:* A land area linked by a unified plan of development, which must be contiguous unless the land area is part of a development agreement executed in accordance with Section X-13 of this Chapter.

*Substantial Nexus:* A substantial nexus exists where the demand for Necessary Public Services that will be generated by an EDU can be reasonably quantified in terms of the burden it will impose on the available capacity of existing Capital Facilities and/or the need it will create for new or expanded Capital Facilities.

*Swimming Pool:* A public facility primarily designed and/or utilized for recreational non-competitive functions generally occurring within water, including, but not limited to, swimming classes, open public swimming sessions, and recreational league swimming/diving events. The

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<sup>2</sup> This definition may be narrowed, in all instances a municipality may collect fees for *fewer* capital facilities than are strictly allowed.

facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities.

[Town: The Town of \_\_\_\_\_, Arizona.]

*Useful Life:* The period of time in which an asset can reasonably be expected to be used under normal conditions, whether or not the asset will continue to be owned and operated by the [City/Town] over the entirety of such period.

*Vehicle:* Any device, structure, or conveyance utilized for transportation in the course of providing a particular Category of Necessary Public Services at a specified Level of Service, excluding helicopters and other aircraft.

*Wastewater:* A Category of Necessary Public Services including but not limited to sewers, lift stations, reclamation plants, wastewater treatment plants, and all other facilities for the collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.

*Water:* A Category of Necessary Public Services including but not limited to those facilities necessary to provide for water services to a development, including the acquisition, supply, transportation, treatment, purification and distribution of water, and any appurtenances to those facilities.

#### **Sec. X-4. – Applicability**

- A. Except as otherwise provided herein, from and after \_\_\_\_\_, this Chapter shall apply to all new development within any Service Area, except for the development of any [public school, private school or]<sup>3</sup> [City/Town] facility.
- B. The provisions of this Chapter shall apply to all of the territory within the corporate limits of the [City/Town] and within the [City/Town]’s water and wastewater service areas.
- C. The [City/Town] manager or his/her designee is authorized to make determinations regarding the application, administration and enforcement of the provisions of this Chapter.

#### **Sec. X-5. – Authority for Development Impact Fees**

- A. *Fee Study and Implementation.* The [City/Town] may assess and collect a development impact fee for costs of Necessary Public Services, including all professional services required for the preparation or revision of an Infrastructure Improvements Plan, Fee Study, development impact fee, and required reports or audits conducted pursuant to this Chapter. Development impact fees shall be subject to the following requirements:

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<sup>3</sup> Optional provision, if not selected delete the definitions of public and private schools.

1. The [City/Town] shall develop and adopt a Fee Study that analyzes and defines the development impact fees to be charged in each Service Area for each Capital Facility Category, based on the Infrastructure Improvements Plan and the Plan-Based Cost per EDU calculated pursuant to Section X-8(A)(12) of this Chapter.
  2. Development impact fees shall be assessed against all new commercial, residential, and industrial development, provided that the [City/Town] may assess different amounts of development impact fees against specific Categories of Development based on the actual burdens and costs that are associated with providing Necessary Public Services to that Category of Development. No development impact fee shall exceed the Plan-Based Cost per EDU for any Category of Development.
  3. No development impact fees shall be charged, or Credits issued, for any Capital Facility that does not fall within one of the Categories of Necessary Public Services for which development impact fees may be assessed as identified in Section X-8(A)(1) of this Chapter.
  4. Development impact fees may not be used to provide a higher level of service to existing development or to meet stricter safety, efficiency, environmental, or other regulatory standards to the extent that these are applied to existing Capital Facilities that are serving existing development.
  5. Development impact fees may not be used to pay the [City/Town]'s administrative, maintenance, or other operating costs.
  6. Projected interest charges and financing costs can only be included in development impact fees to the extent they represent principal and/or interest on the portion of any Financing or Debt used to finance the construction or expansion of a Capital Facility identified in the Infrastructure Improvements Plan.
  7. Except for any fees included on Interim Fee Schedules, all development impact fees charged by the [City/Town] must be included in a "Fee Schedule" prepared pursuant to this Chapter; example versions of all Fee Schedules are provided in Appendix A.
  8. All development impact fees shall meet the requirements of A.R.S. § 9-463.05.
- B. *Costs per EDU.* The Fee Study shall summarize the costs of Capital Facilities necessary to serve new development on a per EDU basis as defined and calculated in the Infrastructure Improvements Plan, including all required Offsets, and shall recommend a development impact fee structure for adoption by the [City/Town]. The actual impact fees to be assessed shall be disclosed and adopted in the form of impact fee schedules described in Appendix A to this Chapter.

- C. *Carry-over of Previously-Adopted Development Impact Fees and Grandfathered Facilities.* Notwithstanding the requirements of this Chapter, certain development impact fees adopted by the [City/Town] prior to the effective date of this Chapter shall continue in effect as follows:
1. Until August 1, 2014 or the date a new development impact fee is adopted for the applicable Category of Necessary Public Services in a Service Area pursuant to this Chapter, whichever occurs first, development impact fees adopted prior to January 1, 2012 shall continue in full force and effect to the extent that the development impact fee is used to provide a Category of Necessary Public Services that is authorized by Section X-8 of this Chapter. Development impact fees collected prior to January 1, 2012, shall be expended on Capital Facilities within the same Category of Necessary Public Services for which they were collected.
  2. The [City/Town] may continue to collect and use any development impact fee adopted before January 1, 2012, even if the development impact fee would not otherwise be permitted to be collected and spent pursuant to A.R.S. § 9-463.05, as amended by the state legislature in SB 1525, Fiftieth Legislature, First Regular Session, if either of the following apply:
    - a. Both of the following conditions are met:
      - i. Prior to June 1, 2011, the development impact fee was Pledged towards the repayment of Financing or Debt incurred by the [City/Town] to provide a Capital Facility.
      - ii. The applicable Capital Facility was included in the [City/Town]'s Infrastructure Improvements Plan, or other [City/Town] planning document prepared pursuant to applicable law, prior to June 1, 2011.
    - b. Before August 1, 2014, the [City/Town] uses the development impact fee to finance a Capital Facility in accordance with A.R.S. § 9-463.05, Subsection (S).
  3. Defined terms in any previously adopted fee schedule shall be interpreted according to the ordinance in effect at the time of their adoption.

#### **Sec. X-6. – Administration of Development Impact Fees**

- A. *Separate Accounts.* Development impact fees collected pursuant to this Chapter shall be placed in separate, interest-bearing accounts for each Capital Facility category within each Service Area.
- B. *Limitations on Use of Fees.* Development impact fees and any interest thereon collected pursuant to this Chapter shall be spent to provide Capital Facilities associated with the same Category of Necessary Public Services in the same

Service Area for which they were collected, including costs of Financing or Debt used by the [City/Town] to finance such Capital Facilities and other costs authorized by this Chapter that are included in the Infrastructure Improvements Plan.

- C. *Time Limit.* Development impact fees collected after July 31, 2014 shall be used within ten years of the date upon which they were collected for all Categories of Necessary Public Services except for Water and Wastewater Facilities. For Water Facilities or Wastewater Facilities collected after July 31, 2014, development impact fees must be used within 15 years of the date upon which they were collected.
- D. [OPTIONAL] *Administrative charge.* There shall be a non-refundable administrative charge equal to not more than \_\_\_ percent of the assessed gross development impact fee, which shall be due at the time development impact fees are paid. The amount of the administrative charge shall be established in the [City/Town]'s Fee Study, and shall not exceed the actual costs to the [City/Town] of administering the development impact fee program. Such administrative charge is not a development impact fee, and cannot be reduced by any Credits.

#### **Sec. X-7. – Land Use Assumptions**

The Infrastructure Improvements Plan shall be consistent with the [City/Town]'s current Land Use Assumptions for each Service Area and each Category of Necessary Public Services as adopted by the [City/Town] pursuant to A.R.S. § 463.05.

- A. *Reviewing the Land Use Assumptions.* Prior to the adoption or amendment of an Infrastructure Improvements Plan, the [City/Town] shall review and evaluate the Land Use Assumptions on which the Infrastructure Improvements Plan is to be based to ensure that the Land Use Assumptions within each Service Area conform with the General Plan.
- B. *Evaluating Necessary Changes.* If the Land Use Assumptions upon which an Infrastructure Improvements Plan is based have not been updated within the last five years, the [City/Town] shall evaluate the Land Use Assumptions to determine whether changes are necessary. If, after general evaluation, the [City/Town] determines that the Land Use Assumptions are still valid, the [City/Town] shall issue the report required in Section X-10 of this Chapter.
- C. *Required Modifications to Land Use Assumptions.* If the [City/Town] determines that changes to the Land Use Assumptions are necessary in order to adopt or amend an Infrastructure Improvements Plan, it shall make such changes as necessary to the Land Use Assumptions prior to or in conjunction with the review and approval of the Infrastructure Improvements Plan pursuant to Section X-10 of this Chapter.

## Sec. X-8. – Infrastructure Improvements Plan

- A. *Infrastructure Improvements Plan Contents.* The Infrastructure Improvements Plan shall be developed by Qualified Professionals and may be based upon or incorporated within the [City/Town]’s Capital Improvements Plan. The Infrastructure Improvements Plan shall:
1. Specify the Categories of Necessary Public Services for which the [City/Town] will impose a development impact fee, which may include any or all of the following:
    - a. Water
    - b. Wastewater
    - c. Stormwater, Drainage, and Flood Control
    - d. Libraries
    - e. Street Facilities
    - f. Fire Protection
    - g. Police
    - h. Parks
  2. Define and provide a map of one or more Service Areas within which the [City/Town] will provide each Category of Necessary Public Services for which development impact fees will be charged. Each Service Area must be defined in a manner that demonstrates a Substantial Nexus between the Capital Facilities to be provided in the Service Area and the development to be served by those Capital Facilities. For Libraries and for Parks larger than 30 acres, each Service Area must be defined in a manner that demonstrates a Direct Benefit between the Capital Facilities and the development to be served by those Capital Facilities. The [City/Town] may cover more than one category of Capital Facilities in the same Service Area provided that there is an independent Substantial Nexus or Direct Benefit, as applicable, between each Category of Necessary Public Services and the development to be served.
  3. Identify and describe the Land Use Assumptions upon which the Infrastructure Improvements Plan is based in each Service Area.
  4. Analyze and identify the existing Level of Service provided by the [City/Town] for each Category of Necessary Public Services in each Service Area.
  5. Identify the Level of Service to be provided by the [City/Town] for each Category of Necessary Public Services in each Service Area based on the relevant Land Use Assumptions and any established [City/Town] standards or policies related to required Levels of Service. If the [City/Town] provides the same Category of Necessary Public Services in more than one Service Area, the Infrastructure Improvements Plan shall

include a comparison of the Levels of Service to be provided in each Service Area.

6. For each Category of Necessary Public Services, analyze and identify the existing capacity of the Capital Facilities in each Service Area, the utilization of those Capital Facilities by existing development, and the available excess capacity of those Capital Facilities to serve new development, including any existing or planned commitments or agreements for the usage of such capacity. The Infrastructure Improvements Plan shall additionally identify: (a) any changes or upgrades to existing Capital Facilities that will be needed to achieve or maintain the planned Level of Service to existing development, or to meet new safety, efficiency, environmental, or other regulatory requirements for services provided to existing development; and (b) those portions of Capital Facilities that will be necessary to serve any new public school, private school, or [City/Town] facility for which development impact fees will not be assessed].<sup>4</sup>
7. Identify any Grandfathered Facilities and the impact thereof on the need for Necessary Public Services in each affected Service Area.
8. Estimate the total number of existing and future EDUs within each Service Area based on the [City/Town]'s Land Use Assumptions and projected new development in each Service Area.
9. Based on the analysis in paragraphs (3)-(6) above, provide a summary table or tables describing the Level of Service for each Category of Necessary Public Services by relating the required Capital Facilities to EDUs in each Service Area, and identifying the applicable EDU factor associated with each Category of Development.
10. For each Category of Necessary Public Services, analyze and identify the projected utilization of any available excess capacity in existing Capital Facilities, and all new or expanded Capital Facilities that will be required to provide and maintain the planned Level of Service in each Service Area as a result of the new projected development in that Service Area, for a period not to exceed ten years. Nothing in this Subsection shall prohibit the [City/Town] from additionally including in its Infrastructure Improvements Plan projected utilization of, or needs for, Capital Facilities for a period longer than ten years, provided that the costs of such Capital Facilities are excluded from the calculation of the Plan-Based Cost per EDU.
11. For each Category of Necessary Public Services, estimate the total cost of any available excess capacity and/or new or expanded Capital Facilities

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<sup>4</sup> This provision only necessary if schools and or other [City/Town] facilities will be exempt from development impact fees in Section X-4.

that will be required to serve new development, including costs of land acquisition, improvements, engineering and architectural services, studies leading to design, design, construction, financing, and administrative costs, as well as projected costs of inflation. Such total costs shall not include costs for ongoing operation and maintenance of Capital Facilities, nor for replacement of Capital Facilities to the extent that such replacement is necessary to serve existing development. If the Infrastructure Improvements Plan includes changes or upgrades to existing Capital Facilities that will be needed to achieve or maintain the planned Level of Service to existing development, or to meet new regulatory requirements for services provided to existing development, such costs shall be identified and distinguished in the Infrastructure Improvements Plan.

12. Forecast the revenues from taxes, fees, assessments or other sources that will be available to fund the new or expanded Capital Facilities identified in the Infrastructure Improvements Plan, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions. The Infrastructure Improvements Plan shall additionally estimate the time required to finance, construct and implement the new or expanded Capital Facilities.
13. Calculate required Offsets as follows:
  - a. From the forecasted revenues in Subsection (12) of this Section, identify those sources of revenue that: (i) are attributable to new development, and (ii) will contribute to paying for the capital costs of Capital Facilities.
  - b. For each source and amount of revenue identified pursuant to paragraph (a) of this Subsection, calculate the relative contribution of each Category of Development to paying for the capital costs of Capital Facilities in each Service Area.
  - c. Based on the relative contributions identified pursuant to paragraph (b) of this subsection, for each Category of Necessary Public Services, calculate the total Offset to be provided to each Category of Development in each Service Area.
  - d. For each Category of Necessary Public Services, convert the total Offset to be provided to each Category of Development in each Service Area into an offset amount per EDU by dividing the total Offset for each Category of Development by the number of EDUs associated with that Category of Development.

- e. Beginning August 1, 2014, for purposes of calculating the required Offset, if the [City/Town] imposes a construction, contracting, or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate that is imposed on the majority of other transaction privilege tax classifications in the [City/Town], the entire excess portion of the construction, contracting, or similar excise tax shall be treated as a contribution to the capital costs of Capital Facilities provided to new development unless the excess portion is already utilized for such purpose pursuant to this Section.
- f. In determining the amount of required Offset for land included in a community facilities district established under A.R.S. Title 48, Chapter 4, Article 6, the [City/Town] shall take into account any Capital Facilities provided by the district that are included in the Infrastructure Improvements Plan and the capital costs paid by the district for such Capital Facilities, and shall offset impact fees assessed within the community facilities district proportionally.

14. Calculate the Plan-Based Cost per EDU by:

- a. Dividing the total projected costs to provide Capital Facilities to new development for each Capital Facility Category in each Service Area as determined pursuant to Subsection (9) of this Section by the number of new EDUs projected for the Capital Facility Category in that Service Area over a period not to exceed ten years.
- b. Subtracting the required Offset per EDU calculated pursuant to Subsection (11) of this Section.

B. *Multiple Plans.* An Infrastructure Improvements Plan adopted pursuant to this Subsection may address one or more of the [City/Town]'s Categories of Necessary Public Services in any or all of the [City/Town]'s Service Areas. Each Capital Facility shall be subject to no more than one Infrastructure Improvements Plan at any given time.

C. *Reserved Capacity.* The [City/Town] may reserve capacity in an Infrastructure Improvements Plan to serve one or more planned future developments, including capacity reserved through a Development Agreement pursuant to Section X-13 of this Chapter. All reservations of existing capacity must be disclosed in the Infrastructure Improvements Plan at the time it is adopted.

### **X-9. – Adoption and Modification Procedures**

A. *Adopting or Amending the Infrastructure Improvements Plan.* The Infrastructure Improvements Plan shall be adopted or amended subject to the following procedures:

1. *Major Amendments to the Infrastructure Improvements Plan.* Except as provided in paragraph 2 of this Subsection, the adoption or amendment of an Infrastructure Improvement Plan shall occur at one or more public hearings according to the following schedule, and may occur concurrently with the adoption of an update of the [City/Town]'s Land Use Assumptions as provided in Section X-7 of this Chapter:
  - a. Sixty days before the first public hearing regarding a new or updated Infrastructure Improvements Plan, the [City/Town] shall provide public notice of the hearing and post the Infrastructure Improvements Plan and the underlying Land Use Assumptions on its website; the [City/Town] shall additionally make available to the public the documents used to prepare the Infrastructure Improvements Plan and underlying Land Use Assumptions and the amount of any proposed changes to the Plan-Based Cost per EDU.
  - b. The [City/Town] shall conduct a public hearing on the Infrastructure Improvements Plan and underlying Land Use Assumptions at least 30 days, but no more than 60 days, before approving or disapproving the Infrastructure Improvements Plan.
2. *Minor Amendments to the Infrastructure Improvements Plan.* Notwithstanding the other requirements of this Section, the [City/Town] may update the Infrastructure Improvements Plan and/or its underlying Land Use Assumptions without a public hearing if all of the following apply:
  - a. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not add any new Category of Necessary Public Services to any Service Area.
  - b. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not increase the Level of Service to be provided in any Service Area.
  - c. Based on an analysis of the Fee Study and the [City/Town]'s adopted development impact fee schedules, the changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions would not, individually or cumulatively with other amendments undertaken pursuant to this Subsection, have caused a development impact fee in any Service Area to have been increased by more than five per cent above the development impact fee that is provided in the current development impact fee schedule.
  - d. At least 30 days prior to the date that the any amendment pursuant to this Section is adopted, the [City/Town] shall post the proposed

amendments on the [City/Town] website [and shall provide the Advisory Committee with written notice of the proposed amendments and the basis for compliance with this Section].<sup>5</sup>

- B. *Amendments to the Fee Study.* Any adoption or amendment of a Fee Study and fee schedule shall occur at one or more public hearings according to the following schedule:
1. The first public hearing on the Fee Study must be held at least 30 days after the adoption or approval of and Infrastructure Improvements Plan as provided in subsection A of this Section. The [City/Town] must give at least 30 days notice prior to the hearing, provided that this notice may be given on the same day as the approval or disapproval of the Infrastructure Improvements Plan.
  2. The [City/Town] shall make the Infrastructure Improvements Plan and underlying Land Use Assumptions available to the public on the [City/Town]'s website 30 days prior to the public hearing described in Paragraph (1) of this Subsection.
  3. The Fee Study may be adopted by the [City/Town] no sooner than 30 days, and no later than 60 days, after the hearing described in Paragraph (1) of this Subsection.
  4. The development fee schedules in the Fee Study adopted pursuant to this subsection shall become effective 75 days after adoption of the Fee Study by the [City/Town].

**Sec. X-10. – Timing for the Renewal and Updating of the Infrastructure Improvements Plan and the Land Use Assumptions**

- A. *Renewing the Infrastructure Improvements Plan.* Except as provided in Subsection B of this Section, not later than every five years the [City/Town] shall update the applicable Infrastructure Improvements Plan and Fee Study related to each Category of Necessary Public Services pursuant to Section X-9 of this Chapter. Such five-year period shall be calculated from the date of the adoption of the Infrastructure Improvements Plan or the date of the adoption of the Fee Study, whichever occurs later.

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<sup>5</sup> If no Advisory Committee, delete this provision.

- B. *Determination of No Changes.* Notwithstanding Subsection (A) of this Section, if the [City/Town] determines that no changes to an Infrastructure Improvements Plan, underlying Land Use Assumptions, or Fee Study are needed, the [City/Town] may elect to continue the existing Infrastructure Improvements Plan and Fee Study without amendment by providing notice as follows:
1. Notice of the determination shall be published at least 180 days prior to the end of the five-year period described in Subsection A of this Section.
  2. The notice shall identify the Infrastructure Improvements Plan and Fee Study that shall continue in force without amendment.
  3. The notice shall provide a map and description of the Service Area(s) covered by such Infrastructure Improvements Plan and Fee Study.
  4. The notice shall identify an address to which any resident of the [City/Town] may submit, within 60 days, a written request that the [City/Town] update the Infrastructure Improvements Plan, underlying Land Use Assumptions, and/or Fee Study and the reasons and basis for the request.
- C. *Response to Comments.* The [City/Town] shall consider and respond within 30 days to any timely requests submitted pursuant to Paragraph 4 of Subsection (B) of this Section.

#### **Sec. X-11. - Collection of Development Impact Fees**

- A. *Collection.* Development impact fees, together with administrative charges assessed pursuant to Paragraph (A)(6) of this Section, shall be calculated and collected prior to issuance of permission to commence development; specifically:
1. Unless otherwise specified pursuant to a Development Agreement adopted pursuant to Section X-13 of this Chapter, development impact fees shall be paid prior to issuance of a building permit according to the current development impact fee schedule for the applicable Service Area(s) as adopted pursuant to this Chapter, or according to any other development impact fee schedule as authorized in this Chapter.
  2. If a building permit is not required for the development, but water or wastewater connections are required, any and all development impact fees due shall be paid at the time the water service connection is purchased. If only a wastewater connection is required, the development impact fees shall be paid prior to approval of a connection to the sewer system. Wastewater development impact fees shall be assessed if a development connects to the public sewer, or as determined by the [\_\_\_\_\_], is capable of discharging sewage to a [City/Town] public sewer.

3. If the development is located in a Service Area with a Stormwater, Drainage, and Flood Control development impact fee, and neither a building permit, water, or sewer service connection is required, the Storm Drainage development impact fee due shall be paid at the time a civil or site permit is issued for the development.
  4. No building permit, water or sewer connection, or certificate of occupancy shall be issued if a development impact fee is not paid as directed in the previous paragraphs.
  5. If the building permit is for an increase in square footage, a change to land use, an addition to a residential or non-residential point of demand to the water or wastewater system, the development impact fee shall be assessed on the additional service units resulting from the expansion or change, and following the development impact fee schedule applicable to any new use type.
  6. For issued permits that expire or are voided, development impact fees and administrative charges shall be as follows:
    - a. If the original permittee is seeking to renew an expired or voided permit, and the development impact fees paid for such development have not been refunded, then the permittee shall pay the difference between any development impact fees paid at the time the permit was issued and those in the fee schedule at the time the permit is reissued or renewed.
    - b. If a new or renewed permit for the same development is being sought by someone other than the original permittee, the new permit Applicant shall pay the full development impact fees specified in the fee schedule in effect at the time that the permits are reissued or renewed; provided that if the original permittee has assigned the permits to the new permit Applicant, the new permit Applicant shall pay development impact fees as specified in Subparagraph A of this Paragraph 6.
- B. *Exceptions.* Development impact fees shall not be owed under either of the following conditions:
1. Development impact fees have been paid for the development and the permit(s) which triggered the collection of the development impact fees have not expired or been voided.
  2. The permission(s) that trigger the collection of development impact fees involve modifications to existing residential or non-residential development that do not: (a) add new EDUs, (b) increase the impact of existing EDUs on existing or future Capital Facilities, or (c) change the

land-use type of the existing development to a different category of development for which a higher development impact fee would have been due. To the extent that any modification does not meet the requirements of this paragraph, the development impact fee due shall be the difference between the development impact fee that was or would have been due on the existing development and the development impact fee that is due on the development as modified.

C. *Temporary Exemptions from Development Impact Fee Schedules.* New developments in the [City/Town] shall be temporarily exempt from increases in development impact fees that result from the adoption of new or modified development impact fee schedules as follows:

1. Residential Uses. On or after the day that the first building permit is issued for a single-family residential development, the [City/Town] shall, at the permittee's request, provide the permittee with an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day that the first building permit is issued, and which shall expire at the end of the first business day of the 25th month thereafter. During the effective period of the applicable development impact fee schedule, any building permit issued for the same single-family residential development shall not be subject to any new or modified development impact fee schedule.
2. Commercial, Industrial and Multifamily Uses. On or after the day that the final approval, as defined in A.R.S. 9-463.05(T)(4), is issued for a commercial, industrial or multifamily development, the [City/Town] shall provide an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day that final development approval of a site plan or final subdivision plat is given, and which shall expire at the end of the first business day of the 25th month thereafter. During the effective period of the applicable development impact fee schedule, any building permit issued for the same development shall not be subject to any new or modified development impact fee schedule.
3. Other Development. Any Category of Development not covered under paragraphs 1 and 2 of this Subsection shall pay development impact fees according to the fee schedule that is current at the time of collection as specified in Subsection (A) of this Section.
4. Changes to Site Plans and Subdivision Plats. Notwithstanding the other requirements of this Subsection, if changes are made to a development's final site plan or subdivision plat that will increase the number of service units after the issuance of a grandfathered development impact fee schedule, the [City/Town] may assess any new or modified development impact fees against the additional service units. If the [City/Town] reduces

the amount of an applicable development impact fee during the period that a grandfathered development impact fee schedule is in force, the [City/Town] shall assess the lower development impact fee.

- D. *Option to Pursue Special Fee Determination.* Where a development is of a type that does not closely fit within a particular Category of Development appearing on an adopted development impact fee schedule, or where a development has unique characteristics such that the actual burdens and costs associated with providing Necessary Public Services to that development will differ substantially from that associated with other developments in a specified Category of Development, the [City/Town] may require the developer to provide the [City/Town] [Planning and Development] Director or authorized designee with an alternative development impact fee analysis. Based on a projection of the actual burdens and costs that will be associated with the development, the alternative development impact fee analysis may propose a unique fee for the development based on the application of an appropriate EDU factor to the applicable Plan-Based Cost per EDU, or may propose that the development be covered under the development impact fee schedule governing a different and more analogous Category of Development. The [City/Town] [Planning and Development] Director or authorized designee shall review the alternative impact fee analysis and shall make a determination as to the development impact fee to be charged. Such decision shall be appealable pursuant to Section X-14 of this Chapter.

#### **Sec. X-12. - Development Impact Fee Credits and Credit Agreements**

- A. *Eligibility of Capital Facility.* All development impact fee Credits must meet the following requirements:
1. One of the following is true:
    - a. The Capital Facility, or the financial contribution toward a Capital Facility that will be provided by the developer and for which a Credit will be issued, must be identified in an adopted Infrastructure Improvements Plan and Fee Study as a Capital Facility for which a development impact fee was assessed; or
    - b. The Applicant must demonstrate to the satisfaction of the [City/Town] that, given the class and type of improvement, the subject Capital Facility should have been included in the Infrastructure Improvements Plan in lieu of a different Capital Facility that was included in the Infrastructure Improvements Plan and for which a development impact fee was assessed. If the subject Capital Facility is determined to be eligible for a Credit in this manner, the [City/Town] shall amend the Infrastructure Improvements Plan to (i) include the subject replacement facility and (ii) delete the Capital Facility that will be replaced.

2. Credits shall not be available for any infrastructure provided by a developer if the cost of such infrastructure will be repaid to the developer by the [City/Town] through another agreement or mechanism. To the extent that the developer will be paid or reimbursed by the [City/Town] for any contribution, payment, construction, or dedication from any [City/Town] funding source including an agreement to reimburse the developer with future collected development impact fees pursuant to Section X-13 of this Chapter, any Credits claimed by the developer shall be: (a) deducted from any amounts to be paid or reimbursed by the [City/Town]; or (b) reduced by the amount of such payment or reimbursement.
- B. *Eligibility of Subject Development.* To be eligible for a Credit, the subject development must be located within the Service Area of the eligible Capital Facility.
- C. *Calculation of Credits.* Credits will be based on that portion of the costs for an eligible Capital Facility identified in the adopted Infrastructure Improvements Plan for which a development fee was assessed pursuant to the Fee Study. If the Gross Impact Fee is adopted at an amount lower than the Plan-Based Cost per EDU, the amount of any Credit shall be reduced in proportion to the difference between the Plan-Based Cost per EDU and the Gross Impact Fee adopted. A Credit shall not exceed the actual costs the Applicant incurred in providing the eligible Capital Facility.
- D. *Allocation of Credits.* Before any Credit can be issued to a Subject Development (or portion thereof), the Credit must be allocated to that development as follows:
1. The Developer and the [City/Town] must execute a Credit Agreement including all of the following:
    - a. The total amount of the Credits resulting from provision of an eligible Capital Facility.
    - b. The estimated number of EDUs to be served within the Subject Development.
    - c. The method by which the Credit values will be distributed within the Subject Development.
  2. It is the responsibility of the developer to request allocation of development impact fee Credits through an application for a Credit Agreement (which may be part of a Development Agreement entered into pursuant to Section X-13 of this Chapter).
  3. If a building permit is issued or a water/sewer connection is purchased, and a development impact fee is paid prior to execution of a Credit Agreement for the subject development, no Credits may be allocated

retroactively to that permit or connection. Credits may be allocated to any remaining permits for the Subject Development in accordance with this Chapter.

4. If the entity that provides an eligible Capital Facility sells or relinquishes a development (or portion thereof) that it owns or controls prior to execution of a Credit Agreement or Development Agreement, Credits resulting from the eligible Capital Facility will only be allocated to the development if the entity legally assigns such rights and responsibilities to its successor(s) in interest for the Subject Development.
  5. If multiple entities jointly provide an eligible Capital Facility, both entities must enter into a single Credit Agreement with the [City/Town], and any request for the allocation of Credit within the Subject Development(s) must be made jointly by the entities that provided the eligible Capital Facility.
  6. Credits may only be reallocated from or within a Subject Development with the [City/Town]'s approval of an amendment to an executed Credit Agreement, subject to the following conditions:
    - a. The entity that executed the original agreement with the [City/Town], or its legal successor in interest and the entity that currently controls the Subject Development are parties to the request for reallocation.
    - b. The reallocation proposal does not change the value of any Credits already issued for the subject development.
- E. *Credit Agreement.* Credits shall only be issued pursuant to a Credit Agreement executed in accordance with Subsection D of this Section. The [City/Town Manager or Authorized Designee] is authorized by this Chapter to enter into a Credit Agreement with the controlling entity of a Subject Development, subject to the following:
1. The Developer requesting the Credit Agreement shall provide all information requested by the [City/Town] to allow it to determine the value of the Credit to be applied.
  2. An application for a Credit Agreement shall be submitted to the City by the Developer within one year of acceptance of the eligible Capital Facility by the [City/Town].
  3. The Developer shall submit a draft Credit Agreement to the [City/Town] Manager or authorized designee(s) for review in the form provided to the Applicant by the [City/Town]. The draft Credit Agreement shall include, at a minimum, all of the following information and supporting documentation:

- a. A legal description and map depicting the location of the Subject Development for which Credit is being applied. The map shall depict the location of the Capital Facilities that have been or will be provided.
  - b. An estimate of the total EDUs that will be developed within the Subject Development depicted on the map and described in the legal description.
  - c. A list of the Capital Facilities, associated physical attributes, and the related costs as stated in the Infrastructure Improvements Plan.
  - d. Documentation showing the date(s) of acceptance by the [City/Town], if the Capital Facilities have already been provided.
  - e. The total amount of Credit to be applied within the Subject Development and the calculations leading to the total amount of Credit.
  - f. The Credit amount to be applied to each EDU within the Subject Development for each Category of Necessary Public Services.
4. The [City/Town]'s determination of the Credit to be allocated is final.
  5. Upon execution of the Credit Agreement by the [City/Town] and the Applicant, Credits shall be deemed allocated to the Subject Development.
  6. Any amendment to a previously approved Credit Agreement must be initiated within two years of the [City/Town]'s final acceptance of the eligible Capital Facility for which the amendment is requested.
  7. Any Credit Agreement approved as part of a Development Agreement shall be amended in accordance with the terms of the Development Agreement and Section X-13 of this Chapter.
- F. *Issuance of Credits.* Credits allocated pursuant to Subsection (D) of this Section may be issued and applied toward the Gross Impact Fees due from a development, subject to the following conditions:
1. Credits issued for an eligible Capital Facility may only be applied to the development impact fee due for the applicable Category of Necessary Public Services, and may not be applied to any fee due for another Category of Necessary Public Services.
  2. Credits shall only be issued when the eligible Capital Facility from which the Credits were derived has been accepted by the [City/Town] or when adequate security for the completion of the eligible Capital Facility has

been provided in accordance with all terms of an executed Development Agreement.

3. Where Credits have been issued pursuant to paragraph (2) of this Subsection, an impact fee due at the time a building permit is issued shall be reduced by the Credit amount stated in or calculated from the executed Credit Agreement. Where Credits have not yet been issued, the Gross Impact Fee shall be paid in full, and a refund of the Credit amount shall be due when the Developer demonstrates compliance with Paragraph (2) of this Subsection in a written request to the [City/Town].
4. Credits, once issued, may not be rescinded or reallocated to another permit or parcel, except that Credits may be released for reuse on the same Subject Development if a building permit for which the Credits were issued has expired or been voided and is otherwise eligible for a refund under Section X-15(A)(2)(a) of this Chapter.
5. Notwithstanding the other provisions of this Section X-12, Credits issued prior to January 1, 2012 may only be used for the Subject Development for which they were issued. Such Credits may be transferred to a new owner of all or part of the Subject Development in proportion to the percentage of ownership in the Subject Development to be held by the new owner.

### **Sec. X-13. - Development Agreements**

Development Agreements containing provisions regarding development impact fees, development impact fee Credits, and/or disbursement of revenues from impact fee accounts shall comply with the following:

- A. *Development Agreement Required.* A Development Agreement is required to authorize any of the following:
  1. To issue Credits prior to the [City/Town]’s acceptance of an eligible Capital Facility.
  2. To allocate Credits to a parcel that is not contiguous with the Subject Development.
  3. To reimburse the developer of an eligible Capital Facility using funds from development impact fee accounts.
  4. To allocate different Credit amounts per EDU to different parcels within a Subject Development.
  5. For a single family residential Dwelling Unit, to allow development impact fees to be paid at a later time than the issuance of a building permit as provided in this Section.

- B. *General Requirements.* All Development Agreements shall be prepared and executed in accordance with A.R.S. 9-500.05. Except where specifically modified by this Section, all provisions of Section X-12 of this Chapter shall apply to any Credit Agreement that is authorized as part of a Development Agreement.
- C. *Early Credit Issuance.* A Development Agreement may authorize the issuance of Credits prior to acceptance of an eligible Capital Facility by the [City/Town] when the Development Agreement specifically states the form and value of the security (i.e. bond, letter of Credit, etc.) to be provided to the [City/Town] prior to issuance of any Credits. The [City/Town] shall determine the acceptable form and value of the security to be provided.
- D. *Non-Contiguous Credit Allocation.* A Development Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:
1. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.
  2. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.
  3. The Development Agreement specifically states the value of the Credits to be allocated to each parcel and/or EDU, or establishes a mechanism for future determination of the Credit values.
- E. *Uneven Credit Allocation.* The Development Agreement must specify how Credits will be allocated amongst different parcels on a per-EDU basis, if the Credits are not to be allocated evenly. If the Development Agreement is silent on this topic, all Credits will be allocated evenly amongst all parcels on a per-EDU basis.
- F. *Use of Reimbursements.* Funds reimbursed to developers from impact fee accounts for construction of an eligible Capital Facility must be utilized in accordance with applicable law for the use of [City/Town] funds in construction or acquisition of Capital Facilities, including A.R.S. § 34-201, *et seq.*
- G. *Deferral of Fees.* A Development Agreement may provide for the deferral of payment of development impact fees for a residential development beyond the issuance of a building permit; provided that a development impact fee may not be paid later than the 15 days after the issuance of the certificate of occupancy for that Dwelling Unit. The Development Agreement shall provide for the value of any deferred development impact fees to be supported by appropriate security, including a surety bond, letter of credit, or cash bond.
- H. *Waiver of Fees.* If the [City/Town] agrees to waive any development impact fees assessed on development in a Development Agreement, the [City/Town] shall

reimburse the appropriate development impact fee account for the amount that was waived [, and shall provide notice of the waiver to the Advisory Committee within 30 days]<sup>6</sup>.

- I. *No Obligation.* Nothing in this Section obligates the [City/Town] to enter into any Development Agreement or to authorize any type of Credit Agreement permitted by this Section.

#### **Sec. X-14. - Appeals**

A development impact fee determination by [City/Town] staff may be appealed in accordance with the following procedures:

- A. *Limited Scope.* An appeal shall be limited to disputes regarding the calculation of the development impact fees for a specific development and/or permit and calculation of EDU's for the development.
- B. *Form of Appeal.* An appeal shall be initiated on such written form as the [City/Town] may prescribe, and submitted to the Director of the [Planning and Development Department].
- C. *Department Action.* The [Planning and Development Department] Director shall act upon the appeal within 30 calendar days of the filing of the appeal with the [Planning and Development Department], and the Applicant shall be notified of the Director's decision in writing.
- D. *Appeal to Manager.* The Applicant may further appeal the decision of the [Planning and Development Department] Director to the [City/Town] Manager or authorized designee(s), who shall be in a more senior position than the [Planning and Development Department] Director, within 14 calendar days of the decision.
- E. *Action by Manager.* The [City/Town] Manager or authorized designee(s) shall act upon the appeal within 14 calendar days of receipt of the appeal, and the Applicant shall be notified of the [City/Town] Manager or authorized designee(s) decision in writing.
- F. *Final Decision.* The [City/Town] Manager or authorized designee(s) decision regarding the appeal is final.
- G. *Fees During Pendency.* Building permits may be issued during the pendency of an appeal if the Applicant (1) pays the full impact fee calculated by the [City/Town] at the time the appeal is filed or (2) provides the [City/Town] with financial assurances in the form acceptable to the [City/Town] Manager or authorized designee equal to the full amount of the impact fee. Upon final disposition of an appeal, the fee shall be adjusted in accordance with the decision rendered, and a refund paid if warranted. If the appeal is denied by the

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<sup>6</sup> If there is an Advisory Committee select this language.

[City/Town] Manager or authorized designee, and the Applicant has provided the [City/Town] with financial assurances as set forth in clause (2) above, the Applicant shall deliver the full amount of the impact fee to the [City/Town] within ten days of the [City/Town] Manager or designee's final decision on the appeal. If the Applicant fails to deliver the full amount of the impact fees when required by this Subsection, the [City/Town] may draw upon such financial assurance instrument(s) as necessary to recover the full amount of the impact fees due from the Applicant.

#### **Sec. X-15. – Refunds of Development Impact Fees**

- A. *Refunds.* A refund (or partial refund) will be paid to any current owner of property within the [City/Town] who submits a written request to the [City/Town] and demonstrates that:
1. The permit(s) that triggered the collection of the development impact fee have expired or been voided prior to the commencement of the development for which the permits were issued and the development impact fees collected have not been expended, encumbered, or Pledged for the repayment of Financing or Debt; or
  2. The owner of the subject real property or its predecessor in interest paid a development impact fee for the applicable Capital Facility on or after August 1, 2014, and one of the following conditions exists:
    - a. The Capital Facility designed to serve the subject real property has been constructed, has the capacity to serve the subject real property and any development for which there is reserved capacity, and the service which was to be provided by that Capital Facility has not been provided to the subject real property from that Capital Facility or from any other infrastructure.
    - b. After collecting the fee to construct a Capital Facility the [City/Town] fails to complete construction of the Capital Facility within the time period identified in the Infrastructure Improvements Plan, as it may be amended, and the corresponding service is otherwise unavailable to the subject real property from that Capital Facility or any other infrastructure.
    - c. For a Category of Necessary Public Services other than Water or Wastewater Facilities, any part of a development impact fee is not spent within ten years of the [City/Town]'s receipt of the development impact fee.
    - d. Any part of a development impact fee for Water or Wastewater Facilities is not spent within 15 years of the [City/Town]'s receipt of the development impact fee.

- e. The development impact fee was calculated and collected for the construction cost to provide all or a portion of a specific Capital Facility serving the subject real property and the actual construction costs for the Capital Facility are less than the construction costs projected in the Infrastructure Improvements Plan by a factor of 10% or more. In such event, the current owner of the subject real property shall, upon request as set forth in this Section A, be entitled to a refund for the difference between the amounts of the development impact fee charged for and attributable to such construction cost and the amount the development impact fee would have been calculated to be if the actual construction cost had been included in the Fee Study. The refund contemplated by this Subsection shall relate only to the costs specific to the construction of the applicable Capital Facility and shall not include any related design, administrative, or other costs not directly incurred for construction of the Capital Facility that are included in the development impact fee as permitted by A.R.S. § 9-463.05.
- B. *Earned Interest.* A refund of a development impact fee shall include any interest actually earned on the refunded portion of the development impact fee by the [City/Town] from the date of collection to the date of refund. All refunds shall be made to the record owner of the property at the time the refund is paid.
- C. *Refund to Government.* If a development impact fee was paid by a governmental entity, any refund shall be paid to that governmental entity.

#### **Sec. X-16. – Oversight of Development Impact Fee Program**

- A. *Annual Report.* Within 90 days of the end of each fiscal year, the [City/Town] shall file with the [City/Town] Clerk an unaudited annual report accounting for the collection and use of the fees for each service area and shall post the report on its website in accordance with A.R.S. § 9-463.05, Subsections N and O, as amended.

#### **[Biennial Audit (Option #1)]**

- B. *Biennial Audit.* In addition to the Annual Report described in Subsection A of this Section, the [City/Town] shall provide for a biennial, certified audit of the [City/Town]’s Land Use Assumptions, Infrastructure Improvements Plan and development impact fees.
  - 1. An audit pursuant to this Subsection shall be conducted by one or more Qualified Professionals who are not employees or officials of the

[City/Town] and who did not prepare the Infrastructure Improvements Plan.

2. The audit shall review the collection and expenditures of development fees for each project in the plan and provide written comments describing the amount of development impact fees assessed, collected, and spent on capital facilities.
3. The audit shall describe the Level of Service in each Service Area, and evaluate any inequities in implementing the Infrastructure Improvements Plan or imposing the development impact fee.
4. The [City/Town] shall post the findings of the audit on the [City/Town]'s website<sup>7</sup> and shall conduct a public hearing on the audit within 60 days of the release of the audit to the public.
5. For purposes of this Section a certified audit shall mean any audit authenticated by one or more of the Qualified Professionals conducting the audit pursuant to paragraph (1) of this Subsection.

**[Advisory Committee (Option #2)]**

- B. *Advisory Committee.* The [City/Town] shall establish an Advisory Committee to provide oversight of the development impact fee program, including review of the Land Use Assumptions, Infrastructure Improvements Plan and Fee Study.
1. *Advisory Committee Composition.* The [City/Town] of \_\_\_\_ hereby establishes an Infrastructure Improvements Advisory Committee (hereinafter “Advisory Committee”), composed of six members approved by the [City/Town] Council who are qualified to serve as follows:
    - a. Three members who are representatives of the real estate, development or building industries. Of those three members, at least one must be a representative of the home building industry.
    - b. All members of the Advisory Committee must be residents of the County who are at least 18 years of age.
    - c. No member of the Advisory Committee may be a paid employee or elected official of the [City/Town]. Persons serving on [City/Town] boards, commissions, or other official or unofficial bodies who receive no compensation for the same (but not including reimbursement of the costs of service) may serve on the Advisory Committee.

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<sup>7</sup> Alternate language: The [City/Town] shall post the findings of the audit on the website of the League of Arizona Cities and Towns.

- d. The members of the Advisory Committee shall be approved by the [City/Town] Council (by majority vote) for three-year terms. No member may serve more than two consecutive terms. Any appointment is subject to the [City/Town]'s appointment procedures set forth in \_\_\_\_\_.
- e. For purposes of this Section, a representative of the real estate, development or building industry shall include general contractors or sub-contractors, tradespersons, real estate or title agents, architects, urban planners, businessmen or women associated with the development or construction industries in other capacities such as finance or law, or anyone who is a member of a trade or professional association the membership of which has special knowledge of or interest in the construction, planning or development of municipal infrastructure or commercial or residential buildings. A representative of the homebuilding industry shall mean any of the above specifically associated with the planning, development, construction, sale, or financing of new residential development.

2. The Advisory Committee shall:

- a. Meet at least annually, with ten days' prior notice to the members of the Committee of all meetings to be provided by the Advisory Committee Chairman. A special meeting of the advisory committee may be called at any time by the Advisory Committee Chairman, or upon the request of the [City/Town] Council, and shall meet as necessary to fulfill its obligations as provided in this subsection.
- b. Review the [City/Town]'s development impact fees, including the underlying Land Use Assumptions, Infrastructure Improvements Plan, Fee Study, and development fee schedules, monitor the [City/Town]'s implementation of the Infrastructure Improvements Plan, and audit development impact fee expenditures. The [City/Town] shall make available to the advisory committee all supporting documentation and professional reports relied upon by the [City/Town] to develop and implement the Infrastructure Improvements Plan and development impact fee report.
- c. Provide written comments as to whether the Land Use Assumptions upon which the Infrastructure Improvements Plan is based are current.
- d. Review the Infrastructure Improvements Plan developed under Section X-8 of this Chapter, and file written comments on the same. The Committee's written comments must be submitted to the

[City/Town] no later than ten business days before the public hearing on the Infrastructure Improvements Plan held pursuant to Section X-9 of this Chapter.

- e. File a written report by June 30 of each year that:
  - i. Summarizes the Advisory Committees recommendations over the last 12 months regarding the [City/Town]'s Infrastructure Improvements Plan.
  - ii. Reports any instances in which the Advisory Committee believes that the [City/Town]'s development impact fees are not proportionate to the cost of providing Necessary Public Services to new development, or where the [City/Town]'s development impact fee program does not fairly distribute such costs between different Categories of Development. This report shall also advise the [City/Town] if there is a need to update or revise the Land Use Assumptions, Infrastructure Improvements Plan and development fee.
- 3. The Advisory Committee shall serve in an advisory capacity only. Actions taken or recommendations made by the Advisory Committee are not binding upon the [City/Town] and the [City/Town] may decide the matter contrary to the recommendations or actions of the Advisory Committee. The failure of the Advisory Committee to file comments or reports as required by this Section shall not prevent the [City/Town] from adopting Land Use Assumptions, Infrastructure Improvement Plans, or development impact fees as otherwise prescribed in this Section.
- 4. *Procedural Rules.* The Advisory Committee shall follow the following procedural rules:
  - a. A Committee Chair shall be designated by the [City/Town] Council.
  - b. The Committee Chair shall be in charge of scheduling all regular meetings and shall conduct all meetings whether regular or special.
  - c. Five members of the Advisory Committee shall constitute a quorum.
  - d. All meetings shall be open for public attendance and shall be conducted in accordance with the Arizona Open Meeting Law, but the public is not entitled to participate in the meetings of the Advisory Committee.

- e. All records of the Advisory Committee shall be public records open to inspection under Arizona law.
- f. Unless otherwise prescribed by the [City/Town], the Advisory Committee shall follow the rules for procedure established by the [City/Town] for other boards, commissions, or committees.

**[Examples, each City or Town needs to develop its own Fee Schedule Forms]**

Section X - **Appendix**

**Fee Schedule Forms**

**Table A-1: Roadway Facilities Development Impact Fee Schedule**

Category of Development	Unit	Gross Fee per Unit				EDU Factor (EDU's per Unit)
		Service Area "A"	Service Area "B"	Service Area "C"	Service Area "D"	
Single-Family Residential	Dwelling					1.0
Multi-Family Residential	Dwelling					
Mobile Home/ RV Park	Space					
Retail	1,000 sq. ft.					
Lodging, Hotel/Motel, Resort	Room					
Office	1,000 sq. ft.					
Institutional	1000 sq. ft.					
Other Commercial	1,000 sq. ft.					
Warehouse	1,000 sq. ft.					
Other Industrial	1,000 sq. ft.					

**Table A-2: Parks Development Impact Fee Schedule**

Category of Development	Unit	Gross Fee per Unit		EDU Factor (EDU's per Unit)
		Service Area "A"	Service Area "B"	
Single-Family Residential	Dwelling			1.0
Multi-Family Residential	Dwelling			
Mobile Home/ RV Park	Space			
Retail	1,000 sq. ft.			
Lodging, Hotel/Motel, Resort	Room			
Office	1,000 sq. ft.			
Institutional	1000 sq. ft.			
Other Commercial	1,000 sq. ft.			
Warehouse	1,000 sq. ft.			
Other Industrial	1,000 sq. ft.			



**Table A-4: Fire Development Impact Fee Schedule**

Category of Development	Unit	Gross Fee per Unit			EDU Factor (EDU's per Unit)
		Service Area "A"	Service Area "B"	Service Area "C"	
Single-Family Residential	Dwelling				1.0
Multi-Family Residential	Dwelling				
Mobile Home/ RV Park	Space				
Retail	1,000 sq. ft.				
Lodging, Hotel/Motel, Resort	Room				
Office	1,000 sq. ft.				
Institutional	1000 sq. ft				
Other Commercial	1,000 sq. ft.				
Warehouse	1,000 sq. ft.				
Other Industrial	1,000 sq. ft.				

**Table A-5: Police Development Impact Fee Schedule**

Category of Development	Unit	Gross Fee per Unit			EDU Factor (EDU's per Unit)
		Service Area "A"	Service Area "B"	Service Area "C"	
Single-Family Residential	Dwelling				1.0
Multi-Family Residential	Dwelling				
Mobile Home/ RV Park	Space				
Retail	1,000 sq. ft.				
Lodging, Hotel/Motel, Resort	Room				
Office	1,000 sq. ft.				
Institutional	1000 sq. ft.				
Other Commercial	1,000 sq. ft.				
Warehouse	1,000 sq. ft.				
Other Industrial	1,000 sq. ft.				

**Table A-6: Library Development Impact Fee Schedule**

Category of Development	Unit	Gross Fee per Unit		EDU Factor (EDU's per Unit)
		Service Area "A"	Service Area "B"	
Single-Family Residential	Dwelling			1.0
Multi-Family Residential	Dwelling			
Mobile Home/ RV Park	Space			
Retail	1,000 sq. ft.			
Lodging, Hotel/Motel, Resort	Room			
Office	1,000 sq. ft.			
Institutional	1000 sq. ft.			
Other Commercial	1,000 sq. ft.			
Warehouse	1,000 sq. ft.			
Other Industrial	1,000 sq. ft.			

**Table A-7: Storm Drainage Development Impact Fee Schedule**

Land Use	Unit	Gross Fee per Unit		EDU Factor (EDU's per Unit)
		Service Area "A"	Service Area "B"	
Single-Family Detached	Dwelling			1.00
All other uses	[ ] acre of gross site area			1.00
Outside Funding Credit				\$___ per EDU

**Table A-8: Equivalent Dwelling Unit Table for Development  
Impact Fee Calculation**

Use Type	Conversion Unit	Capital Facility Category EDU per Unit			
		Parks	Libraries	Fire Protection	Police
Single-Family Residential	EDU				
Multi-Family Residential	EDU				
Mobile Home/ RV Park	EDU				
Retail	EDU				
Lodging, Hotel/Motel, Resort	EDU				
Office	1,000 sq. ft.				
Institutional	1,000 sq. ft.				
Other Commercial	1,000 sq. ft.				
Warehouse	1,000 sq. ft.				
Other Industrial	1,000 sq. ft.				
Nursery	Acre	Requires an independent impact analysis			
Golf course	Acre	Requires an independent impact analysis			
University	Student	Requires an independent impact analysis			
Agriculture	Acre	Requires an independent impact analysis			
Bus depot	1,000 sq. ft.	Requires an independent impact analysis			
Indoor arena	Acre	Requires an independent impact analysis			
Outdoor arena	Acre	Requires an independent impact analysis			