RESOLUTION NO. 2774

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING CHAPTER 155: DEVELOPMENT IMPACT FEES OF PAYSON TOWN CODE AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD.

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, Chapter 155 of the Town Code was adopted in 2001 and related to the International Residential Code; and

WHEREAS, subsequent to the adoption of the International Residential Code, the Town adopted several newer versions of the International Residential Code, the most recent being the 2006 version, in Section 150.20 of the Town Code; and

WHEREAS, Chapter 155 was never amended or directly repealed; and

WHEREAS, it is the intention of the Town of Payson to amend Chapter 155 so that it relates to Development Impact Fees instead of an outdated version of the International Residential Code; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Chapter 155: Development Impact Fees of the Town Code is amended, declared to be a public record, and as amended shall read as set forth in Exhibit 1.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 15th day of May, 2014, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT

_____

Kenny J. Evans, Mayor

Second Hearing MAY 1 5 2014 D.2.A

First Hearing MAY 0 1 2014 D.2.A

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Timothy M. Wright, Town Attorney

EXHIBIT 1

TO

RESOLUTION 2774

Chapter 155: DEVELOPMENT IMPACT FEES

155.01 Title

155.02 Legislative intent and purpose

155.03 Definitions

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§155.01 TITLE.

This Chapter shall be known as the "2014 Development Impact Fee Ordinance of the Town of Payson," and may be cited as such.

§155.02 LEGISLATIVE INTENT AND PURPOSE.

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

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

B. Setting forth standards and procedures for creating and assessing development impact fees consistent with the requirements of 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 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. Reserved.

D. Setting forth procedures for administering the Town's development impact fee program, including mandatory offsets, Credits, and refunds of development impact fees.

This Chapter shall not affect the Town's zoning authority or its authority to adopt or amend its General Plan, provided that planning and zoning activities by the Town may require amendments to development impact fees as provided in Section 155.07.

§155.03 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 Town for a Building Permit.

Appurtenance: Any fixed machinery or equipment, structure or other fixture, including integrated hardware, software or other components, associated with a Capital Facility that are necessary or convenient to the operation, use, or maintenance of a Capital Facility, but excluding replacement of the same after initial installation.

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.

Assistant Town Manager: The Assistant or Deputy Town Manager having responsibility over the Community Development Department or his/her designee.

Building Permit: Any permit issued by the Town that authorizes vertical construction, increases square footage, tenant improvement, 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 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 Town is authorized to assess development impact fees, as further defined in Section 155.08(A)(1).

Category of Development: A specific category of residential, commercial, or industrial development against which a development impact fee is calculated and assessed. The Town assesses development impact fees against the following categories of development: commercial, industrial, single family residential, and multi family residential.

Commercial Land Use: Those uses allowed per Section 15-02-005 (Commercial Districts) of the Unified Development Code, except residential uses.

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 155.12 or as otherwise permitted by this Chapter.

Credit Agreement: A written agreement between the Town and the developer(s) of Subject Development that allocates Credits to the Subject Development pursuant to Section 155.12. A Credit Agreement may be included as part of a Development Agreement pursuant to Section 155.13.

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 A.R.S. §9-500.05, Section 155.13, and any other applicable requirements of the Town Code.

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 either of the following criteria: (i) the Capital Facility is located in the immediate area of the EDU and is needed in the immediate area of the EDU to maintain the Level of Service; or (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 Town's Level of Service.

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, but excluding replacement of the same after initial development of the Capital Facility.

Equivalent Demand Unit (EDU): A unit of development within a particular Category of Development, defined in terms of a standardized measure of the demand that a unit of development in that Category of Development generates for Necessary Public Services in relation to the demand generated by a detached single-family Dwelling Unit. For all Categories of Necessary Public Services, the EDU factor for a detached single-family Dwelling Unit is one (1), while the EDU factor for a unit of development within another Category of Development is represented as a ratio of the demand for each Category of Necessary Public Services typically generated by that unit as compared to the demand for such services typically generated by a detached single-family Dwelling Unit. An EDU shall be a "service unit" for purposes of A.R.S. § 9-463.05(T)(10).

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 Report: A written report developed pursuant to Section 155.09 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. §9-463.05.

Financing or Debt: Any debt, bond, note, loan, interfund loan, fund transfer, or other debt service obligation used to finance the development 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 155.05(C).

General Plan: Refers to the current overall land-use plan for the Town establishing areas of the Town for different purposes, zones and activities.

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: Those uses allowed per Section 15-02-006 (Industrial Districts) of the Unified Development Code, except residential uses.

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 155.09 to cover any Category or combination of Categories of Necessary Public Services.

Interim Fee Schedule: The development impact fee schedule established prior to January 1, 2012 in accordance with then-applicable law, confirmed by Resolution 2633, and which shall expire not later than August 1, 2014.

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 155.07.

Level of Service: A quantitative and/or qualitative measure of a Necessary Public Service that is to be provided by the 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(T)(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 Town pursuant to Section 155.08.

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 Town as a source of payment or repayment for Financing or Debt that was identified as the source of financing 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.

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 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 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: Those uses allowed per Section 15-02-004 (Residential Districts) of the Unified Development Code.

Service Area: Any specified area within the boundaries of the Town within which: (a) the 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.

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 155.13.

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, the need it will create for new or expanded Capital Facilities, and/or the benefit to the development from those 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 facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities.

Town: The Town of Payson, 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 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 development, including the acquisition, supply, transportation, treatment, purification, monitoring, and distribution of water, and any appurtenances to those facilities.

§155.04 APPLICABILITY.

A. Except as otherwise provided herein, from and after August 1, 2014, this Chapter shall apply to all new development within the Town.

B. The provisions of this Chapter shall apply to all of the territory within the corporate limits of the Town.

C. The Assistant Town Manager is authorized to make determinations regarding the application, administration and enforcement of the provisions of this Chapter.

§155.05 AUTHORITY FOR DEVELOPMENT IMPACT FEES.

A. *Fee Report and Implementation.* The 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 Report, development impact fee, and required reports or audits conducted pursuant to this Chapter. Development impact fees shall be subject to the following requirements:

1. The Town shall develop and adopt a Fee Report 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 155.08(A)(12).
2. Development impact fees shall be assessed against all new commercial, industrial, and residential developments, provided that the 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 155.08(A)(1).
4. Costs for Necessary Public Services made necessary by new development shall be based on the same Level of Service provided to existing development in the same Service Area. 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 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 Town must be included in a "Fee Schedule" prepared pursuant to this Chapter and included in the Fee Report.
8. All development impact fees shall meet the requirements of A.R.S. §9-463.05.

B. *Costs per EDU.* The Fee Report 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 Town. The actual impact fees to be assessed shall be as attached in the Appendices to this Chapter.

C. Reserved.

§155.06 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 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.

§155.07 LAND USE ASSUMPTIONS.

The Infrastructure Improvements Plan shall be consistent with the Town's current Land Use Assumptions for each Service Area and each Category of Necessary Public Services as adopted by the Town pursuant to A.R.S. §9-463.05.

A. *Reviewing the Land Use Assumptions.* Prior to the adoption or amendment of an Infrastructure Improvements Plan, the 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 Town shall evaluate the Land Use Assumptions to determine whether changes are necessary. If, after general evaluation, the Town determines that the Land Use Assumptions are still valid, the Town shall issue the report required in Section 155.10.

C. *Required Modifications to Land Use Assumptions.* If the 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 155.10.

§155.08 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 Town's Capital Improvements Plan. The Infrastructure Improvements Plan shall:

1. Specify the Categories of Necessary Public Services for which the 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 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 EDUs 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 EDUs to be served by those Capital Facilities. The 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 EDUs 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 Town to existing EDUs for each Category of Necessary Public Services in each Service Area.
5. Identify the Level of Service to be provided by the Town for each Category of Necessary Public Services in each Service Area based on the relevant Land Use Assumptions and any established Town standards or policies related to required Levels of Service. If the 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 EDUs, and the available excess capacity of those Capital Facilities to serve new EDUs including any existing or planned commitments or agreements for the usage of such capacity. The Infrastructure Improvements Plan shall additionally identify any changes or upgrades to existing Capital Facilities that will be needed to achieve or maintain the planned Level of Service to existing EDUs, or to meet new safety, efficiency, environmental, or other regulatory requirements for services provided to existing EDUs.
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 Town's Land Use Assumptions and projected new EDUs 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 EDUs in that Service Area, for a period not to exceed ten years. Nothing in this Subsection shall prohibit the 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 that will be required to serve new EDUs, 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 EDUs. 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 EDUs, or to meet new regulatory requirements for services provided to existing EDUs, 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 Necessary Public Services.

    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 Necessary Public Services 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 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 Town, the entire excess portion of the construction, contracting, or similar excise tax shall be treated as a contribution to the capital costs of Necessary Public Services 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 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 EDUs for each Category of Necessary Public Services in each Service Area as determined pursuant to Subsection (9) of this Section into the number of new EDUs projected for that Service Area over a period not to exceed ten years, considering the specific EDU factor(s) associated with such EDUs for each Category of Necessary Public Services.

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 Town's Categories of Necessary Public Services in any or all of the 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 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 155.13. All reservations of existing capacity must be disclosed in the Infrastructure Improvements Plan at the time it is adopted.

§155.09 ADOPTION AND MODIFICATION PROECURES.

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 Improvements 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 Town's Land Use Assumptions as provided in Section 155.07:
   a. 60 days before the first public hearing regarding a new or updated Infrastructure Improvements Plan, the Town shall provide public notice of the hearing and post the Infrastructure Improvements Plan and the underlying Land Use Assumptions on its website; the 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 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 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 Report and the 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 any amendment pursuant to this Section is adopted, the Town shall post the proposed amendments on the Town website.

B. *Amendments to the Fee Report.* Any adoption or amendment of a Fee Report and fee schedule shall occur at one or more public hearings according to the following schedule:

1. The first public hearing on the Fee Report 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 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 Town shall make the Infrastructure Improvements Plan and underlying Land Use Assumptions available to the public on the Town's website 30 days prior to the public hearing described in Paragraph (1) of this Subsection.
3. The Fee Report may be adopted by the 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 Report adopted pursuant to this subsection shall become effective 75 days after adoption of the Fee Report by the Town.

§155.10 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 Town shall update the applicable Infrastructure Improvements Plan and Fee Report related to each Category of Necessary Public Services pursuant to Section 155.09. 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 Report, whichever occurs later.

B. *Determination of No Changes.* Notwithstanding Subsection A above, if the Town determines that no changes to an Infrastructure Improvements Plan, underlying Land Use Assumptions, or Fee Report are needed, the Town may elect to continue the existing Infrastructure Improvements Plan and Fee Report 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 Report 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 Report.
4. The notice shall identify an address to which any resident of the Town may submit, within 60 days, a written request that the Town update the Infrastructure Improvements Plan, underlying Land Use Assumptions, and/or Fee Report and the reasons and basis for the request.

C. *Response to Comments.* The Town shall consider and respond within 30 days to any timely requests submitted pursuant to subsection (B)(4) of this Section.

§155.11 COLLECTION OF DEVELOPMENT IMPACT FEES.

A. *Collection.* Development impact fees, together with administrative charges assessed pursuant to Paragraph (A)(7) of this Section, shall be calculated and collected prior to issuance of permission to commence, expand, or change development; specifically:

1. Unless otherwise specified pursuant to a Development Agreement adopted pursuant to Section 155.13 or an agreement authorized pursuant to subsection E below, 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, or according to any other development impact fee schedule.
2. If a building permit is not required for the development, but a water connection is required, any and all development impact fees due shall be paid at the time the water service connection is purchased.
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 a building permit is for a change in the type of building use, an increase in square footage, a change to land use, or 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. If there is a building occupancy permit or business license application filed and it is determined that the proposed occupancy or business includes an expanded or changed use resulting in additional service units, the development impact fee may be assessed on the additional service unit resulting from the expansion or change.
7. 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. If the original permittee has assigned its rights under the permits to the new permit Applicant, the new permit Applicant shall pay development impact fees as if it were the original permittee.

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 approval(s) that trigger the collection of development impact fees involve modification or replacement of existing residential or non-residential development that has paid the then applicable development impact fee and 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 or replacement 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 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 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 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 subsections (C)(1) or (C)(2) 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 Town may assess any new or modified development impact fees against the additional service units. If the Town reduces the amount of an applicable development impact fee during the period that a grandfathered development impact fee schedule is in force, the 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 Town may require the Applicant to provide the Assistant Town Manager 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 Assistant Town Manager 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 155.14. The Assistant Town Manager may require the Applicant to pay an administrative fee to cover the actual costs of reviewing the special fee determination application.

E. *Time Payment Agreements for Commercial, Industrial, and Multifamily Projects.*

1. For commercial, industrial, and multifamily projects, the Town may enter into an agreement for the deferred collection of the development impact fees subject to the following:

   a. Such agreements shall not exceed 60 months;

b. Such agreements shall be approved by the Assistant Town Manager;
c. Payments on the outstanding balance of such agreement shall be made monthly or annually; and
d. No interest shall accrue or be payable if the development impact fees are paid in full within 60 months and in accordance with the terms of the agreement.

2. For commercial, industrial, and multifamily projects requiring five or more EDU's, the Town may enter into an agreement for the deferred collection of development impact fees subject to the following:
   a. Such agreements shall not exceed 120 months;
   b. Such agreements shall be approved by the Town Council;
   c. Payments on the outstanding development impact fees shall be made monthly or annually; and
   d. The interest rate, if any, that shall be charged on the outstanding development impact fees shall be determined by the Town Council.
3. For commercial, industrial, and multifamily projects requiring more than ten EDU's, the Town may enter into an agreement for the deferred collection of the development impact fees subject to the following:
   a. Such agreements shall not exceed 120 months;
   b. Such agreements shall be approved by the Town Council;
   c. Payments on the outstanding development impact fees shall be made monthly or annually. The agreement may allow for the deferral of the first payment for up to 36 months; and
   d. The interest rate, if any, that shall be charged on the outstanding development impact fees shall be determined by the Town Council.
4. Any agreement for the deferral of development impact fees pursuant to this section shall be in a form approved by the Town Attorney, shall comply with State Law, and shall be secured by any assurances deemed necessary by the Town.

§155.12 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 Report as a Capital Facility for which a development impact fee was assessed; or
      b. The Applicant must demonstrate to the satisfaction of the 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 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 Town through another agreement or mechanism. To the extent that the developer will be paid or reimbursed by the Town for any contribution, payment, construction, or dedication from any Town funding source including an agreement to reimburse the developer with future collected development impact fees pursuant to Section 155.13, any Credits claimed by the developer shall be: (a) deducted from any amounts to be paid or reimbursed by the 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 Report. If the Gross Impact Fee for a particular category of Necessary Public Service 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 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 155.13).
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, such entities must enter into a single Credit Agreement with the 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 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 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.
7. A Credit Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:
   a. The entity that executed the original agreement with the Town or its legal successor in interest, the entity that currently controls the Subject Development, and the entity that controls the non-contiguous parcel 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.
   c. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.
   d. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.
   e. The Credit 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.
   f. The Credit Agreement does not involve the transfer of Credits to or from any property subject to a Development Agreement.

E. *Credit Agreement*. Credits shall be issued only pursuant to a Credit Agreement executed in accordance with Subsection D of this Section. The Assistant Town Manager is authorized 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 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 Town by the Developer within one year of the date on which ownership or control of the Capital Facility passes to the Town.
3. The Developer shall submit a draft Credit Agreement to the Assistant Town Manager for review in the form provided to the Applicant by the 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 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 Town's determination of the Credit to be allocated is final.
5. Upon execution of the Credit Agreement by the 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 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 155.13.

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 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 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 155.15(A)(2)(a).

§155.13 DEVELOPMENT AGREEMENTS

Development Agreements containing provisions regarding development impact fees, development impact fee Credits, and/or disbursement of revenues from development 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 Town's acceptance of an eligible Capital Facility.
   2. To allocate Credits to a parcel that is not contiguous with the Subject Development and that does not meet the requirements of Section 155.12(D)(7).
   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 and any applicable requirements of the Town Code. Except where specifically modified by this Section, all provisions of Section 155.12 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 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 Town prior to issuance of any Credits. The 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 among 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 among 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 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 Town agrees to waive any development impact fees assessed on development in a Development Agreement, the Town shall reimburse the appropriate development impact fee account for the amount that was waived.

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

§155.14 APPEALS.

A development impact fee determination by 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 EDUs for the development.

B. *Form of Appeal.* An appeal shall be initiated on such written form as the Town may prescribe, and submitted to the Assistant Town Manager.

C. *Department Action.* The Assistant Town Manager shall act upon the appeal within 30 calendar days of the filing of the appeal, and the Applicant shall be notified of the Assistant Town Manager's decision in writing.

D. *Appeal to Town Manager.* The Applicant may further appeal the decision of the Assistant Town Manager to the Town Manager within 14 calendar days of the decision.

E. *Action by the Town Manager.* The Town Manager shall act upon the appeal within 14 calendar days of receipt of the appeal, and the Applicant shall be notified of the Town Manager's decision in writing.

F. *Final Decision.* The Town Manager'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 Town at the time the appeal is filed or (2) provides the Town with financial assurances in the form acceptable to the Assistant Town Manager 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 Assistant Town Manager, and the Applicant has provided the Town with financial assurances as set forth in clause (2) above, the Applicant shall deliver the full amount of the impact fee to the Town within ten days of the Assistant Town Manager'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 Town may draw upon such financial assurance instrument(s) as necessary to recover the full amount of the impact fees due from the Applicant.

§155.15 REFUNDS OF DEVELOPMENT IMPACT FEES.

A. *Refunds.* A refund (or partial refund) will be paid to any current owner of property within the Town who submits a written request to the 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 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 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 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 Report. 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 Town from the date of collection to the date of refund.

C. *Owner of Record.* All refunds shall be made to the record owner of the property at the time the refund is paid.

D. *Refund to Government.* If a development impact fee was paid by a governmental entity, any refund shall be paid to that governmental entity.

§155.16 OVERSIGHT OF DEVELOPMENT IMPACT FEE PROGRAM.

A. *Annual Report.* Within 90 days of the end of each fiscal year, the Town shall file with the 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.

B. *Biennial Audit.* In addition to the Annual Report described in Subsection A of this Section, the Town shall provide for a biennial, certified audit of the 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 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 Town shall post the findings of the audit on the Town's website 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.

Chapter 155 - **Appendices**

All Appendices will be adopted by separate Ordinance