

**CITY OF REDDING, CALIFORNIA
COUNCIL POLICY**

SUBJECT	RESOLUTION NUMBER	POLICY NUMBER	EFFECTIVE DATE	PAGE
Land-Secured Financing <i>(Formerly “Assessment District Policies”)</i>	96-078	601	5-7-96	1 of 2

BACKGROUND

A complete infrastructure development program integrates pay-as-you-go project financing with projects financed through collection of impact fees and the issuance of long-term land-secured debt. Most cities, including Redding, utilize this combined approach to fund infrastructure projects needed to support new growth.

Substantial cost is involved in the development of major infrastructure. In addition, the City needs to maintain appropriate levels of service and needs to insure that infrastructure is constructed in a manner that promotes the efficient extension of services. These factors may necessitate the increasing use of tax exempt land-secured financing as the City grows.

A policy on land-secured financing should promote the use of such debt financing only in those cases where public policy, equity, and economic efficiency favor debt over cash (i.e., pay-as-you-go) financing.

PURPOSE

The purpose of this policy is to govern the formation and administration of Mello-Roos Community Facilities Districts (CFDs) and Assessment Districts, also known as Local Improvement Districts (LIDs).

Generally, only public facilities and infrastructure, and the provision of public services (if applicable) which directly benefit the CFD or the LID, are eligible for this tax-exempt financing program. Such facilities and services can be financed in accordance with the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or the Mello-Roos Community Facilities Act of 1983.

From a planning perspective, land-secured financing is attractive in that it can be used to avoid pitfalls of the development process, such as congestion of existing facilities and/or the necessity for existing residents to subsidize infrastructure needed for new development. It also allows public facilities to be installed concurrently with development; allows the costs of development to be isolated to the developing area; and provides financing of the projects at a lower cost due to the tax-exempt nature of the financing.

It should be noted that even though the City bears no direct financial responsibility for special assessment or Mello-Roos special tax bonds, the City is still responsible for managing the levels of tax-supported debt within its boundaries. The debt capacity of developing areas is a finite resource, and if the debt burden reaches excessive levels, taxpayers may become unwilling, or unable, to pay.

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POLICY

The proposed policies and procedures will:

- Identify the range of public facilities and services for which the City will consider using land-secured financing.
- Define the application process for district formation and financing, including the requirement that all costs of formation be borne by the applicant and not the General Fund.
- Establish standards for review of economic viability, credit quality, and security to ensure the payment of assessments and/or special taxes.
- Place limits on the combined maximum rate of special taxes, ad valorem taxes, and assessments on properties which secure the debt.
- Define the terms and conditions of bond issuance.
- Define types and requirements of necessary agreements between the City and applicants.
- Define the requirement for disclosure to affect property owners of special taxes and assessments.
- Establish appraisal criteria which will be used to establish the minimum value-to-lien ratios for assessment districts and CFDs.

IMPLEMENTATION

As a means to accomplish the purpose and objectives of this Policy, the City incorporates by reference into this Policy the "Policies and Procedures for Land-Secured Financing" as approved by City Council Resolution No. 2006-183. The document is on file in its entirety in the Office of the City Clerk. The cover page is attached to this Policy as Attachment A.

Amended February 8, 1997, by Resolution No. 97-033
Amended October 3, 2006, by Resolution No. 2006-183

**POLICIES AND PROCEDURES
FOR LAND-SECURED FINANCING**

CITY OF REDDING

September 2006

CITY OF REDDING

POLICIES AND PROCEDURES FOR LAND-SECURED FINANCING

I. GENERAL

The City of Redding ("City") has created these policies on land-secured debt financing ("Policies") as guidelines to assist all concerned parties in determining the City's approach to land-secured financing. It is the City's intent to support projects which address a significant public benefit and which would not otherwise be constructed absent the City's participation. These Policies are also designed to comply with Sections 53312.7 and 53345.8 of the Government Code, as amended.

The City will consider developer- or property owner-initiated applications requesting the formation of community facilities districts ("CFD") and assessment districts (local improvement districts) ("LID") and the issuance of bonds to finance eligible public facilities necessary to serve developing commercial, industrial, residential, and/or mixed-use developments.

Generally, only public facilities such as major thoroughfares and arterials, highway and freeway improvements, flood control or drainage improvements, sewers, telephone ducts, electrical ducts, water supply and distribution improvements, libraries, fire stations, park improvements, transit improvements, certain development impact fees, other capital facilities, and the provision of services (if applicable) may be eligible for this tax-exempt financing program. Facilities will be financed in accordance with the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or the Mello-Roos Community Facilities Act of 1982 ("Act").

Generally, only improvements directly benefitting the CFD or the LID can be financed with Mello-Roos or assessment district bonds. Developer exactions, such as off-site housing subsidies and school and transit impact fees, are not eligible. Existing neighborhoods may apply to the City for the use of assessment financing to fund local or neighborhood-serving facilities in accordance with the Improvement Act of 1911, Municipal Improvement Act of 1913, or the Improvement Bond Act of 1915.

Property included in a CFD or LID must be within the boundaries of the City of Redding except when it can be demonstrated that a benefit to the City results from the inclusion of property outside the boundaries of the City, as determined by the City Council.

The City shall make the determination as to whether a proposed district shall proceed under the provisions of the Mello-Roos Community Facilities Act or the appropriate assessment district laws and whether the district will be a construction or acquisition district. The City may confer with the applicant and his/her consultants to learn of any unique district requirements, such as regional-serving facilities or long-term development phasing prior to making any final determination.

All City and consultant costs incurred in the evaluation of new development district applications and the establishment of districts will be paid by the applicant(s) by advance deposits in those instances where a proposed district has been initiated by a party or parties other than the City. The City shall not incur any expenses for processing assessment or community facilities districts. The City may incur expenses for analyzing proposed districts where the City is the principal proponent of the formation for financing of the district. Expenses not legally reimbursable by the district shall be borne by the applicant. Both City and district consultant costs can be funded from bond proceeds, regardless of how funding is initially arranged.

After the creation of a CFD or LID, the district shall provide for the annual administrative costs of the City for such district. If the district is a CFD, the maximum special tax formula shall be structured to provide for such costs. If the district is an LID, the City shall impose annual fees in accordance with the Streets and Highways Code of California to cover the cost of administration.

These policies and procedures shall apply to all CFDs and LIDs formed by the City. Any policy or procedure stated herein may be supplemented, amended, or deviated from upon determination by the City Council that such supplement, amendment, or deviation is necessary or desirable and in the best interests of the City, and any policy or procedure stated herein shall be deemed amended or supplemented in the event, and as of the date, if ever, that such amendment, supplement, or deviation is required to ensure compliance with the laws of the State of California or Federal laws of the United States of America.

II. ELIGIBLE PUBLIC FACILITIES

Facilities to be financed must be public facilities with an expected useful life of five years or more and for which the City, or agency as determined appropriate by the City, will be owner or holder of an easement. Priority will be given to those public facilities to be owned and operated by the City that are regional in nature. The City may finance public facilities, except for school facilities, that are to be owned and operated by other public agencies. The priority for the financing of infrastructure and public facilities will be determined at the sole discretion of the City. The highest priority will be placed on infrastructure that is for the health and safety of the public. The types of facilities generally eligible to be financed are:

- Streets and roads (thoroughfares, arterials, major streets, highway and freeway improvements, and major collector streets), highways and bridges, street lighting, traffic signals, and safety lighting.
- Public utilities, including, but not limited to, water, sewer, and drainage-related facilities.
- Recreation facilities, including, but not limited to, parks, community centers, and golf courses.

- Biological mitigation measures, including, but not limited to, land acquisition, dedication, and revegetation.

The City has final determination as to any facility's eligibility for financing and the prioritization of facilities to be included within a district financing. Use of bond proceeds for grading and right-of-way acquisition will be reviewed by the City and bond counsel on a case-by-case basis.

The City will consider financing "in-tract" facilities and/or services within existing communities and developing areas. Financing of "in-tract" facilities and/or services shall be reviewed on a case-by-case basis, and the City may require information in addition to that contained in the normal application. The City shall determine what "in-tract" public facilities will be financed and which financing mechanism shall be used.

III. APPLICATION PROCESS FOR DISTRICT FORMATION AND FINANCING

Any person seeking to use land-secured financing ("Applicant") is encouraged to arrange a pre-application meeting with the City's Director of Development Services ("Director") and financing staff to enable the Director and staff to review and discuss elements of the proposed financing and to review with the Applicant the City's financing program policies and procedures.

- A. Application.** The City's land-secured financing program begins with an Applicant filing an application with the Director. The application must be complete and the necessary information provided before any action will be taken to process the application and initiate financing for a project.
- B. Processing the Application.** Upon receiving an application, the Director will form a review committee comprised of City staff who will be involved in the proposed financing project. The review committee will meet to discuss the content of the application, including any issues raised and further information that may be required. If necessary, the Applicant may be asked to submit a revised application and/or additional information.
- C. Selection of Financing Team.** Once the City review committee has determined that the proposed district formation and financing application is complete, the Director will determine the composition and membership of the Financing Team.

The City shall select all consultants to be retained by the City for the financing, including, but not limited to, appraiser, bond counsel, disclosure counsel, bond paying or fiscal agent or trustee, financial advisor (if utilized), assessment engineer, or special tax consultant and underwriter ("Financing Team"). Providers of letters of credit, surety bonds, or other credit enhancements are also subject to City approval.

- D. **District Deposits and Reimbursements.** All City and consultant costs incurred in the evaluation of district applications and the establishment of districts shall be paid by the Applicant in advance-deposit increments. The City shall not incur any expenses for processing and administering assessment or special tax districts. Expenses not chargeable to the district shall be directly borne by the Applicant.

Each application for formation of an assessment or special tax district will be accompanied by an initial deposit to fund initial staff and consultant costs associated with district review and implementation. Prior to project initiation, the Director shall make written demand upon the Applicant for such funds. The proceedings will not begin until receipt of such funds. If the Director determines that additional funds are necessary following project initiation, the City will make written demand upon the Applicant for such funds, and the Applicant shall comply with each demand within thirty (30) calendar days of receipt of such notice. If the Applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The City shall refund any unexpended portion of the deposits upon the following conditions:

- The district is not formed.
- The proceedings for formation of the district or issuance of bonds are not approved by the City.
- The proceedings for formation of the district or issuance of bonds are abandoned in writing by the Applicant.

Except as otherwise provided herein, the Applicant shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incidental to the proceedings and construction of the public facilities. Such costs and expenses will be limited to City costs and those district-related consultants hired or authorized by the City. Invoices shall be verified by the City as a condition of reimbursement, and the City shall have sole discretion as to what costs and expenses are reimbursable and as to their reasonableness.

The deposits and any additional amounts shall be held by the City in a trust account and used only for the costs of the financing. The City shall not be required to invest the trust account or to assure any rate of return if funds in the account are invested; however, if the funds are invested, any interest earnings will remain with the City. Any unused balance remaining in the trust account shall be returned to the Applicant. The use of the Deposit and/or establishment of the trust account shall in no way be construed as requiring the City to issue land-secured indebtedness or to provide reimbursement from the proceeds thereof for expended portions of the Deposit.

- E. **Project Initiation.** The Director will arrange and conduct a meeting between the Applicant and the members of the Financing Team so that all interested parties understand the various components of district formation and proposed financing. Additionally, the interested parties should determine a preliminary project schedule and project responsibilities necessary to complete district formation and financing.
- F. **Time Schedule.** The final schedule of events for any proceeding shall be determined by the City in consultation with its financing team and the Applicant. Any changes will require approval by the Director. Time schedules will (unless specific exceptions are allowed) observe established Council meeting schedules and agenda deadlines. To the extent possible, financing will be scheduled to allow debt service to be placed on the tax rolls with a minimum of capitalized interest.
- G. **Petition.** For new development projects, a petition which meets the requirements of the applicable authorizing law will be required. The Applicant must specify in the Application any reasonably expected impediments to obtaining waivers, including from co-owners and/or lenders of record (where required). Waiver of the petition shall be made only upon showing of extraordinary hardship. For existing developments, petitions are preferred but may be waived, depending on the nature of the project and degree of public importance.

IV. ECONOMIC VIABILITY REVIEW-CREDIT QUALITY

- A. **General.** The City will (unless deemed to be unnecessary by the Director or designee under the circumstances) require each of the following as a condition of processing an Application. Failure to supply any required information in a timely manner shall be cause for the City to suspend processing the Application:
 - 1. *Title Evidence.* The Applicant must submit a current (not older than three months) CLTA or ALTA lender's title insurance policy or preliminary title evidence showing the vesting of title to the land that will secure the financing and showing the interests of any lenders, creditors, etc., as well as any easements, rights-of-way, or other encumbrances that may impact the value of the land. The title evidence will also be used to verify ownership for any owner's petition for the financing. The Applicant will supply copies of any documents disclosed by the title evidence as requested by the City.
 - 2. *Administrative Approvals.* The Applicant must furnish information as to the completeness of the approval process, including, but not limited to, environmental clearances, land use planning approvals, rights to capacity or ability to use water, sewer and storm drainage facilities, and availability of special permits (e.g., Army Corps of Engineers, California Fish and Game, Caltrans, Regional Water Quality Control Board, Division of Dam Safety, etc.). Failure or inability to obtain any approval deemed necessary by the City shall be

cause for delaying or suspending the Application or proceedings, including any bond sale.

3. *Security.* As a general rule, assessment and CFD bonds will be issued on an unrated basis, since the rating agencies normally will not rate these types of securities. Therefore, in cases of new development, the Applicant or property owner must demonstrate his/her financial plan and ability to pay all assessments and/or special taxes before full buildout has taken place. In addition, the City may wish to review the financial position of the Applicant or property owner and any prior experience the City may have had with the Applicant or property owner.

While the City's credit is not pledged to support the bonds, a default in assessment or special tax bonds can negatively impact the City's bonding capacity and market perception. To minimize the risk of default, the City may require third-party guarantees for individual assessments or special taxes from each property owner responsible for 20 percent or more of the annual special tax payments within the district, and additional security may be required by the City in certain instances. The third-party guarantee must be provided on or before the date of delivery of the bonds. The third-party guarantee shall remain in effect on an irrevocable basis until the property owner's annual special assessment or special tax liability is reduced below 20 percent. Purchasers of property subject to 20 percent or more of the special tax payments within the district and for which a third-party guarantee was required at the time of purchase, may be required to provide third-party guarantees.

Third-party guarantees can include letters of credit, surety bonds, or some other mechanism which assures payment of special assessments and special taxes in the event of the bankruptcy of the developer entity or its principals.

If the City requires letters of credit or other security, the credit enhancement must be issued by an institution in a form and upon terms and conditions satisfactory to the City. All fees payable on the letter of credit or other security shall be the sole responsibility of the district Applicant or developer, not the City or district.

Any security required to be provided by the Applicant may be discharged by the City upon the opinion of a qualified appraiser retained by the City that the Target Value-to-Lien Ratio (as defined in the following paragraph) has been attained, with value determined pursuant to the appraisal criteria as set forth herein.

4. *Value-to-Lien.* The property within the district (or improvement area) shall have an actual value-to-lien ratio of at least 4:1 as determined pursuant to the appraisal criteria as set forth herein and considering any prior or pending special taxes or improvement liens. The Financing Team is authorized to require a Target Value-to-Lien Ratio in excess of 4:1. However, a Target Value-to-Lien Ratio

lower than 4:1 can only be established with Council approval. Approved value-to-lien ratios (whether 4:1, greater than 4:1, or less than 4:1) are herein referred to as the "Target Value-to-Lien Ratio."

Property values for the value-to-lien ratio shall be determined based upon an appraisal report prepared by an independent MAI appraiser of the proposed district using the appraisal criteria set forth in Exhibit "A" or such other appraisal criteria as is allowed by the Act. The appraisal shall not be initiated until after formation of the Financing Team and shall be coordinated by and under the direction of the Financing Team. All costs associated with the preparation of the appraisal report shall be paid by the Applicant through the advanced deposit mechanism. The appraisal shall employ either a discounted cash flow or utilize bulk sale comparables where appropriate.

Upon receiving an appraisal and determining the value-to-lien ratio, the City shall apply the following criteria:

- a. If the actual value-to-lien ratio is less than 4:1 and is 3:1 or greater, the City may require letters of credit or other security to secure payment of the special taxes or assessments to be levied annually on properties within the district.
- b. If the actual value-to-lien ratio is less than 3:1, the City shall require either letters of credit or other security (assigned deposits; deposits to escrow) to secure payment of the special taxes/special assessments on properties within the district or may elect to abandon the district.

The City shall have discretion to retain a consultant to prepare a report to verify market absorption assumptions and projected sales prices of the properties which may be subject to the maximum special tax or assessments in the district.

As an alternative valuation method to an appraisal, at the discretion of the City, County-assessed valuation may be utilized in accordance with the Act.

5. *Irrevocable Letters of Credit.* In situations where a district or certain parcels within a district have an actual value-to-lien ratio of less than the Target Value-to-Lien Ratio or where the City has otherwise determined the need for additional security, an Irrevocable Letter of Credit ("LOC") or cash escrow fund deposit shall be required to assure payment of annual special taxes/special assessments until the appropriate ratio level is achieved, as determined by a qualified appraiser retained by the City. An Irrevocable Letter of Credit is a bank credit arrangement wherein the bank agrees to lend a specified amount of funds for a limited term.

The following criteria will be used by the City to determine the acceptability of an Irrevocable Letter of Credit security:

- The LOC shall be issued by a bank which has been approved by the City.
- The term of the LOC shall be the length of time anticipated for the subject parcel(s) to reach the Target Value-to-Lien Ratio as determined by an appraiser and/or market absorption consultant retained by the City. In the event the Target Value-to-Lien Ratio has not been reached by the expiration date and the LOC has not been renewed, the City may draw the full amount of the LOC as security. When the ratio has been reached, the LOC will be released or, if it has been drawn upon, the City will return any unused portion of the security that may exist. The principal amount of the LOC may be reduced by the amount related to parcels that have been developed and sold. All costs associated with the LOC shall be borne by the district Applicant(s).
- The amount of the LOC shall be the sum of all special taxes/special assessments due on the undeveloped parcel(s) for the period that is determined to be needed to reach the Target Value-to-Lien Ratio. The City, at its discretion, may allow the amount of the letter of credit to be reduced annually by the amount of special taxes/special assessments paid by the property owner on the undeveloped parcel(s) if development proceeds on a schedule which is satisfactory to the City.
- The LOC shall be made payable to the Fiscal Agent. The City shall be allowed to draw on the LOC in any year when taxes/assessments are not paid on the subject parcel(s) or the amount of taxes/assessments paid does not meet the special tax/assessment obligation for the parcel(s) for that year.

The following are the City's credit requirements with respect to the credit bank provider:

- Rated "A" or better by Moody's or Standard & Poor's with a rating of "B/C" or better by Thompson BankWatch for a domestic bank and a "B" or better for an international bank.
- Be a subsidiary of a parent organization rated "A" or better by Moody's or Standard & Poor's, with parent's confirmation and with a bank rating of "B/C" for a domestic bank or "B" for an international bank from Thompson BankWatch.
- If approved by the Director of Development Services, be rated below investment grade or not rated by Moody's or Standard & Poor's but meeting

the following test: (1) Assets of at least \$1 billion; (2) Capital & Surplus of at least \$100 million; (3) Collateral of 110 percent of liability exposure to be held by Trustee (collateral to be those types of government securities used for bond defeasance) and to be marked-to-market weekly.

V. SPECIAL TAXES AND ASSESSMENTS

The total of the following special taxes, ad valorem taxes, and assessments shall not exceed 2 percent of the appraised market value (as defined in the appraisal criteria set forth herein) of the subject properties:

- A. Ad valorem property taxes.
- B. Voter-approved ad valorem taxes levied by the City in excess of 1 percent of the market value.
- C. Maximum special taxes allowed by any existing CFD for the payment of bonded indebtedness or ongoing services.
- D. Assessments levied for any assessment district or maintenance district for the payment of bonded indebtedness or services.
- E. The maximum special tax or special assessment for the proposed district.

VI. SPECIAL TAX FORMULA

For a Mello-Roos district, the maximum special tax formula shall adhere to the following requirements:

- A. The maximum special tax submitted to the qualified electors of the CFD shall not exceed 1 percent of the appraised or assessed value, whichever is higher, of the subject properties at the time of the district formation.
- B. The maximum special tax shall provide for the inclusion of the annual administrative costs of the City to administer the district.
- C. The maximum special tax shall establish tax rates corresponding to the adopted land use designations on each parcel.

The City shall retain a special tax consultant to prepare a report as required by the Act which:

- A. Recommends a special tax formula for the proposed CFD.
- B. Evaluates the equity of the recommended special tax formula.

- C. Evaluates the special tax formula proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable), and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes, plus existing special taxes, ad valorem taxes, and assessments on the properties within the CFD.
- D. Provides for the escalation of maximum taxes in compliance with the provisions of Section 53321 of the Act.

VII. TERMS AND CONDITIONS OF BONDS

All terms and conditions of the bonds shall be established by the City. The City or a fiscal agent or other administrator will control, manage, and invest all district-issued bond proceeds. Unless otherwise authorized by the City, the following shall serve as bond requirements:

- A. Unless specifically found to be required for a particular kind of financing, bonds issued for land-secured financing shall be limited obligations, payable solely from special assessments or taxes or other identified sources other than general funds or revenues of the City, and do not require the use of such general funds or revenues to replenish any reserves or to bid at any foreclosure sale.
- B. Except for commercial or industrial property financing with no residential components, debt service shall be substantially level throughout the life of the bond issue. Phased bond issuance shall not result in increased debt service to existing residential homeowners. Unless determined to be specifically required, debt service shall not exceed 30 years from the date of the bonds
- C. Maximum redemption premiums shall not exceed 5 percent. If available, no-call provisions shall not exceed ten years. Unless specifically found to be of economic benefit to the City, no provision shall restrict the ability of the City to refund any bond issue for any period of time. Provision shall be made to allow redemption of bonds at par (without premium) with surplus construction funds or prepayments by the applicant or property owners. Provision shall be made to allow the City to purchase bonds on the open market at par plus accrued interest in lieu of redemption of bonds.
- D. A reserve fund shall be required (unless specifically exempted for cause) for every land-secured financing. The reserve fund should be equal to the lesser of 10 percent of the original principal amount of the bonds, 100 percent of the maximum annual debt service, and 125 percent of average annual debt service (the "Reserve Requirement") and shall be funded from the proceeds of each series of bonds, subject to Federal tax regulations and in accordance with the requirements of credit enhancement providers and/or rating agencies. This "three-prong" test will also apply to a common reserve fund (parity reserve) calculated on all parity bonds within a series. At district formation, the reserve fund can be funded at less-than-the-reserve requirement with

City approval, provided a plan is in place to bring the reserve fund up to the reserve requirement within a reasonable amount of time.

The City may purchase reserve equivalents (i.e., the use of a reserve fund surety or letter of credit) when such purchase is deemed prudent and advantageous. Such equivalents shall be evaluated in comparison to cash funding of reserves on a net present value basis.

- E. The City, with the advice of the financing team, will determine for each financing the term for which interest will be capitalized. This determination will be based on the length of the construction period, the earliest date upon which tax roll collection may commence, and the amount of such interest that would be added to the total amount of the financing, taking into account the restrictions on value-to-lien expressed herein and the ability of the owner(s) to defray the debt service. The maximum period for which interest will be capitalized is two years.
- F. The maximum special tax for a CFD shall be established to assure that the annual revenue produced by levy of the maximum special tax shall be equal to at least 110 percent of the maximum annual debt service. If a portion of the special tax remains unused after annual debt service has been paid, it shall be used to reduce the next levy of the maximum special tax.
- G. Prior to the issuance of bonds, the City may authorize its bond counsel to commence and process to final judgment an action establishing the validity of the proceedings, special tax, and issuance of bonds, unless advised to the contrary by such bond counsel.
- H. In instances where multiple series of bonds are to be issued, the first series shall include public facilities of highest priority to the City, as determined by the City.
- I. The City may require that each new district bond financing refund any prior liens if they exist on properties included in the district in order to avoid subordinated liens. Instances where prior liens may not require refunding are: (1) Where refunding prior liens will result in higher interest cost; (2) Where there can be assurance that prior liens may pose no marketing problems for the new district bonds; or (3) Where refunding prior liens present administrative difficulties to the City or other affected public entities.
- J. **Underwriters Discounts.** In competitive bond sales, the amount of the underwriter's discount shall be determined by the City with the advice of its financial advisor. In negotiated sales, the underwriter must justify its discount as competitive, and such justification must take into account any other compensation being paid to the underwriter. Original-issue discounts and premiums will be allowed only if the City determines that it results in a lower true interest cost and will not adversely affect the ability to construct the public improvements.

- K. **Judicial Foreclosure.** Pursuant to statute, the City may enter into covenants with bond holders to institute judicial foreclosure proceedings. As a result, special assessments and special taxes that are delinquent on July 1 on each year may be removed from the tax roll and turned over to special counsel on or about August 1 of each year for collection. Special counsel will institute action in Superior Court to foreclose these delinquent special assessments and special taxes in their principal amount together with accrued interest, penalties, and attorney fees.
- L. **Initial Disclosure.** Developer(s) and property owner(s) shall provide all information requested by the City, its bond counsel, disclosure counsel, financial advisor, and underwriter which, in the opinion of such entities or persons, is necessary for the City to comply with Federal and State laws and regulations regarding initial disclosure for sale of municipal securities.
- M. **Continuing Disclosure.** Developer(s) and property owner(s) shall provide continuing information to City or, at the City's option, directly to State and National Repositories, which is required by the City, in its opinion or in the opinion of bond counsel, disclosure counsel, financial advisor, or underwriter, to comply with Federal and State laws and regulations regarding continuing disclosure for municipal securities. Developer(s) or property owner(s) shall enter into an agreement to provide such information prior to the issuance of any securities.

VIII. METHOD OF BOND ISSUANCE

The City shall determine the method of bond sale, including competitive, negotiated, and private placement sale approaches. Generally, the City utilizes a negotiated or private placement sale when one or more of the following factors are present.

- A. **Novel Structuring Approach.** When a novel structuring requires advance selling by the managing underwriter(s), a negotiated sale may be appropriate.
- B. **Complex or Unrated Debt.** An unrated financing (Baa or below) or a complex set of credit arrangements can also favor a negotiated sale. If a complex or unrated credit requires more pre-market or advance sales preparation by a managing underwriter, a negotiated sale maybe appropriate.
- C. **Volatile Market Conditions.** In times when the bond market experiences wide swings in interest rates over short periods and when the bond issue is interest-rate sensitive, a negotiated sale offers more latitude in bringing an issue to market.
- D. **Rejection of Competitive Bids.** Should the City hold a competitive sale and reject the bids due to unanticipated unfavorable market conditions, the City may select among those underwriters which it deems most responsive and negotiate the sale as and when

market conditions improve. This option should be utilized only in those circumstances when market conditions have changed markedly immediately prior to the sale.

- E. In instances where none of the above factors are present, a competitive sale approach may be utilized. In those instances where a negotiated sale is used, underwriter(s) shall be selected by the City.

IX. UNDERWRITER SELECTION

The City will select underwriting firms through a Request for Proposal process to serve for a period of one to five years.

Underwriter's Responsibilities. The underwriter will be expected to assist in the development of a sound financial plan for the capital facility or infrastructure that is planned to be financed as necessary and to underwrite the bonds to finance the project. Specific services, although not all inclusive, are listed below. Note that if the terms of the specific services differ from those described in a formal contract, the services as described in the contract shall prevail.

- Meet with City staff, developers, members of the financial team, and others as required to become familiar with the Project.
- Determine, with the assistance of City staff, the capital requirements for the Project.
- Determine and recommend the means of financing which is the most cost-effective in regard to net interest cost, annual debt service, market timing, and other matters which affect the cost of the financing.
- Either independently, or in conjunction with City's financial advisor, recommends alternative credit structures for the financing.
- Prepare a written analysis to be presented to the City of the recommended structure, pricing, and sizing of the issue, based on the then current market conditions. Modify said analysis to meet the changing conditions of the financial markets.
- Prepare a time schedule for the financing, with each critical component or task identified with the operative date of occurrence. Modify such schedule as needed. The schedule will be circulated to all participants in the financing, including City staff; financial advisor; the developer, if any; bond counsel; disclosure counsel; and the City Attorney's Office.
- Recommend and institute, with the City's concurrence, a marketing plan for selling the financial instruments. Such plan may include distributing preliminary official statements to all individuals, broker-dealers, and institutional investors targeting those

most likely to purchase the instruments and following up with telephone calls and other forms of communication.

- Coordinate the financing with the financial advisor, bond counsel, and disclosure counsel regarding the legal requirements of the financing and the preparation and structure of documents, including but not limited to, the preliminary and final official statements.
- Conduct a pre-pricing conference call with City staff the day before the sale. The purpose is to discuss with staff coupon interest rates, prices and yields for the financial instruments to be issued, and to review the comparable sales provided by the underwriter for recently conducted sales of like issues.
- Purchase the bonds, subject to pertinent resolutions, the official statement, and all other necessary documents, approvals, and proceedings governing such debt obligations having been determined by bond counsel, the City, financial advisor, and underwriter to be satisfactory in all respects for financing purposes.
- Obtain CUSIP Numbers for the bonds, if required.
- Prepare a final pricing report which includes an analysis of the interest rates obtained compared to other comparable financing in the market at that time.

X. BOND COUNSEL SELECTION

The issuance of debt by the City will include a written opinion by legal counsel affirming that the City is authorized to issue the proposed debt, that the City has met all constitutional and statutory requirements necessary for issuance, and a determination of the proposed debt's Federal income tax status. After consultation with and approval from the City Attorney, bond counsel shall be appointed by the City.

Bond Counsel Responsibilities. The services to be provided by bond counsel will include, but not be limited to, those listed below. Note that if the terms of the specific services differ from those described in a formal contract, the services as described in the contract shall prevail.

- Provide an objective legal opinion with respect to the authorization and issuance of local agency debt obligations and whether interest paid is tax-exempt under Federal and/or State laws and regulations.
- Research applicable law, prepare documents, consult with City staff and the financial team, review proceedings, and perform additional duties as necessary to render the opinion.

- Provide continuing legal advice regarding any actions necessary to ensure that interest will continue to be tax-exempt.
- Prepare legal documents for the financing, including closing documents and transcripts.
- Participate, when requested, in activities associated with rating agency reviews.
- Offer continuing legal advice, as needed, on issues related to the sale and the trustee administration of City's obligations.
- In cases where a separate disclosure counsel is not retained by the City, bond counsel will provide the City with a "10b-5 Opinion" with respect to the preliminary and final official statements.
- Provide a legal opinion with respect to the authorization and issuance of the debt obligations and whether interest paid is tax-exempt.
- Attend City Council meetings when the debt obligation for which counsel is providing services is being considered. Participate in staff meetings, including post issuance reviews, as requested, relating to the issuance of debt.

XI. CONSULTANTS

Financial Advisor. The City may select a financial advisor (or advisors) to assist in its debt issuance and debt administration processes. Selection of the City's financial advisor(s) shall be based on, but not limited to, the following criteria:

- Experience in providing consulting services to complex issuers.
- Knowledge and experience in structuring and analyzing complex issues.
- Experience and reputation of assigned personnel.
- Fees and expenses.

Financial Advisor Services. Financial advisor services provided to the City shall include, but shall not be limited to those listed below. Note that if the terms of the specific services differ from those described in a formal contract, the services as described in the contract prevail.

- Take primary responsibility for review of the quantitative analysis of the cash flows provided by the underwriter. Prepare reports matching all calculations for bond sizing, debt service schedules, savings calculations, bond calls, escrow calculations, and cash flows on the project. Prepare any other cash flow schedules as requested by the City.
- Provide all cash-flow schedules in a reasonable and timely fashion to all Financing Team members, including, but not limited to, City staff, bond counsel, underwriter, and

disclosure counsel. In addition, make all schedules in presentation form available to rating agencies and bond insurers as request by the City.

- Prepare the detailed costs of issuance, review the gross spread (underwriter's discount), and review all funds available as contributions to any refinancing.
- Be available at reasonable times for consultation to render advice regarding all financial aspects of the project as may be requested.
- Attend meetings and make presentations as requested. Prepare graphs, charts, etc., for staff presentations as needed.
- Review and comment on all legal documents, including, but not limited to, the preliminary and final official statements, resolutions, loan agreements, indenture, and the fiscal agent agreement.
- Conduct pre-pricing, pricing, and post-pricing conference calls with City Staff and underwriter reviewing market conditions, comparable sales, fees related to the refinancing, and final sale results.
- Provide City staff with recent comparable sales from similar projects, including information related to that project and the final sale coupons and yields.
- Be responsible and readily available to City staff (or designee) for the handling and answering of any and all questions, inquiries, and correspondence from interested persons referred to the Financial Advisor by City staff (or designee) regarding the services provided by the Financial Advisor.

Disclosure Counsel. In any negotiated sale of City debt in which legal counsel is required to represent the City, after consultation with and approval from the City Attorney, the City shall appoint a disclosure counsel. The scope of duties will include, but not be limited to, the following:

- Prepare the preliminary and final official statements.
- Provide a "10b-5 Opinion" with respect to the preliminary and final official statements.
- Prepare all documents and materials necessary to comply with all applicable "continuing disclosure" requirements for the transaction.
- Review, as necessary, applicable law and pertinent documents.
- Attend City Council meetings when the debt obligation for which counsel is providing services is being considered. Participate in staff meetings, including post issuance reviews, as requested, relating to the issuance of debt.

XII. AGREEMENTS

The Applicant may be required to enter into an agreement(s) incident to district proceedings as required by and in a form provided by the City and consistent with these policies. An agreement(s) may include, but not be limited to:

- A. Agreement(s) with any other public agency entitled to receive any portion of the bond proceeds or entitled to own and operate any of the public facilities financed by bond proceeds.
- B. Reimbursement/Acquisition Agreement(s), which agreement(s) shall include provisions regarding:
 - 1. The reimbursement of applicant costs and/or the acquisition of the facilities.
 - 2. The requirement for initial and continuing disclosure by developer(s) and property owner(s) as described in Section VII, paragraphs "L" and "M," of this agreement.
 - 3. The requirement that the applicant provide "Notices of Special Tax" as required by Government Code Section 53340.2.
- C. Advance Deposit Agreement(s).

As a condition to the issuance and sale of the bonds, any agreement(s) which may be required shall be duly approved and executed by the parties thereto. Prior to execution of any agreements, such agreements shall be reviewed by bond counsel and the City Attorney. Funding of Agreements "A" and "B" above shall be payable solely from the proceeds of the sale of bonds.

Agreements shall not include provisions which limit the legal right of the City to levy special taxes.

XIII. ACQUISITION PROVISIONS

The City generally allows acquisition districts. The City shall have final determination as to whether and to what extent it will allow the financing of public facilities through acquisition.

In the event the acquisition provisions of the Municipal Improvement Act of 1913 or Mello-Roos Act are utilized, the City and the Applicant or property owner shall mutually agree upon facilities to be acquired and the method of determining reasonable acquisition costs. For acquisitions pursuant to the Municipal Improvement Act of 1913 or the Mello-Roos Act, an acquisition agreement shall be required and approved by the City prior to any payment from the bond proceeds for the subject district.

Specifications and contracts must require payment of "prevailing wages" as set forth in Sections 1720-1861 of the Labor Code of the State of California, where improvements are to be acquired and reimbursement made therefore. The City Attorney will provide the necessary provisions which must be included in the contract to comply with the Labor Code.

Upon completion of construction, the following shall be submitted to the City:

- A. An itemized list of the improvements proposed for acquisition which gives a description of the individual items, the final quantity for each item, the unit price bid for the item and the total cost for each item.
- B. Basis and billing for all engineering fees paid and claimed for reimbursement.
- C. Description of any City fees paid and claimed for reimbursement.
- D. Releases from contractor, subcontractors, and suppliers indicating payment in full.
- E. Guaranty that there are no liens on the improvements to be acquired together with indemnification agreement to the City regarding unknown or future claims.

XIV. DISCLOSURE TO PURCHASERS

The applicant or property owner will be required to disclose an assessment, special tax, or other liens on individual parcels to existing and future property owners. It is the goal of the City that all taxpayers residing within, or owning property within, the boundaries of a Mello-Roos District heretofore or hereafter established by the City will receive the form of notice required by Section 53341.5 of the Act, at the time set forth therein, as such Section may be amended from time to time. In order to comply with this goal, it is the policy of the City to provide Section 53340.2 notice of special tax to any individual requesting such notice or any owner of property subject to a special tax levied by the City within five working days of receiving a request for such notice.

XV. EXCEPTIONS TO THESE POLICIES

The City may find in limited and exceptional instances that a waiver to any of the above-stated policies is warranted given identified special City benefits to be derived from such waiver. Such waivers may be granted by the City Manager or Director of Development Services with the approval of the City Attorney, if provisions waived are not material, and shall be granted only by action of the City Council if as to material provisions and shall be based upon stated policies as warranted given identified special City benefits to be derived from such specific public purpose, economic, and/or health and safety findings.

EXHIBIT "A"

The appraisal criteria herein are based on "Appraisal Standards for Land-Secured Financings" published by the California Debt and Investment Advisory Commission, July 2004 ("CDIAC Standards"). The CDIAC Standards should be used as additional guidance for appraisals related to CFDs. In the event of a conflict between the criteria in this Exhibit "A" and the CDIAC Standards, the CDIAC Standards shall prevail.

APPRAISAL CRITERIA

Appraisals undertaken to establish value-to-lien ratios in assessment districts and CFDs shall value the fee-simple estate subject to special tax and special assessment liens.

The appraiser undertaking the appraisal of real property in connection with the issuance of bonds of a CFD or assessment district formed by the City shall be designated as a Member of the Appraisal Institute ("MAI") at the time of appraisal. He/she shall be an independent appraiser contractor and represent himself/herself to be well-qualified to perform the appraisal services required. Such appraiser shall certify that he/she is familiar with the recognized and acceptable appraisal methods, techniques, and Standards of Professional Practice and Code of Ethics as set forth by the Appraisal Institute and Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation or any other requirements or qualifications pursuant to the laws of the State of California.

In the preparation of the appraisal report, the appraiser shall follow professional appraisal practices utilizing such methods and approaches to value as are appropriate for the specific property being appraised. Should certain approaches to value or requirements covered in these specifications not be applicable to the assignment at hand, the appraiser can fulfill the obligation herein by identifying that approach or requirement, together with a brief explanation of its omission (i.e., an appraisal involving land only).

Generalizations and unsupported assumptions by the appraiser relating to the existence of infrastructure, utilities, improvements, grading, access, soil conditions, topography, etc., and/or an estimated Highest and Best Use which differs from the present or permitted use and zoning are unsatisfactory in reports to be submitted relating to the issuance of CFD bonds. These items must be confirmed or justified by patterns of growth and demand trends, as indicated in the area, City, and neighborhood analyses. As a minimum, the appraisal report must comply with the appraisal requirements set forth below.

The appraiser should use precise definitions of terms, since some readers of appraisals are from outside the real estate profession. Examples of definitions include bulk acreage sales, bulk discounts, aggregate retail value, quick sale valuation, etc.

In lieu of a value determination made by an appraiser in accordance with the criteria set forth herein, the value of property within the CFD may be determined by using the County-assessed valuation of the real property within the CFD.

APPRAISAL CRITERIA

The definitions to be used in appraisals required by Section 53345.8 of the Community Facilities Act of 1992 ("Act") shall include, but shall not be limited to, the following:

- I. "Market Value" means the most probable price in cash; terms equivalent to cash; or, in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under undue duress. Fundamental assumptions and conditions presumed in this definition are:
 - A. Buyer and seller are motivated by self-interest.
 - B. Buyer and seller are well-informed and are acting prudently.
 - C. The property is exposed for a reasonable time on the open market.
 - D. Payment is made in cash, its equivalent, or in specified financing terms.
 - E. Specified financing, if any, may be the financing actually in place or on terms generally available for the property type in its locale on the effective appraisal date.
 - F. The effect, if any, on the amount of market value of atypical financing, services, or fees shall be clearly and precisely revealed in the appraisal report.

"Scope of the Appraisal" means it is the intent of the appraisal that all appropriate data considered pertinent in the valuation of the subject property be collected, confirmed, and reported in conformity with the Uniform Standards of Professional Appraisal Practice.

"As Is" means the state of development of the subject property and the level of entitlements obtained with respect to the subject property as of the date of value of the appraisal.

"Fee Simple Interest" means absolute ownership unencumbered by any other interest or estate subject only to the limitations of eminent domain, escheat, police power, and taxation.

- II. The standards to be used in Appraisals required by Section 53345.8 of the Act are as follows:
 - A. The appraisal shall be prepared by an appraiser licensed by the State of California at the time of appraisal.
 - B. The appraisal shall be prepared for the purposes of publication by any of the City, an underwriter, or an authorized purchaser of bonds in connection with the contemplated CFD financing.

- C. If deemed necessary by the City, the appraisal shall be consistent with a market absorption study, prepared by an experienced market absorption analyst, with respect to the development of the property which is the subject of the appraisal.
 - D. The appraiser shall be the agent of the City rather than the agent of any developer in the subject CFD.
- III. The assumptions to be used in the Appraisals required by Section 53345.8 of the Act shall include, but shall not be limited to, the following:
- A. Title to the property is assumed to be good and marketable unless otherwise stated.
 - B. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
 - C. Responsible ownership and competent property management are assumed.
- IV. The contents of the appraisal report shall include, but shall not be limited to, the following:
- A. **Statement of Limiting Conditions and Assumptions.**
 - B. **Certification of Appraiser and Permission to Reproduce and Use Report as Required for Bond Issuance.**
 - C. **Purpose of Appraisal.** This shall include the reason for the appraisal, a definition of all values required, and property rights appraised.
 - D. **Date of the Appraisal.**
 - E. **Primary Assumption.** The appraiser will process the valuation of subject properties assuming only improvements which are completed as of the date of value or for which current financing has been irrevocably obtained, e.g., proceeds of current bond issue.
 - F. **Legal Description.** This description shall be complete so as to properly identify the property appraised.
 - G. **Property Data.** All information pertinent to the current state of the property shall be considered.
 - H. **Title Condition.**
 - I. **Improvement Description.**
 - J. **General Plan Classification.** Describe the General Plan classification of the subject and comparable properties.

- K. **Zoning.** Describe the zoning for the subject and comparable properties and if rezoning is imminent, discuss further. Note any discrepancy between the General Plan classification and zoning.
- L. **Analysis of Highest and Best Use.** The report shall state and support the highest and best use to which a property can be put and recognize that land is appraised as though vacant and available for development to its highest and best use, and the improvements are based on their actual contribution to the site. If the highest and best use is based on a "Land Use" study provided by the developer, the appraiser's investigation and study supporting the conclusion that said land use is reasonable must be included in the report.
- M. **Proposed Construction.** The report shall describe the construction in the manner proposed by the developer based on the appraiser's study of construction drawings and/or interviews with engineers and architects responsible for project design which support such construction.
- N. **Sales Comparison Approach to Value**
1. **Land: Direct Comparison.** The appraiser's opinion of the value of the land shall be supported by confirmed sale prices of comparable, or nearly comparable, lands having like optimum uses.
 2. **Subdivision or Developmental Approach.** All variables contained within this approach shall be appropriately supported.
 - a. **Costs of Development – Land: Direct Costs.** All land-improvement costs shall either be estimated by developer's independent civil engineer or, if based upon "in-house" estimates, these costs shall be presented in the report in sufficient detail so that they may be reviewed by a qualified civil engineer. Estimates made by appraiser or "rules of thumb" are not acceptable.
 - b. **Costs of Improvement – Structures.** Appraisers shall check for reasonableness the developer's costs of constructing structures for work in progress and cite sources of cost data.
 - c. **Discount Rates.** Appraisals should have an adequate discussion and support/reasoning for discount rate derivation.
- O. **Value Estimate: Cost Approach, if Applicable.** This section shall be in the form of computative data, arranged in sequence beginning with reproduction or replacement cost, and shall state the name of the source of all cost estimates (i.e., engineering firm, contractor, cost estimating service, etc.).

The dollar amounts of physical depreciation and functional and economic obsolescence, or the omission of same, shall be explained in narrative form.

- P. **Income Approach to Value.** This approach should include a discussion on the leasing (rental) status of subject property (i.e., percent occupied, rental rates, concessions, terms, rental adjustments, etc.).
- Q. **Mass Appraisal Techniques.** It may be appropriate for projects that have built-out and occupied product to use mass appraisal techniques.
- R. **Interpretation and Correlation of Estimates.** The appraiser shall interpret the foregoing estimates and shall state his/her reasons why one or more of the conclusions reached in Items "N" through "Q" of this section IV are indicative of the market value of the property.
- S. **Value Allocations.** Appraiser should report values by ownerships or assessor parcel numbers. In CFDs where production units have been built and sold/occupied, these separate ownerships may be grouped together by logical categories (e.g., by tract, etc.).

These value allocations are necessary for preparation of the Official Statement for bond sale offerings.
- T. **Exhibits.** The appraisal report must contain sufficient exhibits to assist the reader in understanding the appraisal.

EXHIBIT "B"

ADMINISTRATION AND RESPONSIBILITY

The City Treasurer is responsible for bond issuance and administration. Administration responsibilities include, but are not limited to, the following:

- Providing the County Auditor's office with timely special tax and assessment information for inclusion on the property tax roll.
- Monitoring the payment of special taxes and assessments.
- Working with the City Attorney's office to initiate foreclosure on parcels with delinquent special taxes or assessments.
- Processing lien payoff requests, payments, and lien releases.
- Monitoring the bond reserve balance to ensure that the reserve does not exceed the maximum allowable amount.
- Calling bonds when funds are available for such purpose.
- Obtaining rebate calculations in accordance with applicable tax law.
- Investing idle district funds.

The Finance Division provides assistance in bond issuance and performs bookkeeping services for CFDs and LIDs. Such services include:

- Provides assistance in the development of documents necessary to issue bonds.
- Provides assistance in structuring and pricing the bond issue.
- Maintains the district's general and subsidiary ledgers.
- Processes requests for payment for construction of district improvements.
- Processes debt service payments.

The Development Services Department takes the lead in CFD and LID formation for the City and is responsible for:

- Establishment of the boundary map.
- Identification of improvements to be constructed and the design of such improvements.
- Appraisal of property.
- The engineer's report.
- Determination of the special tax formula or the method of assessment.
- The assignment of special taxes or assessments to parcels.
- The segregation of the special taxes or assessments for lot splits.

The City Clerk's office maintains the official records of the CFD or LID and performs the following additional services:

- Files and records documents.
- Transmits documents to involved agencies and parties.
- Processes resolutions.
- Prepares, publishes, and distributes notices of public hearings.

The City Attorney's office, at the request of the City Treasurer, processes foreclosures on properties with delinquent special taxes or assessments.

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