

RESOLUTION NO. 2018-_____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
ADOPTING LAND SECURED FINANCING
POLICIES**

WHEREAS, on September 16, 2002, the City Council adopted the Land Secured Financing Policies; and

WHEREAS, on September 4, 2007, the City Council approved revisions to the Policies; and

WHEREAS, the City's Finance Officer has reviewed the Policies and desires to make changes based on the current financing environment; and

WHEREAS, the City Council desires to amend the Land Secured Financing Policies to include the proposed changes; and

WHEREAS, the Land Secured Financing Policies has been amended to incorporate the proposed changes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. That certain document entitled, "Land Secured Financing Policies" is hereby adopted as the official policy for the City of Merced.

SECTION 2. The City Manager and Finance Officer are hereby authorized and directed to implement and comply with the Land Secured Financing Policies effective immediately.

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PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the _____ day of _____ 2018, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kelly Finane 10-8-18
City Attorney Date

CITY OF MERCED

LAND SECURED FINANCING POLICIES

TABLE OF CONTENTS

Definitions	1
Resource Consultants	4
Eligible Public Facilities	5
Credit Conditions	6
Value-to-Lien	6
Reserve Fund	7
Anticipated Tax Rate	7
Delinquency Level	8
Security	9
Exceptions	9
Appraisal Standards	9
Definition of Appraisal	9
Standards of Appraisal	9
Conflict of Interest	10
Refunding and Restructuring	10
Bond Sale Guidelines	10
Financial Participation	11
Acquisition of Facilities	11
Terms and Conditions of Bonds	11
Reserve Fund	11
Special Tax Levy – CFD	11
Capitalized Interest	12
Debt Service Structure	12
Equity of Proposed Special Tax or Assessment	12
Adherence to these Policies	12
Priority of Funding	12
Timing of Bond Sale	12
Refunding Guidelines	13
Security	13
Disclosure	13

District Cost Deposits and Reimbursements	14
Agreements.....	15
Acquisition Provisions.....	16
Property Owner Support.....	16
Land Use Approvals.....	16
Minimum Standards; Waiver and Amendment	16

City of Merced
Land Secured Financing Policies

Definitions

Unless the context otherwise requires, the terms employed in the following policies shall have the meanings specified below:

"Assessment Acts" means the Improvement Bond Act of 1911 and/or the Municipal Improvement Act of 1913 and/or the Improvement Bond Act of 1915; the Landscaping and Lighting Act of 1972; the Benefit Assessment Act of 1982.

"Bonds" means bonds authorized and issued under the Mello-Roos" Act or Improvement Bond Act of 1915.

"Bulk Sale Value" means the most probable price, in a sale of all parcels within a tract or development project, to a single purchaser or purchasers, over a reasonable absorption period, discounted to a present value, as of a specified date, in cash or in terms equivalent to cash, for which the property rights should sell after reasonable exposure, in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under undue stress.

"City" means the City of Merced.

"Discounted Cash Flow" means the measurement of the cash flows associated with the development and sale of real estate parcels, based on an independent judgment of the prices and times at which individual parcels or properties would be sold, after applying a discount rate to such cash flows to reflect the risk- adjusted rate of return necessary to attract the debt and equity investment necessary to undertake and complete the acquisition, entitlement, development and sale of the parcels or properties.

"District" means a community facilities district formed under the Mello-Roos Community Facilities Act of 1982 or an assessment district formed under the Improvement Act of 1911 or the Municipal Improvement Act of 1913.

"Lien" means, in the case of public debt imposed on a parcel or parcels, the aggregate amount of public debt attributable to such parcel, as measured by an assessment engineer; or, in the case of Mello-Roos Community Facilities District debt, the amount of debt attributable to a parcel or parcels, based on an apportionment of the debt to such parcel or parcels in relation to the probable debt service to be borne by such parcel or parcels.

"Public Facilities" means improvements authorized to be constructed or acquired under the Mello-Roos and Assessment Acts including, but not limited to, fees for capital facilities imposed by public agencies as a condition to approval of the development encompassed by the district or as a condition to service the district.

"Value" or "Fair Market Value" means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.

"Value-to-lien ratio" means the ratio of the Value, Fair Market Value or current assessed value applied by the County of Merced's Assessor's Office of a parcel or parcels in relation to the lien or liens imposed by an issue of bonds.

Introductory Statement

Land secured debt, issued through Community Facilities Districts formed by the City through the Mello-Roos Act or Assessment Districts formed through the Municipal Improvement Acts of 1911 and 1913, is issued on behalf of local property owners and property developers in order to finance the cost of infrastructure on undeveloped property. This type of debt is limited to authorized public improvements with a useful life greater than five years.

The City of Merced will consider developer or property owner initiated applications requesting the formation of community facilities or assessment districts and the issuance of bonds to finance eligible Public Facilities necessary to serve newly developing residential, commercial and/or industrial projects under the conditions set forth herein. There will be a clearly articulated public purpose in forming an assessment or special tax district in financing public infrastructure improvements. Council approval must be obtained to use this form of financing.

The City shall have final determination as to any facility's eligibility for financing, as well as the prioritization of facilities to be included within a district. The City shall evaluate the priority of such items on a project by project basis. The City may also require applicants to commit significant equity to projects for which public financing assistance is requested.

Projects primarily comprised of residential property may make application to the City only in the following instances:

1. The tax-exempt financing of project Public Facilities will result in a significant public benefit, as such public benefit is determined by the City; and
2. The City has negotiated and executed a development agreement (or similar agreement) addressing project implementation and providing for financing of all required public infrastructure.
3. Issuance of bonds for Financing of Public Facilities will typically not be less than \$5,000,000. The City can determine on a case by case basis if a lower amount is justified.

The above criteria will be applied by the City staff with final determination and findings to be made by the City Council.

Generally, only regional or community serving Public Facilities such as major collector and arterial streets and highways, state highways and bridges, freeways and freeway interchanges, railroad crossings, traffic signals, parks and open space acquisitions, public works facilities (including water, wastewater, storm drainage processing and distribution systems), community facilities (including youth facilities, sports complexes, bikeways and community/youth centers), public safety facilities (including police and fire facilities) and other appropriate public facilities will be eligible for this program. Facilities will be financed in accordance with the provisions of the Assessment Acts, or the Mello-Roos Community Facilities Act of 1982. The priority for community facilities district ("CFD") financing shall be given to otherwise eligible facilities as follows: (a) facilities needed to serve approved development which is deficient in infrastructure or other public facilities needed to develop the area as planned; (b) other facilities for which there is a clearly demonstrated public benefit; and (c) other facilities permitted by the Act.

The improvements eligible to be financed by a CFD must be owned and/or operated by a public agency except that CFD funds (i.e., special taxes and up to five percent of the proceeds of a tax-exempt bond issue may be owned and/or operated by a privately-owned public utility), and must have a useful life of five or more years. The development proposed within a CFD must be consistent with the City's General Plan. The construction or acquisition of improvements pursuant to a CFD shall not vest any rights to future entitlements on any properties, including those which are responsible for paying special taxes. The funding of facilities to be owned and/or operated by agencies other than the City shall be considered on a case-by-case basis.

Prior to the initiation of CFD formation proceedings, the applicant(s) shall meet and confer with City staff for the purpose of delineating a list of proposed facilities to be financed. As part of any CFD application or property owner petition, all public facilities

shall be described and prioritized, including those City facilities that would be included in the CFD.

Each time a community facilities district or an assessment district is formed for the benefit of a development project, the City will require annexation into a Community Facilities District-Services. The Community Facilities District may be established pursuant to the provisions of the Community Facilities Act of 1982, or such other provision of state law or appropriate local code or charter provisions, and will serve for the purpose of paying for any unfunded on-going City maintenance costs associated with the development project.

The City shall make the determination as to whether a proposed district shall proceed under the provisions of the Assessment Acts or the Mello-Roos Community Facilities Act. The City may confer with other district consultants and the applicant to learn of any unique district requirements such as regional serving facilities or long-term development phasing prior to making any final determination.

All proposed community facilities districts or assessment districts shall be reviewed by City staff for adherence to policy prior to being presented to the City Council. Any variance from policy as well as any other material information will be noted by City staff and reported to the Council with recommendation for action.

Resource Consultants

- Bond Counsel
- Disclosure Counsel
- Independent Registered Municipal Advisor
- Assessment Engineer
- Special Tax Consultant
- Appraiser
- Economist/Market Absorption Specialist
- Bond Underwriter/Placement Agent
- Trustee/Fiscal Agent

The City has the sole discretion as to the selection of consultants and determination of fees and expenses of all consultants necessary for the formation of a community facilities district or an assessment district and the issuance of bonds. Prior consent of the developer(s) or property owner(s) will not be required in the determination by the City of the consulting and financing team.

No firm may serve as both design engineer and engineer of work and assessment engineer or special tax consultant on the same project, pursuant to Section 87100 of the Government Code. No law firm may serve as bond counsel if any project proponent has

engaged such firm at any time during the three-year period immediately preceding the formation of the proposed district.

All City and consultant costs incurred in the evaluation of new development, district applications and the establishment of districts must be paid by the applicant(s) by advance deposit increments. The City will not incur any non-reimbursable expense for processing assessment or community facilities districts. Expenses not prepaid and chargeable to the district shall be solely for the account of the applicant.

Eligible Public Facilities

Facilities to be financed must be public facilities for which the City, or a public agency as determined appropriate by the City, will be the owner or will have normal operating and maintenance responsibility except that CFD funds (i.e., special taxes and up to five percent of the proceeds of a tax-exempt bond issue may be owned and/or operated by a privately owned utility), and must have a useful life of five or more years. Except as otherwise determined by the Council when proceedings for district formation are commenced, preference in financing public improvements through a land secured district will be given for those public improvements that help achieve clearly identified community facility and infrastructure goals. Such improvements and types of facilities eligible to be financed include study, design, construction and/or acquisition of:

1. Public safety facilities;
2. Streets, highways, and bridges;
3. Flood control facilities;
4. Street lighting;
5. Libraries;
6. Traffic signal and safety lighting;
7. Public utilities;
8. Park facilities, open space;
9. Recreational facilities;
10. Storm drain facilities;
11. Sanitary sewer facilities measures involving land acquisition, dedication, and revegetation;
12. Biological mitigation.
13. Potable and reclaimed water facilities;
14. Sewer facilities and water facilities;
15. Facilities authorized pursuant to development agreements, impact fee programs, capital improvement programs and capital facility fee programs of the City;
16. Other governmental facilities and improvements such as offices, information

technology systems and telecommunication systems.

17. Other facilities authorized pursuant to the Mello-Roos Act, as such act may be amended from time to time.

The City will retain final determination as to any facility's eligibility for financing, as well as 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. Generally, in-tract improvements will not be considered eligible, unless specific circumstances and credit conditions warrant such inclusion.

Credit Conditions

- **Value-to-Lien:** In order to minimize the likelihood of a district defaulting on its payment to bond owners, all CFD or assessment district bond issues shall require at least a four to one (4:1) value-to-lien ratio taking into account, in addition to the other aspects of value, the value of the improvements to be financed, and considering all special tax and special assessment liens applicable to the subject property. A slightly lesser value-to-lien ratio may be considered when recommended for approval, upon compelling justification, by both bond counsel and the City's municipal advisor. In no event shall a value-to-lien of less than 3.5:1 be allowed.

Property value may be based on either an appraisal, or on assessed values of the subject property as indicated on the county's assessor's tax roll, or a combination of both. Appraisals, when used to establish property values, shall be performed by a state certified real estate appraiser selected by the City, as defined in subdivision (c) of Section 11340 of the California Business and Professions Code, in accordance with the State of California appraisal standards and the Uniform Standards of Professional Appraisal Practice. The definitions, standards and assumptions to be used in such an appraisal shall be the definitions, standards and assumptions set forth in the California Debt and Investment Advisory Commission's "Appraisal Standards for Land-Secured Financings," May, 1994, revised July, 2004. The appraisal must be dated within ninety days of the date the bonds are issued or if dated more than ninety days of the date the bonds are issued, a "bring down" or "update" letter from the appraiser shall be provided. The public lien amount shall be based on the size of the bond issue currently being sold, plus any parity, public indebtedness currently existing against the properties secured by special taxes or special assessments. This timeframe may be decreased due to then-current underwriting criteria as determined by the City, its municipal advisor, and the underwriter.

In addition to an appraisal, a market absorption study may be required. The appraisal and/or absorption study shall be coordinated by, under the direction of, and addressed to the City. All costs associated with the preparation of the appraisal report and/or market absorption study shall be paid by the developer(s) or property owner(s) through the advance deposit mechanism.

- **Reserve Fund:** A bond reserve fund equal to the least of (i) ten percent (10%) of the original proceeds of the bond issue, (ii) the maximum annual debt service on all outstanding bonds, or (iii) 125 percent of the average annual debt service on all outstanding bonds shall be required for all bond issues in districts where less than 90 percent of the buildable acreage has been developed. Notwithstanding the foregoing, a smaller reserve fund may be permitted by the City for private placements or bond issues in districts where a significant portion of the buildable acreage has been developed and the value-to-lien ratio for undeveloped property is in excess of the minimum required value-to-lien ratio described in the preceding section.

For smaller CFDs or improvement areas within a CFD, a Special Reserve Fund in addition to the standard reserve fund may be required. The reserve fund level will be determined by the City based on the recommendation of the Registered Municipal Advisor. The reserve fund may be funded with cash or an acceptable reserve surety or other credit facility.

- **Anticipated Tax Rate:** The special tax applicable to any parcel in a community facilities district ("CFD") or an assessment district which is expected to be developed for for-sale residential purposes shall be limited to an amount which, at the time of adoption of a rate and method of apportionment of special taxes for such district, and at the time a bond financing is approved by the Council, is not expected to cause the total tax projected to be levied on such parcel in the year following its initial sale to a homebuyer to exceed 1.8% of the estimated initial sales price thereof, as estimated by the City's market absorption consultant. In connection with the foregoing, the estimated sales price shall be determined assuming that the subject home is complete and ready for occupancy and is being marketed contemporaneously with the adoption of the rate and method of apportionment of special taxes. The City, at its sole discretion, may limit the total tax burden to less than 1.8% for certain market segments, such as seniors in age-restricted communities, if homeowners in such segments have demonstrated market sensitivity to tax burdens of 1.8%.

The total of the following burdens, when taken in the aggregate, will be used in calculating the total tax on a parcel: ad valorem property taxes levied by the County, voter approved ad valorem taxes levied by the County in excess of one percent (1%) of the Fair Market Value, any other existing special tax liens or assessments levied

on the property for any CFD or assessment or maintenance district for the payment of bonded indebtedness or services, and the maximum special tax for the proposed district.

The Special Tax formulas for CFDs financing capital improvements shall not include escalating special tax rates for residential property. Community Facilities Districts-Services may provide for an escalating special tax.

The maximum special tax formula shall adhere to the following requirements:

- a) The maximum special tax shall include the annual administrative costs of the City to administer the district (a portion of these costs may be established as superior in lien position to the debt service).
- b) The special tax formula shall not include escalator rates allowing annual tax increases above the maximum special tax established upon district formation.
- c) The maximum special tax shall establish for undeveloped land, tax rates corresponding to the adopted land use designations on each parcel. Undeveloped land may be taxed up to the maximum amount allowed for developed parcels, but debt service will first be paid by taxing developed parcels the maximum rate and to the extent that additional special tax is required to pay debt service and pay administrative costs, an amount up to the maximum special tax may be levied on undeveloped land.
- d) The City shall have discretion to allow a special tax in excess of the established limits for any lands within the CFD which are designated as commercial or industrial.
- e) For residential districts, once property sale actively commences, the City will not take any actions to modify the established special tax formula.

The City shall retain a special tax consultant to prepare a report which recommends a special tax method for the proposed CFD, and evaluates the special tax 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, ad valorem taxes and assessments on properties within the CFD.

- **Delinquency Level:** The property tax delinquency rate on properties within a

district shall be no greater than 5.0% at the time of any sale of bonds in connection with such district, with exception for the issuance of refunding bonds.

- **Security:** For new development, the applicant or property owner must demonstrate its financial plan and ability to pay all assessments and/or special taxes during the build-out period. The City in certain instances may require additional security such as credit enhancement as discussed in further detail in the following section.
- **Exceptions:** The City may consider exceptions to these policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, or for private placements of bonds to accredited investors or qualified institutional buyers. Furthermore, the City may consider exceptions to these policies for projects which meet public policy goals.

Appraisal Standards

- **Definition of Appraisal:** An appraisal is a written self-contained report independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
- **Standards of Appraisal:** A detailed complete appraisal shall be prepared for complex appraisal problems. A detailed complete appraisal shall reflect nationally recognized appraisal standards including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. An appraisal should also generally conform to the Appraisal Standards for Land-Secured Financings provided by the California Debt and Investment Advisory Commission ("CDIAC"). Appraisals undertaken to establish value-to-lien ratios in CFDs should value the fee simple estate, subject to special assessment and special tax liens. The estimate of Market Value should be refined to reflect the Retail Value of fully improved and occupied properties and the Bulk Sale Value of all vacant properties, including both unimproved properties and improved or partially improved but unoccupied properties. An appraisal must contain sufficient documentation including valuation data and the appraiser's analysis of the data to support his or her opinion of value. At a minimum, the appraisal shall contain the following:
 - a) The purpose and/or function of the appraisal, an identification of the property being appraised, the intended use, the identity of the current and intended uses, and a statement of the assumptions and limiting conditions

affecting the appraisal.

- b) An adequate description of the physical characteristics of the property being appraised, location, zoning, present use, and an analysis of highest and best use.
 - c) Relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. If a discounted cash flow analysis is used, it should be supported with at least one other valuation method, such as a market approach using sales that are at the same stage of land development. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.
 - d) A description of comparable sales, including a description of all relevant physical, legal and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
 - e) A statement of the value of real property.
 - f) The effective date of valuation, date of appraisal, signature and certification of the appraiser.
- **Conflict of Interest:** No appraiser shall have any interest direct or indirect in the real property being appraised for the City that would in any way conflict with the preparation or review of the appraisal.
 - **Refunding and Restructuring:** In the context of a workout or bond restructuring, including a refunding, the requirement for an appraisal shall be based on findings of the City Council in light of the particular bond structure and the nature of the bond owners of the new restructured obligations.

Bond Sale Guidelines

The timing of any sale of bonds in connection with a district and the conditions that must be satisfied prior to any such sale shall be determined by the City Council in its sole discretion; and, in connection therewith and in order to address the then prevailing conditions in the bond market, the Council may elect not to issue any such bonds unless and until the property whose special taxes or assessments will secure such bonds is all or substantially all developed and all or substantially all of the for-sale properties located in

the district have been conveyed to end-users thereof.

Financial Participation

The proponent(s) of a district will be expected to advance sufficient funds to pay all costs associated with the formation of the district and all costs associated with the issuance and sale of bonds, as required and/or deemed necessary by the City. Any reimbursement of such costs from the proceeds of the bond sale will be at the sole discretion of the City.

Acquisition of Facilities

In the event the acquisition provision of the Municipal Improvement Act of 1913 or the Mello-Roos Act is utilized, the City at its sole discretion, will determine the facilities to be acquired and the method of determining reasonable acquisition costs. A funding and acquisition agreement shall be required and approved by the City Council prior to the adoption of the Resolution of Formation to form the district. Bidding and prevailing wage requirements will be addressed during the preparation of the agreement.

Terms and Conditions of Bonds

The City shall be responsible for determining the financing method to be used, the structure of the bonds to be issued including the method of sale (negotiated, competitive, or private placement), its consultants for the financing, the investment of bond proceeds, and all other terms and conditions incidental to structuring and closing a land-secured bond issue. Unless otherwise authorized by the City, the following shall serve as bond requirements:

- **Reserve Fund:** A reserve fund equal to the lesser of the three tests described in applicable federal tax regulations.
- **Special Tax Levy – CFD:** Special taxes shall be levied upon developed property which obtains an occupancy permit and, in all cases, in advance of the issuance of CFD bonds, in accordance with the rate and method of apportionment. Special taxes may be levied to fund a special reserve to pay debt service and administration fees. Special taxes may also be levied for authorized improvements prior to bond sale. These improvement funds will be held in a deposit account until such time as bonds are sold, in order to ensure sufficient project funds while maintaining an effective tax rate of 1.8% or lower at the time of bond sale. In the event of extenuating circumstances which make issuing bonds in a reasonable manner unfeasible, the funds in the deposit account could be released at the discretion of the City.

- **Capitalized Interest:** Interest may not be funded (capitalized) beyond the earliest principal payment date for which sufficient special tax or assessment revenues can be made available.
- **Debt Service Structure:** Beginning with the commencement of the repayment of principal, annual debt service shall be level. The City will consider an increasing annual debt service for commercial and/or industrial districts only, but such increases shall not exceed one percent (1%) per year.
- **Equity of Proposed Special Tax or Assessment:** The maximum special tax shall be established to assure that the annual revenue produced by levy of the maximum special tax shall be equal to at least 110% of the average annual debt service after funding of the reasonable and necessary administrative expenses of the district. The allocation of any assessment or special tax shall be consistent with the methodology established by the engineers report and/or the Rate & Method of Apportionment (RMA) as applicable. Under no circumstances shall the special tax levied on any parcel of developed residential property be increased by more than ten percent (10%) as a consequence of delinquency or default by the owner of any other parcel.

All special tax formulas shall include a maximum tax and a formula for prepayment. The City will evaluate the equity of the proposed allocation of a special assessment or special tax consistent with the applicable statutes. Exceptions from the special tax may be given to parcels which are publicly owned, are held by a property owners association, are used for a public purpose such as open space or wetlands, are affected by easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness or as otherwise determined by the City Council.

- **Adherence to these Policies:** Prior to sale of bonds, the City shall have received from its municipal advisor a letter that states to the best of its knowledge to date, these policies have been met, or if not, why a waiver was in the City's best interest.
- **Priority of Funding:** 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.
- **Timing of Bond Sale:** The timing for bond sales is solely at the discretion of the City. Guidelines to assist in determining the appropriate timing of a Bond sale include (but are not limited to): appropriate land-use entitlements being in place and finalized; appropriate environmental clearances completed and certified; in-tract improvements related to parcels securing bonds significantly complete and

certified; for residential projects, completion of model home complex(es), initiation of construction of production homes, and having at least 10% of saleable residential units in escrow or sold and closed.

- **Refunding Guidelines:** In general, current refundings of outstanding bonds for economic savings will be undertaken only when net present value savings of at least three percent (3%) of the refunded debt can be achieved. If the refunding is an advance refunding, then the minimum desired net present value savings shall be at least five percent (5%). Advance refundings that produce net present value savings of less than five percent will be considered on a case-by-case basis, provided that the present value savings are at least three percent (3%) of the refunded debt. Refundings with savings of less than three percent (3%), or with negative savings, will not be considered unless there is a compelling public policy objective, as determined by the City. The measurement of the 3% or 5% savings may, but is not required to, consider other benefits to the City, other than the proposed bond transaction, if deemed appropriate by the City.
- **Security:** For new development, the applicant or property owner must demonstrate its financial plan and ability to pay all assessments and/or special taxes during the build-out period. The City in certain instances may require additional security such as credit enhancement.

The Developer/Land Owner(s) will be required to post a Letter of Credit in the amount of up to two years of maximum annual debt service as long as they have a 20% or greater share of the special tax payments.

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

- **Disclosure:** Owners of land securing 10% or more of the debt service on bonds will be required to provide financial information, deemed appropriate by the City, for inclusion in the continuing disclosure document the City must provide annually and will also be required to provide written undertakings to provide financial and operating data as required by the SEC's Rule 15c2-12 and by the underwriter of the bonds.

It is the intent of the City that purchasers of property within a community facilities district or an assessment district and purchasers of the bonds be fully informed of the amount and nature of the assessment or special tax. In addition to all requirements of law, the City shall require the proponent(s)/applicant(s) of such

district to provide disclosure of such information as the City deems appropriate to the purchasers of property (both existing and future property owners) within the district, with respect to the existence of the district, amounts of special taxes or assessments to be levied within the district and the terms and conditions of bonds issued on behalf of the district. Such disclosure may include homebuyer notifications requiring signature prior to the home purchases, as well as methods to notify subsequent home purchasers. Upon request by staff, the proponent(s) shall provide a certificate of compliance with the disclosure requirements.

District Cost Deposits and Reimbursements

All City and consultant costs incurred in the evaluation of district applications and the establishment of districts will be paid by the applicant by advance deposit increments. The City shall not incur any non-reimbursable expenses for processing and administering developer-initiated assessment districts or CFDs. Expenses not chargeable to the district shall be directly borne by the applicant.

Each application for formation of an assessment district or CFD shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with district review and implementation. If additional funds are needed to offset costs and expenses incurred by the district, the City shall make written demand upon the applicant for such funds and the applicant shall comply with each demand within ten (10) calendar days of receipt of such notice. If the applicant fails to make any deposit of additional funds for the proceedings, the City will suspend all proceedings until receipt of such additional deposit.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the proceedings, including but not limited to, legal, engineering, appraisal, special tax consultant and financial advisory expenses; administrative costs and expenses; required notifications; and printing and publication of legal matters.

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

- a) The District is not formed;
- b) Bonds are not issued and sold by the District;
- c) The proceedings for formation of the District or issuance of bonds is disapproved by the City; or
- d) 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 for all reasonable costs and expenses incident to the proceedings and construction of the public facilities as provided under the Mello-Roos Community Facilities Act of 1982 or the Municipal Improvement Act of 1911 or 1913 and the Improvement Bond Act of 1915, provided that all such costs and expenses shall be verified by the City as a condition of reimbursement.

The applicant or property owner shall not be entitled to reimbursement from bond proceeds for any of the following:

- a) In-house administrative and overhead expenses incurred by the applicant, or expenses of applicant's counsel or consultants;
- b) Interest expense incurred by the applicant on moneys advanced or expended during the proceedings and construction of public facilities; and
- c) Any other costs and expenses incurred by the applicant which are not otherwise authorized for reimbursement under the Mello-Roos or Assessment Acts.
- d) Any fees for public facilities, school, roads, or any other fee or any permits for engineering, construction, planning or inspections.

The City shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant. Neither the City nor the district shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the district. Excess funds on deposit after the formation of the proposed district will be refunded to the depositor.

Agreements

The applicant shall provide all necessary agreements incident to district proceedings in a form satisfactory to the City and consistent with these policies. These agreements shall include, but not be limited to:

- a) Reimbursement Agreement
- b) Agreements 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.

As a condition to the issuance and sale of the bonds, all of the agreements specified 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 and approved by

the City Council.

Acquisition Provisions

The City is generally opposed to construction districts. The City shall have final determination as to whether it will allow the financing of public facilities through construction as opposed to acquisition, and will grant exceptions only where an overriding justification exists concerning public benefit, safety or health. Such waiver shall be subject to City Council approval.

The City and the applicant or property owner shall mutually agree upon facilities to be acquired and the method of determining reasonable acquisition costs. A funding and acquisition agreement shall be required and approved by the city council on or prior to the adoption of the Resolution of Intention to form the district.

Property Owner Support

In the instance of multiple property owners, the district applicant shall be required to produce letters evidencing other property owner support for the scope and establishment of the district as an attachment to the district application. The City will require that developer initiated districts have concurrence of not less than two-thirds of the property owners to be included in the proposed district, unless there is an overriding need for the public facilities, or the applicant is willing to separately fund the facilities on the non-participating property(s). The City reserves the right to require demonstration of a greater or lesser degree of public support for the formation of the proposed district.

Land Use Approvals

Proposed district properties must possess a land use determination such that proposed development land uses and specific facility requirements can be adequately assessed. The City will accept applications for assessment and/or Mello-Roos financing only when properties to be included within a proposed district have City-approved zoning or site plan approval.

Minimum Standards: Waiver and Amendment

The policies set forth herein reflect the minimum standards under which the City will assist development of land-secured districts. The City may, in its discretion, require additional measures and procedures, enhanced security and higher standards in particular cases.

The City may, in limited and exceptional circumstances and to the extent permitted by law,

in its discretion, waive any of the policies set forth herein in particular cases given identified special City benefits to be derived from such waiver. Such waivers are granted only by action of the City Council and based upon a specific public purpose and/or health and safety findings. The policies set forth herein may be amended at any time and from time to time by the City.