

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

CITY OF STOCKTON, CA
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CITY OF STOCKTON

POLICIES AND PROCEDURES FOR LAND-SECURED FINANCING

I. INTRODUCTION

The City of Stockton (the “City”) has created these policies on land-secured debt financing (the “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 (“CFDs”) and assessment districts (local improvement districts) (“LIDs”) and the issuance of bonds to finance eligible public facilities necessary to serve developing commercial, industrial, residential, and/or mixed use developments of a regional nature, as described in the following eligible capital project facilities section.

Eligible public facilities and improvements will be tax-exempt 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.

Generally, only improvements directly benefiting 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.

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 its 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 application 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.

These policies and procedures shall apply to all CFD's and LID's formed by the City. Any policy or procedure stated herein may be supplemented or 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.

To the extent that items have not been contemplated for inclusion in the Land Based Debt Financing Policy, additions and revisions can be made by approval of the Debt Policy Committee to be formally added to the Debt Management Policy through the annual review process.

II. ELIGIBLE PUBLIC FACILITIES

Facilities to be financed must be public facilities for which the City, or an agency as determined appropriate by the City, will be owner or will have normal operating and maintenance responsibility. 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. The City will give priority for the use of land-secured financing capacity for City services and those facilities that are regional in nature and for operations and maintenance. The

City shall review financing “in-tract” facilities 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 (an “Applicant”) is encouraged to arrange a pre-application meeting with the City’s Chief Financial Officer the “CFO”) and financing staff to enable the CFO 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 CFO. 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 CFO 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 Finance Team. Once the City review committee has determined that the proposed district formation and financing application is complete, the CFO 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, assessment engineer or special tax consultant and underwriter (the “Financing Team”). Providers of letters of credit, surety bonds or other credit enhancements are also subject to City approval.

- D. Representatives. The City and the Applicant shall each designate a representative for each financing district proceedings. The representative shall be responsible for coordinating the activities of their respective interests and shall be the spokespersons for each such interest. The purpose of this requirement is to avoid duplication of effort and misunderstandings from failure to communicate effectively. In the case of the City, it allows the City’s consultant to report to a single official who will, in turn, communicate with other staff members.
- E. 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 CFO shall make written demand upon the Applicant for such funds. The proceedings will not begin until receipt of such funds. If the CFO 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 is 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 and 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.

- F. Project Initiation. The CFO will arrange and conduct a meeting between the Applicant and the members of the Finance 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.
- G. 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 CFO. Time schedules will (unless specific exceptions are allowed) observe established Council meeting schedules and agenda deadlines. To the extent possible, financings will be scheduled to allow debt service to be placed on the tax rolls with a minimum of capitalized interest.

- H. 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.
- I. City Administration Fee. In addition to deposits advanced by the Applicant to cover the costs of the initial review of the application and consultants, the City shall receive an administrative fee which is intended to cover the City's costs associated with the formation of the assessment or special tax district and the issuance of bonds. The City's Administrative Fee is listed in Exhibit 'A' and is a component of the cost of issuance paid from bond proceeds.

IV. ECONOMIC VIABILITY REVIEW-CREDIT QUALITY

- A. General. The City will (unless deemed to be unnecessary by the CFO 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, availability of special permits (e.g., Army Corps of Engineers, California Fish and Game, Cal-Trans, 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 their financial plan and ability to pay all assessments and/or special taxes before full build-out has taken place.

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 twenty percent (20%) 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 twenty percent (20%) (New property owners responsible for twenty percent (20%) or more of the special tax payments within the district will 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 must be discharged by the City upon the opinion of a qualified appraiser, retained by the City, that a minimum value-to-lien-ratio of 3:1 has been attained, with value determined pursuant to the appraisal criteria as set forth herein.

4. *Value-to-Lien.* The district (or improvement area) property value-to-lien ratio shall be at least 3:1 as determined pursuant to the appraisal criteria as set forth herein and considering any prior or pending special taxes or improvement liens. As an alternative valuation method to an appraisal, County assessed valuation may be utilized in accordance with the Act. Notwithstanding, the CFO has the complete discretion to require value-to-lien ratio in excess of 3:1.

If an appraisal is used to determine value, 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 'B' or such other appraisal criteria as is allowed by the Act. The appraisal shall be coordinated by and under the direction of the City. 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 value-to-lien ratio is 3:1 or greater, the City may determine not to 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. However, letters of credit or other security may be required for individual parcels within a district that have a value-to-lien ratio of less than 3:1.
- B. If the 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.

5. *Irrevocable Letters of Credit.* In situations where a district or certain parcels within a district have a value-to-lien ratio of less than 3:1, an Irrevocable Letter of Credit ("LOC") or cash escrow fund deposit shall be required to assure payment of annual special taxes/special assessments until such time that the 3:1 ratio 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 (LOC) 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 a value-to-lien ratio of 3:1, as determined by an appraiser and/or market absorption consultant retained by the City. In the event the 3:1 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 a value to-lien ratio of 3:1. 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 do 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:

- A. rated "A" or better by Moody's or Standard & Poor's with a rating of "9/C" or better by Thompson BankWatch for a domestic bank and a "B" or better for an international bank.

or

- B. 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.

or

- C. if approved by the CFO, 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% 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 two and one-half percent (2.5%) of the appraised market value (as defined in the appraisal criteria set forth herein) of the subject properties:

- A. Ad valorem property taxes levied by the City;

- B. Voter approved ad valorem taxes levied by the City in excess of one percent (1%) 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; and
- 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 one percent (1%) 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:

- D. Recommends a special tax for the proposed CFD; and
- E. 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 plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

It is further the policy of the City to comply with the provisions of Section 53321 of the Act with respect to the escalation of maximum taxes.

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 particular kind of financing, bonds issued for land secured financings 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 financings 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 thirty (30) years from the date of the bonds.
- C. Maximum redemption premiums shall not exceed five percent (5%). If available, no-call provisions shall not exceed ten (10) 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 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 (1) ten percent (10%) of the original principal amount of the bonds, (2) one hundred percent (100%) of the maximum annual debt service, and (3) one hundred and twenty five percent (125%) of average annual debt service, (the "Reserve Requirement") 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. Policies governing the investment of debt service reserves and bond proceeds can be found in both the bond documents and the City's Investment Policy. At district formation, the reserve fund can be funded at less than the reserve requirement with City approval providing 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 amount of capitalized interest required. The amount of such interest will be determined based on the length of the construction period, the earliest date upon which tax roll collection may commence and the amount of such interest will 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.

- 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% of the maximum annual debt service;
- 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 underwriters 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. Delinquency Management: Pursuant to statute, the City may enter into covenants with bond holders to institute delinquency management 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.

1. **Competitive Sale.** In a competitive sale, the City's bonds shall be awarded to the bidder providing the lowest true interest cost as long as the bid adheres to the requirements set forth in the official notice of sale.
2. **Negotiated Sale.** The City recognizes that some securities are best sold through negotiation. In its consideration of a negotiated sale, the City shall assess the following circumstances:
 - Bonds issued as variable rate demand obligations.
 - A complex structure which may require a strong pre-marketing effort.
 - Size of the issue which may limit the number of potential bidders.
 - Market volatility is such that the City would be better served by flexibility in timing its sale in changing interest rate environments.

Other criteria to consider: the absence of investment grade rating of the bonds; timing considerations beyond "market volatility" (e.g., refundings).

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.

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, the selection of underwriter(s) by the City shall be one or more of the underwriters from the City's approved list of underwriters.

IX. Underwriter Selection

It is within the City's best interest to be in a position to be able to react quickly and issue debt based on favorable market conditions. Therefore, the City will periodically issue a Request for Proposals to a number of underwriting firms, and through a thorough review and selection process will pre-qualify a number of underwriting firms for a pool from which underwriters will be selected for various financings. Firms from this pool may be selected to act as sole, senior or co-manager, or as a group member in a syndicate.

- **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 financings in the market at that time.
- **Underwriter’s Compensation.** See Exhibit ‘A’

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. The approving opinion and other documents relating to the issuance of debt will be prepared by counsel with extensive experience in public finance and tax issues.

In order to be able to react quickly and issue debt based on favorable market conditions, the City will periodically issue a Request for Proposals to a number of bond counsel firms, and through a thorough review and selection process will pre-qualify a number of bond counsel firms for a pool from which bond counsel will be selected for various financings. Bond counsel will be selected by the City Attorney’s Office in consultation with the City Manager.

- **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; preparing documents; consulting with City staff and the financial team; reviewing proceedings; and performing 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.
- **Bond Counsel Compensation.** See Exhibit 'A'

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 Finance 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.
- Assist the City in the design and implementation of a credit strategy, including preparation of presentations to credit rating agencies and bond insurers or other credit providers, development of requests for proposals for municipal bond insurance, surety bonds and/or letters of credit, and the analysis of the economic efficiency of any proposed credit enhancement.
- In the case of a competitive sale of bonds, advise the City on the appropriate terms and parameters for the Notice of Sale and market timing for the receipt of bids.
- 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.

- **Financial Advisor Compensation.** See Exhibit 'A'
- **Disclosure Counsel.** In any negotiated sale of City debt in which legal counsel is required to represent the City, 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.
- **Disclosure Counsel Compensation.** See Exhibit 'A'

XII. Market and Investor Relationships

- **Rating Agencies and Investors.** The CFO shall be responsible for maintaining the City's relationships with Moody's Investors Service, Standard & Poor's and Fitch IBCA. The City may, from time to time, choose to deal with only one or two of these agencies as circumstances dictate. In addition to general communication, the CFO shall: (1) communicate with credit analysts at least once each fiscal year, and (2) prior to each competitive or negotiated sale, offer conference calls and meetings with agency analysts in connection with the planned sale.
- **City Council Communication.** As appropriate, the CFO shall provide feedback to the City Manager from rating agencies and/or investors regarding the City's financial strengths and weaknesses and recommendations for addressing any weaknesses.
- **Continuing Disclosure.** The City shall remain in compliance with Rule 15c2-12 by filing its annual financial statements and other financial and operating data for the benefit of its bondholders by March 31 each year.
- **Rebate Reporting.** The use of bond proceeds and their investments must be monitored to ensure compliance with arbitrage restrictions as contained in the Federal Tax Code. Existing regulations require that issuers calculate annual rebates, due for interest earnings on bond proceeds in excess of the interest rate

on the bonds if any, with rebate, if due, paid every five years. Therefore, the CFO shall ensure that proceeds and investments are tracked in a manner which facilitates accurate calculation, that calculations are completed, and rebates, if any, are made in a timely manner.

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); and
- 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 the above agreements shall be payable solely from the proceeds of the sale of bonds.

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" (each individual department is responsible for its own contract compliance with 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. Release from contractor, subcontractors, and suppliers indicating payment in full.
- F. Guaranty that there are no liens on the improvements to be acquired together with indemnification agreement to the City regarding unknown or future claims.
- G. Competitive Bidder. The Developer covenants that all contracts to be awarded pursuant to the Acquisition Agreement shall be awarded to the contractor who is the lowest responsible bidder on that particular contract, after notice inviting sealed bids is given as required for public works projects by law.
- H. Prevailing Wages. The Developer covenants that, with respect to the construction of Facilities, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages.

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.

XVI. 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 CFO 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'

COMPENSATION SCHEDULE

- **Underwriter's Compensation.** An underwriter shall be entitled to an Underwriter's Discount to be negotiated with the City prior to initiating underwriting services. Said Underwriter's Discount shall not exceed those amounts set forth below in conjunction with the monetary value of the issuance.

Underwriter compensation on rated or insured issues will be set in collaboration with the financial advisor and will be based on the prevailing market for fees paid for in comparable issue types, complexities and size.

Notwithstanding the above, an underwriter shall be entitled to a minimum fee of \$22,500 for any issue for which underwriter has been engaged to provide underwriting services.

The Underwriter's Discount allowed on each issue shall include management fees, takedown, underwriter's risk, and expenses of sale, including but not limited to, underwriter's counsel, travel and out-of-pocket expenses, computer and modeling, charges from the California Debt Advisory Commission (CDIAC), assignment of CUSIPS, day loan charges, and other usual and customary costs incurred by the underwriter.

– All fees are contingent upon the successful completion of the City's financing.

- **Bond Counsel Compensation.** Compensation will be based on the following terms.

– The fee for each financing will be computed on the basis of a minimum fee of twenty thousand dollars (\$20,000) plus one-quarter of one percent (.25%) of the first ten million dollars (\$10,000,000) of bonds issued plus one tenth of one percent (.1%) of any principal amount of bonds issued in excess of ten million dollars (\$10,000,001) up to \$20,000,000, plus seven and one half of one percent (.075%) of any principal amount of bonds issued in excess of twenty million dollars (\$20,000,000) up to \$30,000,000. For amounts in excess of \$30,000,000, the City shall negotiate an acceptable fee with the qualified firm of its choice. In the event that an agreement is not reached between the City and that qualified firm, the City shall negotiate with a different qualified firm. Such selection process will continue until a qualified firm accepts the City's proposed fee.

– Reimbursement for actual out-of-pocket expenses shall not exceed 10% of the fee unless otherwise agreed to in advance. The qualified firm must submit documentation for such expenses satisfactory to the City prior to reimbursement of any out-of-pocket expense.

– All fees are contingent upon the successful completion of the City's financing.

- **Financial Advisor Compensation.** Financial Advisor compensation shall be negotiated on a case-by-case basis not to exceed the fees paid to the Bond Counsel. The Financial Advisor should be compensated based on the following terms.
 - The fee for each financing will be negotiated based on the complexity and size of the specific transaction.
 - All fees paid to the Financial Advisor are inclusive of out-of-pocket expenses.
 - All fees are contingent upon the successful completion of the City’s financing.
- **Disclosure Counsel Compensation.** The fee paid to disclosure counsel is 60% of the fee paid to bond counsel. Other terms of compensation include:
 - Reimbursement for actual out-of-pocket expenses shall not exceed 10% of the fee unless otherwise agreed to in advance. The qualified firm must submit documentation for such expenses satisfactory to the City prior to reimbursement of any out-of-pocket expense.
 - All fees are contingent upon the successful completion of the City’s financing.
- ◆ **City Administration Fee.** In addition to deposits advanced by the Applicant to cover the costs of the initial review of the application and consultants, the City shall receive an administrative fee which is intended to cover the City’s costs associated with the formation of the assessment or special tax district and the issuance of bonds. The City’s Administrative Fee is based on the following fee scale: Three-quarters of one-percent (.75%) up to the first \$5 million of the par amount of the bond issue; one-half of one-percent (.50%) of the par amount of the bond issue over \$5 million up to \$10 million; one-quarter of one-percent (.25%) of the par amount of the bond issue over \$10 million. The City’s Administration Fee is a component of the cost of issuance and is paid from bond proceeds.

EXHIBIT 'B'

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 an MAI Member of the Appraisal Institute, 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, as 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

- A. The definitions to be used in appraisals required by Section 53345.8 of the Act shall include, but shall not be limited to, the following:

"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:

1. Buyer and seller are motivated by self-interest.
2. Buyer and seller are well-informed and are acting prudently.
3. The property is exposed for a reasonable time on the open market.
4. Payment is made in cash, its equivalent, or in specified financing terms.
5. 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.
6. 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.

- B. The standards to be used in Appraisals required by Section 53345.8 of the Act are as follows:

1. The appraisal shall be prepared by an appraiser licensed by the State of California at the time of appraisal; and

2. 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; and
 3. 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; and
 4. The appraiser shall be the agent of the City rather than the agent of any developer in the subject CFD.
- C. 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:
1. Title to the property is assumed to be good and marketable unless otherwise stated.
 2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
 3. Responsible ownership and competent property management are assumed.
- D. The contents of the appraisal report shall include, but shall not be limited to, the following:
1. Statement of Limiting Conditions and Assumptions.
 2. Certification of Appraiser and Permission to Reproduce and Use Report as Required for Bond Issuance.
 3. Purpose of Appraisal -- This shall include the reason for the appraisal, a definition of all values required, and property rights appraised.
 4. 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.
 5. Legal Description -- This description shall be complete so as to properly identify the property appraised.
 6. Property Data - All information pertinent to the current state of the property shall be considered.
 7. Zoning -- Describe the zoning for the subject and comparable properties and if rezoning is imminent, discuss further.

8. 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.
9. 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.
10. Sales Comparison Approach to Value -
 - a. 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.
 - b. Subdivision or Developmental Approach - All variables contained within this approach shall be appropriately supported.
 - (1) 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.
 - (2) 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.
 - (3) Discount Rates - Appraisals should have an adequate discussion and support/reasoning for discount rate derivation.
11. 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.
12. 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.).

13. Mass Appraisal Techniques - It may be appropriate for projects that have built-out and occupied product to use mass appraisal techniques.
14. 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 10 through 13 are indicative of the market value of the property.
15. 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.

16. Exhibits - The appraisal report must contain sufficient exhibits to assist the reader in understanding the appraisal.