

## CITY OF MODESTO

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### **POLICIES & PROCEDURES FOR THE FORMATION, ANNEXATION, AND ADMINISTRATION OF COMMUNITY FACILITIES DISTRICTS CREATED PURSUANT TO THE PROVISIONS OF THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982**

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### **POLICIES & PROCEDURES FOR THE FORMATION, ANNEXATION AND ADMINISTRATION OF COMMUNITY FACILITIES DISTRICTS CREATED PURSUANT TO THE PROVISIONS OF THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982**

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#### 1) Introduction.

The following policies and procedures (“Policies and Procedures”) for the use of the Mello-Roos Community Facilities Act of 1982 (the “Act”) are established pursuant to Government Code Section 53312.7. These Policies and Procedures describe the application, formation, annexation, appropriate uses for and administration of any Community Facilities District (“CFD”) used to finance facilities or for the provision of allowable services.

The City of Modesto (the “City”) will consider developer or property-owner initiated applications requesting the formation of a CFD, and the possible issuance of bonds or the generation of revenues to finance eligible public facilities necessary to serve residential, commercial and/or industrial projects. The City may also establish CFDs which are initiated by the City. Priority in using CFD funding will be given to capital projects that are regional in nature and have the broadest possible benefit to the land uses included in the CFD. While it is the City’s intent to use the Act to provide for the financing of City-owned and operated infrastructure and services, projects of a regional nature may include facilities to be owned and operated by other public agencies. In any event, only regional or community serving public facilities which directly benefit the CFD, and the provision of services (if applicable) may be eligible for CFD funding.

The City shall make the final determination as to whether or not a proposed CFD shall proceed under the provisions of the Act. 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 such final determination.

The Act may be used for the purchase, construction, expansion, rehabilitation, or acquisition of public improvements, or the provision of public services subject to the provisions of these Policies and Procedures and any subsequent amendments thereto, to the fullest extent permitted by the Act. The City shall use the Act to provide for the financing of City-owned and operated infrastructure and services, except as noted above.

The City will make the final determination whether or not the CFD will be a construction or acquisition district. All City and consultant costs incurred in the evaluation of CFD applications and the creation of CFDs must be paid in advance by the applicants in those instances where a CFD is initiated by a party or parties other than the City. However, the City may incur expenses for analyzing proposed districts where the City is the principal proponent of the CFD formation for financing of the CFD.

Expenses not legally reimbursable by the district shall be borne by the applicant. Both City costs and district consultant costs may be funded from bond proceeds.

For the purposes of reviewing activities undertaken pursuant to these Policies and Procedures, and to review proposed Mello-Roos financing, all relevant matters shall be referred to the Financial Policy Committee of the City Council.

2) Definitions.

- a) Acquisition District. A CFD formed to finance the acquisition of infrastructure or public facilities where the applicant will be reimbursed for eligible construction related costs by means of tax credits or otherwise.
- b) Amendment. A change, in any manner, to an adopted Public Report.
- c) Annexation. The addition of real property into a CFD which has already been formed, and for which a Public Report has already been prepared and adopted. “Annexation” in this context does not mean a change in organization as described in the Cortese-Knox Act of 1985 (Sections 56000 et seq., Division 3 of the Government Code).
- d) Applicant. Developer or landowner who initiates formation/annexation of a CFD.
- e) Bonds. Bonds authorized and issued under the Mello-Roos Community Facilities Act of 1982.
- f) Bond Counsel. Outside counsel retained by the City to assure compliance with applicable federal and State tax and other laws and regulations relating to public financing.
- g) Bond Underwriter. The investment banker(s) retained by the City to design, develop and execute the sale of bonds in the market place.
- h) Certificate of Completion: A written document provided to a facility provider by the District Engineer stating that the facility is complete and in good working order, and that the requirements of the facility acquisition agreement have been met.
- i) City. The City of Modesto.
- j) City Attorney. City Attorney of the City of Modesto or his or her designee.
- k) City Manager. City Manager or his or her designee.
- l) Community Facilities District (CFD). A special district formed pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 as amended, to finance specific public improvements or public services, and where properties within the CFD are levied a special tax in accordance with the rate and method of apportionment adopted as part of the district proceedings.
- m) Conclusion of Formation. The date a tax lien, for a specific CFD, is successfully recorded by the Stanislaus County Clerk Recorder.

- n) Credit. An offset against tax owed, or cash reimbursement for tax paid, as appropriate, calculated by subtracting from the Facility Cost Estimate any non-prepaid costs or incidental costs as defined in the Mello Roos Act, Section 53317(c) and (e), by means of a cash administrative cost offset. The administrative offset may be specified in the public report.
- o) CFD. A Community Facilities District created for the purpose of financing the costs of certain public facilities and services pursuant to the provisions of Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code.
- p) CFD Team. An interdepartmental City working group consisting of a representative of the City Attorney's Office, the District Administrator and such other staff as the District Administrator may designate. Its function shall be to process CFD applications and the formation of CFDs, including elections as appropriate.
- q) District Administrator. A subgroup of the CFD Formation Group composed of a City Manager or his or her designee. The District Administrator shall have the power to retain and consult with an outside consultant experienced in administering established CFDs in order to assure such administration is in accordance with City ordinances, resolutions, these Policies and Procedures as amended, and applicable law. The District Administrator shall also have the power to appoint an Acting District Administrator to serve in his or her absence.
- r) District Engineer. A California registered professional engineer employed by the City of Modesto, or a City of Modesto CFD, who is responsible for making final engineering determinations on behalf of that CFD.
- s) Facility. Any public works-type infrastructure for which tax is to be collected pursuant to the public report, which could be eligible for tax credit and is located within a CFD.
- t) Facility Cost Estimate. The facility (or facility segment) cost estimate, including contingency cost estimates relating to that facility (or segment) which are included in the tax stated directly, or by reference, in the public report, as that report may be amended or adjusted for inflation from time to time.
- u) Facility Provider: Any person or entity constructing a facility.
- v) Fair Market Value, or Value. The amount of cash or its equivalent which property would bring if exposed for sale on 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.
- w) Financial Advisor. Financial consultant retained by the City to review, comment and advise on financial matters relating to CFDs.
- x) Fiscal Feasibility Report. A study performed under the direction of the City to determine the financial viability of a proposed CFD.

- y) Infrastructure and Public Facilities. Those public improvements including but not limited to major streets and arterials, highway improvements and freeways, freeway interchanges, right of way acquisitions, bridges, street lights, water, flood, sewer and drainage improvements, fire and police stations, parks, wetlands, telephone ducts, electrical conduits, libraries, transit improvements (including public parking facilities), and the provision of certain services (if applicable), that may be eligible for financing pursuant to these Policies and Procedures, and which are authorized improvements pursuant to provisions of the Mello-Roos Community Facilities Act of 1982 (“Act”).
- z) In-tract Facilities. Infrastructure and public facilities which serve an individual CFD, such as local subdivision streets, local utilities and local drainage systems. Not all such infrastructure and public facilities may actually be located within the boundaries of the CFD. (Possible example: drainage system).
- aa) Oversubscription. Oversubscription is the furnishing of land or facilities whose total value as set forth in the public report exceeds the total taxes attributable to a facility provider’s entire development within a CFD.
- bb) Public Report. A report generally containing the following:
  - (1) A description of the public capital facilities and services proposed for the CFD.
  - (2) A general description of the area to be served by said facilities; said areas being the boundaries of the CFD.
  - (3) A cost estimate, setting forth the costs and expenses for providing the public facilities and services to the properties within the boundaries of the CFD and the costs of any incidental expenses to be paid by the CFD.
  - (4) The rate and method of apportionment of the special tax in sufficient detail to allow each landowner or resident within the proposed CFD to estimate the annual amount of payment;
  - (5) General Terms and conditions relating to the proceedings.
  - (6) All exhibits and attachments to the resolution of formation of a CFD, and documents included therein by reference.
- cc) Special Tax Consultant. A consultant retained by the City to develop the rate and method of apportionment and other special tax formulas and criteria for a Mello-Roos CFD.
- dd) Tax: Any facilities special tax specified in the public report for the CFD.
- ee) Value-to-Lien Ratio. The value of a parcel of land as determined by an MAI appraisal relative to the amount for which land secured bonds may be sold for the parcel.

3) Application Process.

- a) Application. The applicant shall submit an application in the form attached hereto as Example “A”, or as may be amended from time to time by the City Manager, to the City together with a nonrefundable fee as set forth herein and amended from time to time. The fee is for the purpose of application processing, other preliminary costs, retention of appropriate consultants, and the compensation of staff time devoted to the formation of the CFD.
- b) Project Review. Applicant and the CFD Formation Group may discuss the application including but not limited to further information that might be required and other issues as necessary. If necessary, the applicant may be required to submit a revised application. Once the application is accepted by the CFD Formation Group, it may be reviewed by City Finance personnel or City consultants to determine the adequacy of the proposed financing. CFD Formation Group may also forward the application to the City’s engineering staff for determination that the application package is in fact both complete and practicable. Applicant and the CFD Formation Group may also conduct a face to face meeting between the applicant and the CFD Formation Group to “scope” the consultant work necessary to the formation of the CFD. However, the final authority to approve the scope of the consultant work to be performed in connection with the formation of any CFD and for the compensation of such services shall be solely within the authority of the CFD Formation Group.
- c) Project Initiation. The application is accepted by the CFD Formation Group and the CFD Formation Group receives contracts, reimbursement agreements, bond documents and other pertinent items for consideration by the City Council, as required.
- d) Costs Incurred By The City Prior To Formation. All costs incurred by the City prior to formation of the CFD, including but not limited to consultant costs (e.g. legal counsel, engineer firms, appraisers, special tax consultants, financial advisors), City staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be reimbursed to the City by the applicant prior to the completion of formation. The CFD Formation Group shall utilize timekeeping computer software, as such may be updated from time to time, to track billable hours in 1/10 hour increments attributable to CFD formation, amendment, annexation or other modification, and CFD administration. The timekeeping process will be used both to audit time spent as appropriate, and to generate bills to applicants for formation costs. Such bills shall also contain, in so far as practicable, costs or estimates of costs incurred by CFD group members in connection with CFD formation and/or CFD administration.

From time to time the CFD Formation Group will review and re-evaluate the City’s fee/deposit requirements in light of the cost results of recent CFD formations for the purpose of recommending modifications of excessively high or low fee/deposit charges as required. The initial such review shall occur in September 1998.

- e) Costs Incurred Prior To Bond Closing. If a CFD is formed, and if bonds are issued, the

City may direct that all of its costs of formation be reimbursed from bond proceeds.

- f) Costs Incurred By The City Subsequent To Formation. All City administrative and consultant costs, including those of the District Administrator, related to administration of a CFD and incurred after formation shall be included within the special tax formula in accordance with applicable provisions of law.
- g) Formation Reimbursement To Applicant.
  - (1) Where CFD is Not Formed, or where CFD is Formed and Bonds are Not Issued. In the event that the CFD is not formed due to City disapproval or abandonment, or due to applicant abandonment, or due to nonpayment of any reimbursable fee, or the CFD is formed and bonds are not issued for any reason, the City will refund to the applicant any remaining unexpended and unobligated portion of advance deposits posted with the City, subject to the City's prior and full reimbursement of all of its direct and indirect costs. In the event that the applicant's advance deposit to the City is not sufficient to reimburse the City for all of its direct and indirect costs, the City will require an additional deposit by the applicant for the difference. The City shall be entitled to pay any refund to the applicant listed on the application form without interest, irrespective of any changes in the ownership or compensation of the applicant.
  - (2) Where CFD is Formed and Bonds are Issued. If the CFD is formed and bonds are issued, bond proceeds shall be used to defray all approved costs and expenses incident to the proceedings in construction of the public facilities, subject to approval of the CFD Formation Group in conjunction with Bond Counsel, and subject to any applicable restrictions contained in the Act as amended. With respect to applicant paid consultant costs, reimbursement shall be limited to those CFD-related consultant's hired by the City or those hired by the applicant and expressly approved by the City in writing. Eligibility for reimbursement of any otherwise-eligible expense is conditioned upon the applicant providing paid invoices therefore to the City, and the CFD Formation Group's approval thereof. The applicant shall not be entitled to reimbursement from bond proceeds for any of the following reasons: interest expense incurred by the applicant during the planning or design of construction (subject to exception for construction-related interest expense, set forth below) of the public improvements and any other costs and expenses incurred by the applicant which are not legally authorized for reimbursement, or as to which Bond Counsel has declined approval for reimbursement.
  - (3) Pursuant to Government Code Section 53314.9, the City Council may enter into an agreement, by resolution, with a person or entity advancing funds or work-in-kind for any authorized purpose, including, but not limited to, paying any cost incurred by the City in creating a CFD, without interest, under all of the following conditions:
    - (a) The reimbursement proposal is included in the resolution of intention to establish the CFD and in the resolution of formation to establish the CFD, or in the resolution of consideration adopted pursuant to Government Code Section

53334.

- (b) The proposed special tax or change in a special tax is approved by the qualified electors of the CFD, or in the event that the electors do not approve the proposed special tax or change in a special tax, the City shall return any funds which have not been committed for any authorized purpose at the time of the election.
- (c) Any work-in-kind accepted pursuant to this paragraph shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the City.
- (d) Any reimbursement agreement entered into pursuant to this paragraph and Government Code Section 53314.9, shall not constitute a debt or liability of the City or of the District.

The reimbursement procedure specified in Government Code Section 53314.9 and incorporated in this paragraph may be utilized both in the case where the requesting person or entity owns all of the land within a proposed CFD, and in the case in which the requesting person or entity owns less than all of the land within the proposed CFD. In the later event, consideration will be given to setting forth two (2) or more tax districts within the CFD in order to facilitate reimbursement of the person or entity which paid more than its pro-rata share of the formation costs from the proceeds of one time special facilities taxes paid by landowners in the tax district or districts that does/do not include the land owned by the person or entity that paid more than its prorata share of the CFD formation costs.

- (4) Where CFD is Formed and Bonds are Not Issued. With respect to advance formation fees pursuant to Paragraph 3.u. of these Policies and Procedures, any portion of such fee/deposit not paid out or obligated for the direct or indirect costs of CFD formation by the CFD Formation Group, may be further obligated by the CFD Formation Group based on its good faith estimate of the cost, including consultant costs, and other reasonable incidental costs as defined in the Act that may be incurred in the administration of the CFD during the period of time following its formation but prior to the City's receipt of sufficient annual maintenance special taxes to provide for appropriate administration of the CFD. The remaining fee/deposit not paid out or obligated for the direct or indirect costs of the CFD formation or administration by the CFD Formation Group shall be returned to the applicant within five (5) business days after the CFD Formation Group presents its written accounting and good faith estimate. The accounting and good faith estimate shall be prepared within thirty (30) days after the CFD is formed.
- (5) "Dollar for Dollar" Credit Against One-Time Facility Tax. Where the applicant makes a timely request that CFD formation costs be included in the cost of infrastructure for the purpose of computing taxes due under the Rate and Method of Apportionment and the final tax formulas, such CFD formation costs, including the



initial fee/deposit, may be recovered by crediting such formation costs against facilities special taxes which would otherwise be due from the applicant from the time when such taxes would initially be due until the subject formation costs to be credited are exhausted by facilities special taxes incurred.

h) Agreements Required. Applicant will be required to enter into all necessary agreements incident to CFD proceedings in a form provided by the City and consistent with these Policies and Procedures. These agreements may include, but not be limited to:

- (1) Acquisition and Shortfall Agreement
- (2) Advance Deposit Agreement
- (3) Land Dedication Agreement (where required)
- (4) Acquisition and Disclosure Agreement
- (5) Disposition and Development Agreement (where required)
- (6) Development Agreement
- (7) Other agreements (as required)

As a condition of the issuance and sale of bonds, all of the agreements required by the City shall be duly approved and executed by the parties thereto. Prior to execution of any such agreements, the agreements shall be reviewed and approved by the City Attorney. They may also be reviewed by Bond Counsel and such other consultants as the City believes are appropriate.

i) Land Use Approvals. All projects within the proposed CFD, together with the infrastructure and public facilities, must be consistent with the City's adopted General Plan and zoning classifications. All property within the proposed CFD must possess land use determinations or zoning classifications of sufficient certainty, and facility requirements of sufficient specificity that each parcel can be adequately assessed.

j) Use of Consultants. The City shall employ any consultants necessary for the formation of a CFD, review of financing, the issuance and administration of bonds, including but not limited to underwriters and underwriter's counsel, Bond Counsel, Financial Advisor, special tax consultant, engineers, appraisers, market absorption study consultant, or any other consultant deemed necessary by the CFD Formation Group in its judgment to complete the CFD proceedings and/or for issuance of bonds. The cost reimbursement provisions of these Policies and Procedures shall apply to all costs and expenses incurred by the CFD Formation Group in employing such consultants. An applicant may retain its own consultants for its own benefit, but must work only through those consultants hired by the City. In the event the applicant retains its own consultants, all costs associated therewith shall be borne by the applicant, without reimbursement from bond proceeds unless expressly agreed in writing by the CFD Formation Group.

k) Eligible Infrastructure and Public Facilities. Infrastructure and public facilities eligible for CFD financing are those public improvements which benefit properties within a proposed CFD and/or will mitigate impacts of that development upon areas of the City outside the proposed CFD, and which will be owned, operated and maintained by the City or another public agency expressly approved in writing by the City. Improvements which are or will be

owned, operated or maintained by a private company or utility are not eligible, except for improvements to be owned by shareholder owned utility companies regulated by the California Public Utilities Commission and which comprise less than five (5%) percent of the project. In-tract facilities, exactions, or other public right of way easements and/or lands which are dedicated by applicant as a condition of a development entitlement will not be eligible for bond financing, except if they are expressly allowed in a development agreement or other agreement between the City and the applicant.

l) Bidding Process.

- i) In retaining construction contractors for work which is reimburseable by a City of Modesto CFD and where the construction costs of the Acquisition and Shortfall Agreement (or other similar agreement) with the CFD are less than \$300,000.00, the developer shall abide by the following bid process:
  - (1) The developer shall provide three (3) competitive bids. If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the District Engineer. The District Engineer may allow this if the developer can provide adequate justification
  - (2) The developer shall make sure that all contractors and subcontractors are licensed in accordance with sections 7000 through 7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed.
  - (3) In accordance with California Labor Code section 1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the District Engineer, Developer's construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The CFD shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, Section 4.19, for the work performed unless the District Engineer authorizes the use of overtime or legal holiday time, in advance and in writing.
  - (4) The District Engineer shall retain the right to be in attendance to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the District Engineer in advance and in writing. In the case of an emergency, any such charges may be authorized by the District Engineer if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.
  - (5) No permits shall be issued and no work shall commence until the developer and the District Administrator have executed an Acquisition and Shortfall Agreement for the

improvements to be constructed.

- (6) The developer shall maintain certified payroll records for all labor costs incurred on all CFD reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the CFD or any state regulatory agency for review, audit, inspection or copying upon request.
  - (7) Developer shall indemnify and hold the City and the CFD harmless for ensuring that the project is bid and constructed in accordance with City and CFD standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City and the CFD harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.
  - (8) Developer may be reimbursed for design costs incurred prior to the execution of an Acquisition and Shortfall Agreement for completed and accepted, CFD-funded facilities as determined and approved by the CFD Administrator and the CFD Engineer.
- ii) In retaining construction contractors for work which is reimburseable by a City of Modesto CFD and where the construction costs of the Acquisition and Shortfall Agreement (or other similar agreement) with the CFD are \$300,000.00 or greater, the developer shall abide by the following bid process:
- (1) Using a bid package approved by the City, the developer shall advertise for bids in the appropriate newspapers and periodicals, including but not limited to the local Builders Exchange and the Modesto Bee. Bid opening shall be no sooner than 7 days after the initial publication.
  - (2) The bid package shall include, and be based upon, improvement plans as stamped approved by the City Engineer or his or her designee (“City Engineer”), and the Community Facilities District Engineer or his or her designee (“District Engineer”). The bid package may not contain any alterations, deviations or exceptions to the improvement plans, unless the alteration, deviation or exception is approved in writing by the District Engineer and is advertised for a reasonable period prior to the bid opening.
  - (3) The developer shall only accept bids using a bid proposal form approved by the City. The developer shall ensure that copies of the form are made available to prospective bidders at a local business office located within Stanislaus County during reasonable business hours throughout the bid advertising period. Contractors interested in submitting sealed bids for the project will be directed to do so on the approved form and at a specific date and time (e.g., at 9 a.m. on February 1, 2004, at the developer’s place of business). At this specified time, the District Engineer may be in attendance to receive the bid packages.

- (4) The bid packages will be opened immediately after the close of the specified time period. The bid opening shall be open to the public and may be in the presence of the District Engineer. All bids will be publicly announced at the bid opening. The developer will then begin the process of executing a contract with the lowest responsible bidder.

If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the District Engineer. The District Engineer may allow this if the developer can provide adequate justification.

- (5) The developer shall insure that all contractors and subcontractors are licensed in accordance with sections 7000 through 7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed.
- (6) In accordance with California Labor Code section 1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the District Engineer, Developer's construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The CFD shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, Section 4.19, for the work performed unless the District Engineer authorizes the use of overtime or legal holiday time, in advance and in writing.
- (7) The District Engineer shall retain the right to be in attendance to receive the bid package, or to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the District Engineer in advance and in writing. In the case of an emergency, any such charges may be authorized by the District Engineer if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.
- (8) No permits shall be issued and no work shall commence until the developer and the District Administrator have executed an Acquisition and Shortfall Agreement for the improvements to be constructed.
- (9) The developer shall maintain certified payroll records for all labor costs incurred on all CFD reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the CFD or any state regulatory agency for review, audit, inspection or copying upon request.

- (10) Developer shall indemnify and hold the City and the CFD harmless for ensuring that the project is bid and constructed in accordance with City and CFD standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City and the CFD harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.
  - (11) Developer may be reimbursed for design costs incurred prior to the execution of an Acquisition and Shortfall Agreement for completed and accepted, CFD-funded facilities as determined and approved by the CFD Administrator and the CFD Engineer.
- k) Designation of Spokesperson. The applicant(s) owners requesting preparation of a petition for formation of a CFD, if more than one, shall designate a spokesperson for all of them. The applicants' spokesperson shall be responsible for the following.
- (1) Advising joint applicants to contact him or her for answers to their questions concerning CFD matters.
  - (2) Contacting appropriate City representatives to obtain answers to such questions as he or she is unable to answer. The appropriate City representatives are the members of the CFD Formation Group.
  - (3) Informing joint applicants that any estimated cost figures supplied to them prior to the estimate contained in the public report, as preliminarily approved by the CFD Formation Group, must not be relied upon as necessarily precise.
- l) Additional Advances. It is the policy of the City that applicants with properties improved through CFD proceedings pay all City and associated costs of such proceedings and other costs incurred in advance of CFD formation, or, in the case of the sale of bonds, before any bonds are sold. Therefore, with respect to all developer-initiated applications, if actual City costs exceed the amounts estimated below, the applicant will be required to advance additional monies to pay all costs incurred or to be incurred. Any failure to do so within ten (10) days of provision of written demand by the CFD Formation Group will be grounds for immediate termination of all activities by the CFD Formation Group, and by the consultants, if any, retained by the CFD Formation Group for the purpose of bond financing.
- m) Boundary Map. A boundary map for each proposed CFD must be provided with the application. The boundary map should be provided in the following formats:
- (1) 18" x 26" Mylar
  - (2) 8 1/2 x 11" paper
  - (3) PDF

Assessor's parcels maps may be compiled on which the project boundary and other required information are shown. The map must identify all Assessor's parcels within the project

boundary and the boundary of the area being annexed must follow existing parcel lines. The map must be certified by a licensed civil engineer. The CFD number to be included in the map title and page numbers may be obtained from the CFD Formation Group.

- n) Registered Voter/Property Owner Certification. Any CFD election will be voted upon by property owners (one vote per acre) so long as there are fewer than twelve (12) registered voters residing within the proposed CFD area. The CFD Formation Group will not process registered voter elections absent special arrangements with the CFD proponent. Each of the property owners must designate a single proxy to cast their ballot. The civil engineer for the CFD applicant must verify the number of registered voters within the project and list all property owners showing APN and number of acres. The civil engineer must then file a certification suitable to the CFD Formation Group as part of the application package. This certification must be made within ninety (90) days prior to the hearing on the resolution of formation for the CFD.
- o) Waiver and Consent. The qualified electors (property owners) must file a waiver and consent document suitable to the CFD Formation Group waiving some of the statutory election requirements, particularly the time lines. With this waiver, the election may take place sooner than otherwise.
- p) Fiscal Feasibility Report. Prior to the formation of a CFD, a fiscal feasibility report may be required if a portion of the land within a CFD is substantially undeveloped. The report shall be prepared by or at the direction of the CFD Formation Group. All costs for preparing this report shall be borne by the applicant.
- q) Special Taxes and Assessments. The projected special tax, when added to the ad valorem property tax and other direct and overlapping debt for the proposed CFD (including other benefit assessments, special taxes levied for authorized but unissued debt, and any other anticipated special assessments, taxes or charges which may be included on a property owner's annual property tax bill), shall not exceed two (2%) percent of the projected assessed value of each improved parcel within the CFD. A backup special tax may be required to protect against changes in land use that may result in insufficient annual special tax revenues.
- r) Special Tax Formula. The maximum special tax submitted to the qualified voters of the CFD shall not exceed one (1%) percent of the projected assessed value of the developed properties at the time of full build out of CFD formation. Furthermore, the total of the following shall not exceed two (2%) percent of the projected assessed value of the subject properties
  - (1) Ad valorem property taxes levied by the City.
  - (2) Voter approved ad valorem taxes levied by the City in excess of one (1%) percent of the assessed value.
  - (3) Special taxes levied by any existing CFD for the payment of bonded indebtedness or ongoing services.

- (4) Assessments levied for any assessment district or maintenance district for the payment of bonded indebtedness or services.
- (5) The maximum special tax for the proposed CFD.

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

1. The maximum special tax shall be established when a developed parcel is first subject to the tax and shall include the annual administrative costs to the City to administer the CFD.
  2. Concerning that portion of the tax restricted to generating funds for maintenance of facilities, the special tax formula shall not include escalator rates allowing annual tax increases above four (4%) percent per year for developed parcels.
  3. The City shall have discretion to allow a special tax in excess of the two (2%) percent maximum tax burden limits for any commercial or industrial lands within the CFD.
  4. Concerning that proportion of the tax restricted to generate funds for the payment of debt service, the special tax formula shall not include escalator rates allowing annual tax increases above two (2%) percent.
- s) CEQA Compliance. The CFD Formation Group shall be responsible for compliance with the California Environmental Quality Act with respect to each CFD formation analyzed or completed by it.
- t) Based on substantial evidence presented to the City Council, it is determined that advance deposits in the following sums must be received in all cases, whether reimbursable or not, prior to an applicant's application for a CFD being deemed complete by the CFD Formation Group.
- (1) CFD is to be created at applicant's request and where bonds are issued - \$64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.
  - (2) A CFD is to be created at applicant's request and where bonds are not to be issued - \$64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.
  - (3) In the case of the creation of a "simple" annexation to an existing CFD, which does not require the preparation of a new public report, or the alteration of an existing Public Report or modification of any other CFD-related document for the existing

CFD, and the annexation does not involve the sale of bonds - \$9,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

- (4) In the case of the creation of a “complex” annexation to an existing CFD, which requires an amendment to or modification of a Public Report or other CFD-related document, and the annexation does not require the sale of bond - \$20,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.
  - (5) In the event that a "registered" voter election is required, an additional amount over and above the previously mentioned fees may be incurred. The City Clerk will estimate the minimum time and material costs pertaining to such an election based on the facts known at the time the election becomes necessary, and payment of the estimated sum shall be required prior to initiation of such an election.
  - (6) In the event that a "registered voter" election is both required and results in the nonformation/nonannexation of the subject CFD, the above-referenced fees and costs will not be refundable to the applicant save and except those amounts advanced by the applicant which are in excess of those obligated for the CFD Formation Group formation/annexation costs, consulting fees and other related expenses.
- u) Resolution of Intention. When a CFD application and all related documents have been completed, the appropriate fee has been paid, and the CFD Formation Group has agreed to place the matter of the formation/annexation of the pertinent CFD before the City Council, the vehicle for such placement shall be the "Resolution of Intention" as required by the Act. The City Council vote on the Resolution of Intention shall also be the City's final determination on the application. If the Resolution of Intention is approved, the CFD Formation Group will undertake the necessary steps to complete formation/annexation of the CFD, including, but not limited to, completion of appropriate contracts, legal documentation, bond documents, project schedule, and other pertinent items.
- v) Fiscal Year Planning. In the event that the fiscal year in which a CFD is commenced ends during the formation of the CFD, the Finance Department of the City shall carry forward any unused CFD funds to the next fiscal year in order to facilitate a smoothly continuous CFD formation/annexation process, and to permit prompt payment of ongoing expenditures.
- w) Fiscal Authority. The CFD Formation Group has the inherent authority to receive and to appropriate CFD revenue and to direct the Finance Department of the City of Modesto to establish a new fund for each new CFD formation/annexation.



4) Terms and Conditions of Bonds.

- a) All terms and conditions of bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Unless otherwise authorized by the City, the following shall serve as bond requirements:
- (1) A debt service reserve fund equal to an amount not less than ten (10%) percent of the bond issue's par value, subject to federal tax regulations will be established.
  - (2) The special taxes shall be levied for the first fiscal year following sale of the bonds for which they may be levied. Unless otherwise agreed to by the City, interest shall not be funded (capitalized) beyond the earliest interest payment date for which sufficient special tax revenues will be available for payment of interest.
  - (3) Beginning with the commencement of the repayment of principal, annual debt service may be level or may escalate up to a maximum of two (2%) percent per year.
  - (4) 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 one hundred ten (110%) percent of the average annual debt service.
  - (5) The initial maximum annual administration requirement shall be no more than two (2%) percent of the par amount of the bonds but may escalate up to a maximum of two (2%) percent per year.
  - (6) Prior to the issuance of bonds, the City shall 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.
  - (7) In instances where multiple series of bonds are to be issued, the City shall make a final determination as to which public facilities are of the highest priority and those public facilities which will be financed first, pursuant to funding availability and the proposed timing of facilities development, and will be subject to the earliest or most senior lien except, when concerning land-secured financings if the City and applicant agree separately.
  - (8) The City may require that each new CFD bond issue refund any prior issues, if they exist on properties included in the CFD, in order to avoid subordinated liens. Instances where prior issues may not require refunding are:
    - (a) Where refunding of prior issues will result in higher interest costs;
    - (b) Where there can be assurance that prior liens may pose no marketing problems for the new CFD bonds; or
    - (c) Where refunding of prior issues may present future administrative difficulties to

the City or other affected public entities.

b) Security and Credit Enhancement.

- (1) Financial Plan. Prior to City Council approval of the CFD, the applicant must submit a financial plan which demonstrates to the City's satisfaction the applicant's ability to pay all assessments and/or special taxes through build out of the project.
- (2) Credit Enhancement. In general, where credit enhancement is required for the bond issue as a whole, in the opinion of the City, the applicant shall provide such enhancement in such form as is approved by the City and the underwriters. Such enhancement may, for example, be required in cases where the value-to-lien ratio for property within the CFD is sufficient, and may take the form of letter of credit, policies of insurance, or other vehicles.
- (3) Letter of Credit Requirements. In general, the following requirements apply to letters of credit.
  - (a) The term shall be at least one (1) year, with automatic renewal unless canceled in writing by City.
  - (b) The amount the applicant is required to post shall be determined by the City.
  - (c) The letter of credit must be posted with the City in final form, properly authorized and executed, prior to Council authorization to issue bonds for the CFD. Irrevocable credit commitments, commitment letters, in-lieu letter of credit guarantee forms, or other similar instruments, will not be accepted.
  - (d) The letter of credit shall be irrevocable, and issued for the benefit of the City.
  - (e) The issuer of any Letter of Credit or other credit enhancement shall be a bank legally operating within the State of California, and which has a Thompson Bank Watch rating of "C" or higher, or an equivalent rating by any other nationally recognized financial institution rating agency, and whose letters of credit are deemed marketable by the City for public financing purposes.
  - (f) The City reserves the right to consider other forms of credit enhancement or bond guarantee which are determined by the City, in its sole discretion, to be a lawful and adequate substitute for a letter of credit.

c) Value-to-Lien Ratios.

- (1) If the value-to-lien ratio is 3:1 or greater for the entire CFD and if there is a value-to-lien ratio of 3:1 on at least ninety (90%) percent of vacant land in the CFD, the City may not require letters of credit or other security to secure payment of the special taxes to be levied annually on properties within the CFD.

- (2) If the value-to-lien ratio is less than 3:1 for the CFD as a whole or on at least ninety (90%) percent of vacant land in the CFD, the City may 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 CFD or may elect to abandon the CFD.
- d) Market Absorption Study. The City in its discretion may require and may employ a consultant for the purpose of conducting a market absorption study. The study, if required, shall include and estimate the total number of units, land uses and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated, and to determine if the financing of the infrastructure and public facilities is appropriate given the projected level and pace of development.
- e) Disclosure Requirements. The applicant shall be responsible for compliance with all applicable federal and state statutory disclosure requirements, as well as any additional City requirements, in transactions with purchasers of properties with the CFD.
- f) Continuing Disclosure. The developer will comply with federal and State securities laws and SEC Rule 15c 2-12 requirements concerning secondary market disclosure as those requirements are interpreted by the City and its counsel.
- g) Refunding. The City will analyze outstanding bond issues for refunding opportunities. In addition, the City will accept refunding proposals from underwriting firms and financial advisors which the City will then analyze and verify. The City will refund outstanding bond issues if:
- (1) The refunding will generate at least five (5%) percent net present value savings; or
  - (2) There is another reason the City determines is compelling enough to complete a refunding (e.g. for the purpose of changing onerous legal requirements in a previous bond indenture or resolution).
- h) Credit Quality to be Required of Bond Issues.
- (1) Debt Service. Except for commercial or industrial property financings with no residential components, debt service shall be substantially level throughout the life of the bond issue or shall escalate at a rate generally not greater than two (2%) percent per year. 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 bond issuance.
  - (2) Bond Redemptions. Maximum redemption premiums shall not exceed three percent (3%). Call protection provisions shall not exceed ten (10) years and no provision shall be made to restrict the ability of the City to refund any bond issue. Consideration shall be given to allowing redemption of bonds at par (without premium) with surplus construction funds, or from the prepayment of the special tax. 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.

- (3) Reserve Funds. A reserve fund shall be required (unless specifically exempted for cause) for every land-secured financing. The City will consider the substitution of other security, such as a letter of credit, for monies in the reserve fund. The reserve fund will be sized by the City with the advice of the financing team, and, for tax-exempt financings, will not exceed the maximum prescribed by applicable federal tax law. Reserve fund earnings beyond maximum reserve fund size should be used to credit debt service and may be used to pay applicable rebate obligations under federal tax law. (The City may also determine to permit such reserve fund earnings to be transferred to the construction fund until the project is completed.)
  - (4) Capitalized Interest. The City, with the advice of the financing team, will determine, on a case by case basis, the amount of capitalized interest for a particular financing. The amount of such interest will be determined based on factors such as the length of the construction period, the earliest date upon which tax roll collection may commence and the amount such interest will add to the total amount of the financing, taking into account the restrictions on value to lien expressed herein, the ability of the owner(s) to defray the debt service, and applicable provisions of the Act.
  - (5) Foreclosure Covenants. Every land-secured financing bond issuance document shall provide for the judicial foreclosure of delinquent payments of assessments or special taxes. Such covenants may vary with the particular financings, but shall at the minimum generally provide for the institution of foreclosure not more than 150 days from April 10 of a calendar year and shall authorize the City Attorney or delegate thereof to commence foreclosure without further Council action upon notification of a delinquency. Provision may be made to allow deferral of foreclosure in the event the City advances funds to the reserve fund to maintain any specific reserve requirement.
  - (6) Discounts. In competitive bond sales, the amount of discount shall be determined by the City with the advice of its financial advisor. In negotiated sales, it shall be the burden on the underwriter to justify its discount as competitive and such justification must take into account any other compensation being paid to the underwriter. Original issue discount will be allowed if it results in a lower true interest cost and will not adversely affect the ability to construct the public improvements.
- i) Information to Property Owners.
- (1) Prospective Purchasers. The Director of Finance shall be responsible for providing notice of special tax to prospective property owners pursuant to Section 53340.2 of the Act and, upon request of an applicant, or its agent or representative, information in order for such applicant, agent or representative to comply with Section 53341.5 of the Act.
  - (2) Existing Lenders. The City may require the consent of the existing deed of trust

holders in any CFD to be formed by landowner (rather than registered voter) approval.

j) Criteria for Evaluating the Equity of the Special Tax Formula.

The proposed rate and method of apportionment shall comply with the following criteria:

- (1) The rate and method of apportionment generally shall not provide for an annual increase in the maximum special tax for any classification. However, under limited circumstances an increase in the maximum special tax will be permitted, not to exceed two percent (2%) annually. As a general rule, escalation of the maximum annual special tax will be allowed when bonds are to be sold in several series over an extended period of time.
- (2) The total projected annual special tax revenues, less estimated annual administrative expenses, must exceed the projected annual gross debt service on the bonds by ten percent (10%). In structuring the special tax, projected annual interest earnings at current passbook savings rates on bond reserve funds may also be included as revenue for the purpose of this calculation. Reserve fund interest earnings credit in excess of the foregoing will only be permitted if an investment agreement, satisfactory to the City, is secured at the time any bonds are sold and delivered.
- (3) The projected annual tax revenues shall include reasonable annual administrative expenses and other direct costs to the CFD.
- (4) All property not otherwise statutorily exempted or owned (or to be owned) by a public entity shall bear its appropriate share of the special tax liability.
- (5) The special tax shall be allocated and apportioned on the basis of reasonableness to all categories and classes of property receiving general or specific benefit within the CFD.
- (6) A formula to prepay the special tax shall be considered.
- (7) The projected ad valorem property tax and other direct and overlapping debt for the proposed CFD (including estimated CFD charges, projected benefit assessments, levies for authorized but unissued debt and any other anticipated municipal charges which may be included on a property owner's annual tax bill), including the proposed maximum special tax, should not exceed two percent (2%) of the anticipated assessed value of each improved parcel upon completion of the public and private improvements. Any deviations from the foregoing will not be permitted unless specifically recommended by the CFD Formation Group and approved by the City Council.
- (8) The special tax formula shall be structured to produce sufficient annual special tax revenue to pay annual debt service, administrative expenses, and "pay as you go" programs funded by the CFD special tax. To the extent a special tax is to be levied

to pay for services, it should be separate from the special tax to pay for facilities.

- (9) The special tax formula shall be such that once the total special tax need is known, and the status of all properties within the CFD relative to that formula are known, the special tax on each parcel is determined purely by the application of the formula without the exercise of discretion on the part of any person.

k) Criteria for the Sale of Bonds.

In order to ensure the long-term security of any bonds sold as the result of the formation of a CFD, the following policies shall be followed:

- (1) The ratio of the appraised value of the land to the value of the proposed bond issue, and any other overlapping debt, shall not be lower than 3-to-1 unless authorized by the City Council with specific findings in accordance with the Act.
- (2) Market absorption studies may be required at the City's discretion to determine if the financing of the infrastructure and public facilities is appropriate given the projected level and pace of development. The study may also be required by the appraiser for use in the appraisal process. The City will employ any market-absorption consultant.
- (3) All terms and conditions for the sale of bonds shall be established by the City.

- l) Continuing Disclosure. By being allowed to participate for a Mello-Roos proceeding, each owner of land therein must be willing to provide information deemed by the City and its financing team to be needed in order for the City and the underwriter to comply with applicable Federal and State securities laws, including continuing disclosure requirements imposed by S.E.C. Rule 15c 2-12.

- m) The Appraisal Process. Appraisals undertaken to establish value-to-lien ratios for land-secured financings can be complex, requiring the appraiser to interpret the significance of various financial and demographic data. Because an appraisal essentially is an appraiser's *opinion* of value, the City requires that the appraiser be qualified to render this opinion.

- (1) Credentials. The appraiser will be credentialed by the State of California Office of Real Estate Appraisers and be a member of the Appraisal Institute (MAI) or have similar training, experience and qualifications.
- (2) Independence. The appraiser will be an independent contractor retained by the public agency, rather than a land owner/developer.

- n) The Appraisal Problem. The appraiser will begin each assignment by defining the *appraisal problem* - that is, succinctly stating the objective of the appraisal. The statement of the appraisal problem will identify (1) the property rights to be valued, (2) the operative definition of value, and (3) the date of the value estimate.

- (1) Property Rights to be Valued. Appraisals undertaken to establish value-to-lien

ratios in CFDs and assessment districts will value the fee simple estate within the established district and subject to the special tax or assessment lien.

- (2) Definition of Value. Appraisal undertaken to establish value-to-lien ratios in CFDs and assessment districts will estimate the market value of the subject property. The market value estimate will be the bulk sale value for all vacant properties - both unimproved properties and improved or partially improved but unoccupied properties. The bulk land value will include the property within the district as it is currently entitled with all appropriate zoning and in its current state of development, the value of the improvements to be financed with the proposed bond issue, if any, and the value of other improvements to be financed with any other cash escrow or security whose cash value is entirely controlled by the City. Paragraph O, which follows, provides those valuation methods the City will allow an appraiser to use to estimate the bulk sale value.
  - (3) Date of the Value Estimate. The date of the value estimate should clearly be identified in the appraisal report. The period between the date of the appraisal and the financing should be no more than four months, to accurately represent land values to prospective investors.
- o) Valuation Methods. The first three valuation methods discussed below - the Sales Comparison Approach to Value, the Cost Approach to Value, and the Income Capitalization Approach to Value - form the core of modern real estate appraisal practices. These valuation methods are appropriate for conventional appraisal assignments involving improved real property, but are less well-suited to the valuation of unimproved land. Appraisals of unimproved CFDs and assessment districts will additionally employ a Discounted Cash Flow (DCF) analysis based upon the bulk land value of the property appraised, the fourth valuation method discussed in this section. This section concludes with a brief discussion of Mass Appraisal techniques and an assessed value approach alternative. An appraisal may include more than one appraisal method, depending on the status of the project.
- (1) Sales Comparison Approach to Value. The Sales Comparison Approach to Value offers the best indication of the market value of the subject property, because it is based on actual sales data. This methodology is appropriate for most improved properties, but the absence of comparable sales data usually constrains its application to appraisals of unimproved CFDs and assessment districts. The Sales Comparison approach, however, provides the analytical basis for estimating a future retail value of presently unimproved properties which may be incorporated into a Discounted Cash Flow analysis.
  - (2) Cost Approach to Value. The Cost Approach to Value is not appropriate for appraisals undertaken to establish value-to-lien ratios in CFDs and assessment districts. Cost does not create value. The Cost Approach may be useful, however, for adjusting for physical differences between properties under the Sales Comparison Approach. Sales Comparison appraisals can be adjusted to reflect infrastructure differences between different projects.

- (3) Income Capitalization Approach to Value. The Income Capitalization Approach to Value is appropriate for retail value calculations of income-producing properties. It also may be appropriate for estimating the future retail values of income-producing properties for use in a Discounted Cash Flow analysis.
  - (4) Discounted Cash Flow Analysis. Discounted Cash Flow Analysis is appropriate for bulk sale valuations of unimproved properties and improved or partially improved but unoccupied properties. Discounted Cash Flow valuations should rely on an absorption study to estimate how quickly properties can be developed and sold or leased to end users. The expense of converting raw land to finished product or improved lots must be deducted from gross cash flow to derive net cash flow prior to discounting. The value of the public facilities to be financed with the contemplated bond financing will be included in the appraisal. The discount rate should reflect the rates of return needed to attract debt and equity participation in the project.
  - (5) Mass Appraisal Techniques. When an entire tract or project has been built and fully absorbed, the appraiser may employ mass appraisal techniques, utilizing conservative per dwelling unit estimates.
  - (6) Assessed Value. If, based upon assessed value, the value-to-lien ratio of the project and ninety (90%) percent of the undeveloped parcels is greater than 3:1, then a separate appraisal may not be required. If the assessed value of ninety (90%) percent of the undeveloped parcels is not greater than three times the amount of the lien then the City can require an appraisal to be completed on the undeveloped portion of the project while it uses the assessed value for the developed portion.
- p) Contents of Appraisal. The appropriate format and level of appraisal documentation can vary according to its complexity. A detailed appraisal will reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice. Appraisal methodology and presentation of the results of the appraisal shall be presented in writing in either form report or narrative report, as required, by the CFD Formation Group.

Appraisals should conform to the following specific criteria:

- (1) Appraisals must be selected from a “pre-qualified” list of appraisers determined by the City.
- (2) Appraisals must be in writing, using either a “form report” (Uniform Commercial and Industrial Appraisal Report - Existing Property) or a “narrative report.”
- (3) Each appraisal shall clearly state the purpose of the report; a definition of the estate being appraised (i.e. fee, leasehold, etc.); and a description of the limiting conditions and assumptions underlying the appraisal.



- (4) Valuation dates shall be as determined by the City, but in no event earlier than 120 days prior to the sale of the bonds. To the extent practical, valuation dates on all properties shall be synchronized to a specific date, such as “October 1, 1999.”
- (5) A physical description of the property being appraised, along with a discussion of its “highest and best use,” land use regulations, present use and location.
- (6) An opinion of value which specifically considers the value of the property (including individual parcels) with the completed public facilities (bond proceeds and other financial guarantees).
- (7) A certificate of the appraiser stating the absence of any direct or indirect interests in the property, along with a brief description of the appraiser’s qualifications.
- (8) Improvement description (to the extent information is practically available).
  - (a) Land parcels which have been developed and subsequently sold should at a minimum indicate land parcel size, number of lots, density, number of plans, square footage, year construction was initiated, year of completion, and when sales were initiated.
  - (b) Land parcels with product under construction or with standing inventory, should be described as in (5) above and include a summary of the stage of development including: number of residential units or buildings completed, number of buildings, status of buildings under construction, finished lots and mass-graded or raw lots. In addition, a comment on the marketability of the building (architecture, size, etc.) is appropriate.
  - (c) Land parcels which have been developed with income-producing (or owner-occupied) commercial, industrial, offices, etc., should be described as follows:
    - (i) Commercial Retail. Land parcel size; basic construction type; typical tenant improvements (and who is responsible for their construction); leasable area, when construction was initiated; and date of completion.
    - (ii) Industrial. Land parcel size; basic construction type, whether single or multi-tenant typical office build-out as percentage of total area, when construction was initiated; and date of completion.
    - (iii) Office. Land parcel size; basic construction type; typical tenant improvements/allowance; net rentable area, when construction was initiated; and date of completion.
    - (iv) Residential. Land parcel size; basic construction type; whether single or multi-family; when construction was initiated; and date of completion.

5) District Administrator.

Upon completion of the formation of or annexation to a CFD, the District Administrator shall oversee all post-formation/post-annexation administrative duties. Examples of said duties include but are not limited to the following:

- a) Establish through the Finance Department of the City of Modesto the financing mechanism to receive, dispense and administer all monies received post-formation/post-annexation.
- b) Establish and administer a reserve fund.
- c) File all appropriate notices.
- d) Take any and all actions necessary for prudent administration of all post-formation/post-annexation CFDs, including but not limited to the expenditure or allocation of District funds, in strict accordance with Section 53343 of the Mello-Roos Act of 1982 as it may be amended, so that any such funds shall only be allocated or expended for facilities and services authorized by the Act. This shall include but not be limited to, creation of and modification to the Capital Improvement Project (CIP) budgets.

6) District Administration.

- a) District Administration Requirement of Infrastructure/Credit Specification in Subdivision Agreements.

On or after December 1, 1998, it shall be City policy with respect to those subdivisions located within the boundaries of a proposed Community Facilities District, an existing Community Facilities District, or a proposed or existing annexation to a Community Facilities District that the subdivision agreement required by the City for each such subdivision specify the creditable infrastructure or infrastructure segment percentages to be provided by the Developer of that subdivision in detail, as well as proposed credit amounts associated with the subject infrastructure or infrastructure segment percentages. The infrastructure or infrastructure percentages shall be among those required to be completed by the Facility Master Plan or another similar infrastructure specification pertaining to the subdivision for which an agreement is sought.

- b) District Administrator To Consult With Director Of Community Development Re Inclusion of Community Facilities Districts In Specific (Or Other) Plan Finance Plans.

When Specific or analogous Plans required by law for development are being prepared by the City, the City's Director of Community Development, after consultation with the City's Director of Engineering and Transportation and its District Administrator, shall determine whether or not a Community Facilities District shall be at least one means of financing infrastructure within any proposed Specific Plan on and after December 1, 1998, once the Director of Community

Development has determined that a Community Facilities District shall be one means of financing such infrastructure, each subdivision within such a Plan shall have approval of its tentative subdivision map conditioned on the creation of or annexation to a Community Facilities District prior to final approval of its subdivision map, and the District Administrator shall assist the Director of Community Development in ensuring enforcement of this policy.

c) Uncreditable Portion Of Contingency Estimates In Village One.

The District Administrator, in coordination with the City's Community Development Department, shall ensure that the contingency portion of each facility segment credit against the one-time facilities taxes otherwise due shall be uncreditable, and received in cash, in an amount equivalent to 10.5% of the 25% contingency portion of each such facility segment credit, so that Village One developers will receive a net credit of 14.5% with respect to the contingency portion of each such facility segment credit against the appropriate one-time facilities tax.

d) Uncreditable Portion Of Contingency Costs To Be Included In Future Community Facilities Districts.

The District Administrator, in coordination with the City's Community Development Department, shall insure that an uncreditable percentage of each future one-time facilities tax is incorporated into each of the City's future Community Facilities Districts by means of inclusion in the Public Report and in the Rate and Method of Apportionment of Taxes. In order to ensure that the City's sunk costs of planning and engineering, ongoing administration, indirect costs and consultant costs can be paid from cash on hand generated by this requirement, some portion of the estimated cost of each facility, facility segment, or unit cost of a facility shall be disallowed from presentation for credit against the special one-time facilities tax which would otherwise be due with respect to the provision of that facility.

e) Tax Credit Procedure

- i) Facility providers may be permitted credits against taxes owed, or cash credits, as appropriate, and as set forth herein.
- ii) In the case of oversubscription, cash up to the amount of the oversubscription may be paid to a facility provider as cash becomes available to the CFD through tax collection.
- iii) Taxes shall be payable at the time specified in the public report. Until January 1, 2000, the tax payable shall at least equal the administrative offset specified in the public report or otherwise.
- iv) The district shall also be compensated from available tax monies for money and services advanced by it for the acquisition, construction, improvement or control of any or all of the facilities set forth in the public report, all in accordance with and subject to the Mello Roos Act (including, without limitation, Section 53314.9 of the Act), the resolution of

formation of the CFD, the policies and procedures for administration of the CFD, the public report and other applicable law.

- v) In no event shall cash advances, dedications, or construction of facilities become either a debt of the City, or a debt in excess of actual tax receipts, of the CFD.
- vi) All tax credits shall be made by the District Administrator pursuant to a valid, executed facility acquisition agreement in a form approved by the District Administrator.
- vii) Prior to January 1, 2000, with the approval of the District Administrator, credits may be furnished to a facility provider to offset taxes otherwise due if the facility provider has furnished or is furnishing facilities which have not yet received a notice of completion. Notwithstanding the foregoing, such discretionary credit shall be fully reimbursable to the CFD in cash by the facility provider in the event that a facility acquisition agreement is not executed by the facility provider, or if that facility provider does not receive a notice of completion from the District Engineer.
- viii) On and after January 1, 2000:
  - (1) The District Administrator shall ensure that the full tax is collected as it becomes due from each provider of facilities or facility segments to the CFD until (a) a valid facility acquisition agreement exists between the CFD and the facility provider and, (b) the facility has been completed, and (c) a certificate of completion has been issued to the facility provider. The District Administrator shall then provide facility special tax credits or cash reimbursement, as appropriate, to that facility provider.
  - (2) All facility providers shall be denied tax credit for any portion of an otherwise credit-eligible facility constructed prior to execution by that provider of a facility acquisition agreement suitable to the District Administrator. Credit shall not be denied for planning or engineering costs included in a Facility Cost Estimate incurred prior to execution of that agreement.
  - (3) Credits shall be expended by the District Administrator in date order of the certificate of completion of the facility for which credits are requested, and each such facility shall be completely credited before the district administrator shall grant credits to a facility receiving a certificate of completion later in time.
  - (4) Where apportionment is required, as with respect to a total facilities cost stated in the public report including two or more sub-facilities, or where more than one person or entity participates in the construction or furnishing of a facility, the determination of such apportionment and credit by the District Administrator or their designee shall be conclusive evidence of the amount of the credit derived thereby.