

**CITY OF MURRIETA  
LAND SECURED FINANCING POLICY  
For Special Assessment and  
Mello-Roos Community Facilities District Financing**

***INTRODUCTION***

The City of Murrieta encourages development of commercial, residential and industrial property which result in reciprocal value to the City (i.e. increased jobs, property or sales tax revenues, major public improvements), and will consider developer or property initiated applications requesting the formation of community facilities districts ("CFDs") or special benefits assessment districts ("ADs"), as well as other financing methods to assist these types of development. Facilities will be financed in accordance with the provisions of the Mello-Roos Community Facilities Act of 1982 as amended and/or the appropriate laws governing the levying of assessments and the issuance of bonds concerning ADs.

Generally, only improvements benefiting the CFD or the AD can be financed with Mello-Roos or assessment district bonds. Developer exactions, such as off-site housing subsidies and transit impact fees, may not be financeable.

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 or a combination thereof. 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 applications and the establishment of districts will be paid by the applicant(s) by advance deposits in those instances where a proposed district has been initiated by a party or parties other than the City. The City 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 or reimbursed 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.

***APPLICATION PROCESS***

Early communication with the City is encouraged to assist applicants in evaluating the feasibility of available financing programs and to discuss program procedures. The following details a typical district application review and application process:

- 1. Application Submission** - Applicant/developer shall submit an application to the

City together with a non-refundable fee in the amount of \$10,000.00. This fee is for the purpose of application processing, and other preliminary costs. The City will conduct an initial evaluation of the application to determine if it is complete and whether additional information is required.

2. **Project Review** – Applicant and the City Manager, or his designee, shall meet to discuss the initial project application, including any issues raised and further information that might be required. If necessary, applicant submits revised application. Once the application is accepted by the City Manager, it will be reviewed by a City financing team consisting of City staff determined by the City Manager, based on the needs of the project.
3. **Application Processing** – Upon the City staff's determination that the application package is complete, the application for district formation and project financing, along with staff's recommendation will be forwarded to the City Council for further action.
4. **Analysis and Study** – Once the City review team has determined that the proposed district formation and financing application is complete, the City Manager will request the City Council to approve a preliminary feasibility study on the project. This study may be done internally or externally, as the circumstances of the project may dictate.
5. **City Council Consideration** – The Council will either approve or deny the application. If approval is granted, the Council directs the City Manager to engage additional consultants, negotiate necessary contracts, and collect additional developer deposits, as necessary.
6. **Project Initiation** – The City Manager and the City's financing team submit contracts, reimbursement agreements, bond documents and other pertinent items for consideration of the City Council, as required.
7. **Project Implementation** – Applicant, the City Manager and consultants meet to determine a preliminary schedule and begin work necessary to complete the district's formation and financing.

#### ***DISTRICT COSTS, REIMBURSEMENT AND SURPLUS POLICIES***

- **Costs incurred by the City prior to formation:** All costs incurred by the City prior to formation of the district, 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/developer prior to formation. Reimbursement shall be facilitated by advance deposit increments in accordance with the agreements required by this policy document.

- **Costs incurred by the City subsequent to formation:** All City administrative and consultant costs related to administration of the district and incurred after the later formation and bond issuance shall be included within the assessment or special tax formula in accordance with applicable provisions of law.
- **Reimbursement to applicant/developer:**
  1. Where district is formed and bonds are issued. If the district is formed and bonds are issued, the applicant/developer shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incident to the proceedings and construction of the public facilities, subject to approval of bond counsel, and subject to any applicable restrictions contained in the Improvement Acts or the Mello-Roos Community Facilities Act of 1982 if applicable or the appropriate assessment district act. With regard to applicant/developer paid consultant costs, reimbursement shall be limited to those district-related consultants hired by the City or those hired by the developer/applicant and expressly approved by the City. Eligibility for reimbursement for any otherwise-eligible expense is conditioned upon the applicant/developer providing paid invoices therefore to the City, and City approval.

The applicant/developer shall not be entitled to reimbursement from bond proceeds for any of the following:

- Administrative or overhead expenses, financial consultant or legal fees incurred by an applicant for the formation of a Special District (this limitation does not apply to amounts advanced by the applicant to the City).
  - Land-use planning and subdivision costs and environmental review costs related to such land use planning and subdivision.
  - Construction loan interest.
  - Costs, including but not limited to, land acquisition costs incurred prior to entering into a reimbursement or acquisition agreement or the adoption of a resolution of intention to form the special district.
  - Attorney's fees related to the land use entitlement or subdivision process unless off-site and directly related to the project.
  - Other overhead expenses incurred by the applicant.
2. Where district is not formed, or where district is formed and bonds are not issued. In the event that the district is not formed due to City disapproval or abandonment, or due to applicant/developer abandonment, or the district is formed and bonds are not issued for any reason, the City will refund to applicant/developer any remaining unexpended and unobligated portion of advance deposits posted with the City, subject to the City's prior and full reimbursement of all its direct and indirect costs associated with the Special District in accordance with policies herein. If the applicant/developer'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/developer for the difference. The City shall be entitled to pay any refund to the applicant/developer listed on the application form without interest, irrespective of any changes in the ownership or composition of the applicant/developer.

- **Surplus Funds:** In the event that there are surplus funds generated through the creation of the Special District and the sale of bonds, these surplus funds shall be used as follows:
  1. The Council may direct staff to use a portion of this surplus to offset the annual levy of assessments or special taxes to property owners in following years in a manner consistent with the statutes. Under this policy, an amount of up to 5% of the total bond issue size not to exceed \$1 million may be used to offset the annual levy without further Council action.
  2. Any amount in excess of that used to offset the annual levy described in (2) above will be used to call bonds at an appropriate bond call date, as determined by staff and the City's financial advisor.

### ***USE OF CONSULTANTS***

The City shall employ any consultants necessary for the formation of a special district, review of the financing, and the issuance and administration of bonds, including but not limited to the underwriter(s) and underwriters' counsel; bond counsel; financial advisor; special tax consultant; engineers; appraiser; market absorption study consultant; or any other consultant deemed necessary by the City in its judgment to complete the district proceedings and for issuance of bonds. The cost reimbursement provisions of this policy shall apply to all costs and expenses incurred by the City in employing such consultants.

An applicant/developer may retain its own consultants for its own benefit, but will work through those consultants hired by the City. If the developer/applicant retains its own consultants, all costs associated therewith shall be borne by the developer/applicant, without reimbursement from bond proceeds unless otherwise agreed to by the City.

### ***ELIGIBLE INFRASTRUCTURE AND PUBLIC FACILITIES***

Infrastructure and public facilities eligible for district financing are those public improvements which benefit properties within a proposed development, and/or will mitigate impacts of that development upon areas of the City outside the proposed development, and which will be owned, operated and maintained by the City or another public agency approved by the City. (A complete listing is detailed in the Glossary under *Infrastructure and Public Facilities*.) 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 percent of the project. Fees improved by a public agency to construct public infrastructure may be financed, provided such public agency agrees to expend the bond proceeds within all

legally required time frames.

### **LAND USE APPROVALS**

All proposed projects within the proposed district, 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 district must possess land use determinations or zoning classifications of sufficient certainty, and facility requirements of sufficient specialty that each parcel can be adequately assessed.

### **AGREEMENTS REQUIRED**

The applicant will be required to enter into all necessary agreements incident to district proceedings in a form provided by the City and consistent with these policies. These agreements may include, but not be limited to:

- Development and Disposition Agreement
- Acquisition and Disclosure Agreement
- Funding and Reimbursement Agreement
- Advance Deposit Agreement
- Land Dedication Agreement (where required)
- Agreement to use the City as the sole issuer of bonds in the District. No other governmental entity may be used to issue any additional bonds in the future.
- Other Agreements (as required)

As a condition to the issuance and sale of the bonds, all of the agreements required by the City 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 City Attorney and such other consultants as the City believes are appropriate.

### **THE APPRAISAL PROCESS**

#### **A) Introduction**

The process of arriving at an appraised value may be summarized as follows:

- Statement of appraisal problem.
- Required data and sources of data.
- Gathering, recording and verification of data.
- Determination of "highest and best use."
- Estimation of land value.
- Estimation of improvement value by relevant approach:
  - sales comparison,
  - cost (or replacement value), or
  - income capitalization.
- Reconciliation of results to concluded value.
- Report of value with statement of limitations, conditions, and assumptions.

## **B) The Appraiser – General Requirements**

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.

## **C) 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.

## **D) Appraisal Deposits**

Appraisal fees will be estimated by the City and deposit of said fee with the City will be required prior to starting the appraisal.

## ***SECURITY: CREDIT ENHANCEMENT***

- **Financial Plan** – for new development, prior to City Council approval of the district, the applicant/developer must submit a financial plan which demonstrates to the City's satisfaction the applicant/developer's ability to pay all assessments and/or special taxes through build out of the project.
- **Credit Enhancement** – in general, where credit enhancement is required for all or part of a bond issue, in the opinion of the City, the applicant/developer 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 district is insufficient, and may take the form of letters of credit, policies of insurance, or other vehicles.

## ***VALUE-TO-LIEN RATIOS***

If the value-to-lien ratio is 3:1 or greater for the entire district and if there is a value-to-lien ratio of 3:1 on at least 90% of vacant land in the district, 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 district.

If the value-to-lien ratio is less than 3:1 for the district as a whole or on at least 90% of vacant land in the district, 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 district or may elect to abandon the district.

### **MARKET ABSORPTION STUDY**

The City, in its discretion, may require and may employ a consultant for the purpose of conducting a market absorption study.

### **SPECIAL TAXES AND ASSESSMENTS**

The projected special assessment and/or special tax, when added to the ad valorem property tax and other direct and overlapping debt for the proposed district (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 percent (2%) of the projected assessed value of each improved parcel within the district. A backup special tax shall be required to protect against changes in land use that may result in insufficient annual special tax revenues.

### **TERMS AND CONDITIONS OF BONDS**

All terms and conditions of the bonds shall be established by the City. The City will control, manage and invest all district issued bond proceeds. Bonds issued under this policy may be sold through competitive or negotiated.

### **FISCAL FEASIBILITY REPORT**

Prior to the formation of a financing district, a fiscal feasibility report may be required if fifty percent (50%) or more of the land within a district is substantially undeveloped. The report shall be prepared by or at the direction of the City. All costs for preparing this report shall be borne by the applicant/developer. An estimate of the report cost will be made prior to initiating the study and the applicant/developer shall deposit one hundred percent (100%) of the cost prior to starting the report.

### **SPECIAL TAX FORMULA**

The maximum special tax submitted to the qualified voters of the district shall not exceed one percent (1%) of the projected assessed value of the developed properties at the time of full build-out of district formation. Furthermore, the total of the following shall not exceed two percent (2%) 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 percent (1%) of the assessed value.
- 3) Special taxes levied by any existing CFD for the payment of bonded indebtedness or on-going 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 of the City to administer the district.
- 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 two percent (2%) per year for developed parcels.
- 3) The City shall have discretion to allow a special tax in excess of the two percent (2%) maximum tax burden limits for any commercial or industrial lands within the district.
- 4) Concerning that portion 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 percent (2%).

The City shall retain a special tax consultant to prepare a report which:

- 1) Recommends a special tax for the proposed CFD, and
- 2) Evaluates the proposed special tax in light of its ability to adequately fund identified public facilities, City administrative costs and 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.

### **ACQUISITION PROVISIONS**

Unless as otherwise agreed to between the City and the applicant/developer, the following provisions will apply concerning the acquisition of public facilities with Mello-Roos or assessment district funds:

- The delivery to the City by the applicant/developer of all deeds, easements, or other documents necessary to complete the transfer of title to the improvements

and the land or interests in land on which the improvements have been constructed.

- Issuance of a title insurance policy in favor of the City that ensures clear title to the land or interests in land to be conveyed to the City.
- The delivery to the City of a certified copy of the developer's "Notice of Completion" filed with the County of Riverside Recorder's Office thirty-five (35) days prior to acceptance of the improvements.
- The delivery to the City by the applicant/developer of lien waivers or releases from all contractors, subcontractors, and suppliers associated with construction of the improvements; or, in cases where this is not practical, other equivalent security such as a lien-free endorsement from a title company.
- Any other documentation required pursuant to the acquisition agreement between applicant/developer and the City.

### ***CONTINUING DISCLOSURE***

The developer will comply with the federal requirements concerning secondary market disclosure as those requirements are reasonably interpreted by the City and its counsel.

### ***REFUNDING***

The City will analyze outstanding bond issues for refunding opportunities. In addition, the City will accept refunding proposals from underwriting firms which the City will then analyze and verify. The City will refund outstanding bond issues if:

- the refunding will generate at least three percent (3%) net present value savings; or
- 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).

### ***HOME BUYER DISCLOSURE***

The City, in addition to those disclosure requirements by the State Guidelines, may, from time-to-time, add additional disclosure items at its sole discretion.

## GLOSSARY

**Acquisition district** - a special assessment district or CFD formed to finance the acquisition of infrastructure or public facilities where the applicant/developer will be reimbursed for eligible construction and related costs.

**Bonds** - bonds authorized and issued under the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Mello-Roos Act of 1982, or such other mechanism as is utilized by the City in its discretion to finance the infrastructure and/or public facilities.

**Bond counsel** - special counsel retained by the City to assure compliance with applicable federal and state tax and other laws and regulations relating to public financing.

**Bond underwriter** - the investment banker(s) retained by the City to design, develop and execute the sale of bonds in the market place.

**City** - the City of Murrieta.

**Community Facilities District (CFD)** - a special district formed pursuant to the Mello-Roos Community Facilities Act of 1982, to finance specific public improvements or public services, and where properties within the district are levied a special tax in accordance with the rate and method of apportionment adopted as part of the district proceedings.

**Fair market** - 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.

**Fee district** - a special district formed to finance specific infrastructure and/or public facilities, and where landowners within the district are assessed a fee, payable at the time of development or permit approval, which fee is proportionate to the benefit received from the infrastructure and/or public facilities. There is no bond financing associated with a fee district.

**Fiscal feasibility report** - a study performed under the direction of the City to determine the financial viability of a proposed district.

**Improvement acts** - the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or such other act or ordinance under which the proceedings are conducted, leading to formation of the district.

**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; landscape and irrigation facilities; reclaimed water facilities; environmental mitigation; bicycle and pedestrian facilities; 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 under this document, and which are authorized improvements under the improvement act or CFD selected by the City.

**In-tract facilities** - public facilities which serve an individual tract development, such as local subdivision streets, local utilities and local drainage systems.

**Special assessment district** - an assessment district formed pursuant to an improvement act to finance eligible specified infrastructure and/or public facilities, and where properties within the district are assessed an amount proportionate to the benefit received from the improvements financed.

**Special tax consultant** - 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.

**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.