

RESOLUTION NO. 2019-209

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING THE CITY OF ELK GROVE LAND SECURED FINANCING POLICY AND TO AMEND THE CITY OF ELK GROVE REIMBURSEMENT POLICIES AND PROCEDURES FOR PRIVATELY-CONSTRUCTED FACILITIES

WHEREAS, on December 11, 2013, City Council adopted Resolution No. 2013-249 adopting a Land Secured Financing Policy, which set goals and policies for the formation and management of City financing districts; and

WHEREAS, the adoption of the Land Secured Financing Policy created guidelines for the future formation of financing districts to provide certainty around costs, the application process, eligible infrastructure, and to ensure a level playing field for all district participants; and

WHEREAS, the Land Secured Financing Policy also approved financing options for developers through specified conduit issuers, in particular the Statewide Communities Infrastructure Program (SCIP) through the California Statewide Communities Development Authority (CSCDA), which provides limited financing for eligible impact fees and infrastructure owing to special benefit analysis requirements of the Benefit Assessment Act of 1982; and

WHEREAS, on May 22, 2019, the City Council adopted Resolution No. 2019-099 to update the Land Secured Financing Policy to allow for the use of an additional financing option for developers in the form of the Bond Offerings for Local Development (BOLD) program which is administered and issued by the California Municipal Financing Authority, a Joint Powers Authority (JPA), of which the City is currently a member of since its execution of a Joint Exercise of Powers Agreement on October 22 2014, through the adoption of Resolution No. 2014-249; and

WHEREAS, the City now desires to adopt another update to the Land Secured Financing Policy to add clarifying language governing the administration, prioritization, and uses of financing proceeds; and

WHEREAS, the City Council further desires to adopt an update to the City of Elk Grove Reimbursement Policies and Procedures for Privately Constructed Public Facilities, which governs the administrative process for reimbursing developers who have constructed public facilities that are subsequently acquired by the City; and

WHEREAS, the update to the Reimbursement Policies and Procedures for Privately-Constructed Public Facilities will clarify non-compliance penalties as well as the procedures that developers must follow when submitting for reimbursement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby approves and adopts the amended City of Elk Grove Land Secured Financing Policy, attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the City Council of the City of Elk Grove hereby approves and adopts the amended City of Elk Grove Reimbursement Policies and Procedures for Privately-Constructed Public Facilities, attached hereto as Exhibit B.

BE IT FURTHER RESOLVED that any prior versions of the City of Elk Grove Land Secured Financing Policy and/or the City of Elk Grove Reimbursement Policies and Procedures for Privately-Constructed Public Facilities are hereby superseded by the amended policies adopted herewith.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 25th day of September 2019



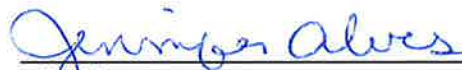
STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JENNIFER ALVES,
ASSISTANT CITY ATTORNEY

EXHIBIT A



**City of Elk Grove
Land Secured Financing Policy**

No. 1500-006

Date: 05/22/2019
Revised: 09/25/2019

Department: Finance
Division: Land Secured Financing

Authority: City Council

This Administrative Policy is declarative of existing City policy, is issued under the authority vested in the City Manager, and shall remain in place unless and until rescinded or superseded.

Jason Behrmann,
City Manager

Table of Contents

PURPOSE..... 1

SCOPE..... 1

ASSIGNMENT OF RESPONSIBILITY 1

DEFINITIONS..... 2

LAND BASED FINANCING 3

 1. Eligible Facilities..... 5

 2. Application Process 5

 3. General Requirements 7

 4. Financing Requirements 10

 5. Limitations on Special Taxes and Overlapping Debt 13

 6. Criteria for Appraisals..... 13

 7. Prepayment of Special Tax Obligations 15

PURPOSE

To set applications processes for and to establish parameters around reviewing for approval land secured financing districts including parameters for debt issuance and management, eligible facilities and services. Additionally, California Government Code Section 53312.7(a) requires the City Council to consider and adopt policies concerning Mello-Roos Community Facilities Districts, a type of land secured financing district. This policy is sufficient to meet the requirements of this section of Government Code.

SCOPE

The policies apply to all land secured financing requests received by the City, including both facility and service financing requests.

ASSIGNMENT OF RESPONSIBILITY

- A. **Assistant City Manager** Participate in application review process for Land Secured Financing Districts.
- B. **City Attorney** Review all financing district formation and debt applications for consistency with all applicable federal, state and local law.
- C. **City Council** Review and approve all Land Secured Financing District applications, on a case by case basis, based upon Finance Director and City Manager's recommendations. Approve all land secured debt.
- D. **City Manager** Oversee application review process for Land Secured Financing Districts and make recommendations to the City Council.
- E. **Finance Director** Annually review this policy for consistency with the City's infrastructure and service financing needs and annually review outstanding land secured debt obligations for refinancing potential. Manage the debt issuance process, as required, including the selection of the Financing and Formation Team. Oversee application review process for Land Secured Financing Districts and make recommendations to City Council along with the City Manager.
- F. **Financing District Administrator** The City's Finance Analyst assigned as the lead in accepting and administering the application review process for Land Secured Financing Districts and make recommendations to the Finance Director on necessary consultants for the Financing or Formation Teams as necessary.
- G. **Public Works Director** Participate in application review process for Land Secured Financing Districts by providing cost estimates and verifying that requested infrastructure and services are true requirements of development.

DEFINITIONS

- A. **ADs:** Assessment Districts formed for the purpose of financing infrastructure or funding ongoing services. ADs are usually formed under the authority of the Improvement Act of 1911 (Streets & Highways Code Section 5000 et. seq.), the Municipal Improvement Act of 1913 for Special Assessment Districts (Streets and Highway Code Section 10000 et. seq.), the Benefit Assessment Act of 1982 (Government Code Section 54710 et. seq.) or under other specific laws authorizing formation of a district.
- B. **Appraisal:** A written statement independently and impartially prepared by a qualified licensed appraiser setting forth an opinion of fair market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
- C. **Applicant:** Any party desiring the City to consider formation of a Land Secured Financing District who has demonstrated the support from landowners of the subject property(s), has submitted the appropriate application form and paid application deposits.
- D. **Backbone Infrastructure:** Any physical improvements that have a regional benefit and/or benefit multiple subdivisions or developments. Backbone infrastructure includes, but is not limited to, the following: major and minor arterial roads (4 lanes or more, including grading, pavement, curb, gutter, sidewalk, streetlights, traffic signals, landscaping, irrigation, or similar); water treatment plants and transmission mains; sewer lift stations, force mains and trunk mains; trunk stormwater mains; and regional stormwater collection systems. The City Manager shall retain discretion under this policy to determine if any particular improvement is considered backbone infrastructure.
- E. **CFDs:** Community Facilities Districts formed for the purpose of financing facilities or funding ongoing services. CFDs, also called Mello Roos districts, are formed under the provisions of the Mello Roos Community Facilities Districts Act of 1982 (Commencing with Section 53311 of the Government Code).
- F. **Conduit Financing:** A financing arrangement in which a public agency other than the City issues land-secured bonds or notes to finance Public Facilities and/or Impact Fees. The City is not responsible for forming the applicable CFD or AD or paying debt service on the bonds or notes. Examples of Conduit Financing programs for land-secured debt are (i) the California Statewide Communities Development Authority's (CSCDA) Statewide Community Infrastructure Program (SCIP) and (ii) the California Municipal Finance Authority's (CMFA) Bond Opportunities for Land Development (BOLD) Program.
- G. **Credit Enhancement:** The use of insurance or bank credit to mitigate the risk to investors that a financing instrument will not perform in order to lower the interest cost.
- H. **Deposit Replenishment Policy:** The City of Elk Grove Planning and Public Works Deposit Replenishment Policy, adopted by the City Council by Resolution 2209-153 on July 22, 2009, or such policy as it exists or is amended in the future.

- I. **Financing Team:** The team of professionals required for the City to execute a successful security transaction, at a minimum including the financial advisor, bond counsel, disclosure counsel and underwriter, as well as the City Manager, Assistant City Manager, Director of Public Works, Finance Director and City Attorney.
- J. **Formation Team:** The team of professionals required for the City to execute a successful CFD or AD formation, at a minimum including the financial advisor, district counsel, special tax consultant, and appraiser.
- K. **Impact Fees:** A monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of Public Facilities related to the development project.
- L. **In-Tract Infrastructure:** Any physical improvements that facilitate local service within a discrete subdivision or development which improvements are commonly delivered by developers to serve local, individual (as opposed to multiple) land parcels within a subdivision or development. In-tract infrastructure creates the link between backbone infrastructure and the ability to develop each individual parcel. In-tract infrastructure includes, but is not limited to the following: Collector and local roads and alleys; water distribution mains; sewer collection mains; local stormwater collection systems; sidewalks, street lighting, landscaping, irrigation, clearing, grubbing, lot grading, and joint trench services (such as electric, gas, and cable services) within a discrete subdivision or development. The City Manager shall retain discretion under this policy to determine if any particular improvement is considered in-tract infrastructure.
- M. **Public Facility:** Any facility for which the City, or a public agency as determined appropriate by the City, will be the owner or will have normal operating and maintenance responsibility.
- N. **Prepayment Amount:** The amount required to prepay the special tax obligation for infrastructure debt of a parcel located within a CFD or AD.
- O. **Pay Go:** The amount of the collected annual Special Tax not needed to fund debt service and administrative costs and available for funding other eligible facilities.

LAND BASED FINANCING

The City will consider developer or property owner initiated applications requesting the formation of CFDs or ADs and the issuance of bonds to finance eligible Impact Fees, Public Facilities, and maintenance services necessary to serve newly developing commercial, industrial, and/or residential projects. In addition, existing neighborhoods may apply to the City for the use of special assessment or tax financing to fund local or neighborhood serving facilities.

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

All City and City consultant costs incurred in the evaluation of new development district applications and the establishment of districts shall be paid by the applicant(s) by advance deposits consistent with the Deposit Replenishment Policy in those instances where a party or parties other than the City have initiated a proposed district. Expenses not legally reimbursable by the district will be borne by the applicant.

The City will consider Conduit Financing through: (i) the California Statewide Communities Development Authority's (CSCDA) Statewide Community Infrastructure Program (SCIP); (ii) the California Municipal Finance Authority's (CMFA) Bond Opportunities for Land Development (BOLD) Program; and/or (iii) similar programs, should they arise in the future. For many projects, particularly smaller scale projects, a Conduit Financing program will be considered by the City, at the sole discretion of the City, and if such program is deemed acceptable, the applicant will be required to coordinate with the relevant agency and its designated representatives to execute district formation and financing.

Conduit Financing will be permitted to fund:

- the payment/reimbursement of City Impact Fees;
- applicant-project-required Backbone Infrastructure and Public Facilities dedicated to the City;
- payment/reimbursement of other public agencies Impact Fees and Public Facilities to be dedicated to public agencies other than the City.

In-Tract Infrastructure will not be eligible to be funded by Conduit Financing except for residential developments with a medium density or high density land use designations, as specified in the General Plan.

Other public agency Impact Fees may only be funded from Conduit Financing after all eligible City Impact Fees have either (i) been paid in full; or (ii) been reserved and allocated by the Finance Director, in his or her discretion, to be funded in full.

The Finance Director shall be responsible for administering the provisions of this Policy, all in his or her discretion.

The City may incur expenses for analyzing proposed ADs or CFDs where the City is the principal proponent of the formation or financing of the district. The City will seek full reimbursement for eligible costs, including consultant fees and staff time from future district debt proceeds and/or district revenues as permitted by the applicable district law.

All City CFD or AD debt financing will be issued through the City of Elk Grove Financing Authority, if not issued through a Conduit Financing program. All annual special tax levies that are above and beyond the annual debt service and administrative cost requirements shall be available in an amount determined by the City's Finance Director as Pay Go to the City for funding eligible Public Facilities at its sole discretion, except that the City may agree that all or a portion of the Pay Go levied and collected during the first two fiscal years in which the special tax is levied in a CFD be released to the developer or property owner on or after September 2 of the first two years to reimburse the cost of CFD authorized Public Facilities or Impact Fees not financed with bond proceeds. In addition, any savings realized by refunding CFD or AD debt shall be available in an amount determined by the City's Finance Director for the City to fund eligible Public Facilities and/or the reduction of the tax levy for taxpayers.

1. Eligible Facilities

Whether for maintenance services or construction, the facilities maintained and/or to be financed must be Public Facilities. The City's Finance Director has the final determination as to any facility's eligibility for financing, as well as the prioritization of Public Facilities to be included within a district financing. The types of facilities eligible to be financed are:

- a. Streets and Roads (thoroughfares, arterials, major streets, highway and freeway improvements and major collector streets), trails; and
- b. Utilities and Drainage Facilities, including but not limited to, sewer and water; and
- c. Other City owned Public Facilities, including but not limited to Civic Center, recreation, museums, event/performing arts center, meeting/convention space, public safety or transportation facilities; and
- d. Other Public Facilities including those to be owned and operated by other public agencies as permitted by law.

Facilities of broader benefit, that is, those facilities with benefit outside the boundaries of the financing district, will be considered on a case by case basis. Such facilities will only be deemed eligible after careful consideration of developer and public input, long term tax implications and may necessitate multiple funding sources.

2. 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 the City's minimum district formation application review and approval process:

A. Pre application Conference

The potential Applicant meets at a minimum with the City Manager, Assistant City Manager, Director of Public Works, Finance Director, Financing District Administrator and other officials, as the City Manager deems appropriate, to initially discuss the proposed project and application procedures.

B. Application Submission

If following the pre application conference the applicant wishes to continue, the applicant shall submit an application including all appropriate deposit and review forms. Application forms are attached as Exhibit A to this policy.

In order for City Staff to further process the application, it must include the initial processing deposit in the amount of \$300,000 (or lesser amount determined appropriate by the City Director of Finance for Conduit Financing programs). This deposit is anticipated to be a cost recovery fee and will be used to pay all consultant costs and reimburse the City for all City Staff time spent directly on pre-application meetings, District formation and application review costs. This deposit is subject to the Deposit Replenishment Policy. To the extent permissible by law, the Developer may receive a reimbursement of these costs, up to the full amount of this initial deposit plus any subsequent deposits made under the Deposit Replenishment Policy from district debt proceeds.

C. Project Review

City Staff will meet to discuss the application, including any issues raised and further information that might be required. If necessary, the applicant will submit a revised application. Once the application is received by the Finance Director and City Manager, it will be reviewed by the City Financing Team based on the needs of the project.

D. Application Processing

Upon determination that the application package is deemed complete, by the Financing Team, pursuant to subsection C above, City Staff prepares a report to the City Manager and Finance Director, or their designee, who will then forward the application for district formation and project financing, along with the recommendations of the Finance Director to the City Council for further action. If it is determined by Staff or the City Council, that the project does not meet the community's needs, the application deposit less any City expenses and Staff time incurred in processing the application, will be refunded to the applicant.

E. City Council Consideration

The City Council has discretion to grant or deny the application. If approval of the application is granted, the City Council directs the Finance Director, to seek additional consultants, and negotiate contracts consistent with the City's Municipal Code, who may include, but not be limited to: an appraiser,

financial advisor, underwriter, bond counsel, special tax consultant and assessment engineer. The decision of the City Council is final, but does not bind the Council to subsequent approvals necessary to district formation. If the applicant wishes to revise and resubmit a subsequent or amended application, it will be reviewed in the same manner as prescribed in this section. If the City Council denies the application for any reason, the application deposit less any City expenses, Staff time, and Financing and Formation Team costs incurred in processing the application, will be refunded to the applicant.

F. Implementation

Applicant, City Staff and City's consultants meet to determine preliminary project schedule and begin work necessary to complete district formation and financing.

G. Initiation

City Staff submits formation documents, contracts, reimbursement agreements, bond documents and other pertinent items for consideration to the City Council, as required.

3. General Requirements

A. Disclosure to Purchasers

The applicant or property owner will be required to disclose the specific special taxes of the district that they have been involved in and any other special tax, assessment or liens on individual parcels to existing and future property owners. In addition to all requirements of law, the City shall require the applicant to disclose such information to the purchasers of property within the district, the terms and conditions of bonds issued on behalf of the district, the maximum special taxes or assessments within the district, and the final tax year the taxes or assessments can be levied. Such disclosure requirement shall include notifications to potential property purchasers, as well as methods to notify subsequent property purchasers. Control measures ensuring adequate disclosure to purchasers will be reviewed and considered as part of the application process.

B. District Cost Deposits and Reimbursements

A deposit of \$300,000 (or lesser amount determined appropriate by the City Director of Finance for Conduit Financing programs) will be required for the City to begin processing applications. The Deposit will be used by the City to pay costs and expenses incurred by the City for the proceedings, including, but not limited to, legal, engineering, Appraisal, special tax consultant and financial advisory expenses, administrative costs (including City Staff time) and expenses, required notifications, printing and publication of legal matters. The City may refund any unexpended portion of the deposits upon the following conditions:

- i. The district is not formed;
- ii. The proceedings for formation of the district or issuance of bonds is disapproved by the City Council; or
- iii. The proceedings for formation of the district or issuance of bonds are abandoned in writing by the applicant. This may occur at any point in the process prior to City Council approval of district formation.
- iv. If the district is formed, excess deposits will be applied to the financing costs of the first series debt issuance.

Pursuant to the adoption of a reimbursement resolution for the AD or CFD, the applicant may be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incident to the proceedings and construction of the Public Facilities as provided under the Mello-Roos Act or the relevant Assessment Act. All such costs and expenses will be verified by the City as a condition of reimbursement.

The applicant or property owner will not be entitled to reimbursement from Bond proceeds for any of the expenses specified as follows:

- a. The applicant's own in-house administrative, legal and overhead expenses incurred by the applicant; and
- b. Interest expense incurred by the applicant on moneys advanced or expended during the proceedings and construction of Public Facilities; and
- c. Any other costs and expenses incurred by the applicant, which are not otherwise authorized for reimbursement under the applicable formation law.

Neither the City nor the district will be required to reimburse the applicant or property owner from any funds other than the proceeds of Bonds issued by the district.

The City will only reimburse through a Financing District the net amount of eligible and approved costs less reimbursement through other public financing sources, including but not limited to the City's own development Impact Fee programs and other local agency Impact Fee programs, and state or federal grants

C. Use of Consultants

The City will select all consultants necessary for the formation of the district and the issuance of bonds in compliance with the City's purchasing ordinance as set forth in the City's Municipal Code. City Staff may confer with the applicant, but consent of the applicant is not required in the determination by the City of the Formation and Financing Teams. The need for district consultants and the scope of their services will be determined by City Staff on

a case-by-case basis with consideration given to market conditions and the nature of the district and financing(s).

D. Property Owner Support

In the instance of multiple property owners, the applicant will be required to produce letters evidencing support by the other property owners for the scope and establishment of the district as an attachment to the district application. Such letters shall be produced at the time of application. Formation of the district will require proof of overwhelming support of the other property owners to be included in the proposed district, unless there is an overriding need for the Public Facilities as determined by the City Council, or the applicant is willing to separately fund the Public Facilities on behalf of the Non-Participating Owner(s).

In accordance with Government Code section 53322.4, 53753 or Streets and Highway Code Section 5000, et seq. depending upon the district type, a notice of public hearing regarding the formation of a community facilities district may be mailed to all registered voters and landowners within the district. Pursuant to Government Code section 53323, all interested persons or taxpayers must be afforded an opportunity to protest against the establishment of the proposed district. Interested persons, as defined under this policy, shall include both persons and entities that own land and persons who have entered contracts for the reservation or purchase of homes to be constructed on lots in a community facilities district.

E. Land Use Approvals

The City will accept applications for the formation of ADs and/or CFDs only when properties to be included within a proposed district have City site plan and other applicable zoning approval.

F. Acquisition Agreement Provisions

The City generally will provide for acquisition district agreements, whereby bonds are issued after the public improvement has been constructed. The City will have final determination and sole discretion as to whether and to what extent it will allow the financing of public facilities through acquisition agreements, as well as the timing of execution of acquisition agreements.

The City will only acquire facilities through acquisition district agreements that have not previously been accepted by the City and will not reimburse amounts reimbursed through another source, i.e. Impact Fees. The City will only reimburse through acquisition agreements the net amount of eligible and approved costs less reimbursement through other public financing sources, including but not limited to the City's own development Impact Fee programs and other local agency Impact Fee programs, and state or federal grants.

G. Market Absorption Study

A market absorption study of the proposed district development project shall be required for land secured financing on undeveloped property. A Market Absorption Study may be required for any Conduit Financing program. The absorption study will be used as a basis for verification that sufficient revenues can be produced and to determine if the financing of the Public Facilities is appropriate as determined by the Finance Director given the timing of the development. Additionally, the projected absorption rates will be provided to the appraiser for use in the Appraisal and to verify special tax projections.

H. Participant Cost Sharing

The City will not negotiate or administer any private cost sharing agreement for costs incurred relating to the creation of CFDs or ADs. It is in the interest of developers to create a cost sharing agreement prior to obtaining City approval of the CFD or AD. Prior to District approval, the City, at the discretion of the Finance Director, City Attorney and City Manager will evaluate any requests for assistance in developing or administering a public fee cost sharing program on a case by case basis upon request from project participants.

I. Community Amenities, Schools and Non-profits

It is the intent of the City to promote a well-balanced community and as such it encourages developers to provide for that balance in proposed projects. The appropriate balance will be determined by current land use designations and City Council goals. In consideration of a proposed CFD or AD, the City will evaluate designs respective to proposed acreage for churches, schools, and non-profit organizations, regardless of whether or not that group chooses to participate in the land based financing. The City may elect to exempt, reduce or create an exclusion from the Special Tax obligation for these development categories as is desired by the City Council in an effort to achieve City Council goals of a well-balanced community.

4. Financing Requirements

A. Security

For new development, the applicant or property owner must demonstrate its financial plan and ability to pay all assessments and/or special taxes before full build-out has taken place. The City shall require additional security such as Credit Enhancement. Letters of credit or other security shall be required to secure debt service until such time that responsibility for special taxes or assessment installments are less than 10% for any single tax payer in the district.

The Security (if required) must be issued by an institution in a form and upon terms and conditions satisfactory to the Finance Director. All fees payable on

the letter of credit or other security will be the sole responsibility of the applicant or developer, not the City or the district.

Prior to the City Council's approval of district formation , any property owner that will be responsible for more than 10 percent of the aggregate special taxes or assessment installments within the district must, at City Staff's request, provide detailed information regarding the following:

1. Legal structure of the individual or title-holding entity, and the legal structure of the owners or partners thereof;
2. Detailed, audited financial statements of the individual or property owning entity and, if the owning entity is a subsidiary or affiliate of another entity, detailed audited financial statements of such parent or affiliate. Three years' statements are required;
3. A list of bank, credit or investment references which the City may contact, including letter of credit or other means of credit enhancement to secure debt service;
4. A list of other cities or agencies in which the developer or its parent or affiliate company have participated or is proposing to participate in financing district formation and bond sales; and
5. A comprehensive property development financial pro forma detailing development costs and funding sources, whether from equity, bank, investor or bond proceed sources. The pro forma must clearly identify timing and amount of private funds required to develop the project and pay the installments or taxes pending project completion and sale. The developer will be expected to demonstrate the level of certainty of obtaining such private funds and the sources thereof.
6. Tax delinquency, default or bankruptcy history for the last 10 years, or for as long as the property-owning entity has been established if less than 10 years.

The City will use the above information in assessing whether or not to proceed with the formation of the district.

B. Terms and Conditions of the Bonds

The City will establish all terms and conditions of the bonds. The City will control, manage and invest all district bond proceeds. Unless otherwise authorized by the City, the following shall generally serve as bond requirements:

- i. A reserve fund equal to the lesser of (i) 10% of the proceeds of the sale of the Bonds, (ii) maximum annual debt service on the bonds, or (iii) 125% of average annual debt service will be established.
- ii. A Surety Bond may be considered in lieu of cash funded reserve fund based on the following criteria:
 - Cost of Surety versus interest rates on cash funded reserve fund.
 - IRS Arbitrage regulation considerations.

- Financing requirements of the project.
- iii. Selection of a surety provider will be dictated by the requirements of the bond insurer. In the absence of a bond insurer, the surety provider must possess a minimum long-term debt rating (or claims paying ability) of double A (**AA**), or its equivalent, by Moody's, Standard and Poor's and Fitch.
- iv. The special taxes or annual assessments shall be levied for the first fiscal year following the sale of the Bonds for which they may be levied. Interest shall not be funded (capitalized) beyond the earliest interest payment date for which sufficient special tax revenues or annual assessment installments will be available for payment of interest.
- v. The repayment of principal shall begin on the earliest date for which sufficient special tax revenues or annual assessment will be made available.
- vi. For Mello Roos CFD's, the maximum special tax will be established to ensure that the annual revenue produced by the levy of the maximum special tax shall be equal to at least 110% of average annual debt service on the bonds plus District administration costs. For AD's, the maximum special tax or assessment will be equal to 100% of the direct benefit as it relates to each individual parcel.
- vii. In instances where multiple series of bonds are to be issued, the City will make a final determination as to which Public Facilities are of the highest priority and those Public Facilities will be financed first and will be subject to the earliest or most senior lien.
- viii. The City may require that each new district bond financing refund any prior district liens, if they exist, on properties included in the district in order to avoid subordinated liens. Instances where prior liens may not require refunding are: (1) where refunding prior liens will result in higher interest cost, (2) where there can be assurance that prior liens pose no marketing problems for the new district bonds, or (3) where refunding prior liens may present future administrative difficulties to the City or other affected public entities.

C. Value-to-Lien Ratio

The district property value-to-lien ratio should meet current market standards, as determined by the Finance Director and the City's Financial Advisor. In no circumstances shall the value-to-lien be less than 3.0 to 1 after including in an Appraisal the value of the financed Public Facilities to be installed and including as part of the lien any property taxes and prior or pending special taxes or improvement liens. Individual properties within the boundaries of the proposed district may also be required to meet a minimum value-to-lien test on a weighted average basis.

The value-to-lien ratio will be determined based upon an independent Appraisal of the proposed district. The Appraisal will be coordinated by and under the direction of the City. All costs associated with the preparation of the

Appraisal report will be paid by the applicant through the advance deposit mechanism. The Appraisal will be conducted in accordance with criteria established by the City and in compliance with this policy

5. Limitations on Special Taxes and Overlapping Debt

It is the City's intent that the maximum amount of special taxes to be levied on any parcel of property within a community facilities district, in any given fiscal year to pay debt service on bonds, together with the general property taxes and other special taxes and assessments levied on such parcel, shall not exceed an amount equal to two percent (2%) based on the weighted average of the estimated full cash value of the parcel at the anticipated time of sale. For residential properties additional limitations will include consistency with the market absorption study for all homes with an estimated value less than the most recently published median home price for Elk Grove. For homes with an estimated value in excess of the most recently published median home price in Elk Grove, the two percent (2%) should be applied on the estimated full cash value and not the weighted average calculation. Special tax allocation formulas or methodologies with respect to the levy of special taxes to pay for Public Facilities will specify maximum amounts of special tax for all categories of taxable property. The dollar amount will be established no later than the date on which the parcel is first subject to the levy of special taxes.

6. Criteria for Appraisals

A. Standards of Appraisal

The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. A detailed appraisal will be prepared for complex appraisal problems. A detailed appraisal will reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Land Acquisition and the CDIAAC Appraisal Guidelines (published in 1994, as revised July 2004). An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of the data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following:

- i. The purpose and/or function of the appraisal, a description of the property being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.
- ii. An adequate description of the physical characteristics of the property being appraised, location, zoning, present use, and an analysis of the highest and best use.
- iii. All relevant and reliable approaches to arrive at the value consistent with commonly accepted professional appraisal practices. If a discounted cash flow analysis is used, it should be supported with at least one other valuation method such as a market approach using sales that are at the same stage of land

development. If more than one approach is utilized, there must be an analysis and reconciliation of approaches to value that is sufficient to support the appraiser's opinion of value.

- iv. A description of comparable sales, including a description of all relevant physical, legal and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- v. A statement of the value of the real property.
- vi. The date of appraisal, signature and certification of the appraiser.

B. Conflict of Interest

No appraiser or review appraiser will have any interest, direct or indirect, in the real property or any entity owning any real property being appraised for the City that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal will not be based on the amount of the valuation. The City's purchasing ordinance shall govern all appraisal contracts, and the City shall have final determination in the selection of an appraiser.

C. CFD or AD Appraisal Premises

The valuation of the proposed CFDs or ADs should be based on three premises:

Raw Land Value – (Premise #1): The total land within the project is valued “as-is”.

- i. With any existing infrastructure.
- ii. Without proposed infrastructure being financed.
- iii. With existing parcel configuration.
- iv. Considering planned densities allowed by the specific site plan of the project.

Project Build-out Value – (Premise #2): The total land within the project is valued under projected conditions.

- i. With proposed infrastructure being financed completed.
- ii. At the planned densities allowed by the specific plan.
- iii. Land development is at the stage of being marketed to merchant builders or tentative tract maps ready to be filed.

This is a projected value based on the project plans predicated on the market conditions continuing as projected.

Bulk Land Value – (Premise #3): The total land within the project is valued under projected conditions.

- i. With proposed infrastructure being financed completed.
- ii. With existing parcel configurations.
- iii. Considering planned densities allowed by the specific plan of the project.

This premise should consider a discounted or quick sale valuation considering time, cost and the possibility of a per unit value based on the total size of the project.

7. Prepayment of Special Tax Obligations

In order to accommodate property owner requests, the following sets forth the policies of the City and the procedures to be followed with respect to the prepayment of special tax obligations for property within CFD's or AD's. This policy applies to all CFD's or AD's of the City of Elk Grove formed for the purposes of financing Capital Improvements. The City may allow an owner of a parcel within a CFD or AD ("Parcel") to prepay and satisfy the special tax or assessment obligation of the Parcel if the Finance Director determines that such prepayment will not jeopardize the City's ability to levy and collect sufficient special taxes or assessments in any fiscal year to pay required debt service on the outstanding bonds of the CFD or AD.

A. Subdivision Required

Prepayments of special tax obligations will be allowed only for Parcels which are within tracts for which final subdivision maps in accordance with the Subdivision Map Act (Government Code section 66410, et seq.) and, if applicable, condominium plans have been recorded.

B. Full Payment Required

Only prepayments that satisfy the entire remaining special tax obligation of the Parcel will be allowed. Partial payments will not be accepted.

C. Written Request and Deposit

The owner of the Parcel requesting determination of the prepayment amount necessary to fully satisfy the special tax obligation for the Parcel must submit a written request to the Finance Department. Such written requests must be accompanied by a deposit in an amount determined by the Finance Director based on estimated costs which will be incurred by the City, including City Staff time and fees and costs of the City's special tax consultant, in making such determination

D. Determination of Prepayment Amount

The prepayment amount shall be determined as follows:

- i. The Prepayment Amount shall be determined on the basis of the total of the amounts of the special taxes or assessments that would be levied on the Parcel at the applicable maximum annual special tax or assessment rate or amount for the Parcel, in accordance with

the methodology for levying and apportioning the special taxes or assessments which is applicable to the CFD or AD (the "Maximum Annual Tax"), in all remaining fiscal years, beginning with the fiscal year in which the determination is made and ending with the fiscal year in which the last payment of debt service on the outstanding bonds are to occur.

- ii. If the determination is made prior to the September 1st preceding the first optional redemption date for the outstanding bonds of the CFD the Prepayment Amount shall be calculated on the basis of the total amount of the special taxes or assessments that would be levied, based on the Maximum Annual Tax, in the fiscal years, beginning with the fiscal year in which the determination is made, which end prior to the first optional redemption date at a rate of interest equal to the rate on 90-day Treasury Bills in effect at the time of the calculation. The amount determined pursuant to this paragraph (the "Pre-Redemption Amount") shall be used to pay debt service on the bonds through the first optional redemption date.
- iii. There shall be added to the Pre-Redemption Amount an amount equal to the present value of the total amount of the special taxes or assessments which would be levied, based on the Maximum Annual Tax, in the fiscal years beginning with the fiscal year in which the first optional redemption date occurs and ending with the fiscal year in which the last payment of debt service on the bonds is to occur (the "Redemption Amount"). The Redemption Amount shall be used for the call and redemption of outstanding bonds on the first optional redemption date.
- iv. There shall also be added to the Pre-Redemption Amount and the Redemption Amount an amount determined by multiplying the Redemption Amount by the applicable redemption premium for the outstanding bonds of the CFD (the "Premium Amount").
- v. There shall be deducted from the Pre-Redemption Amount, the Redemption Amount, and the Premium Amount an amount transferred from the CFD's Bond Reserve Fund (the "Bond Reserve Amount"). The Bond Reserve Amount to be deducted shall be determined by multiplying the CFD's Reserve Fund Requirement by the percentage which the Redemption Amount is of the total amount of bonds outstanding at the time the determination is made. The Bond Reserve Amount may be reduced by a proportionate share of the amount necessary to maintain the CFD's Reserve Fund Requirement. The Reserve Fund Requirement is the least of (i) 10% of the original proceeds of the bonds, (ii) Maximum Annual Debt Service for the remaining bond obligation, or (iii) 125% percent of the average annual debt service on the remaining bond obligation.

- vi. The net redemption amount shall be the total of the Redemption Amount and the Premium Amount, less the Bond Reserve Amount plus interest thereon at the rate of interest on 90-day Treasury Bills in effect at the time of the calculation (the "Net Redemption Amount").
- vii. If the determination is made before the September 1st of any fiscal year preceding the first optional redemption date for the bonds, the Prepayment Amount shall be the total of the Pre-Redemption Amount and the Net Redemption Amount
- viii. If the determination is made after September 1st of any fiscal year, there shall be deducted from the Prepayment Amount the amount of the special taxes or assessments that have been levied on the Parcel in the then current fiscal year. The prepayment will not be considered final until the property owner pays in full the current fiscal year levy on the property tax rolls and all prior fiscal year levies.

After a CFD has reached build-out with no remaining property classified as "undeveloped" for a period of five years, the Maximum Annual Tax shall be replaced in the calculation for the "Prepayment Amount" with an average of the percent of Maximum Annual Tax levied for the most recent five year period.

E. No Refunds

Property owners who prepay and satisfy in full the special tax or assessment obligations for their Parcels shall not be entitled to any refund of any amount from the City or the CFD, regardless of circumstances surrounding potential differences in the future levy of the special tax or assessment respective to the calculated Prepayment Amount. Property owners shall bear the full risk associated with prepayment.

F. Modifications

The City may modify or revoke the Policy and Procedures contained herein respective to prepayment of special tax obligations at any time.

EXHIBIT B

REIMBURSEMENT POLICIES AND PROCEDURES FOR PRIVATELY-CONSTRUCTED PUBLIC FACILITIES

UPDATED: SEPTEMBER 2019

1. PRE-AGREEMENT/PRE-ADVERTISING REQUIREMENTS

Prior to entering into a Credit and Reimbursement Agreement (“Agreement”) with the City and prior to advertising for bids for privately-constructed public facilities, the Developer shall comply with the following requirements:

- a. Submit complete sets of civil improvement plans and landscape plans, if applicable, to the Development Services Department (“DSD”) for review and approval.
- b. Submit an Engineer’s estimate (“Estimate”) to DSD for review and approval. The Estimate shall include the quantities and unit prices of the itemized facilities to be constructed. The Estimate shall clearly itemize reimbursable/eligible facilities from non-reimbursable/non-eligible facilities. If applicable, the Estimate shall also be clearly itemized by the funding sources of reimbursable/eligible facilities (i.e. Developer Impact Fees, Community Facilities Districts or similar).

2. BID ADVERTISING, OPENING AND AWARDING

For the bidding process, the Developer shall comply with the following requirements:

- a. Bid package shall be advertised in at least two (2) local Builders’ Exchanges for a period of no less than one week in each publication. Bid opening shall not be less than 14 days after distribution of plans to the Builders’ Exchanges.
- b. Bid package shall include a Non-Collusion Affidavit.
- c. Notify the City in writing of any addenda and/or plan revisions prior to or during the advertising period.
- d. Bid schedule in bid package shall be substantially similar to the Estimate approved by the City (see Section 1b above) regarding format and quantities.
- e. Bids shall be received in sealed envelopes and shall be opened and read publicly at the time and place indicated in the Notice to Bidders.
- f. Bid awards shall be awarded, if at all, to the lowest, responsive responsible bidder.
- g. The agreement amount shall be consistent with the awarded bid amount.

- h. **PREVAILING WAGE REQUIREMENTS SHALL APPLY TO ALL AWARDED CONTRACTS PURSUANT TO THE CALIFORNIA LABOR CODE. CONSTRUCTION CONTRACTS SHALL INCLUDE THIS PROVISION. THE CITY MAY REQUEST CERTIFIED PAYROLL RECORDS AT ANYTIME.**

3. PRE-CONSTRUCTION

Prior to construction, the Developer shall comply with the following requirements:

- a. Provide the City proof that bids were advertised in accordance with this policy.
- b. Submit a complete copy of the executed construction contract.
- c. Enter into Agreement with the City. Agreement shall be fully executed and approved by the City prior to construction if the Developer expects to receive credits and/or reimbursement. At the discretion of the City Manager, the Developer may be reimbursed for any eligible City impact fees that were paid in advance of an Agreement for the development listed in the Agreement. NOTE: Agreements require City Council approval, so Developer should consider that requirement in their project schedule.

Agreements shall be fully executed and notarized by Developer no later than two (2) weeks from the date of the City Council meeting to avoid being moved to a future agenda. If Developer has made a request for Agreement to the City's Finance Department no less than thirty (30) days prior to construction, and has provided with that request all documents listed in this Policy including, but not limited to, the improvement plans and Estimate detailed above Developer will not be subject to the minimum 15% penalty in Section 6 for failure to have a signed Agreement prior to construction. Council still retains its authority to deny an agreement all together or to provide no reimbursement, but it will not subject the Agreement to a 15% penalty for lack of execution and approval prior to construction. A 15% penalty may still attach to the same agreement for other violations of this Policy.

- d. Schedule and attend a pre-construction meeting held by the City's inspection staff. Scheduling shall occur at least 48 hours in advance.

4. DURING CONSTRUCTION

During construction, the Developer shall comply with the following requirements:

- a. Adhere to City standards, specifications and procedures for inspection and construction management.
- b. Any revisions to approved plans shall be reviewed and approved in accordance with the City's typical plan check and permitting process.
- c. Any change orders shall require a Potential Change of Work Acknowledgement (PCWA) along with a certified engineer's estimate to be completed and submitted to the City for review and approval. Change order amounts shall not cause the reimbursable amount to exceed the amount established by the executed Agreement.

5. PAYMENT REQUESTS

Requests for payment shall only be considered when the project is substantially complete (90% or greater), as determined by the City. The improvements or portions thereof to be reimbursed shall be completed in accordance with the approved plans, contracts and change orders. The City will begin reviewing the payment request once all the applicable items listed below have been submitted to the satisfaction of the City:

- a. Executed Payment Request Form
- b. Letter Indicating Percent Complete (90% completion or greater)
- c. Conditional Lien Release(s)
- d. Proof of Payment (i.e. Canceled Checks)
- e. Proof of Bid Advertising
- f. Summary of Bid Results (Bidders, Amounts, etc.)
- g. Executed Construction Contract(s), including Prevailing Wage Provision
- h. Civil Improvement and/or Landscape Plans, if required
- i. Authorization and Justification for Change Orders
- j. Paid Invoices
- k. Summary Linking Paid Invoices to Reimbursable Improvements
- l. Any Other Items as Requested by the City to Justify Payment

With the final payment request, the Developer shall also submit Letter(s) of City Acceptance of Improvements and Unconditional Lien Release(s). All payments to Developer will be made in accordance with the applicable, executed Agreement.

6. FAILURE TO COMPLY

It is the Developer's sole responsibility to comply with all the requirements set forth in these policies and procedures. Failure to comply with these policies and procedures may result in the City denying reimbursement, in whole or in part. To the extent any partial reimbursement is allowed by the City following non-compliance with these policies and procedures, and so long as payment is permitted by applicable law, reimbursement shall be subject to a penalty of not less than 15% (and perhaps more) of the otherwise approvable reimbursement amount. The City reserves all rights, and nothing herein shall constitute a waiver or estoppel of any City rights otherwise allowed by law. Nothing herein shall require the City to undertake any action not otherwise allowed by law.

7. ADMINISTRATION OF POLICY

The City Manager shall be responsible for administering the provisions of these policies and procedures, all in his or her discretion.

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2019-209

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 25, 2019 by the following vote:

AYES: COUNCILMEMBERS: *Ly, Hume, Detrick, Nguyen, Suen*

NOES: COUNCILMEMBERS: *None*

ABSTAIN: COUNCILMEMBERS: *None*

ABSENT: COUNCILMEMBERS: *None*



Jason Lindgren, City Clerk
City of Elk Grove, California