

**RESOLUTION NO. 2001-24**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
APPROVING AND ADOPTING  
SPECIAL ASSESSMENT AND COMMUNITY FACILITIES DISTRICT FINANCING  
PROGRAM POLICIES FOR THE CITY OF ELK GROVE**

WHEREAS, the City of Elk Grove (City") desires to have the full range of financing tools available to finance infrastructure desirable for the improvement and orderly growth of the City; and

WHEREAS, California Government Code section 53312.7 allows the City agency to initiate proceedings to establish community facilities district financing programs only if the City has first considered and adopted local goals and policies concerning the use of community facilities districts; and

WHEREAS, on April 11, 2001 the City Council adopted goals and policies for Special Assessment and Community Facilities District Financing Programs, and Council desires to adopt an amended version of those policies;


NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELK GROVE HEREBY RESOLVES AS FOLLOWS:

1. Approves and Adopts the amended City of Elk Grove Special Assessment and Community Facilities District Financing Program Policies attached to this resolution.

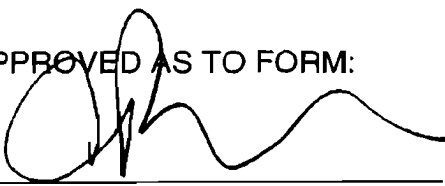
PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 25th day of April 2001.

  
JAMES COOPER, MAYOR  
CITY OF ELK GROVE

ATTEST:

  
PEGGY JACKSON, CITY CLERK  
CITY OF ELK GROVE

APPROVED AS TO FORM:

  
ANTHONY MANZANETTI,  
CITY ATTORNEY  
CITY OF ELK GROVE

**AYES:** Briggs, Cooper, Leary,  
Scherman, Soares  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

**City of Elk Grove  
Special Assessment and Community Facilities District  
Financing Program Policies**

Presented April 11, 2001  
By Resolution No. 2001-20

Adopted April 25, 2001  
By Resolution No. 2001-24

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# **City of Elk Grove**

## **Special Assessment and Community Facilities District**

### **Financing Program Policies**

#### **1. Introductory Statement**

The City of Elk Grove will consider developer or property owner initiated applications requesting the formation of community facilities or assessment districts and the issuance of bonds to finance eligible public facilities necessary to serve developing commercial, industrial and/or residential/industrial/commercial mixed use developments.

Generally, only public facilities such as major thoroughfares and arterials, highway and freeway improvements, flood control or drainage improvements, sewers, telephone ducts, electrical ducts, water supply and distribution improvements, libraries, fire stations, park improvements, transit improvements, certain development impact fees, and other capital facilities may be eligible for this tax-exempt financing program. Facilities will be financed in accordance with the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Integrated Financing District Act or the Mello-Roos Community Facilities Act of 1982.

Existing neighborhoods may apply to the City for the use of assessment financing to fund local or neighborhood serving facilities in accordance with the Improvement Act of 1911 or Municipal Improvement Act of 1913, the Improvement Bond Act of 1915 and the Integrated Financing District Act.

The City shall make the determination as to whether a proposed district shall proceed under the provisions of the Improvement 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 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 deposit increments. The City shall not incur any expenses for processing assessment or community facilities districts. Expenses not chargeable to the district shall be borne by the applicant.

## 2. **Definitions**

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

**"Bonds"** means bonds authorized and issued under the Mello-Roos Act or the Improvement Act of 1911, or the Improvement Bond Act of 1915.

**"City"** means the City of Elk Grove.

**"City Staff"** means the City Manager or his/her designee.

**"District"** means a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 ("CFD") or an assessment district formed under the Improvement Act of 1911 or the Municipal Improvement Act of 1913 ("The Municipal Improvement Acts").

**"In-Tract Facilities"** means public facilities which serve an individual development, such as public facilities serving an industrial park.

**"Public Facilities"** means improvements authorized to be constructed or acquired under the Mello-Roos and Municipal Improvement Acts including, but not limited to, those public improvements detailed within Section 7 Eligible Public Facilities of this document, and subject to the terms and conditions set forth therein.

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

## 3. **Application Process**

Early communication with the City staff of the City of Elk Grove 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 approval process.

- A. **Pre-Application Conference:** Applicant meets with City staff to discuss the proposed project and application procedures.
- B. **Application Submission:** Applicant submits an initial application to City staff with a \$10,000 non-refundable application fee.



- C. **Project Review:** Applicant and City staff meet to discuss initial application, including any issues raised and further information that might be required. If necessary, applicant submits revised application. Once the district's application is accepted by City staff, it will be reviewed by a City assessment and Mello-Roos financing team consisting of staff from the City and City Counsel.
- D. **Application Processing:** Upon City determination that the application is complete, staff prepares a report which forwards the request for district formation and project financing and staff recommendation to the City Council.
- E. **City Council Consideration:** The City Council grants or denies the application. If approval is granted, the City Council directs staff to select consultants, negotiate necessary contracts, and authorizes staff to collect developer advance deposits, beyond the initial application fee.
- F. **Project Initiation:** City staff submits consultant contracts, reimbursement agreements and other similar items for City Council consideration.
- G. **Project Implementation:** Applicant, City staff and consultants meet to determine preliminary project schedule and begin work necessary to initiate district formation. (Please see Exhibits A and B for specific district formation procedures.)

## 4. District Application

<b>City of Elk Grove</b> <b>Special Assessment and Mello-Roos District</b> <b>Financing Program Application</b>	
<b>Instructions:</b> 1. Please complete the following Sections in the spaces provided. 2. Attach additional sheets if necessary. 3. Attach \$10,000 non-refundable application fee. If application is approved, any unexpended portion can be applied to the District formation deposit amount.	<b><u>TO BE COMPLETED BY CITY</u></b>  _____ City/District Accounting No.  _____ Date Application Fee Received
<b><u>Applicant Information</u></b>  Applicant Name: _____  Relationship to Landowner: _____  Mailing Address: _____  Contact: _____  Title: _____ Phone: _____  <b><u>Preferred Proceedings (check)</u></b>  Improvement Act of 1911 _____ Municipal Improvement Act of 1913 _____ Improvement Bond Act of 1915 _____ Mello-Roos Community Facilities Act _____ Undecided _____ Explanation: _____  <b><u>Name of Project</u></b>  Provide map identifying zoning title or ordinance no	<b><u>Name of Civil Engineer for Project to Date</u></b>  Name: _____ Contact: _____ Address: _____  Phone: _____  <b><u>Landowner Name</u></b>  Mailing Address: _____  Contact: _____  Title: _____ Phone: _____ _____  <b><u>Project Land Use Summary</u></b> (i.e., number of units/acres by land use category)

### **Additional Project Information**

- A. City planning approvals (subdivision approvals received to date including processing numbers, dates of approval, current processing status and development agreement reference, if any).
- B. Previous names under which this project has been known or processed by the City (list names and dates).
- C. Improvements or facilities proposed for assessment district or community facilities district financing. (If available, provide a cost breakdown, map and construction timetable for each facility or improvement proposed.)
- D. All existing and proposed taxes, assessments, liens or other secured interests on all property within the proposed district. (Provide a copy of recent property tax bill and preliminary title report.)
- E. Estimated property value documented by letter from MAI appraiser or other qualified party, if available.
- F. Prior experience developer/landowner has had with assessment and/or community facilities district financing.
- G. All other land development ventures by landowner and/or developer where public debt financings were used. (include location, land use summary, period of construction, etc.)

### **Other District Formation/Financing Information**

- A. Project's need for assessment and/or community facilities district financing.
- B. Public entities anticipated to own, operate or maintain facilities or improvements proposed.
- C. Identify the percentage of total acreage owned by the applicant in the proposed district. (Attach a map identifying their property locations, affected facilities, and evidence indicating support for the proposed district financing).
- D. Have you, or anyone else, filed a petition with another public agency (e.g., school or water district) to form an Assessment / Mello-Roos district on the property?
- E. Surrounding property owners which may be affected by or be included in the proposed district financing.

### **Miscellaneous**

- A. Indicate whether an application for assessment and/or community facilities district financing has ever been previously denied by the City Council for this property. If so, explain the circumstances and reasons.
- B. Indicate whether the landowner/developer and/or joint venture participant has ever been party to an abandoned, defaulted and/or court challenged assessment or community facilities district financing in any jurisdiction. If so, state when, where, issue size, circumstances and reasons.
- C. Do you foresee any unusual requirements, problems, unique opportunities, etc., that may exist in the requested financing of the project?
- D. Provide recent financial statements of landowner, developer, joint venture, etc., or provide lead bank/lender references or other information demonstrating past financial performance.

- E. To minimize the possibility of the City's and prospective bond holders involvement with contaminated property, provide a Phase I site assessment of the subject property which concludes there is minimal or no possibility of contamination. If the site assessment concludes that contamination exists or further studies are warranted, the applicant shall conduct an appropriate Phase II site assessment of the property, and funding eligibility will be based on the results of the Phase II site assessment.

### **Declarations**

The undersigned hereby declares that property taxes and assessments are current for the properties included in this Application and that the information contained in this Application is accurate and complete to the best of the undersigned's knowledge.	
<b><u>Submitted by</u></b>	
Firm:	Date:
Name:	Title:
Signature:	

### **5. District Cost Deposits and Reimbursements**

All City and consultant costs incurred in the evaluation of district applications and the establishment of districts shall be paid by the applicant by advance deposit increments. The City shall not incur any expenses for processing and administering assessment districts or CFD's. Expenses not chargeable to the district shall be directly borne by the applicant.

Each application for formation of an assessment district or CFD shall be accompanied by an initial deposit of \$10,000.00 to fund initial staff and consultant costs associated with district review and implementation. If additional funds are needed to offset costs and expenses incurred by the district, the City shall make written demand upon the applicant for such funds and the applicant shall comply with each demand within thirty (30) calendar days of receipt of such notice. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the proceedings, including but not limited to legal, engineering, appraisal, special tax consultant and financial advisor expenses; administrative costs and expenses; required notifications; and printing and publication of legal matters. The following table illustrates typical district costs prior to the sale of bonds to be funded by the applicant by the advance deposit mechanism. The following estimated district formation cost summary is intended to indicate order of magnitude cost of a typical \$25 million Mello-Roos or assessment district to an applicant(s) prior to the sale of bonds.

<b>Typical District Costs Prior to Sale of Bonds</b>	
Application Fee	\$ 10,000
Assessment Engineering/Special Tax Consultant	40,000
Disclosure Counsel	30,000
Appraisals	30,000
Market Absorption Study	15,000
Traffic Study	20,000
Miscellaneous	10,000
City Staff Administration	80,000
Preliminary Engineering	150,000
<b>TOTAL</b>	<b>\$385,000</b>

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

- A. The district is not formed;
- B. The proceedings for formation of the district or issuance of bonds is not approved by the City; or
- C. The proceedings for formation of the district or issuance of bonds is abandoned in writing by the applicant.

Except as otherwise provided herein, the applicant shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incident to the proceedings and construction of the public facilities as provided under the Mello-Roos Community Facilities Act of 1982 or the Improvement Act of 1911 or the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915 or the Integrated Financing District Act. All such costs and expenses will be limited to those district related consultants hired or authorized by the City and invoices shall be verified by the City as a condition of reimbursement and the City shall have sole discretion as to what costs and expenses are reimbursable and as to their reasonableness.

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

- A. In-house administrative and overhead expenses incurred by the applicant;
- B. Interest expense incurred by the applicant during the construction of public facilities; and
- C. Any other costs and expenses incurred by the applicant which are not otherwise authorized for reimbursement under the Mello-Roos or Improvement Acts.

The City will pay interest at the net City Treasury pool rate on the unexpended balance of the money advanced. The City will pay interest only if the district is abandoned or if there are funds remaining from those advanced at completion of the district. Neither the City nor the district

# Amendment 1

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shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the district.

## **6. Use of Consultants**

The City shall select all consultants necessary for the formation of the district and the issuance of bonds, including the underwriter(s), bond counsel, disclosure counsel, financial advisor, engineers, appraiser, market absorption study consultant, and special tax consultant. City staff may confer with the district applicant, but consent of the applicant is not required in the determination by the City of the consulting and financing team. The need for district consultants and the scope of their services shall 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).

No firm may serve as both design engineer and assessment engineer or special tax consultant on the same district pursuant to Section 87100 of the Government Code. City staff reserves the option to select any engineer in connection with an assessment or Mello-Roos district.

## **7. Eligible Public Facilities**

Facilities to be financed must be public facilities for which the City, or an agency as determined appropriate by the City, will be the owner or will have normal operating and maintenance responsibility. Priority will be given to those public facilities to be owned and operated by the City that are regional in nature. The City may finance public facilities, except for school facilities, that are to be owned and operated by other public agencies. The priority for the financing of infrastructure and public facilities will be determined at the sole discretion of the City. The highest priority will be placed on infrastructure that is for the health & safety of the public. The types of facilities generally eligible to be financed and their priority are:

- A. Streets and Roads (thoroughfares, arterials, major streets, highway and freeway improvements and major collector streets); In determining the eligibility of roadway improvements for special district financing, major arterials which include full road improvements (i.e., curb to curb) will be given preference.
- B. Utilities and Drainage Facilities, including but not limited to, sewer and water; and
- C. Other public facilities including those to be owned and operated by other public agencies, except for school facilities, as permitted by law.

The City has final determination as to any facility's eligibility for financing, as well as the prioritization of facilities to be included within a district financing. Use of bond proceeds for grading and right-of-way acquisition will be reviewed by the City and bond counsel on a case-by-case basis.

The City will consider financing "in-tract" facilities within existing communities and developing areas. Financing of "in-tract" facilities shall be reviewed on a case-by-case basis and the City may require information in addition to that contained in the normal application. The City shall

also have sole determination as to what “in-tract” public facilities will be financed and which financing mechanism shall be used. Bonds issued under the Improvement Act of 1911 may be considered, depending upon the extent to which the cost for administering those bonds are recovered. Bonds issued under the Improvement Act of 1915 may be considered as long as the issuance of those bonds does not adversely impact the City's overlapping debt.

## **8. Property Owner Support**

In the instance of property owner initiated districts involving multiple property ownership, the district applicant shall 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. Initiation of formation of the district will require concurrence of 60 percent of the other property owners to be included in the proposed district, unless there is an overriding need for the public facilities, or the applicant is willing to separately fund the facilities on the non-participating property(s).

## **9. Land Use Approvals**

Proposed district properties must possess a land use determination such that proposed land uses and specific facility requirements can be adequately analyzed. The City will accept applications for assessment and/or Mello-Roos financings at any time, however the City will implement said financings only when the above condition is satisfied.

## **10. Agreements**

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 shall include, but not be limited to:

- A. Advance Deposit Agreement;
- B. Reimbursement/Acquisition Agreements; and
- C. Agreements with any other public agency entitled to receive any portion of the bond proceeds or entitled to own and operate any of the public facilities financed by bond proceeds.

As a condition to the issuance and sale of the bonds, all of the agreements specified shall be duly approved and executed by the parties thereto. Prior to execution of any agreements, such agreements shall be reviewed by bond counsel and City's Counsel. Funding of the above agreements shall be payable solely from the proceeds of the sale of bonds.



## **11. Security**

As a general rule, Mello-Roos and assessment bonds will be issued on an unrated basis because the rating agencies normally will not rate these types of securities. Therefore, in cases of 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.

While the City's credit is not pledged to support the bonds, a default in Mello-Roos or special assessment bonds can negatively impact the City's bonding capacity and market perception. The greatest exposure to default on Mello-Roos or special assessment bonds is the period in which responsibility for debt service payments is concentrated in one property owner/tax payer.

To minimize the risk of a default, it will be the City's policy to require third party guarantees for individual assessments or special taxes from each property owner that owns legal lots which are collectively responsible for 10 percent or more of the annual special assessment or special tax payments within the district and additional security may be required by the City in certain other instances. "Property owner" shall include any and all entities in which the same individual or entity has a 10 percent or more ownership interest or a controlling interest. This may include, but is not limited to, limited partnerships, limited liability companies, general partnerships, corporations, or trusts. The total assessments or special taxes for which a property owner shall be responsible shall include the total of all assessments or special taxes for any and all properties in which the property owner has a 10 percent or more ownership interest or a controlling interest.

The third party guarantee must generally be provided on or before the date of pricing of the bonds. The third party guarantee shall remain in effect, on an irrevocable basis, until the property owner's annual special assessment or special tax liability is reduced below 10 percent. Upon the sale or transfer by the property owner of any property with the district, the amount of the third party guarantee may be reduced by recalculation in accordance with Section 13 below provided that the new property owners responsible for 10 percent or more of the special assessment or special tax payments within the district provide third party guarantees. Third party guarantees can include letters of credit, surety bonds or some other mechanism which assures payment of special assessments and special taxes, even in the event of the bankruptcy of the developer entity or its principals. The third party guarantee may be annually renewable. City shall determine in its sole discretion which form of third party guarantee is acceptable.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution in a form and upon terms and conditions satisfactory to the City. All fees payable on the letter of credit or other security shall be the sole responsibility of the district applicant or developer, not the City or district. Any security required to be provided by the applicant pursuant to this section may be discharged by the City upon a determination by the City that the property owner is no longer responsible for 10 percent or more of the annual special assessment or special tax payments within the district.

Exceptions: The above security will not be required for refundings where the original issue did not require security. The City may also waive or modify the security requirement where the assessments or special taxes actually levied and collected is not less than one hundred fifty percent (150%) of the annual debt service.

## **12. Value-to-Lien**

The district (or improvement area) property value-to-lien ratio shall be at least 3:1 as determined pursuant to the appraisal criteria as set forth in Exhibit D and considering any prior or pending special taxes or improvement liens.

The value-to-lien ratio shall be determined based upon an appraisal by an independent MAI appraiser of the proposed district using the appraisal criteria set forth in Exhibit D. The appraisal shall be coordinated by and under the direction of the City. All costs associated with the preparation of the appraisal report shall be paid by the applicant through the advanced deposit mechanism. In every case, the appraisal shall employ either a discounted cash flow or utilize bulk sale comparables.

Upon receiving an appraisal and determining the value-to-lien ratio, the City shall apply the following criteria:

- A. If the value-to-lien ratio is 3:1 or greater, the City may determine not to require letters of credit or other security to secure payment of the special taxes to be levied annually on properties within the district. However, letters of credit or other security may be required for individual parcels within a district that have a value-to-lien ratio of less than 3:1.
- B. If the value-to-lien ratio is less than 3:1, the City shall require either letters of credit or other security (assigned deposits; deposits to escrow) to secure payment of the special taxes/special assessments on properties within the district or may elect to abandon the district.

The letter of credit or other security shall be in a form consistent with the security described in Section 11 and shall be in addition to any security required to be provided pursuant to Section 11. Any security required to be provided pursuant to this Section 12 shall be discharged by the City upon the opinion of a qualified appraiser, retained by the City and paid for by the property owner that a minimum value-to-lien ration of 3:1 has been attained.

The City shall have discretion to retain a consultant to prepare a report to verify market absorption assumptions and projected sales prices of the properties which may be subject to the maximum special tax or assessments in the district.

### **13. Irrevocable Letters of Credit**

In situations where a district or certain parcels within a district have a value-to-lien ratio of less than 3:1 or a property owner is responsible for 10 percent or more of the annual special assessment or special tax payments within the district, an Irrevocable Letter of Credit (LOC) or escrow fund deposit shall be required to assure payment of annual special taxes/special assessments until such time that the 3:1 ratio is achieved as determined by a qualified appraiser retained by the City or an individual property owner is no longer responsible for 10 percent or more of the annual special assessment or special tax payments within the district as determined by the City, in its sole discretion. An LOC is a bank credit arrangement, wherein the bank agrees to lend a specified amount of funds for a limited term.

The following criteria will be used by the City to determine the acceptability of an LOC security for the less than 3:1 value-to-lien ratio:

The amount of the LOC shall be the sum of all special taxes/special assessments due on the undeveloped parcel(s) for the period that is determined to be needed to reach a value-to-lien ratio of 3:1. The City, at its discretion, may allow the amount of the LOC to be reduced annually by the amount of special taxes/special assessments paid by the property owner on the undeveloped parcel(s) if development proceeds on a schedule which is satisfactory to the City.

The term of the LOC shall be annually renewable until such time as the value-to-lien ratio is 3:1, as determined by an appraiser and/or market absorption consultant retained by the County. In the event the 3:1 ratio has not been reached by the expiration date and the LOC has not been renewed, the City may draw the full amount of the LOC as security. When the ratio of 3:1 has been reached the LOC will be released, or if it has been drawn upon, the City will return any unused portion of the security that may exist. All costs associated with the LOC shall be borne by the district applicant(s).

The following criteria will be used by the City to determine the acceptability of a LOC security for a property owner who is responsible for 10 percent or more of the special assessment or special taxes paid within the district:

The amount of the LOC shall be an amount equal to the assessment or maximum special tax allocable to all undeveloped parcels owned by the property owner in the proposed district for the fiscal year ending on the termination date of the LOC. Upon the sale or transfer by the property owner of any property with the district, the amount of the third party guarantee shall be reduced by recalculation in accordance with this Section 13.

The term of the LOC shall be annually renewable until such time as the property owner is no longer responsible for 10 percent or more of the special assessment or special taxes paid within the district. In the event the LOC is not renewed in a timely manner, the City may draw the full amount of the LOC as security. When the property owner is no longer responsible for at least 10 percent of the special assessment or special tax within the

district, the City will return the unused portion of the security that may exist. All costs associated with the LOC shall be borne by the property owner.

The LOC shall be made payable to the City of Elk Grove. The City shall be allowed to draw on the LOC in any year when taxes/assessments are not paid on the subject parcel(s) or the amount of taxes/assessments paid do not meet the special tax/special assessment obligation for the parcel(s) for that year.

The following are the City's credit requirements with respect to the credit bank provider:

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

or

- B. Be a subsidiary of a parent organization rated "A" or better by Moody's or Standard & Poors - with parent's confirmation, and with a bank rating of "B/C" for a domestic bank or "B" for an international bank from Thompson BankWatch.

or

- C. On a case-by-case basis as determined by the City Director of Finance, be rated below investment grade or not rated by Moody's or Standard & Poors but meeting the following test: (1) Assets of at least \$1 billion; (2) Capital & Surplus of at least \$100 million; (3) Collateral of 110% of liability exposure to be held by Trustee (Collateral to be those types of government securities used for bond defeasance) and to be marked-to-market weekly.

#### **14. Special Taxes and Assessments**

The total of the following special taxes, ad valorem taxes and assessments shall not exceed two percent (2%) of the appraised Fair Market Value of the subject properties:

- A. Ad valorem property taxes levied by the City;
- B. Voter approved ad valorem taxes levied by the City in excess of one percent (1%) of the Fair Market Value;
- C. Maximum special taxes allowed by any existing CFD for the payment of bonded indebtedness or ongoing services;
- D. Assessments levied for any assessment district or maintenance district for the payment of bonded indebtedness or services; and
- E. The maximum special tax or special assessment for the proposed CFD.

## **15. Special Tax Formula**

For a Mello-Roos district, the maximum special tax formula shall adhere to the following requirements.

- A. The maximum special tax shall include the annual administrative costs of the City to administer the district;
- B. The maximum special tax shall establish tax rates corresponding to the adopted land use designations on each parcel.

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

- A. Recommends a special tax for the proposed CFD; and
- B. Evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

## **16. 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. Unless otherwise authorized by the City, the following shall serve as bond requirements:

- A. A reserve fund equal to an amount not less than 5 percent and generally 10 percent of the bond issue size on financings where the properties are undeveloped;
- B. Funding (capitalizing) of interest shall be made by the City on a case-by-case basis. When capitalized interest is provided for a period, the period shall not exceed the estimated period to complete the improvements contained in the capital improvement program;
- C. The maximum special tax for a CFD shall be established to assure that the annual revenue produced by levy of the maximum special tax shall be equal to at least 110% of the average annual debt service;
- D. Prior to the issuance of bonds, the City may authorize its bond counsel to commence and process to final judgment an action establishing the validity of the proceedings, special tax and issuance of bonds, unless advised to the contrary by such bond counsel;

- E. In instances where multiple series of bonds are to be issued, the first series shall include public facilities of highest priority to the City, as determined by the City;
- F. The City may require that each new district bond financing refund any prior liens, if they exist on properties included in the district, in order to avoid subordinated liens. Instances where prior liens may not require refunding are: 1) where refunding prior liens will result in higher interest cost; 2) where there can be assurance that prior liens may pose no marketing problems for the new district bonds; or 3) where refunding prior liens present administrative difficulties to the City or other affected public entities; and
- G. Judicial Foreclosure: Pursuant to statute, the City may enter into covenants with bond holders of assessment bonds and special tax bonds to institute judicial foreclosure proceedings. As a result, special assessments and special taxes that are delinquent on July 1 on each year may be removed from the tax roll and turned over to special counsel on or about August 1 of each year for collection. Special counsel will institute action in Superior Court to foreclose these delinquent special assessments and special taxes in their principal amount together with accrued interest, penalties, and attorney fees.
- H. Initial Disclosure: Developer(s) and property owner(s) shall provide all information requested by the City, its bond counsel, disclosure counsel and underwriter which, in the opinion of such entities or persons, is necessary for the City to comply with federal and state laws and regulations regarding initial disclosure for sale of municipal securities.
- I. Continuing Disclosure: Developer(s) and property owner(s) shall provide continuing information to the City, or, at the City's option, directly to State and National Repositories, which is required by the City, in its opinion or in the opinion of bond counsel, disclosure counsel or underwriter, to comply with federal and state laws and regulations regarding continuing disclosure for municipal securities. Developer(s) or property owner(s) shall enter into an agreement to provide such information prior to the issuance of any securities.

## **17. Method of Bond Issuance**

The City shall determine the method of bond sale, including competitive, negotiated and private placement sale approaches. Generally, the City utilizes a negotiated or private placement sale when one or more of the following factors are present.

- A. **Novel structuring approach** - When a novel structuring requires advance selling by the managing underwriter(s), a negotiated sale may be appropriate.
- B. **Complex or unrated debt** - An unrated financing (Baa or below) or a complex set of credit arrangements can also favor a negotiated sale. If a complex or unrated credit requires more pre-market or advance sales preparation by a managing underwriter, a negotiated sale may be appropriate.

- C. **Volatile market conditions** - In times when the bond market experiences wide swings in interest rates over short periods, and when the bond issue is interest rate sensitive, a negotiated sale offers more latitude in bringing an issue to market.
- D. **Rejection of competitive bids** - Should the City hold a competitive sale and reject the bids due to unanticipated unfavorable market conditions, the City may select among those underwriters which it deems most responsive and negotiate the sale as and when market conditions improve. This option should be utilized only in those circumstances when market conditions have changed markedly immediately prior to the sale.

In instances where none of the above factors are present, a competitive sale approach may be utilized.

In those instances where a negotiated sale is used, the selection of underwriter(s) by the City shall be conducted as follows:

- A. A request for proposal is issued to a list of underwriters acceptable to the County.
- B. A screening panel reviews proposals submitted for purposes of selecting an underwriter(s) or for determining finalists for interviews. Interviews are conducted by the City for purposes of selecting an underwriter(s).
- C. The screening/interview panel may consist of representatives appointed by the Director of Finance, including representatives from the Public Works Agency; City Counsel and bond counsel.
- D. The recommended selection of underwriter(s) is then submitted to the City Council for approval.

## **18. Disclosure to Purchasers**

The applicant or property owner will be required to disclose this and any other special tax, assessment or other liens on individual parcels to existing and future property owners. In addition to all requirements of law, the applicant shall be required to provide examples to the City of disclosure of such information to the purchasers of property within the district, with respect to the existence of the district, amounts of special taxes to be levied within the district and the terms and conditions of bonds issued on behalf of the district. Such disclosure shall include homebuyer notifications requiring signature prior to home purchases, as well as methods to notify subsequent home purchasers.

Examples of such disclosure documents are provided on the following pages. These examples are for information only and are not to be considered or used as documents to guarantee that adequate disclosure of special liens has been made. Adequate disclosure is the responsibility of the applicant. The City will neither provide forms nor complete forms on behalf of the applicant.

## Community Facilities District No. \_\_\_\_

The \_\_\_\_\_ is committed to providing a workable disclosure program that satisfies the needs of the City and the homeowners residing in \_\_\_\_\_. Homeowners in \_\_\_\_\_ need to be fully informed about the establishment of the CFD and the special tax payments that they will be obligated to pay. The \_\_\_\_\_ intends to implement disclosure information at various stages in the development and homebuying process as described below:

**Information Regarding Community Facilities District No.**

Your property will be assessed a special tax to cover the costs incurred in connection with the financing of these facilities. The costs of financing improvements will be allocated among all homes within the Community Facilities District and charged to you each year as a portion of your annual property tax bill. The tax will become effective when your property closes escrow. Your maximum special tax will be \$\_\_\_\_\_. The special tax will be collected for a period of \_\_\_\_ years.

20



**CITY OF ELK GROVE**  
**\_\_\_\_\_ Community Facilities District No. \_\_\_\_\_**  
**Notice of Provisions Incorporated into the "Public Report"**  
**Issued by the California Department of Real Estate**

Community Facilities District: The City of Elk Grove has established within its boundaries "Community Facilities District No. \_\_\_\_." This District was established pursuant to the procedures authorized under the "Mello-Roos Community Facilities District Act of 1982". (Refer to the accompanying "Mello-Roos Community Facilities District Fact Sheet" attached to this public report for details).

Community Facilities District No. \_\_\_\_ was formed to finance the construction and land acquisition of major infrastructure improvements such as \_\_\_\_\_ and other similar improvements in the community of \_\_\_\_\_.

The Community Facilities District No. \_\_\_\_ was formed in \_\_\_\_\_ and is authorized to incur indebtedness and issue bonds in the amount of \$ \_\_\_\_\_. The term of the bonds may not exceed forty years and the interest rate may not exceed that allowed by law. Principal and interest on the bonds are payable from the proceeds of special taxes levied against real property within the District. Properties in this project will be assessed a special tax to cover the costs incurred in connection with the financing of these facilities.

<b>Title Policy Disclosure</b>
<p>"The property covered herein lies within the boundaries of a pending Community Facilities District No. _____, as disclosed by a Community Facilities District map filed in book____ page ____ of _____, recorded on _____, as instrument no. _____."</p> <p>"An instrument entitled "Notice of Special Tax Authorization", recorded _____ as instrument no. _____ of official records reference being made to the record thereof for full particulars."</p>

**CITY OF ELK GROVE**

\_\_\_\_\_ **Community Facilities District No. \_\_\_\_**

**Acknowledgment by Homebuyer prior to the Close of Escrow**

The unit you are purchasing is located within the boundaries of a Community Facilities District as described in the final subdivision public report. The estimated special taxes shown below are in addition to the base property taxes on your property. The maximum annual amount of special taxes is as follows:

<u><b>Year</b></u>	<u><b>Community Facilities District Maximum Special Tax</b></u>
<b>1</b>	
<b>2</b>	
<b>3</b>	
<b>--</b>	
<b>--</b>	
<b>--</b>	
<b>--</b>	
<b>20</b>	

Builder \_\_\_\_\_

Plan \_\_\_\_\_ Square Footage \_\_\_\_\_

Lot No. \_\_\_\_\_ Tract No. \_\_\_\_\_

Acknowledged \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

<b>CITY OF ELK GROVE</b>	
<b>Community Facilities District No. _____</b>	
<b>Grant Deed Disclosure</b>	
Grant to _____	
Subject to:	The lien of a special tax resulting from the inclusion of the property in a Mello-Roos Community Facilities District and the sale of bonds by the District. The special tax will be payable annually with property taxes until all bonds sold by the District have been repaid in full and all eligible facilities have been completed.

## **19. Acquisition Provisions**

The City generally allows acquisition districts. The City shall have final determination as to whether and to what extent it will allow the financing of public facilities through acquisition.

In the event the acquisition provisions of the Municipal Improvement Act of 1913 or the Mello-Roos Act are utilized, the City and the applicant or property owner shall mutually agree upon facilities to be acquired and the method of determining reasonable acquisition costs. For acquisitions pursuant to the Municipal Improvement Act of 1913, an acquisition agreement shall be required and approved by the City Council on or prior to the adoption of the Resolution of Intention to form the district. For acquisitions pursuant to the Mello-Roos Act, an acquisition agreement shall be required and approved by the City Council prior to the closing of the bond sale for the subject district.

Specifications and contracts must require payment of "prevailing wages" as set forth in Sections 1720-1861 of the Labor Code of the State of California, where improvements are to be acquired and reimbursement made therefor. City staff will provide the necessary documents which must be included in the contract to comply with the Labor Code.

Sealed competitive bids must be taken on City of Elk Grove approved plans and specifications where acquisitions are to be made pursuant to the Mello-Roos Act. City staff shall be in attendance at the bid opening and a copy of the engineer's estimate of cost shall be furnished to that section prior to the date for receiving bids. The minimum advertising acceptable is the distribution of approved plans and specifications to the Builders Exchanges and Construction Services shown on the distribution list obtainable from the City staff and the time fixed for opening bids shall be a reasonable time not less than fourteen (14) days after distribution of plans and specifications to the Builders Exchanges and Construction Services.

Sealed competitive bids are not required where acquisitions are to be made pursuant to the Municipal Improvement Act of 1913, but City approved plans and specifications are required and the City reserves the right to determine the value of the improvements to be acquired irrespective of the cost paid by the developer.

Upon completion of construction, the following shall be submitted to the Infrastructure Finance Section of the Public Works Agency:

- A. An itemized list of the improvements proposed for acquisition which gives a description of the individual items, the final quantity for each item, the unit price bid for the item and the total cost for each item.
- B. Basis and billing for all engineering fees paid and claimed for reimbursement.
- C. Description of any City fees paid and claimed for reimbursement.
- D. Release from contractor, subcontractors, and suppliers indicating payment in full.

- E. Guaranty that there are no liens on the improvements to be acquired together with indemnification agreement to the City regarding unknown or future claims.

## **20. Exceptions to These Policies**

The City may find in limited and exceptional instances that a waiver to any of the above stated policies is warranted given identified special City benefits to be derived from such waiver. Such waivers are granted only by action of the City Council and based upon stated policies as warranted given identified special City benefits to be derived from such specific public purpose, economic and/or health and safety findings.

## **EXHIBIT A**

### **ASSESSMENT DISTRICT FORMATION PROCEEDINGS**

#### **Assessment Districts**

Assessment district proceedings under the Municipal Improvement Act of 1913 normally provide for the construction of improvements by the City and the financing of such improvements with improvement bonds, which are secured by a fixed lien on the benefited property. In certain instances, if authorized by the City, the developer may construct the improvements (or portion thereof) which would be acquired by the City as provided in the proceedings. This procedure requires the developer to enter into an Acquisition and Financing Agreement with the City and to pay all administrative and consultant costs which may be incurred.

- A. Initiation of Proceedings - The district is initiated by an applicant or landowner petition for City Council action. Upon initiation, the design engineer prepares plans, specifications and cost estimates of the proposed public improvements. The assessment engineer begins preparing the Engineer's Report including the assessment diagram, assessment roll, description of improvements and preliminary cost spread. The preparation of any necessary environmental documentation for the public improvements shall be facilitated by the City.
- B. Presentation of Report - Upon completion of the preliminary engineering work, the City Council adopts a resolution of intention to form the assessment district, approves the Engineer's Report, calls for construction bids, authorizes the future sale of bonds, sets the date, time and place for the public hearing and directs assessment notices to be mailed.
- C. Awarding of Bids - Clerk receives construction bids and bond bids (if bonds are sold competitively). Assessment engineer modifies the assessment roll and Engineer's Report and notifies property owners of revised assessments.
- D. Public Hearing - City Council holds public hearing at which written protests are presented and public testimony is taken. If no protests have been received, or if the City Council determines to overrule such protests, City Council approves district formation, orders construction work, confirms the assessments, directs Treasurer to mail assessment bills and approves the bond sale.
- E. Cash Collection Period - Treasurer may receive cash payments during the 30 days following confirmation if property owners elect to pay off the assessment or portion thereof prior to the issuance of bonds. The cash collection period may be waived if consent is demonstrated by all the property owners to be included in the district.

- F. Authorize Issuance of Bonds - City Council determines the balance of unpaid assessments and provides for the issuance of bonds to be secured thereby.
- G. Sale of Bonds - Bonds are issued in exchange for the cash proceeds of the sale, which are held by the City or its fiscal agent (or paying agent/registrar) and utilized for the purposes described in the Engineer's Report.

## TYPICAL 1913 ACT ASSESSMENT PROCEEDING

					Days Elapsed
Initiation*		60% Petition	City Council Determination	Health Officer Letter	0 Days
Improvement Design	180 Days		Complete Engineering Design of Public Improvements		180 Days
Presentation of Report, Resolution of Intention	45 Days		Presentation Engineers Report to City Council		225 Days
Receive Bids	30 Days		Const. Bond Bids Bids		255 Days
Public Hearing, Confirm Assessments	15 Days		Public Hearing		270 Days
Cash Collection Period	30 Days		Cash Collection Period		300 Days
Determine Unpaid Assessments and Authorize Issuance of Bonds	30 Days		City Council Authorize to Issue Bonds		330 Days
Closing	20 Days		Closing		350 Days

\* This chart is a representative example of a “best case” scenario



## **EXHIBIT B**

### **Mello-Roos Community Facilities District Formation Proceedings**

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A Community facilities district ("CFD") is a legally constituted governmental entity created for the purpose of financing public facilities and services. It is similar in effect to an assessment district except that the resulting security for debt in an assessment district is a fixed lien, while under a CFD it is a special tax supported by a continuing lien. A CFD may finance a broad range of facilities, including facilities which benefit an area in a general way as opposed to benefiting specifically identified properties as required in an assessment district.

1. Formation of a Steering Committee. Upon confirmation that land use determinations have been obtained in accordance with Section 9 of this report, a steering committee made up of representatives of the City, other affected facility and service providers, and the landowners is formed for the purpose of overseeing the work of the engineering consultants, preparation of the report on public facilities required, and preparation of the comprehensive public facilities financing plan.
2. Preparation of a Report on Public Facilities Required. The report on public facilities required identifies the major public facilities required to develop the property with urban land uses. Typically, this has included identification of capital facilities related to major roadways, transit, water supply, drainage, sewer, fire stations, and basic park improvements, along with their estimated costs.
3. Preparation of a Comprehensive Public Facilities Financing Plan. The public facilities financing plan is a continuation of the report on public facilities required and identifies financing mechanisms for the various public facilities. Typically, this report is contained in a multiple volume set of documents including the following:
  - o Financing Plan Summary Report.
  - o Public Facility Improvements Financed by Existing Financing Mechanisms.
  - o Public Facility Improvements to be Financed by the Community Facilities District or Other Financing Mechanisms.
  - o Public Facilities Financing Plan (includes a detailed description of the proposed community facilities district and the rate and method of apportionment of the special tax).

o Environmental Document.

4. Initiation of Proceedings. Proceedings must be instituted when a written request is made by two members of the City Council or a petition is signed by ten percent (10%) of the registered voters (or ten percent (10%) of the landowners by area if less than 12 registered voters) within the proposed CFD. Except when the proceedings are commenced on the initiative of the City Council, the written request or petition shall be accompanied by payment of a fee determined by the City Council to be sufficient to pay for costs incurred in conducting the proceedings. The Local Agency Formation Commission ("LAFCo") has no jurisdiction over the formation of or annexation of territory to, or detachment of, territory from a CFD.
5. Resolution of Intention. Within ninety (90) days of the receipt of a written request or petition, the City Council must adopt a resolution of intention to establish a CFD, stating the name of the proposed CFD, the types of facilities or services to be financed and that, except where funds are otherwise available, a special tax to pay for such facilities and services will be annually levied. The resolution of intention shall also fix a time and place for a public hearing between thirty (30) and sixty (60) days after the adoption of the resolution of intention, describe the method of levy and apportionment of the special tax and describe the proposed voting procedure. In addition, the resolution may specify conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied. The City Council directs its responsible officers to study the proposed district and to file a report at or before the public hearing describing the proposed public facilities and services and an estimate of costs.
6. Public Hearing. Protests against the establishment of the CFD, the extent of the CFD or the furnishing of specified types of public facilities or services may be made orally or in writing by interested persons or taxpayers. If fifty percent (50%) or more of the registered voters or six (6) registered voters, whichever is more, residing within the proposed CFD or the owners of one-half (1/2) or more of the area of land in the proposed CFD file written protest against the establishment of the CFD, the proceedings are abandoned. If the protests are directed toward certain types of facilities or services, or against a specified special tax, those specific items may be eliminated from the resolution forming the CFD. The hearing may be continued for up to thirty (30) days without special findings and up to six (6) months if the City Council makes specified findings.
7. Resolution of Formation. If the City Council decides to establish the CFD, it shall adopt a resolution of formation containing similar information as contained in the resolution of intention.
8. Election. If the City Council determines to form the CFD, it submits the question of whether special taxes should be levied to an election of the qualified voters of the proposed CFD. Combined with the tax proposition, there may be a proposition on the question of incurring bonded indebtedness. The tax, in order to be levied, must be approved by two-thirds (2/3) of the votes cast. The Act provides that the election shall be at the next general election or at a special election to be held between 90 and 180 days

following the close of the protest hearing. The election time limits may be shortened by the unanimous consent of the qualified electors within the proposed district and the concurrence of the election official conducting the election.

9. Improvement Bonds. A CFD may be created solely to provide the services permitted by statute. However, most CFD's have been created specifically for the purpose of levying special taxes to service bonded indebtedness incurred by the CFD in order to finance the construction of facilities. The proceedings to authorize and incur bonded indebtedness usually parallel the proceedings for formation of the CFD and the authorization to levy the special tax, although the bond proceedings should be conducted separately and at a later date. The proceedings to authorize bonded indebtedness involve a resolution of intention, public hearing and election all conducted in a manner similar to proceedings to form the CFD and levy the tax. CFD bonds may be sold competitively or through negotiated sale and may bear fixed or variable interest rates.

In some cases, specified facilities may be provided by a CFD for only a portion of the land within the CFD. In that event, the Act provides for the formation of improvement areas for which separate elections are conducted and to which a specified special tax applies.

10. Bond Closing. At the bond closing, proceeds of the bond sale are received by the City and the bonds are transferred to the underwriter.

**TYPICAL MELLO-ROOS COMMUNITY FACILITIES  
DISTRICT PROCEEDING**

<b>EVENT</b>	<b>ESTIMATED</b>	
	<b>Days</b>	<b>Days</b>
1. Formation of a steering committee to oversee the preparation of a comprehensive public facilities financing plan.	30	30
2. Preparation of a report on public facilities required with adoption by the City Council.	180	210
3. Preparation of a comprehensive public facilities financing plan with adoption by the City Council.	120	330
4. Petition requesting formation of a community facilities district received.	-	-
5. City Council adoption of a resolution of intention to establish a community facilities district.	15	345
6. Public hearings on the establishment of the community facilities district and adoption of a resolution of formation by the City Council.	35	380
7. Hold the election and present the election results to the City Council.	30	410
8. City Council to adopt a bond resolution, approve the official statement, and approve the bond purchase agreement.	60	470
9. Bond closing and receipt of bond proceeds.	30	500

## **EXHIBIT C**

### **COMPARISON OF MELLO-ROOS COMMUNITY FACILITIES DISTRICT VS. SPECIAL ASSESSMENT DISTRICT**

	<b>Mello-Roos</b>	<b>Special Assessment</b>
<b>Legal Basis</b>	Mello-Roos Community Facilities Act of 1982	Improvement Act of 1911, Municipal Improvement Act of 1913, Improvement Bond Act of 1915
<b>Financeable Facilities</b>	Any tangible or real property with an expected life of five (5) years or more to be owned or operated by a public agency of a local government plus any fees to pay for such capital facilities	Public facilities whose benefits are identifiable, specific and direct and whose costs can be easily apportioned among the properties
<b>Direct Benefit Facilities</b>	Yes	Yes
<b>General Benefit Facilities</b>	Yes	No
<b>Financeable Services</b>	Yes, police and fire protection, recreation and park maintenance	Yes, maintenance and repair of improvements financed
<b>Services Initiated by Petition</b>	Yes	Yes
<b>Public Hearing</b>	Yes	Yes
<b>Election</b>	Yes	No

## **EXHIBIT D**

### **I. APPRAISAL CRITERIA**

#### **GENERAL DEFINITIONS:**

##### **PROPERTY RIGHTS TO BE VALUED**

Appraisals undertaken to establish value-to-lien ratios in CFDs and assessment districts shall value the fee simple estate, subject to special tax and special assessment liens.

##### **DEFINITION OF VALUE**

Appraisals undertaken to establish value-to-lien ratios in CFDs and assessment districts shall estimate the Market Value of the subject property. Since two distinct “markets” may be at work in a CFD or assessment district, the estimate of Market Value shall be refined to reflect the Retail Value of fully improved and occupied properties and the Bulk Sale Value of all vacant properties - both unimproved properties and improved or partially improved but unoccupied properties.

##### **MARKET VALUE IS DEFINED AS FOLLOWS:**

The general definition of “Market Value” with the “normal” financing assumption is: The most probable price in cash or in terms equivalent to cash for which specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

##### **MARKET VALUE - SPECIAL FINANCING**

When the assumption is “atypical” financing terms, then the value sought is “Market Value, Subject to Special Financing Terms”. The special financing can include one or more of the following features which may differ from typical financing terms:

1. Interest rate
2. Loan fees/points
3. Loan term
4. Loan-to-value ratio
5. Tax-free bonds versus taxable mortgage loan

Presumably, a property financed with a loan carrying a lower than typical interest rate, lower loan fees, a tax-free status, longer loan duration, and/or higher loan-to-value ratio, will sell for more than the same property financed with “typical” loan terms. It logically follows that the inverse is true -- a property financed with a higher interest rate, higher points, shorter loan

duration, and/or lower loan-to-value ratio, will sell for less than the same property financed with “typical” loan terms.

For properties where special financing of tax-free assessment bonds are used, a special definition of “Market Value With the Special Financing” assumption would be:

“The most probable price for which specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and self-interest, and assuming that neither is under undue duress. The method of financing the sale is assumed to be a combination of cash and special tax-free municipal bond financing at an interest rate lower than the interest rate for traditional taxable mortgage loan financing. Precise terms of the assumed special financing are as follows:”

**(Specify exact financing terms)**

### **RETAIL MARKET VALUE**

In addition to the definitional differences created by financing assumptions there are valuation variations created by the “marketing point” assumption. For instance, if one finished lot or house in a subdivision is the subject of the appraisal, the “retail market value” will be sought. This is the probable price one purchaser would pay for one lot or one house. In this instance, if the financing assumed is “typical financing”, the first general definition (Page 1) would be appropriate. If “special financing” is assumed, the second special definition (preceding paragraph) would apply.

### **CURRENT AGGREGATE RETAIL VALUE - GENERAL**

A summation of two or more retail values is often useful as a beginning point in further analysis of multiple parcels, usually to facilitate a solution in arriving at a “Bulk” or “Wholesale Value”. Although there is rarely a marketing stage where two or more units are sold for “retail”, it is useful to properly define the “Current Aggregate Value” to distinguish this summation from “Bulk” or “Wholesale Value”. Thus, “Current Aggregate Retail Value - General is:

The Total retail value of individual units, as if complete on the date of appraisal, and sold to individual buyers. The individual unit values reflect the most probable sales price, before adjustments to cash equivalency and without any deductions for the cost of sales or holding.”

## **CURRENT AGGREGATE RETAIL VALUE - SPECIAL FINANCING**

If the individual retail sales include special financing an alternate definition applies. "Current Aggregate Retail Value - Special Financing" is:

"The total retail value of individual units, as if complete on the date of the appraisal, and sold to individual buyers. The individual unit values reflect the most probable sales price without any deductions for the cost of sales or holding. The method of financing each retail sale includes the following terms:

**(Specify exact financing terms)**

## **BULK SALE VALUE - GENERAL**

"Bulk sale value" shall be estimated for all vacant properties - both unimproved properties and improved or partially improved but unoccupied properties. Bulk sale value is derived by discounting retail values to present value by an appropriate discount rate, through a procedure called Discounted Cash Flow Analysis. If the assumed financing for the bulk (wholesale) sale is "typical" with no especially favorable or unfavorable terms, a standard definition applies.

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

## **BULK SALE VALUE - SPECIAL FINANCING**

On the other hand, if the assumption is atypical (as described previously), the special definition of "Bulk Sale Value - Special Financing" is:

"The most probable price, in a sale of all parcels within a tract or development project, to a single purchaser or sales to multiple purchasers, over a reasonable period discounted to present value, as of specified date for which the property rights should sell after reasonable exposure, in a competitive market under all conditions requisite to a fair sale, with the buyer and seller, each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. The method of financing the sale is assumed to be a combination of cash and special tax-free municipal bond financing at an interest rate lower than the interest rate for traditional taxable mortgage loan financing. Precise terms of the assumed special financing are as follows:"

**(Specify exact financing terms)**



The bulk sale value assumes the sale of all properties in the district. It really is a hypothetical conception of value, as the bulk sale most likely will never occur. Nonetheless, the assumptions embedded in bulk sale value can and should be market-driven.

### **DATE OF VALUE ESTIMATE**

The Date of the Value Estimate shall clearly be identified in the appraisal report. The period between the date of the appraisal and the financing should be kept as short as possible, preferably no more than six months, to accurately represent land values to prospective investors.

## **II. VALUATION METHODS**

### **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. Value estimates under the Sales Comparison approach shall be discounted to reflect special tax and special assessment liens encumbering the subject property.

### **DISCOUNTING RETAIL VALUES TO REFLECT SPECIAL TAX ASSESSMENT LIENS**

Appraisals under the Sales Comparison Approach shall be adjusted to reflect all differences between the subject of the appraisal and the comparable properties which affect value. Such differences include not only physical differences in location, square footage and construction quality, but also differences in tax burdens. Appraisals for residential, commercial, and industrial properties shall be discounted to reflect special tax and special assessment liens encumbering the subject property on a case-by-case basis. Since assessment liens are a fixed amount, the appraiser can determine, based upon analysis of comparable sales data, how much of this fixed amount to deduct from the value estimate of the subject property. Special tax liens, however, are “floating” liens that are recalculated annually, which complicates the valuation adjustment. The appraiser instead must calculate the present value of estimated future special tax payments, then decide how much of this amount to deduct from the value estimate of the subject property. Figure 1 below outlines the recommended steps for discounting values to reflect future special tax payments:

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## **Figure 1**

### **Discounting Retail Values to Reflect Future Special Tax Payments**

1. From the Special Tax Analyst, obtain the rate and method of apportionment of the Special Tax (for developed and undeveloped land, and by various product type).
2. At the time the property is expected to be sold, either as a finished product to the end user, or an improved lot to a merchant builder (based upon the appropriate lead time according to the demand by end users from the Market Absorption Study), the present value of the remaining Special Tax payments shall be computed (using the projected bond True Interest Cost as the discount rate).
3. In adjusting the retail value of the finished property or improved lot to reflect the present value of future special tax payments, the Appraiser shall consider the extent to which the comparable property sales were encumbered by such liens, and the impact that such liens may have upon the price that the end user or merchant builder would be willing to pay for the property. Specifically, the impact that the special tax lien may have on the price of property may vary by location and product type, and may be equal to all of or only a portion of the present value.

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The appraisal shall maintain the linkage between the level of the special tax and the value of the infrastructure financed through the tax. If an escalating special tax is needed to finance comparable infrastructure improvements, the appraiser shall increase the special tax payment by two (2) percent annually prior to discounting. If instead, the annually increasing special tax will finance infrastructure superior to that in the comparable development, the appraiser would again escalate the special tax at this rate prior to discounting, but also adjust the retail values in the new development upward to reflect its superior amenities. Finally, if the escalating special tax will finance a series of bond issues scheduled for some time in the future, the appraiser may choose either to ignore that portion of the tax to be dedicated to future bond issues (and the value of the future improvements), or discount the full amount of the tax (as long as the value of the future improvement is incorporated into retail values). This decision will depend upon how firm the plans for future bond issuance are, and whether the special tax actually will be levied at the higher rate initially. In any event, the appraiser shall maintain the linkage between the special tax and value of improvements financed through the tax.

### **TECHNICAL REQUIREMENTS**

The appraiser's opinion of the value of the property shall be confirmed by sales prices of comparable, or nearly comparable, properties having similar highest and best uses. The appraisal

report shall support all adjustments, including other than market financing, and set forth the analysis that resulted in the value of the land appraised. Detailed data sheets should be included either in the body or the addenda of the report.

1. Attached and Detached Residential--When valuing residential complexes with completed and sold units, standing inventory or newly completed units, the appraiser must identify the source of the data (in-tract or outside projects), base selling price for dwelling units, premiums, concessions or incentives, unit sizes, costs to complete (carpets, appliance, etc.) and support adjustments to the data.
2. Income Properties--The appraiser must identify the sources of data, sales prices, terms, etc., comparability to subject property, and support adjustments to the data.

### **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. The cost of publicly-financed infrastructure shall not simply be tacked on the value estimates, however, if comparable sales data fully reflects the value contributed by comparable infrastructure improvements.

### **ADJUSTING SALES COMPARISON VALUATIONS**

The Cost Approach can be useful for adjusting for physical differences between properties under the Sales Comparison approach. If, for example, a subject property is otherwise identical to comparable properties save for a few additional infrastructure improvements, the cost of those improvements may be added to the value estimate of the subject property to reflect that difference. In this manner, Sales Comparison appraisals can be adjusted to reflect not only differences in infrastructure improvements, but also products under construction and newly completed structures. The cost of publicly-financed infrastructure shall not simply be tacked on to value estimates, however, if comparable sales fully reflect comparable infrastructure improvements. It only is appropriate to adjust value estimates to reflect differences in infrastructure between the subject and comparable properties.

### **TECHNICAL REQUIREMENTS**

Cost valuations shall conform to the following technical requirements:

1. Data Presentation: Data shall be arranged in sequence beginning with reproduction or replacement cost.
2. Source of Estimates: The name of the source of all cost estimates shall be clearly stated (i.e., engineering firm, contractor, cost estimating service, etc.)

3. Unit Cost: Unit costs and the number of units shall be provided so that the reader can determine how the costs were calculated. The dollar amounts of physical depreciation and functional and economic obsolescence, or its omission, should be explained in narrative form. This procedure may be omitted on improvements for which only a salvage or scrap value is estimated.

### **INCOME CAPITALIZATION APPROACH TO VALUE**

The Income Capitalization Approach to Value is appropriate for retail valuations of income-producing properties. It also may be appropriate for estimating the future retail values of incoming-producing properties for use in a Discounted Cash Flow analysis.

### **TECHNICAL REQUIREMENTS**

Appraisals relying on the Income Capitalization approach shall include a discussion on the leasing (rental) status of subject property (e.g., percent occupied, rental rates, concessions, terms, rental adjustments).

1. Rental Estimates: Appraisers shall use rental comparisons to estimate market rental rates and include a discussion of market to actual rentals in existence. A summary of the rental data should be included in the report.
2. Vacancy Rates: Allowance for vacancy and collection costs shall be market-related and not an industry rule of thumb. If a project is partially occupied, the appraisal shall indicate the time period to reach stabilized occupancy, and the value shall reflect the rental loss until such time as stabilized conditions are achieved.
3. Operating Expenses: Estimated operating expenses shall consist of an itemized estimate of annual operating expenses, including reserves for replacements. The support for these estimates should be cited.
4. Capitalization Rate: The capitalization of net income shall be at the rate prevailing for the property type and location. The capitalization technique, method and rate used shall be explained with sources and reasoning.

### **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 to end users. The expenses 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 discount rate shall reflect the rates of return needed to attract debt and equity participation in the project.

Appraisals undertaken to establish value-to-lien ratios for land-secured financing usually must value property that is in an unimproved or partially improved condition. (Bonds issued after a district is substantially occupied may rely on assessed value, rather than commission another appraisal - even though assessed valuation understates market value under Proposition 13 assessment practices.) As noted, the appraiser is not likely to find comparable sales data for unimproved CFDs and assessment districts, which are unique in many respects and do not change hands frequently enough to establish pricing patterns. As a result, these appraisals typically rely on a Discounted Cash Flow (DCF) analysis to estimate land values which also is called the Subdivision Development or Land Development Approach to value in the appraisal literature.

Key variables in a DCF analysis are discussed below:

Number and Type of Buildings and/or Sites. DCF analysis values unimproved land as if it were subdivided, developed and sold.

Rate of Absorption. DCF valuations should rely on an absorption or market demand study to estimate the dates of sale of finished properties to end users and improved lots to merchant builders.

Direct and Indirect Costs. The expenses of converting raw land to finished product or improved lots must be deducted from gross cash flow to derive net cash flow before discounting to present value. Direct costs, or hard costs, which must be deducted from cash flow include labor and materials and developer's profit. Other expenditures which must be deducted from cash flow are referred to as indirect or soft costs, and include items such as administrative overhead, financing costs, taxes and insurance.

1. Land Improvements: All land improvement (i.e., infrastructure) costs shall be estimated by either a licensed civil engineer, or if based upon the appraiser's estimates, be present in the report in sufficient detail so that they may be reviewed by a licensed civil engineer. Estimates based on rules of thumb are not acceptable.
2. Cost of Structures: The appraiser shall check the reasonableness of the developer's costs of constructing structures for work in progress or percentage of projects completed and cite sources of cost data.
3. Indirect Costs: The appraiser shall include reasonable estimates for indirect costs such as marketing, overhead, taxes, and construction financing (for land improvements and proposed structures).
4. Infrastructure Financed through Special Taxes and Assessments: Privately-financed infrastructure improvements represent a direct cost to the developer that shall be deducted from gross cash flow, as these costs depress the rate of return on the initial land investment (unless the developer anticipates these costs and passes them back to the original land owner). But if these improvements are instead

financed through special taxes and assessments levied on the property in the development, deducting both construction costs and the annual special tax and assessment payments would amount to “double-counting” the cost of the same infrastructure improvements - thereby artificially depressing land values. To resolve this dilemma, the DCF analysis shall treat special tax and assessment payments during the construction period as expenses to be deducted from gross cash flow. At the time of the sale of the property to the end user, the present value of the remaining taxes or assessments shall be deducted from the sales price. In this manner, the cost of publicly-financed infrastructure ultimately is charged back to land values, but the cash flow benefit that the developer derives from the public financing also is recognized.

## **DISCOUNT RATE**

The True Interest Cost (TIC) of bonds issued to finance public improvements in the development is not the appropriate discount rate: the discount rate should be much higher. The discount rate shall reflect the risk-adjusted rates of return needed to attract debt and equity participation in the project. The discount rate really consists of three parts: (1) the real rate of return, also called the safe rate, which is the compensation paid to the lender or investor for the use of their money; (2) the inflation premium, to compensate the lender or investor for the fact that future loan or equity payments will be paid in dollars worth less than they are today; and (3) the risk premium, to compensate the lender or investor for the possibility of a loan default or investment lost.

It is not necessary for the appraiser to estimate these three components of the discount rate separately, since each already is present in both the interest rates on construction loans charged by commercial lenders and the rates of return demanded by equity investors. The appraiser merely needs to survey commercial lenders and sources of equity capital to find the going rates.

The rate of return required to attract equity investment in a real estate development project will be higher than that charged for a commercial loan, reflecting the greater degree of risk assumed by the equity investor. The equity investor puts his or her capital at risk, and may even assume responsibility for losses of the partnership. A commercial loan, by contrast, is secured by a private lien on the property or other collateral. As a consequence, the portion of a project financed through equity shall be discounted at a higher rate than the portion financed through debt.

The discount rate should reflect current market conditions and be consistent with the assumptions used in the balance of the appraisal. The discount rate formula below is a weighted average (debt and equity) cost of capital.

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#### **Discount Rate Formula**

$$DF_p \times Ir_{df} + Ef_p \times ROR_{cf}$$

Where:

$DF_p$  = Debt financing as a percent of total financed costs (in decimal form, exclusively of publicly financed costs).

$Ir_{df}$  = Interest rate on debt financing (in decimal form).

$Ef_p$  = Equity financing as a percent of total financed costs (in decimal form, exclusive publicly financed costs).

$ROR_{cf}$  = Annual rate of return required on equity financing (in decimal form).

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#### **TECHNICAL REQUIREMENTS**

Cash flow projects shall include both sales of finished properties to end users and improved lots to merchant builders. Any product (improved lots, residential units or an unleased income property) which will have unsold or unleased inventory for one year or longer shall be discounted. If market data of partially completed product is available, the direct Sales Comparison approach may also be applied. If both direct Sales Comparison valuation and DCF are provided, the values shall be reconciled.

#### **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.

It may be appropriate for large projects that have built-out and occupied product to use mass appraisal techniques. When an entire tract or project has been built and fully absorbed, the appraiser may use an aggregate value estimate utilizing conservative per dwelling unit estimates. These estimates may be the actual base selling prices of each plan, provided resales in the tract do not indicate a downward price trend. If price reductions have occurred, these indications must be considered.

#### **INTERPRETATION AND CORRELATION OF ESTIMATES**

Appraisers shall reconcile their estimates of value and state their reasons why the conclusions reached under the chosen valuation method(s) are indicative of the market value of the property.

## **VALUE ALLOCATIONS**

Appraisers shall report values by ownership or assessor parcel numbers. In CFDs or assessment districts where production units have been built and sold, these separate ownerships may be grouped together by logical categories (e.g. tract). Appraisals for projects with numerous tracts owned by one or related property owners shall indicate value (which may be general) by phase, planning area, or other logical basis of differentiations.

### **III. CONTENTS OF APPRAISAL**

The appropriate format and level of documentation for an appraisal can vary according to its complexity. A detailed appraisal should reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of the data to support the opinion of value. At a minimum, an appraisal shall contain the following items:

1. **Purpose of Appraisal**

This shall include the reason for the appraisal, a definition of all values required, and property rights appraised.

2. **Area, City and Neighborhood Data**

This data shall include such information as directly affects the appraisal property together with the appraiser's conclusions as to significant trends.

3. **Property Data**

This shall include a detailed physical description of the property; its size, shape, soil conditions, topography, improvements, and other physical characteristics which affect the property being appraised. The availability of, capacity of, and proximity to utilities and other infrastructure shall be discussed.

4. **Title Condition**

The condition of title of the property appraised shall be discussed in the appraisal report based upon examination of a title report to be furnished by the property owner, a copy of which shall be included in the report addenda. In those instances where numerous homes, units, lots, etc., are being appraised (within a single tract or planned unit development), a title report of a sample property should be reviewed as opposed to a title report for each parcel. The appraiser shall analyze and discuss those title issues which are concluded to impact the value of the property being appraised (for example, property within a flood zone).



5. Improvement Description

- a. Land parcels which have been developed with residences and subsequently sold shall, at a minimum, indicate land parcel size, number of lots, density, number of plans, square footage, room counts, year construction was initiated, year of completion, and when sales were initiated.
- b. Land parcels with residential product under construction, or with standing inventory, shall be described as in (a) above and include a summary of the stage of development regarding number of units completed, number of models, status of units under construction, finished lots and mass-graded or raw lots. In addition, a comment on the marketability of the units (architecture, size, etc.) is appropriate.
- c. Land Parcels which have been developed with income-producing (or owner-occupied) commercial, industrial, apartments, offices, etc., shall be described as follows:
  - 1) Commercial - Retail - Land parcel size; basic construction type; typical tenant improvements (and who is responsible for their construction); feasible area, when construction was initiated; and date of completion.
  - 2) Industrial - Land parcel size; basic construction type, whether single or multi-tenant; typical build-out as percentage of total area when construction was initiated; and date of completion.
  - 3) Apartments - Land parcel size; basic construction type; number of stories; number of units; unit mix; size; total rentable area when construction was initiated; and date of completion.
  - 4) Office - Land parcel size; basic construction type; typical tenant improvements/allowance; net rentable area when construction was initiated; and date of completion.

6. General Plan Classification

Describe the General Plan classification of the subject and comparable properties. By California Law, the General Plan supersedes zoning and requires amendment concurrent with a zone change.

7. Zoning

Describe the zoning for the subject and comparable properties. Note any discrepancy between General Plan classification and zoning. If the two are not in conformation and rezoning is necessary for the project to proceed, substantial delays may result. If rezoning is imminent, discuss further under Item 8 below.

8. Analysis of Highest and Best Use

The report shall state and support the highest and best use to which a property can be put, and recognized that land is appraised as though vacant and available for development to its highest and best use, and the improvements are based on their actual contribution to the site. If the highest and best use is based on a "Land Use" study provided the developer, the appraiser's investigation and study supporting the conclusion that said land use is reasonable must be included in the report.

9. Statement of Value

The appraiser's opinion of the value of the specified property rights, prepared according to one or more of the valuation methods specified in the previous section.

10. Certification

Certification of Appraiser and Permission to Reproduce and Use Report as Required for Bond Issuance.

## EXAMPLE

### CITY'S CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Elk Grove, California (the "Issuer") in connection with its issuance of City of Elk Grove, Special Tax Bonds in the aggregate principal amount of \$ \_\_\_\_\_ (the "Bonds"). The Bonds are being issued pursuant to Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, supplementing Resolution No. \_\_\_\_\_ (the "Bond Resolution"). The Issuer covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the holds and beneficial owners of the Bonds and in order to assist the Participating Underwriters in complying with Rule 15c2-12(b)(5) of the Securities and Exchange Commission.

SECTION 2. Definitions. In addition to the definitions set forth in the Bond Resolution or parenthetically defined herein, which apply to any capitalized terms used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the Issuer pursuant to, and described in, Sections 3 and 4 of this Disclosure Certificate.

"Dissemination Agent" shall mean the City Manager or his/her designee as the Issuer or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

"Listed Events" shall mean any of the events listed in Section 5 of this Disclosure Certificate.

"National Repository" shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. Currently, the following are National Repositories:

Bloomberg Municipal Repository  
Attn: Dave Campbell  
100 Business Park Drive  
Skillman, NJ 08558-3629

DPC Data, Inc.  
Attn: Peter J. Schmitt  
One Executive Drive  
Fort Lee, NJ 07024

Interactive Data  
Attn: NRMSIR  
100 William Street  
New York, NY 10038  
Phone: (212) 771-6999  
Fax: (212) 771-7390

Standard & Poor's JJ Kenny  
Attn: Joan Horai, Repository  
55 Water Street, 45<sup>th</sup> Floor  
New York, NY 10041

"Participating Underwriter" shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with an offering of the Bonds.

"Repository" shall mean each National Repository and each State Repository.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State Repository" shall mean any public or private repository or entity designated by the State of California as a state information depository for the purpose of the Rule. As of the date of this Disclosure Certificate, there is no State Repository.

### SECTION 3. Provision of Annual Reports.

The Issuer shall, or shall cause the Dissemination Agent to, not later than seven (7) months following the end of the Issuer's fiscal year of each year, commencing seven (7) months following the end of the Issuer's fiscal year ending June 30, 1998, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than five (5) business days prior to said date, the Issuer shall provide the Annual Report to the Dissemination Agent (if other than the Issuer). The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report.

If the Issuer is unable to provide to the Repositories an Annual Report by the date specified in the preceding paragraph, the Issuer shall send a notice to the Municipal Securities Rulemaking Board ("MSRB") and to the State Repository, if any, in substantially the form attached as Exhibit "A."

The Dissemination Agent shall:

determine each year prior to the date for providing the Annual Report the name and address of each National Repository and each State Repository, if any; and

(if the Dissemination Agent is other than the Issuer) file a report with the Issuer certifying the Annual Report has been provided pursuant to this Disclosure Certificate, stating the date it was provided and listing all the Repositories to which it was provided.

SECTION 4. Content of Annual Reports. The Issuer's Annual Report shall contain or incorporate by reference the following:

A copy of its annual financial statements prepared in accordance with generally accepted accounting principles audited by a firm of certified public accountants. If audited annual financial statements are not available by the time specified in the first paragraph of Section 3 above, unaudited financial statements will be provided as part of the Annual Report and audited financial statements will be provided when and if available.

An update of the information of the type contained in the tables in the Official Statement, identified in Exhibit "B" hereto.

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Issuer shall clearly identify each such document incorporated by reference.

SECTION 5. Reporting of Significant Events. The Issuer shall provide or cause to be provided, in a timely manner, to the MSRB and the State Repository, if any, notice of any of the following events with respect to the Bonds, if such event is material:

Principal and interest payment delinquencies;

Non-payment related defaults;

Unscheduled draws on debt service reserves reflecting financial difficulties;

Unscheduled draws on credit enhancements reflecting financial difficulties;

Substitution of credit or liquidity providers, or their failure to perform;

Adverse tax opinions or events affecting the tax-exempt status of the Bonds;

Modifications to rights of bondholders;

Bond calls;

Defeasances;

Release, substitution or sale of property securing repayment of the Bonds; or

Rating changes.

SECTION 6. Termination of Reporting Obligation. The Issuer's obligations under this Disclosure Certificate shall terminate upon the earliest of: (i) the date of legal defeasance, prior redemption or payment in full of all of the Bonds; (ii) the date that the Issuer shall no longer constitute an "obligated person" within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this written undertaking are held to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist the Issuer in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the Issuer may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, without the consent of the holders of the Bonds, if such amendment or waiver does not, in and of itself, cause the undertakings herein (or action of any Participating Underwriter in reliance on the undertakings herein) to violate the Rule, but taking into account any subsequent change in or official interpretation of the Rule. The Issuer will provide notice of such amendment or waiver to the Repository.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the Issuer chooses to include any information in any Annual Report or notice of a Listed Event in addition to what which is specifically required by this Disclosure Certificate, the Issuer shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Certificate, any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Bond Resolution, and the sole remedy under this Disclosure Certificate in the event of any failure of the Issuer to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter, the holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

DATE:

[SEAL]

CITY OF ELK GROVE, CALIFORNIA

By: \_\_\_\_\_

**EXHIBIT "A"**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: City of Elk Grove, California

Name of Bond Issue: City of Elk Grove Special Tax Bonds in the aggregate principal amount of \$ \_\_\_\_\_.

Date of Issuance:

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required the Continuing Disclosure Certificate executed on \_\_\_\_\_, by the Issuer. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_, \_\_\_\_\_

CITY OF ELK GROVE

By: \_\_\_\_\_  
Its: \_\_\_\_\_



## **EXHIBIT “B”**

### **EXAMPLE OF CONTINUING DISCLOSURE REQUIREMENTS**

1. The principal amount of Bonds Outstanding as of the November 30 next preceding the Annual Report Date.
2. The amount of deposit in the subaccount of the Bond Reserve Account, and a statement of the applicable Required Bond Reserve, as of the November 30 next preceding the Annual Report Date.
3. The balance in the subaccount of the Acquisition and Construction Fund as of the November 30 next preceding the Annual Report Date.
4. A summary of the Special Taxes levied on undeveloped land and developed land (by category) within the Community Facilities District, the assessed value of such land (by category), as shown on the assessment roll of the County Assessor last equalized prior to the November 30 next preceding the Annual Report Date, and a statement of assessed value to lien ratios therefor, substantially similar to that provided in the table on page \_\_ of the Official Statement.
5. A summary of the estimated annual debt service on the Bonds and any Additional Bonds and the coverage produced by the maximum authorized Special Tax within the Community Facilities District, based upon recorded subdivision maps as of the June 30 next preceding the Annual Report Date, substantially similar to that provided in the table on page \_\_ of the Official Statement.
6. The percentage of the amount of Special Tax levied within the Community Facilities District for the preceding fiscal year that remains unpaid as of the November 30 next preceding the Annual Report Date, the number of parcels within the Community Facilities District delinquent in payment of Special Taxes as of the November 30 next preceding the Annual Report Date, the amount of each delinquency, the length of time delinquent and the date on which foreclosure was commenced, or similar information pertaining to delinquencies deemed appropriate by the City; provided, however, that parcels with delinquencies of \$2,500 or less may be grouped together and such information may be provided by category.
7. The status of foreclosure proceedings and a summary of the results of any foreclosure sales as of the November 30 next preceding the Annual Report Date.
8. The identity of any property owner representing more than 5% of the Special Tax levy within the Community Facilities District delinquent in payment of Special Taxes as of the November 30 next preceding the Annual Report Date.

9. A land ownership summary listing property owners responsible for more than 5% of the Special Tax levy within the Community Facilities District as shown on the assessment roll of the County Assessor last equalized prior to the November 30 next preceding the Annual Report Date, a summary of the Special Taxes levied on the property within the Community Facilities District owned by such property owners, the assessed value of such property, as shown on such assessment roll, and a statement of assessed value to lien ratios therefor, substantially similar to that provided in the table on page \_\_ of the Official Statement.
10. A statement of direct and overlapping debt for the Community Facilities District, substantially similar to that provided in the table on page \_\_ of the Official Statement; provided, however, that such statement need not be included unless and until additional debt has been issued that is secured in whole or in part by additional ad valorem taxes, special assessments or special taxes.