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OFFICE OF THE DIRECTOR

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May 3, 1993

City Council  
Sacramento, California

Honorable Members in Session

**SUBJECT: POLICY AND PROCEDURE MANUAL FOR SPECIAL ASSESSMENT AND MELLO-ROOS DISTRICT FINANCING OF INFRASTRUCTURE AND PUBLIC FACILITIES**

**LOCATION/DISTRICT:** Citywide, all Council districts.

**STAFF RECOMMENDATIONS:**

This report presents the proposed City of Sacramento Policy and Procedure Manual for Special Assessment and Mello-Roos Districts. Staff recommends that the City Council accept the report for review and comment. No formal action is required at this time. Staff will return for the next City Council meeting to request formal adoption of the Policy and Procedure Manual.

**CONTACT PERSON:** Edward Williams, Assistant Engineer, 264-5440

**FOR COUNCIL MEETING OF:** May 18, 1993

**SUMMARY:**

The attached manual contains guidelines for planning special assessment districts that provide tax-exempt financing for infrastructure and public facilities. The guidelines have been developed for use Citywide to provide policy and procedural information for both traditional benefit assessment districts as well as Mello-Roos Community Facilities Districts. This manual will formalize the City Policy on Assessment District financing and will assist landowners and developers in planning development and redevelopment projects within the City. In brief it will accomplish the following objectives:

- Establishes a consistent and thorough application review process.
- Specifies and describes the role of consultants through the formation and implementation of a district.
- Defines the minimum value-to-lien ratio, and the maximum allowable special tax or assessment which a home-buyer would be assessed.

City Council  
Policy and Procedure Manual

- Provides a method to assure that all existing and proposed assessments will be disclosed to each prospective home-buyer.
- Provides a method to reimburse developers for costs incurred prior to formation of a district.

**COMMITTEE/COMMISSION ACTION:**

None.

**BACKGROUND INFORMATION:**

The City of Sacramento has for many years undertaken the formation of various types of benefit assessment districts under the authority of the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Landscaping and Lighting Act of 1972. In 1982 the Mello-Roos Community Facilities Act was passed allowing greater flexibility with the types of public facilities eligible for tax-exempt financing and in the method of apportioning the special assessments. Now, with landowners/developers looking at large-scale development projects for which funding of the backbone infrastructure and public facilities will be achieved by the use of multiple financing mechanisms, the need for an adopted City policy becomes a necessity.

The City strives to be consistent with policies related to the planning and formation of traditional benefit assessment districts. There is concern, however, that maintaining the high degree of consistency during the planning and formation of larger Special Assessment or Mello-Roos Community Facilities Districts will become increasingly difficult. These concerns will be mitigated by City Council approval of guidelines to assist developers in making development-related business and planning decisions and also provide City staff the needed documentation to be consistent when working with developers.

A number of cities and counties that have utilized Special Assessment and/or Mello-Roos Districts have adopted similar policy documents. To meet the City's need in this area, staff has developed a manual documenting the City's policies for use in planning both traditional benefit assessment districts and Mello-Roos Districts. The Policy and Procedure Manual was initially fashioned from policy documents developed by the County of Sacramento, County of Riverside, City of Santa Clarita, and City of San Diego.

Comments and suggestions leading to revisions in the final document have aided in the production of a Policy and Procedure Manual tailored for the City of Sacramento. In brief, the key elements contained in the manual are:

- **Application Process**
- **District Costs and Reimbursement Policies**
- **Use of Consultants**
- **Eligible Infrastructure and Public Facilities**
- **Land Use Approvals**
- **Agreements Required**
- **Security; Credit Enhancement**

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- Value-to-Lien Ratio
- Market Absorption Study
- Special Taxes and Assessments
- Terms and Conditions of Bonds
- Fiscal Feasibility Report
- Home-Buyer Disclosure Requirements
- Property Owner Support
- Special Tax Formula

An overview of the elements listed above is attached as Exhibit A. The Policy and Procedure Manual has been developed in cooperation with the City Attorney's Office, Director of Finance, City Treasurer, and the City's bond underwriters. In January 1993, a draft manual was released to the public for a 30-day review period and sent to local landowner/developer groups, developer related consultant firms, and the Building Industry Association of Superior California (Exhibit B). Comments and suggestions received through the review process have been addressed and appropriate changes have been incorporated into the final document.

**FINANCIAL CONSIDERATIONS:**

This policy document defines roles and responsibilities for costs associated with the planning and implementation of a Special Assessment or Mello-Roos District. It also contains provisions that guarantee that all costs incurred by the City during the formation of such developer-initiated districts will be recovered.

There is no impact to the City's General Fund related to this item.

**POLICY CONSIDERATIONS:**

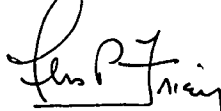
City Council adoption of the Policy and Procedure Manual will provide the City with a set of clear and definitive guidelines for use by developers when requesting public financing and will allow the City financing flexibility in the development of programs for individual projects.

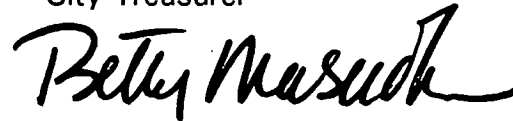
**MBE/WBE:**

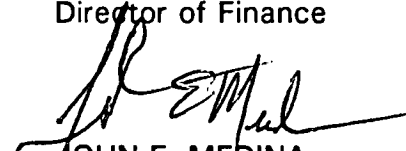
None. No goods or services are being purchased.

City Council  
Policy and Procedure Manual

Respectfully Submitted,

  
THOMAS FRIERY  
City Treasurer

  
BETTY MASUOKA  
Director of Finance

  
JOHN E. MEDINA  
Director of Public Works

RECOMMENDATION APPROVED:

  
WILLIAM H. EDGAR  
City Manager

Attachment

**OVERVIEW****POLICY AND PROCEDURES  
FOR  
SPECIAL ASSESSMENT AND MELLO-ROOS DISTRICT  
FINANCING OF INFRASTRUCTURE AND PUBLIC FACILITIES**

- **Introduction**  
This document sets forth the City's policy and procedures for the use of tax exempt bond financing for infrastructure and related public facilities. This document will assist developers in the planning and implementation of development and redevelopment projects within the City.
- **Definition of Terms**  
Definitions of fifteen terms associated with the contents of this document and included for the purposes of clarification.
- **Application Process**  
The application process is intended to provide the City with information sufficient to show that the person(s) initiating formation of a special district (SD) or community facilities district (CFD) have the ability (expertise and knowledge) to successfully follow through on formation of the district. The initial \$5,000 fee will be utilized to pay City costs associated with processing of the application and planning the district.
- **District Costs and Reimbursement Policies**  
All costs incurred by the City during the planning and formation phase shall be funded by the applicant/developer. All City costs related to administration of the district incurred after formation shall be included within the assessment in accordance with applicable provisions of law.  
  
Upon formation of district and issuance of bonds, the applicant/developer shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses.
- **Use of Consultants**  
The City reserves the right to employ any consultants deemed necessary to complete district proceedings and issue bonds. Developers may retain their own consultants for their own benefit but will work through those consultants hired by the City. All consultant costs will be funded by the developer(s).

- **Eligible Infrastructure and Public Facilities**

In general the following infrastructure and public facilities are eligible for special district financing.

- Infrastructure:  
Major Streets, Freeway Improvements, Drainage & Pump Stations, Sanitary Sewer Interceptors and Treatment, Water Transmission and Storage.
- Public Facilities:  
Fire & Police Stations, Parks & Landscaping, Libraries, Community Centers.

In-tract facilities, exactions, or other public right-of-way easements and/or lands which are dedicated by a developer as a condition of a development entitlement will not be eligible for bond financing, but may in the City's discretion be eligible for inclusion in a fee district.

- **Land Use Approvals**

All proposed projects within the proposed district, together with the infrastructure and public facilities, must be consistent with the City's adopted General Plan and any applicable Community Plan.

- **Agreements Required**

The developer(s) will be required to enter into all necessary agreements incident to district processing (i.e. reimbursement, land dedication, acquisition).

- **Security; Credit Enhancement**

Prior to City Council approval of the district, the applicant/developer must submit a financial plan which demonstrates to the City's satisfaction the applicant/developer's ability to pay the assessments and/or special taxes through build out of the project.

- **Value-to-Lien Ratio**

The district property value-to-lien ratio shall be at least 3:1. The City shall determine the methodology to be used by the MAI appraiser in determining land value. Calculations include the value of the financed infrastructure and public facilities to be installed, and considering any prior or pending special taxes or improvement liens. The actual value-to-lien ratio will be established by the City Treasurer.

- **Market Absorption Study**

The City may require a market absorption study for the development. The study will include an estimate of the total number of units, land uses and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated. The study will be used to determine if bond financing of the infrastructure and public facilities is appropriate given the projected level and pace of development.

- **Special Taxes and Assessments**

The total annual payment, including general county taxes and all special assessments and/or taxes should not exceed two percent (2.0%) of the projected assessed value of each improved parcel within the district.

- **Terms and Conditions of Tax Exempt Bonds**  
All terms and conditions of the bonds shall be established by the City Treasurer as provided in the complete Policies and Procedures Document.
- **Fiscal Feasibility Report**  
A fiscal feasibility report prepared by the City Treasurer shall be required if forty percent (40%) or more of the land within a district is undeveloped.
- **Home-Buyer Disclosure Requirements**  
The developer will provide assurance that a disclosure statement identifying all existing and proposed special taxes, assessments or liens shall be signed by each prospective buyer prior to purchase of property.
- **Property Owner Support**  
Where the formation of a district is applicant/developer initiated, the applicant shall be required to produce letters of support from the other property owners.
- **Special Tax Formulas**  
Where the district to be formed is a Mello-Roos district, the maximum special tax shall adhere to the guidelines as stated in the complete Policies and Procedures Document.
- **Acquisition Provisions**  
Where the district formed is an acquisition district, the City shall make the determination as to which public improvements and to what extent such improvements are eligible for financing through acquisition. All acquisition districts will be in compliance with terms as stated in the complete Policies and Procedures Document.

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## EXHIBIT B

### MAILING LIST FOR POLICY DOCUMENT

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Santa Fe Development Corp.  
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Citrus Heights, CA 95610

# RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

## RESOLUTION ADOPTING THE POLICY AND PROCEDURE MANUAL FOR SPECIAL ASSESSMENT AND MELLO-ROOS COMMUNITY FACILITIES DISTRICT FINANCING FOR INFRASTRUCTURE AND PUBLIC FACILITIES

Be it resolved by the Council of the City of Sacramento, that the Policy and Procedure Manual for Special Assessment and Mello-Roos Community Facilities District, a copy of which is attached to this resolution, is hereby approved and adopted.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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FOR CITY CLERK USE ONLY

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

# **CITY OF SACRAMENTO**



**POLICY AND PROCEDURES FOR USE OF  
SPECIAL ASSESSMENT AND MELLO-ROOS  
COMMUNITY FACILITIES DISTRICT FINANCING  
FOR  
INFRASTRUCTURE AND PUBLIC FACILITIES**

**MAY 1993**

City of Sacramento  
Special Assessment and Mello-Roos District  
Financing Program Policies

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## 1. INTRODUCTION

The City of Sacramento has adopted this document to set forth the City's policies and procedures for the use of tax exempt financing for infrastructure and other public facilities required as a condition of development approval or otherwise. This document will assist developers in making realistic business and planning decisions concerning development and redevelopment within the City.

The City will consider developer initiated applications requesting the formation of special assessment districts or Community Facilities Districts, and the issuance of bonds to finance the construction and/or acquisition of eligible public infrastructure and other public facilities necessary to serve developing commercial, industrial and residential projects. **The decision as to whether or not to utilize the City's authority to form any such district rests solely in the discretion of the City.**

In general, only infrastructure which will be owned, operated and maintained by the City or another public entity, such as major streets, street lights, freeway improvements, drainage, water and sewer improvements, and other public facilities such as libraries, fire and police stations, park improvements and transit improvements, will be eligible for tax exempt financing in accordance with this policy document.

Infrastructure and other facilities will normally be financed in accordance with the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913 with the Improvement Bond Act of 1915, or the Mello-Roos Community Facilities Act of 1982. In its discretion, the City may consider utilization of other public improvement financing acts, fee districts, or its status as a charter City capable of enacting its own improvement financing ordinances. The City will, in its sole discretion, make the final determination as to whether a proposed financing will proceed under a particular act, or some other similar mechanism.

All costs, including consultant costs, incurred by the City in the evaluation of new development (or redevelopment) projects and district formation applications, and in the establishment of a district or other method of providing the public financing, shall be paid by the applicant/developer by advance deposit increments. It is the express intention of the City in adopting this policy, that the City shall be reimbursed for all of its costs associated with formation of districts and otherwise implementing the public financing. Where provision has been made to reimburse the applicant/developer from bond proceeds for those amounts paid to the City hereunder, such reimbursement shall be limited to expenses legally chargeable to the district according to the opinion of bond counsel. To the extent that such expenses are not legally chargeable to the district, they shall be borne by the applicant/developer.

## 2. DEFINITIONS

Unless the context otherwise requires, the terms employed in this document shall have the meanings specified below.

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

- b. **Bonds**: bonds authorized and issued under the Improvement Act of 1911, the Improvement Bond Act of 1915, the Mello-Roos Act of 1982, or such other mechanism as is utilized by the City in its discretion to finance the infrastructure and/or public facilities.
- c. **Bond counsel**: special counsel retained by the City to assure compliance with applicable federal and state tax and other laws and regulations relating to public financing.
- d. **Bond underwriter**: the investment banker(s) retained by the City to design, develop and execute the sale of bonds in the market place.
- e. **City**: the City of Sacramento.
- f. **Community Facilities District (CFD)**: a special district formed pursuant to the Mello-Roos Community Facilities Act of 1982, to finance specific public improvements or public services, and where properties within the district are levied a special tax in accordance with the rate and method of apportionment adopted as part of the district proceedings.
- g. **Fair market value, or value**: the amount of cash or its equivalent which property would bring if exposed for sale on the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.
- h. **Fee district**: a special district formed to finance specific infrastructure and/or public facilities, and where landowners within the district are assessed a fee, payable at the time of development or permit approval, which fee is proportionate to the benefit received from the infrastructure and/or public facilities. There is no bond financing associated with a fee district.
- i. **Fiscal feasibility report**: means a study performed under the direction of the City Treasurer to determine the financial viability of a proposed district.
- j. **Improvement acts**: the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or such other act or ordinance under which the proceedings are conducted, leading to formation of the district.
- k. **Infrastructure and public facilities**: those public improvements including but not limited to major streets, freeway interchanges, bridges, street lights, water, sewer and drainage improvements, fire and police stations, parks, libraries and transit improvements, which are eligible for financing under this document, and which are authorized improvements under the improvement act or CFD selected by the City.
- l. **In-tract facilities**: public facilities which serve an individual tract development, such as local subdivision streets, local utilities and local drainage systems.
- m. **Special assessment district**: an assessment district formed pursuant to an improvement act to finance eligible specified infrastructure and/or public facilities, and where properties within the district are assessed an amount proportionate to the benefit received from the improvements financed.

- n. **Special tax consultant**: consultant retained by the City to develop the rate and method of apportionment and other special tax formulas and criteria for a Mello-Roos CFD.
- o. **Value-to-lien ratio**: the value of a parcel of land as determined by an MAI appraisal or equivalent or as determined by the City Treasurer relative to the amount for which land secured bonds may be sold for that parcel.

### 3. **APPLICATION PROCESS**

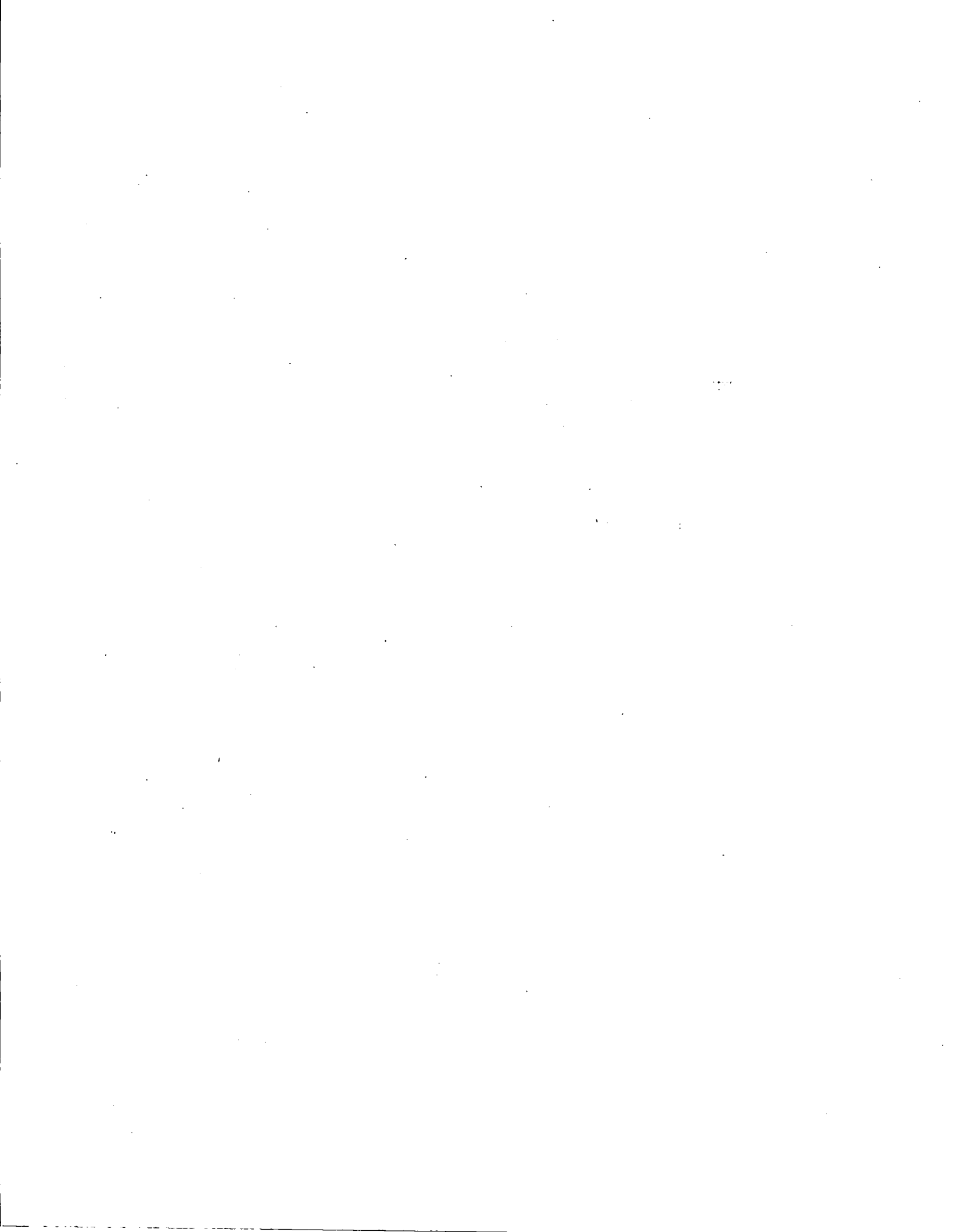
The following comprises the City's application process for formation of a district covered by this policy.

- a. **Application**: applicant/developer shall submit an initial application to the City together with a non-refundable fee in the amount of \$5,000. This fee is for the purpose of application processing, and other preliminary costs. The application form is set forth in Exhibit A. The City will conduct an initial evaluation of the application, to determine if it is complete, or whether additional information is required.
- b. **Application processing**: upon City determination that application is complete, staff will prepare a transmittal report to the City Council, forwarding the application for Council consideration, with staff's recommendation. If the Council approves the application, Council will direct staff to select consultants and negotiate necessary contracts with the applicant/developer, including but not limited to advance funding agreements and reimbursement agreements, if required.
- c. **Project implementation**: consultant and applicant/developer agreements will be submitted to the Council for approval. Upon approval, the procedure leading to district formation will be implemented. Procedures for formation of districts are specified in Exhibits D and E.

### 4. **DISTRICT COSTS AND REIMBURSEMENT POLICIES**

- a. **Costs incurred by the City prior to formation**: all costs incurred by the City prior to formation of the district, including but not limited to consultant costs (e.g., legal counsel, engineer firms, appraisers, special tax consultants, financial advisors), City staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be reimbursed to the City by the applicant/developer prior to formation. Reimbursement shall be facilitated by advance deposit increments in accordance with the agreements required by this policy document.
- b. **Costs incurred by the City subsequent to formation**: all City administrative and consultant costs related to administration of the district and incurred after formation shall be included within the assessment in accordance with applicable provisions of law.





c. **Reimbursement to applicant/developer:**

- (i) **Where district is formed and bonds are issued.** If the district is formed and bonds are issued, the applicant/developer shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incident to the proceedings and construction of the public facilities, subject to approval of bond counsel, and subject to any applicable restrictions contained in the Improvement Acts or the Mello-Roos Community Facilities Act of 1982. With regard to applicant/developer paid consultant costs, reimbursement shall be limited to those district-related consultants which were hired by the City. Eligibility for reimbursement for any otherwise-eligible expense is conditioned upon the applicant/developer providing paid invoices therefor to the City, and City approval.

The applicant/developer shall not be entitled to reimbursement from bond proceeds for any of the following expenses: in-house administrative and overhead expenses incurred by the applicant/developer; interest expense incurred by the applicant/developer during the planning or design or construction (subject to the exception for construction-related interest expense, set forth below) of the public improvements; any dedication or other exaction required as a condition of approval of a development entitlement; and any other costs and expenses incurred by the applicant/developer which are not legally authorized for reimbursement, or as to which bond counsel has declined approval for reimbursement.

In the case of an acquisition assessment district involving interest expense incurred by the applicant/developer during the construction of the public improvements, and where the project to be financed consists of an acquisition district with an acquisition actual value of no less than \$20 million, the City in its sole and exclusive discretion may consider reimbursement from bond proceeds of all or a portion of such construction-related interest expense.

- (ii) **Where district is not formed, or where district is formed and bonds are not issued.** In the event that the district is not formed due to City disapproval or abandonment, or due to applicant/developer abandonment, or the district is formed and bonds are not issued for any reason, the City will refund to applicant/developer any remaining unexpended and unobligated portion of advance deposits posted with the City, subject to City's prior and full reimbursement of all its direct and indirect costs. The City shall be entitled to pay any refund to the applicant/developer listed on the application form, irrespective of any changes in the ownership or composition of the applicant/ developer.

5. **USE OF CONSULTANTS**

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

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

No firm may serve as both design engineer and assessment engineer (or special tax consultant) in proceedings relating to the same district (see Government Code §87100.1).

## **6. ELIGIBLE INFRASTRUCTURE AND PUBLIC FACILITIES**

Infrastructure and public facilities eligible for district financing are those public improvements which benefit properties within a proposed development, and which will be owned, operated and maintained by the City or another public agency approved by the City, including major streets, street lights, and freeway improvements, drainage improvements, water and sewer improvements, and other public facilities such as libraries, fire and police stations, park improvements, and transit/transportation improvements. Improvements which are or will be owned, operated or maintained by a private company or utility are not eligible.

In-tract facilities, exactions, or other public right-of-way easements and/or lands which are dedicated by a developer as a condition of a development entitlement will not be eligible for bond financing, but may in the City's discretion be eligible for inclusion in a fee district.

## **7. LAND USE APPROVALS**

All proposed projects within the proposed district, together with the infrastructure and public facilities, must be consistent with the City's adopted General Plan and any applicable Community Plan. All property within the proposed district must possess land use determinations of sufficient certainty, and facility requirements of sufficient specificity that each parcel can be adequately assessed.

## **8. AGREEMENTS REQUIRED**

Each applicant/developer will be required to enter into all necessary agreements incident to district processing, on forms which shall be provided by the City. These agreements may include the following:

- a. Funding and reimbursement agreement.
- b. Land dedication agreement (where required).
- c. Acquisition agreement (where required).
- d. Other agreements (as required).

As a condition to the issuance and sale of the bonds, all of the required agreements shall have been duly approved and executed by all parties thereto.

A sample of the funding and reimbursement agreement is attached to this policy as Exhibit B.

## 9. SECURITY: CREDIT ENHANCEMENT

- a. **Financial plan:** for new development, prior to City Council approval of the district, the applicant/developer must submit a financial plan which demonstrates to the City's satisfaction the applicant/developer's ability to pay all assessments and/or special taxes through build out of the project.
- b. **Credit enhancement:** in general, where credit enhancement is required for the bond issue as a whole, in the opinion of the City Treasurer, the applicant/developer shall provide such enhancement in such form as is approved by the City Treasurer and the underwriters. Such enhancements may, for example, be required in cases where the value-to-lien ratio for property within the district is insufficient, and may take the form of letters of credit, or policies of insurance, or other vehicles.
- c. **Letter of credit requirements:** where required, the letter of credit shall be in the form specified in Exhibit C. In general, the following requirements apply to letters of credit:
  - (i) The term shall be one year, with automatic renewal unless cancelled in writing by the City.
  - (ii) The amount the property owner is required to post shall be determined by the City Treasurer.
  - (iii) The letter of credit must be posted with the City in final form, properly authorized and executed, prior to Council authorization to issue bonds for the district. Irrevocable credit commitments, commitment letters, in-lieu letter of credit guarantee forms, or other similar instruments, will not be accepted irrespective of whether capitalized interest is funded from bond proceeds.
  - (iv) The letter of credit shall be irrevocable, and issued for the benefit of the City of Sacramento.
  - (v) The issuer shall be a bank legally operating within the State of California, and which has a Thompson Bank Watch rating of "C" or higher, or an equivalent rating by any other nationally recognized financial institution rating agency, and whose letters of credit are deemed marketable by the City Treasurer for public financing purposes.
  - (vi) The City reserves the right to consider other forms of credit enhancement or bond guarantee which are determined by the City Treasurer, in his or her sole discretion, to be a lawful and adequate substitute for a letter of credit.

## 10. VALUE-TO-LIEN RATIOS

The district property value-to-lien ratio shall be at least 3:1 after calculating the value of the financed infrastructure and public facilities to be installed (or, in the case of an acquisition assessment district, which are installed and to be acquired), and considering any prior or pending special taxes or improvement liens. The City may require a higher value-to-lien ratio in its discretion, in consideration of current market and related conditions. The actual value-to-lien ratio required will be established by the City Treasurer.

The value of the property within the district, for purposes of establishing the value-to-lien ratio, shall be determined by an appraisal process, conducted by an MAI (Member, Appraisal Institute) appraiser under contract with the City. The appraisal criteria and methodology will be as specified by the City in its contract with the appraiser.

In instances where the value-to-lien ratio is less than 3:1, or less than some higher ratio selected by the City in its discretion, credit enhancement will be required in accordance with the provisions of section 9 of this policy. The actual form of the credit enhancement shall be in the discretion of the City Treasurer, in consultation with financial advisors.

In the event that the overall value-to-lien ratio for the district is at least 3:1 (or a higher ratio selected by the City), but as to one or more individual properties is less than the required ratio, the City, at its discretion, may require a credit enhancement for these properties.

#### **11. MARKET ABSORPTION STUDY**

The City in its discretion may require, and may employ a consultant for the purpose of conducting a market absorption study. The study, if required, shall include an estimate of the total number of units, land uses and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated, and to determine if the financing of the infrastructure and public facilities is appropriate given the projected level and pace of development. In the case of a phased development, land value appraisal should include the developed land value assuming the infrastructure to be included in the current financing is completed. However, land values for remaining future phases of the development should not assume future infrastructure is completed. The study will also be provided to the appraiser for use in the appraisal process.

#### **12. SPECIAL TAXES AND ASSESSMENTS**

The projected special assessment and/or special tax, when added to the ad valorem property tax and other direct and overlapping debt for the proposed district (including other projected benefit assessments, special taxes levied for authorized but unissued debt, and any other anticipated special assessments, taxes or charges which may be included on a property owner's annual property tax bill), shall not exceed two percent (2.0%) of the projected assessed value of each improved parcel within the district. As it pertains to commercial, industrial, or other parcels within the district, the City reserves the right to exceed the two percent (2.0%) limit if, in the City's sole discretion, it is fiscally prudent. A backup special tax shall be required to protect against changes in land use that may result in insufficient annual special tax revenues.

#### **13. TERMS AND CONDITIONS OF BONDS**

All terms and conditions of the bonds shall be established by the City. The office of the City Treasurer shall be responsible for administration of bond issues, including but not limited to the following decisions:

- a. Determination of the amount of capitalized interest that may be required, if any.
- b. Determination of the term and interest rate for the bonds.
- c. Determination of the amount of the reserve accounts for the bonds.

- d. Authorization and control of all bond proceeds disbursements.
- e. Determination of the authorized investments from bond proceeds held prior to disbursements.
- f. Determination of compliance with federal, state and local tax and related laws.
- g. Conducting sale of bonds.
- h. Determine the market feasibility of all consultants used for financing purposes.
- i. Determine the need and marketability of any credit enhancements.

**14. FISCAL FEASIBILITY REPORT**

A fiscal feasibility report shall be required if forty percent (40%) or more of the land within a district is substantially undeveloped. The report shall be prepared by or at the direction of the City Treasurer. All costs for preparing this report shall be borne by the applicant/developer. An estimate of the report cost will be made prior to initiating the study and the applicant/developer shall deposit fifty percent (50%) of the cost prior to starting the report.

**15. DISCLOSURE REQUIREMENTS**

The applicant/developer shall be responsible for compliance with all applicable federal and state statutory disclosure requirements in transactions with purchasers of properties within the district. Specifically, the applicant/developer shall disclose in writing to prospective property owners the exact nature and extent of all existing and proposed special taxes and/or assessments on the property. The disclosure statement shall be issued to and signed by the prospective buyer prior to any binding commitment by the buyer to purchase the property.

**16. PROPERTY OWNER SUPPORT**

Where the formation of a district is applicant/developer initiated and where multiple property owners are involved, the district applicant shall be required to produce letters of support from the other property owners who are in favor of the district as an attachment to the district application.

**17. SPECIAL TAX FORMULA**

Where the district to be formed is a Mello-Roos district, the maximum special tax shall adhere the following:

- a. The special tax shall include the annual administrative cost of the City to administer the district.

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

- a. Recommends a special tax for the proposed CFD.

- b. Evaluates the special tax proposed to determine its ability to adequately fund identified public improvements, administrative costs and other related expenditures.
- c. The City Treasurer shall determine the method of bond sale, including competitive, negotiated and private placement sale approaches.

**18. ACQUISITION PROVISIONS**

The City allows for the formation of acquisition districts. The City shall make the final determination as to which public improvements and to what extent such improvements are eligible for financing through acquisition.

All improvements to be acquired by the City will be constructed in compliance with City standards and specifications, and shall be accepted by the City only after such compliance has been verified.

An acquisition agreement between the City and applicant/developer shall be required and approved by the City Council prior the sale of bonds for the subject district.

Upon completion of construction of improvements to be acquired by the City, the following shall be submitted to the Department of Public Works:

- a. The delivery to the City by the applicant/developer of all deeds, easements, or other documents necessary to complete the transfer of title to the improvements and the land or interests in land on which the improvements have been constructed.
- b. Issuance of a title insurance policy in favor of the City that ensures clear title to the land or interests in land to be conveyed to the City.
- c. The delivery to the City of a certified copy of the Developers "Notice of Completion" filed with the County of Sacramento Records Office thirty-five (35) days prior to acceptance of the improvements.
- d. The delivery to the City by the applicant/developer of lien waivers or releases from all contractors, subcontractors, and suppliers associated with construction of the improvements; or, in cases where this is not practical, other equivalent security such as a lien-free endorsement from a title company.
- e. The delivery to the City by the developers of certified payroll documents from contractors and applicant/developer for whose release is sought.
- f. Any other documentation required pursuant to the acquisition agreement between applicant/developer and the City.

**EXHIBIT A  
CITY OF SACRAMENTO**

**APPLICATION  
FOR  
SPECIAL DISTRICT FINANCING**

---

**APPLICATION INSTRUCTIONS**

1. Please complete the following pages. If additional space is needed please attach additional sheets.
2. Application is to be accompanied by a \$5,000 non-refundable application fee.

**FINANCING PROGRAM APPLICATION INFORMATION**

**A. Applicant Information**

Applicant \_\_\_\_\_

Contact Person \_\_\_\_\_

Mailing Address \_\_\_\_\_  
\_\_\_\_\_

Phone ( ) -

**C. Name of Project**

Name, Location, Type and Acreage of Project

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**E. Land Use Summary**

(Type[s] of development; i.e., commercial, industrial, residential; units/acre by land use.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**B. Civil Engineering Information**

Name of Firm \_\_\_\_\_

Contact Person \_\_\_\_\_

Mailing Address \_\_\_\_\_  
\_\_\_\_\_

Phone ( ) -

**D. Landowner Information**

Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Mailing Address \_\_\_\_\_  
\_\_\_\_\_

Phone ( ) -

**F. Public Improvements Required**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





**PROJECT INFORMATION**

1. List the number of net developable acres within the proposed district.

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2. For all parcels within the proposed district list the Assessor's Parcel Number, zoning/land use, owner(s) and length of ownership (Attach a separate sheet if necessary).

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3. List all surrounding property owners which may be affected by or be included in the purposed district financing.

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4. What is the estimated time-line for build-out of the project.

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5. Identify the status of approvals for re-zoning applications, subdivision maps, environmental clearance, State and Federal permits etc., for development of the property.

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6. What are the future plans for the properties in the district; (i.e. sale to merchants or builders, home buyers, etc?)

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7. Describe and provide information as to the estimated construction value of any development existing or under-way, if available.

---

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8. List all existing trust deeds/loans, existing and proposed taxes, assessments, liens or other secured interests on all property within the district.

---

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9. State the current status of property taxes on the property. Have any property taxes or assessments on the property been delinquent at any time during the past three years? If yes, please explain.

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10. How will required in-tract improvements be financed (i.e. local subdivision streets, utilities etc.?)

---

11. Has construction financing for the project been obtained? If yes, describe source and amount of such loan.

---

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**EXPERIENCE OF DEVELOPER OR DEVELOPER GROUP**

1. List prior experience with the formation of developer/landowner assessment and/or CFD financing.

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2. Identify and describe any current or recently completed developments which your group has taken part in.

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3. Are there any existing or prior bankruptcies of the developer group or any member or partner of the group.

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4. List the Name, Title and Phone number of the appropriate contact person if additional information is needed.

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**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.

Submitted By:

Firm: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**EXHIBIT B**  
**FUNDING AND REIMBURSEMENT AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF SACRAMENTO AND**

---

**FOR COSTS RELATED TO THE PROPOSED**  
**SPECIAL DISTRICT**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_, 19\_\_, by and between the CITY OF SACRAMENTO, a municipal corporation (herein "City"), and \_\_\_\_\_ (referred to herein as "Owners").

RECITALS

- A. The Owner(s) own and intend to develop certain real property within the \_\_\_\_\_ Community Plan area of the City of Sacramento.
- B. The land to be developed (hereafter "Subject Property") are described in Exhibit A attached.
- C. The Owner(s) have requested the City to consider the formation of a Special Assessment District and/or a CFD (hereafter "Proposed Special District") to provide a method of financing the public improvements that are necessary to serve development of the subject property.
- D. The Owner(s) are willing to provide advance funding to the City to pay all costs necessary for the planning and implementation of the Proposed Special District, including, but not limited to, a special benefit engineer, special tax consultant, real estate appraiser, market absorption analyst, financial advisor, special consultant studies, City staff costs, administration, and related expenses.
- E. The purpose of this Agreement is to set forth the terms and conditions of Owner(s) advance funding obligations and future reimbursement through the proposed district.

NOW, THEREFORE, the parties agree as follows:

- 1. Funding for Planning and Formation Costs. Owner(s) agree to pay in cash one hundred percent (100%) of the estimated costs as identified in Exhibit B. Owner(s) shall, upon five (5) days' written request from City, pay the initial cost to City in accordance with the payment schedule indicated on Exhibit B. In the event that actual costs exceed the estimates, the Owner(s) shall, upon five (5) days' written notice from City, pay any such additional costs in full.
- 2. Hiring of Consultants. Upon actual receipt from Owner(s) of the amounts specified in Exhibit B and subject to any required prior approval of the City Council, City agrees to enter into contracts with consultants to initiate the planning phase of the proposed district. The

selection of consultants shall be in the sole and exclusive discretion of City. City shall have full and exclusive control over the work program and the manner of performance thereof, and shall be the sole and exclusive owner of the product produced by the consultants. City shall be the sole and exclusive judge of whether and to what extent the said product satisfies the requirements of the consultant contract.

3. Disbursement to City. City shall disburse from the fund the sums required to pay, when due, the City's ongoing costs and expenses, both direct and indirect, as shown on Exhibit B, which are related to the proposed district. The City shall have sole discretion as to the disbursement of said monies, and shall make an accounting of said disbursement of monies at the time of reimbursement to Owner(s) as set forth in Section 4.
4. Conditions for Reimbursement to Owner(s). Reimbursement to Owner(s) for the costs advanced by Owner(s) pursuant to this Agreement is predicated on the following conditions:
  - a. *Formation of the Proposed District.* The proposed district, for the purpose of financing the infrastructure required for implementation of the \_\_\_\_\_ Community Plan, shall have been lawfully formed. In the event that a financial mechanism other than a Mello-Roos district is employed for this purpose, the provisions of this Agreement shall apply to that mechanism, to the extent feasible and to the extent legally permissible. In the event that City, in its sole and exclusive discretion, determines that neither a Mello-Roos district nor any other financial mechanism is feasible, the Owner(s) shall have no right to reimbursement.
  - b. *Issuance of Bonds.* Bonds shall have been issued by the district.
  - c. *Phasing.* In the event that bonds are issued in phases, and because the City Council will be required to prioritize, in its sole and exclusive discretion, the items on which bond proceeds will be expended and the order thereof, reimbursement shall be subject to the priority list, with the result that reimbursement hereunder may occur, if at all, in bond issues other than the first issue.
  - d. *Reimbursement Limited to Bond Proceeds.* Reimbursement shall be made solely from proceeds of bonds issued by the district, and only to the extent that such proceeds are actually in the hands of City, in amounts sufficient in City's sole discretion.
5. Disbursement to Owner(s). Any funds payable to Owner(s) as reimbursement hereunder shall be deposited by City into an escrow account or other mechanism established by Owner(s) and agreed to in advance by City. Owner(s) agree that the disbursement to the various parties comprising Owner(s) shall be made in accordance with the disbursement schedule provided to City by Owner(s), and set forth on Exhibit C. Owner(s) agree to pay all escrow fees and related transaction costs, including, but not limited to, any attorney fees incurred by Owner(s) in connection with allocation of the reimbursement. City's sole obligation, with respect to allocation, shall be to deposit the total amount to be reimbursed with the escrow holder, which, for this purpose, shall be deemed to be the agent of Owner(s). City is not responsible in any manner for the accuracy, fairness, or appropriateness of the allocation specified on Exhibit C.

6. **City Obligation Arising from Agreement.** Neither the City general fund, nor any other account or monies of City except the future bond proceeds from the proposed, shall be liable or in any way financially responsible for payment of any obligations arising from this Agreement. Said obligations are not a debt of City, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon its income, receipts, or revenues. This Agreement embodies all of Owner(s) reimbursement rights and no further note or other document shall be required to be executed by City.
7. **Non-liability of City for Reimbursement.** This Agreement shall terminate and the City shall not be obligated to reimburse the Owner(s) from any source if, within \_\_\_ ( ) years following the date of execution of this Agreement, the proposed district has not been completed and has not been approved by the City Council of the City of Sacramento. The City, in its sole discretion, determines that neither a special district, nor any other financial mechanisms, are feasible, or that reimbursement pursuant to proposed district or other scheme is unlawful, invalid, or otherwise inappropriate. Owner(s) shall have no right to reimbursement from the City for the funds which it has provided to the City under terms of this Agreement.
8. **Indemnity.** Owner(s) agree to indemnify, defend, and hold harmless City and its officers, employees and agents, from any and all damages, claims, costs, expenses, and losses of whatever nature and whatever kind, including attorneys' fees, made or caused either by signatories hereto or third parties not signatories hereto, that arise out of, or are in any way related to, caused by, or based upon this Agreement, the consultant studies, or the financial or other agreements or arrangements between all or any of the various persons or entities comprising Owner(s). Without affecting the generality of the foregoing, the provisions of this paragraph extend to damages, claims, costs, expenses, and losses relating to the quality or quantity of the performance of the consultants selected by City for planning and formation of the proposed district. For purposes of this paragraph, "City" shall include each consultant selected by City pursuant to this Agreement.
9. **Account Debit.** The City shall give the Owner(s) \_\_\_ days written notice should it appear that the account balance will become insufficient to pay the City's costs and expenses necessary for the proposed financing and shall, at the time, provide the Owner(s) with an estimate of additional costs and expenses to be incurred by the City for the financing. When the City determines the account balance will be insufficient to pay its costs and expenses, the City shall cease all work and effort related to said financing until such time as this Agreement has been amended and the Owner(s) have advanced additional funds to pay said estimated costs and expenses.
10. **Interest Payments.** Interest earned on the cash advances and repaid by the account to the Owner(s) shall be at the rate and method established by the City Treasurer of the City of Sacramento.
11. **Notices.** Any notice, tender, delivery, or other communications pursuant to the Agreement shall be in writing and shall be deemed to be properly given when delivered or mailed in the manner provided in this paragraph to the following persons:

- a. If to City: CITY MANAGER  
City of Sacramento  
915 I Street  
Sacramento, California 95814
- b. If to Owner(s):

Any other party may change that party's address for these purposes by giving written notice of the change to the other parties in the manner provided in this section. If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given 48 hours after it has been deposited in the United States mail, with postage prepared, and addressed as set forth above.

12. Attorneys' Fees; Prejudgment Interest. If the services of any attorneys are required by either party to secure the performance of this Agreement, or otherwise upon the breach of the default of either party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and other expenses, in addition to any other relief to which such party may be entitled. In the event of a judgment in the City's favor based upon this Agreement, Owner(s) agree that the City is entitled to prejudgment interest on amounts unpaid hereunder from and after the date such amount was required to be paid.
13. Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.
14. Waiver. The waiver by any party to this Agreement or a breach of any provisions of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
15. Statement of Binding Effect and Representation of Authority. The Owner(s) agree that this Agreement has the legal effect of binding all Owner(s) and that it has the legal status and authority to represent and to bind by its signatures each and every one of such Owner(s) to all provisions of this Agreement. The provisions set forth below for the approval as to form by legal counsel for the Owner(s), when executed by said counsel, shall constitute such counsel's legal opinion that all Owner(s) are jointly and severally bound by the provisions of this Agreement.



IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on this date first set forth above.

CITY OF SACRAMENTO, a municipal Corporation

By: \_\_\_\_\_  
WALTER J. SLIPE, City Manager

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

By: \_\_\_\_\_  
OWNER(S)

City of Sacramento, Beneficiary  
921 10th Street, Suite 700  
Sacramento, CA 95814

**EXHIBIT C**

**IRREVOCABLE LETTER OF CREDIT**

Date: \_\_\_\_\_  
Letter of Credit: \_\_\_\_\_

City of Sacramento:

This irrevocable letter of credit is issued to the City of Sacramento, a municipal corporation ("City") by \_\_\_\_\_ ("Financial Institution") at the request of and for the account of \_\_\_\_\_ ("Principal").

We hereby establish this irrevocable letter of credit in your favor in the amount of \_\_\_\_\_ (U.S. \$ \_\_\_\_\_) available with us at the address stated above by payment of your draft(s) drawn at sight accompanied by the following document:

Your signed and dated statement worded as follows:

I, the City Treasurer of the City of Sacramento or official representative thereof, hereby certifies that the Principal is in default to the City of Sacramento.

If we should, for any reason, dishonor this letter of credit upon presentation, we will specify the reason or reasons therefor in writing immediately upon dishonor.

Each draft presented hereunder must be accompanied by this original letter of credit for our endorsement thereon of the amount of each draft.

This letter of credit shall not expire of its own terms. If, after a minimum period of three (3) years from the present, we determine we wish to discontinue this letter of credit, we shall notify you by registered letter, addressed to the City Treasurer, that we have set an expiration date for this letter of credit thirty (30) days from the date of receipt of said registered letter. Prior to expiration, upon demand by the City of Sacramento, the whole or any portion of said funds shall be paid forthwith to the City of Sacramento as it sees fit.

Financial Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
By: \_\_\_\_\_  
Authorized Agent or Representative

NOTARY & CORPORATE RESOLUTION TO BE ATTACHED

## EXHIBIT D

### FORMATION PROCEEDINGS FOR MELLO-ROOS CFD

- Completed    Initiate formation of Mello-Roos CFD (CFD).
- Written request signed by two members of the City Council.
  - Petition signed by 10% of voters.
  - Petition signed by 10% of the landowners of the proposed district area.
- Submit signed waivers and agreements of participating landowners.
- Week 2        City Council .
- Adopt resolution of intention to establish a CFD.
  - Adopt resolution establishing district boundaries.
  - Adopt resolution approving consultant agreements.
- Week 6        File Mello-Roos Engineering Report with City Clerk.
- Special tax consultants method of apportionment for special tax.
  - Detailed cost estimates of public improvements.
- Week 5-6      Notice of public hearing.
- Week 6        City Council public hearing on district formation.
- If protests are less than 50% of qualified landowner vote; adopt resolutions of formation and indebtedness are adopted.
  - If protests are greater than 50% of qualified landowner vote, district is abandoned.
  - Adopt resolution for special election
- Week 18      Special election to establish district and authorizing bonds to be issued.
- Require  $\frac{2}{3}$  majority of qualified landowner vote.
- Week 19      Initiate validation proceedings.
- Week 19-28    Validation of resolutions and agreements by California or County Superior Court.
- Week 29-30    Sell bonds (Phase 1).  
Notification to California Debt Advisory Commission (CDAC).
- Week 31      Close bond sale.  
Obtain proceeds.

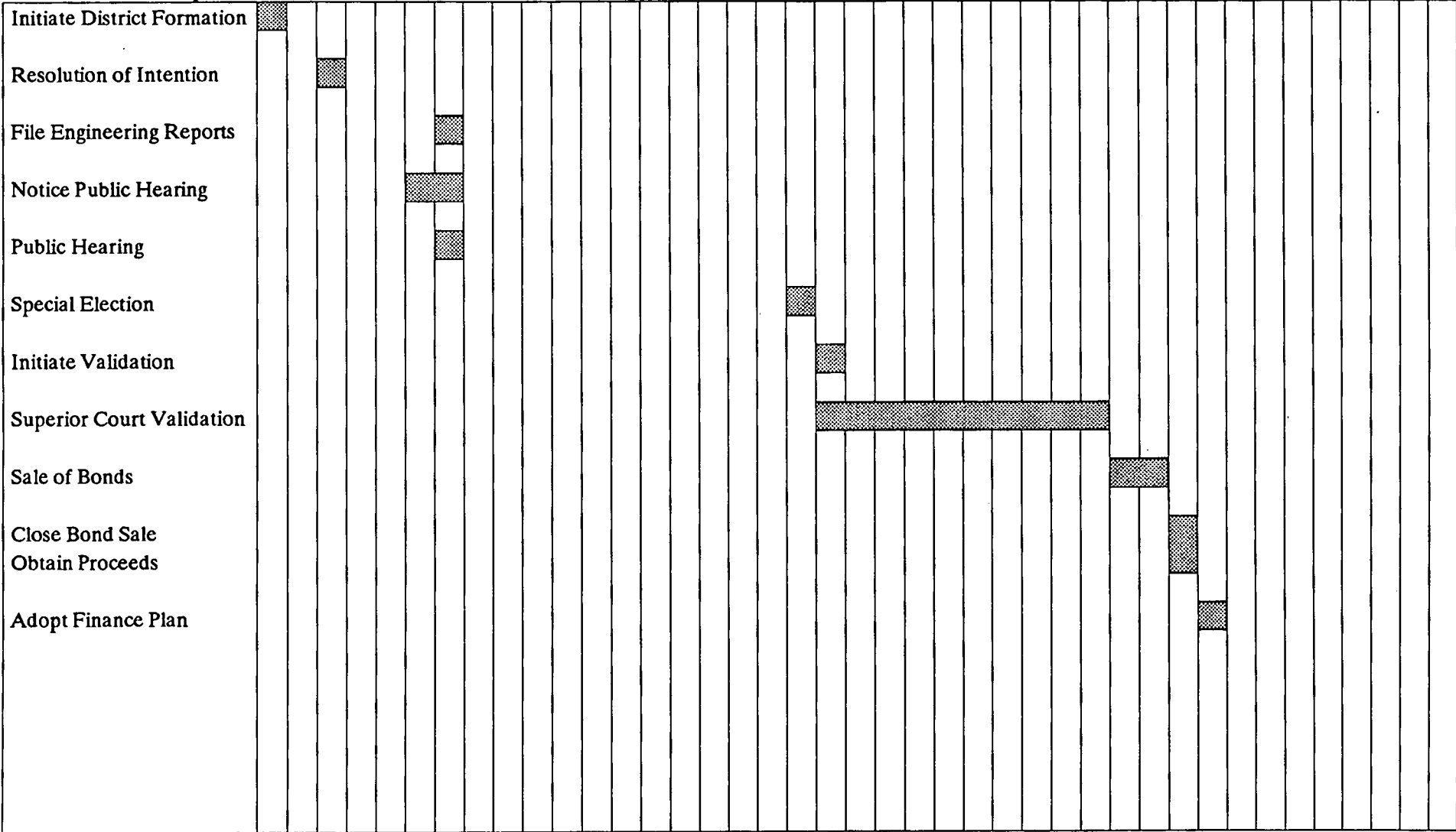
Week 32 City Council.

- Adopt financing plan.

# TIME - TABLE FOR IMPLEMENTATION MELLO-ROOS CFD/FINANCING PLAN

## TIME TABLE IN WEEKS

01-Apr-93    0   1   2   3   4   5   6   7   8   9   10   11   12   13   14   15   16   17   18   19   20   21   22   23   24   25   26   27   28   29   30   31   32   33   34   35   36   37   38   39   40



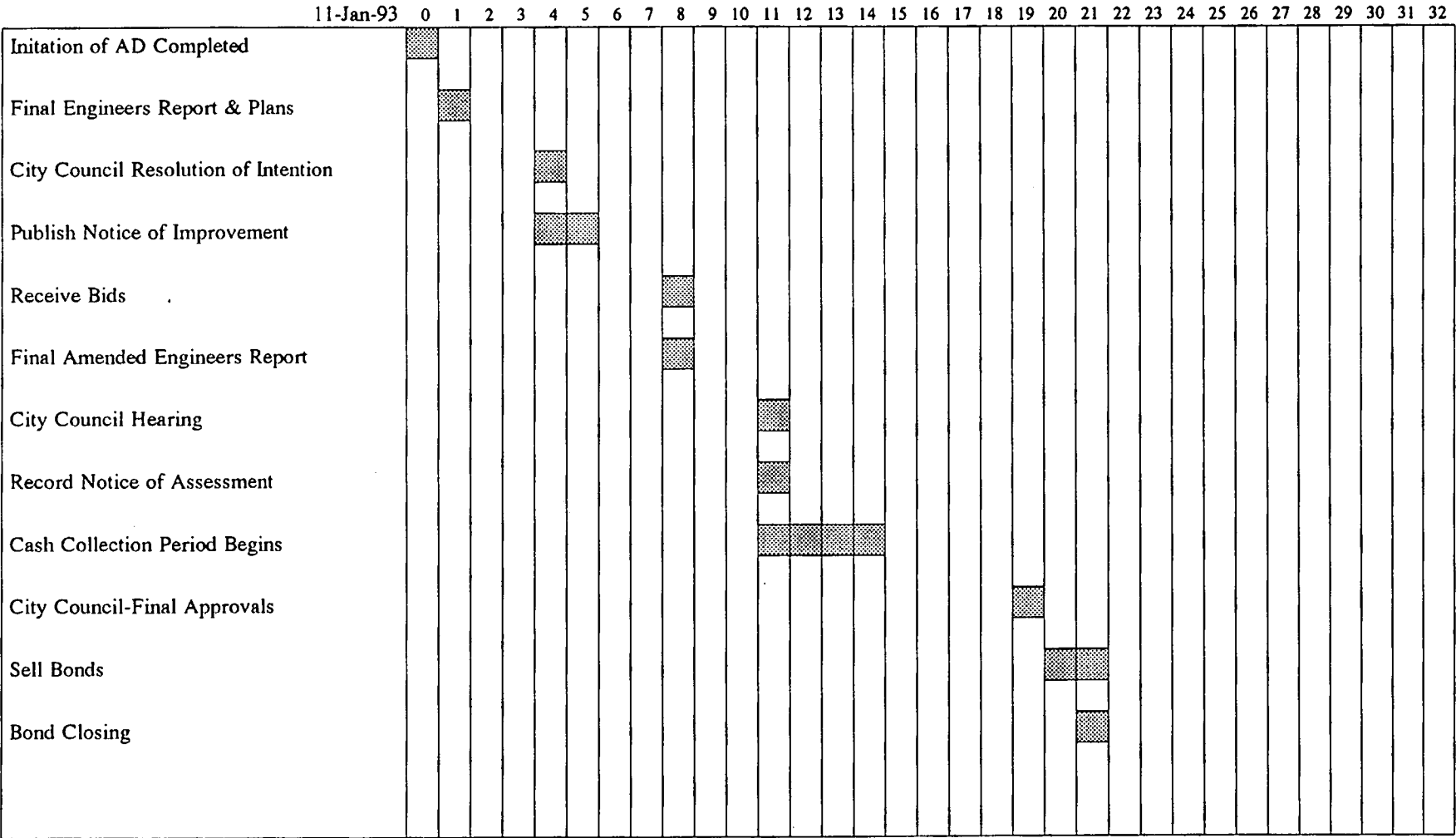
## **EXHIBIT E**

### **FORMATION PROCEEDINGS FOR SPECIAL ASSESSMENT DISTRICT**

- Completed**      Initiate formation of Special Assessment District.
- City Council determination.
  - Petition signed by 60% of voters.
  - Resolution of intention if funding is received from external source or Council initiated project requires substantial engineering costs.
- Week 1**          Finalize engineer's report, plans and specifications.
- Week 4**          City Council.
- Adopt resolution of intention to establish a Special Assessment District.
  - Adopt resolution establishing district boundaries.
  - Adopt resolution approving legal Services.
  - Adopt resolution calling for construction bids.
  - Adopt resolution accepting report and setting a time and place of public hearing.
- Week 4-5**      Publish and post notice of improvements.  
Publish notice inviting sealed bids.  
Record boundary map.
- Week 8**          Receive construction bids.
- Week 8**          Finalize amended engineer's report.
- Week 11**        City Council public hearing on district formation.
- Adopt resolution overruling protests.
  - Adopt resolution approving amended engineers report.
- Week 11**        Record notice of assessment and assessment diagram.
- Week 11**        Begin cash collection period.
- Week 19**        City Council-final approvals.
- Adopt resolution authorizing sale of bonds.
  - Adopt resolution awarding construction contract.
- Week 20**        Sell bonds.
- Week 21**        Close bond sale.  
Obtain proceeds.

# TIME-TABLE FOR IMPLEMENTATION OF SPECIAL ASSESSMENT DISTRICT

## TIME TABLE IN WEEKS



SDTIMTBL

## EXHIBIT F

### COMPARISON OF MELLO-ROOS CFD VS. SPECIAL ASSESSMENT DISTRICT

	Mello-Roos	Special Assessment
Legal Basis	Mello-Roos Community Facilities Act of 1982.	Improvement Act of 1911, Municipal Improvement Act of 1913, Improvement Bond Act of 1915.
Financeable Facilities	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.
Direct Benefit Facilities	Yes.	Yes.
General Benefit Facilities	Yes.	No.
Financeable Services	Yes, police and fire protection, recreation, and park maintenance.	Yes, maintenance and repair of improvements financed.
Services Initiated by Petition	Yes.	Yes.
Public Hearing	Yes.	Yes.
Election	Yes.	Yes.



# RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

## RESOLUTION ADOPTING THE POLICY AND PROCEDURE MANUAL FOR SPECIAL ASSESSMENT AND MELLO-ROOS COMMUNITY FACILITIES DISTRICT FINANCING FOR INFRASTRUCTURE AND PUBLIC FACILITIES

Be it resolved by the Council of the City of Sacramento, that the Policy and Procedure Manual for Special Assessment and Mello-Roos Community Facilities District, a copy of which is attached to this resolution, is hereby approved and adopted.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

---

**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

# **CITY OF SACRAMENTO**



**POLICY AND PROCEDURES FOR USE OF  
SPECIAL ASSESSMENT AND MELLO-ROOS  
COMMUNITY FACILITIES DISTRICT FINANCING  
FOR  
INFRASTRUCTURE AND PUBLIC FACILITIES**

**MAY 1993**

City of Sacramento  
Special Assessment and Mello-Roos District  
Financing Program Policies

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## 1. INTRODUCTION

The City of Sacramento has adopted this document to set forth the City's policies and procedures for the use of tax exempt financing for infrastructure and other public facilities required as a condition of development approval or otherwise. This document will assist developers in making realistic business and planning decisions concerning development and redevelopment within the City.

The City will consider developer initiated applications requesting the formation of special assessment districts or Community Facilities Districts, and the issuance of bonds to finance the construction and/or acquisition of eligible public infrastructure and other public facilities necessary to serve developing commercial, industrial and residential projects. The decision as to whether or not to utilize the City's authority to form any such district rests solely in the discretion of the City.

In general, only infrastructure which will be owned, operated and maintained by the City or another public entity, such as major streets, street lights, freeway improvements, drainage, water and sewer improvements, and other public facilities such as libraries, fire and police stations, park improvements and transit improvements, will be eligible for tax exempt financing in accordance with this policy document.

Infrastructure and other facilities will normally be financed in accordance with the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913 with the Improvement Bond Act of 1915, or the Mello-Roos Community Facilities Act of 1982. In its discretion, the City may consider utilization of other public improvement financing acts, fee districts, or its status as a charter City capable of enacting its own improvement financing ordinances. The City will, in its sole discretion, make the final determination as to whether a proposed financing will proceed under a particular act, or some other similar mechanism.

All costs, including consultant costs, incurred by the City in the evaluation of new development (or redevelopment) projects and district formation applications, and in the establishment of a district or other method of providing the public financing, shall be paid by the applicant/developer by advance deposit increments. It is the express intention of the City in adopting this policy, that the City shall be reimbursed for all of its costs associated with formation of districts and otherwise implementing the public financing. Where provision has been made to reimburse the applicant/developer from bond proceeds for those amounts paid to the City hereunder, such reimbursement shall be limited to expenses legally chargeable to the district according to the opinion of bond counsel. To the extent that such expenses are not legally chargeable to the district, they shall be borne by the applicant/developer.

## 2. DEFINITIONS

Unless the context otherwise requires, the terms employed in this document shall have the meanings specified below.

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

- b. **Bonds**: bonds authorized and issued under the Improvement Act of 1911, the Improvement Bond Act of 1915, the Mello-Roos Act of 1982, or such other mechanism as is utilized by the City in its discretion to finance the infrastructure and/or public facilities.
- c. **Bond counsel**: special counsel retained by the City to assure compliance with applicable federal and state tax and other laws and regulations relating to public financing.
- d. **Bond underwriter**: the investment banker(s) retained by the City to design, develop and execute the sale of bonds in the market place.
- e. **City**: the City of Sacramento.
- f. **Community Facilities District (CFD)**: a special district formed pursuant to the Mello-Roos Community Facilities Act of 1982, to finance specific public improvements or public services, and where properties within the district are levied a special tax in accordance with the rate and method of apportionment adopted as part of the district proceedings.
- g. **Fair market value, or value**: the amount of cash or its equivalent which property would bring if exposed for sale on the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.
- h. **Fee district**: a special district formed to finance specific infrastructure and/or public facilities, and where landowners within the district are assessed a fee, payable at the time of development or permit approval, which fee is proportionate to the benefit received from the infrastructure and/or public facilities. There is no bond financing associated with a fee district.
- i. **Fiscal feasibility report**: means a study performed under the direction of the City Treasurer to determine the financial viability of a proposed district.
- j. **Improvement acts**: the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or such other act or ordinance under which the proceedings are conducted, leading to formation of the district.
- k. **Infrastructure and public facilities**: those public improvements including but not limited to major streets, freeway interchanges, bridges, street lights, water, sewer and drainage improvements, fire and police stations, parks, libraries and transit improvements, which are eligible for financing under this document, and which are authorized improvements under the improvement act or CFD selected by the City.
- l. **In-tract facilities**: public facilities which serve an individual tract development, such as local subdivision streets, local utilities and local drainage systems.
- m. **Special assessment district**: an assessment district formed pursuant to an improvement act to finance eligible specified infrastructure and/or public facilities, and where properties within the district are assessed an amount proportionate to the benefit received from the improvements financed.

- n. **Special tax consultant:** consultant retained by the City to develop the rate and method of apportionment and other special tax formulas and criteria for a Mello-Roos CFD.
- o. **Value-to-lien ratio:** the value of a parcel of land as determined by an MAI appraisal or equivalent or as determined by the City Treasurer relative to the amount for which land secured bonds may be sold for that parcel.

### 3. **APPLICATION PROCESS**

The following comprises the City's application process for formation of a district covered by this policy.

- a. **Application:** applicant/developer shall submit an initial application to the City together with a non-refundable fee in the amount of \$5,000. This fee is for the purpose of application processing, and other preliminary costs. The application form is set forth in Exhibit A. The City will conduct an initial evaluation of the application, to determine if it is complete, or whether additional information is required.
- b. **Application processing:** upon City determination that application is complete, staff will prepare a transmittal report to the City Council, forwarding the application for Council consideration, with staff's recommendation. If the Council approves the application, Council will direct staff to select consultants and negotiate necessary contracts with the applicant/developer, including but not limited to advance funding agreements and reimbursement agreements, if required.
- c. **Project implementation:** consultant and applicant/developer agreements will be submitted to the Council for approval. Upon approval, the procedure leading to district formation will be implemented. Procedures for formation of districts are specified in Exhibits D and E.

### 4. **DISTRICT COSTS AND REIMBURSEMENT POLICIES**

- a. **Costs incurred by the City prior to formation:** all costs incurred by the City prior to formation of the district, including but not limited to consultant costs (e.g., legal counsel, engineer firms, appraisers, special tax consultants, financial advisors), City staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be reimbursed to the City by the applicant/developer prior to formation. Reimbursement shall be facilitated by advance deposit increments in accordance with the agreements required by this policy document.
- b. **Costs incurred by the City subsequent to formation:** all City administrative and consultant costs related to administration of the district and incurred after formation shall be included within the assessment in accordance with applicable provisions of law.

c. **Reimbursement to applicant/developer:**

- (i) **Where district is formed and bonds are issued.** If the district is formed and bonds are issued, the applicant/developer shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incident to the proceedings and construction of the public facilities, subject to approval of bond counsel, and subject to any applicable restrictions contained in the Improvement Acts or the Mello-Roos Community Facilities Act of 1982. With regard to applicant/developer paid consultant costs, reimbursement shall be limited to those district-related consultants which were hired by the City. Eligibility for reimbursement for any otherwise-eligible expense is conditioned upon the applicant/developer providing paid invoices therefor to the City, and City approval.

The applicant/developer shall not be entitled to reimbursement from bond proceeds for any of the following expenses: in-house administrative and overhead expenses incurred by the applicant/developer; interest expense incurred by the applicant/developer during the planning or design or construction (subject to the exception for construction-related interest expense, set forth below) of the public improvements; any dedication or other exaction required as a condition of approval of a development entitlement; and any other costs and expenses incurred by the applicant/developer which are not legally authorized for reimbursement, or as to which bond counsel has declined approval for reimbursement.

In the case of an acquisition assessment district involving interest expense incurred by the applicant/developer during the construction of the public improvements, and where the project to be financed consists of an acquisition district with an acquisition actual value of no less than \$20 million, the City in its sole and exclusive discretion may consider reimbursement from bond proceeds of all or a portion of such construction-related interest expense.

- (ii) **Where district is not formed, or where district is formed and bonds are not issued.** In the event that the district is not formed due to City disapproval or abandonment, or due to applicant/developer abandonment, or the district is formed and bonds are not issued for any reason, the City will refund to applicant/developer any remaining unexpended and unobligated portion of advance deposits posted with the City, subject to City's prior and full reimbursement of all its direct and indirect costs. The City shall be entitled to pay any refund to the applicant/developer listed on the application form, irrespective of any changes in the ownership or composition of the applicant/ developer.

**5. USE OF CONSULTANTS**

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

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

No firm may serve as both design engineer and assessment engineer (or special tax consultant) in proceedings relating to the same district (see Government Code §87100.1).

## **6. ELIGIBLE INFRASTRUCTURE AND PUBLIC FACILITIES**

Infrastructure and public facilities eligible for district financing are those public improvements which benefit properties within a proposed development, and which will be owned, operated and maintained by the City or another public agency approved by the City, including major streets, street lights, and freeway improvements, drainage improvements, water and sewer improvements, and other public facilities such as libraries, fire and police stations, park improvements, and transit/transportation improvements. Improvements which are or will be owned, operated or maintained by a private company or utility are not eligible.

In-tract facilities, exactions, or other public right-of-way easements and/or lands which are dedicated by a developer as a condition of a development entitlement will not be eligible for bond financing, but may in the City's discretion be eligible for inclusion in a fee district.

## **7. LAND USE APPROVALS**

All proposed projects within the proposed district, together with the infrastructure and public facilities, must be consistent with the City's adopted General Plan and any applicable Community Plan. All property within the proposed district must possess land use determinations of sufficient certainty, and facility requirements of sufficient specificity that each parcel can be adequately assessed.

## **8. AGREEMENTS REQUIRED**

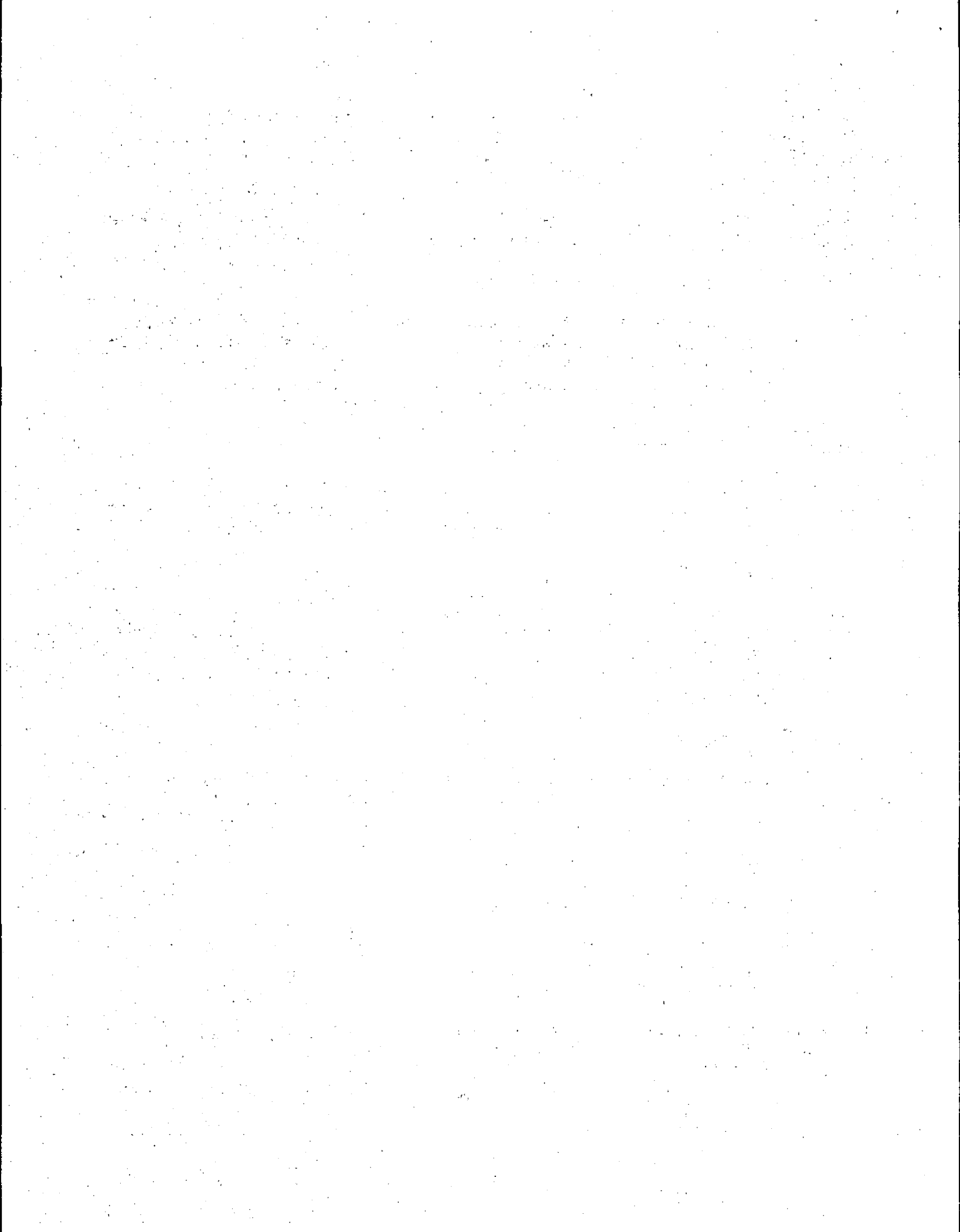
Each applicant/developer will be required to enter into all necessary agreements incident to district processing, on forms which shall be provided by the City. These agreements may include the following:

- a. Funding and reimbursement agreement.
- b. Land dedication agreement (where required).
- c. Acquisition agreement (where required).
- d. Other agreements (as required).

As a condition to the issuance and sale of the bonds, all of the required agreements shall have been duly approved and executed by all parties thereto.

A sample of the funding and reimbursement agreement is attached to this policy as Exhibit B.





## 9. SECURITY: CREDIT ENHANCEMENT

- a. **Financial plan:** for new development, prior to City Council approval of the district, the applicant/developer must submit a financial plan which demonstrates to the City's satisfaction the applicant/developer's ability to pay all assessments and/or special taxes through build out of the project.
- b. **Credit enhancement:** in general, where credit enhancement is required for the bond issue as a whole, in the opinion of the City Treasurer, the applicant/developer shall provide such enhancement in such form as is approved by the City Treasurer and the underwriters. Such enhancements may, for example, be required in cases where the value-to-lien ratio for property within the district is insufficient, and may take the form of letters of credit, or policies of insurance, or other vehicles.
- c. **Letter of credit requirements:** where required, the letter of credit shall be in the form specified in Exhibit C. In general, the following requirements apply to letters of credit:
  - (i) The term shall be one year, with automatic renewal unless cancelled in writing by the City.
  - (ii) The amount the property owner is required to post shall be determined by the City Treasurer.
  - (iii) The letter of credit must be posted with the City in final form, properly authorized and executed, prior to Council authorization to issue bonds for the district. Irrevocable credit commitments, commitment letters, in-lieu letter of credit guarantee forms, or other similar instruments, will not be accepted irrespective of whether capitalized interest is funded from bond proceeds.
  - (iv) The letter of credit shall be irrevocable, and issued for the benefit of the City of Sacramento.
  - (v) The issuer shall be a bank legally operating within the State of California, and which has a Thompson Bank Watch rating of "C" or higher, or an equivalent rating by any other nationally recognized financial institution rating agency, and whose letters of credit are deemed marketable by the City Treasurer for public financing purposes.
  - (vi) The City reserves the right to consider other forms of credit enhancement or bond guarantee which are determined by the City Treasurer, in his or her sole discretion, to be a lawful and adequate substitute for a letter of credit.

## 10. VALUE-TO-LIEN RATIOS

The district property value-to-lien ratio shall be at least 3:1 after calculating the value of the financed infrastructure and public facilities to be installed (or, in the case of an acquisition assessment district, which are installed and to be acquired), and considering any prior or pending special taxes or improvement liens. The City may require a higher value-to-lien ratio in its discretion, in consideration of current market and related conditions. The actual value-to-lien ratio required will be established by the City Treasurer.

The value of the property within the district, for purposes of establishing the value-to-lien ratio, shall be determined by an appraisal process, conducted by an MAI (Member, Appraisal Institute) appraiser under contract with the City. The appraisal criteria and methodology will be as specified by the City in its contract with the appraiser.

In instances where the value-to-lien ratio is less than 3:1, or less than some higher ratio selected by the City in its discretion, credit enhancement will be required in accordance with the provisions of section 9 of this policy. The actual form of the credit enhancement shall be in the discretion of the City Treasurer, in consultation with financial advisors.

In the event that the overall value-to-lien ratio for the district is at least 3:1 (or a higher ratio selected by the City), but as to one or more individual properties is less than the required ratio, the City, at its discretion, may require a credit enhancement for these properties.

#### **11. MARKET ABSORPTION STUDY**

The City in its discretion may require, and may employ a consultant for the purpose of conducting a market absorption study. The study, if required, shall include an estimate of the total number of units, land uses and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated, and to determine if the financing of the infrastructure and public facilities is appropriate given the projected level and pace of development. In the case of a phased development, land value appraisal should include the developed land value assuming the infrastructure to be included in the current financing is completed. However, land values for remaining future phases of the development should not assume future infrastructure is completed. The study will also be provided to the appraiser for use in the appraisal process.

#### **12. SPECIAL TAXES AND ASSESSMENTS**

The projected special assessment and/or special tax, when added to the ad valorem property tax and other direct and overlapping debt for the proposed district (including other projected benefit assessments, special taxes levied for authorized but unissued debt, and any other anticipated special assessments, taxes or charges which may be included on a property owner's annual property tax bill), shall not exceed two percent (2.0%) of the projected assessed value of each improved parcel within the district. As it pertains to commercial, industrial, or other parcels within the district, the City reserves the right to exceed the two percent (2.0%) limit if, in the City's sole discretion, it is fiscally prudent. A backup special tax shall be required to protect against changes in land use that may result in insufficient annual special tax revenues.

#### **13. TERMS AND CONDITIONS OF BONDS**

All terms and conditions of the bonds shall be established by the City. The office of the City Treasurer shall be responsible for administration of bond issues, including but not limited to the following decisions:

- a. Determination of the amount of capitalized interest that may be required, if any.
- b. Determination of the term and interest rate for the bonds.
- c. Determination of the amount of the reserve accounts for the bonds.

- d. Authorization and control of all bond proceeds disbursements.
- e. Determination of the authorized investments from bond proceeds held prior to disbursements.
- f. Determination of compliance with federal, state and local tax and related laws.
- g. Conducting sale of bonds.
- h. Determine the market feasibility of all consultants used for financing purposes.
- i. Determine the need and marketability of any credit enhancements.

**14. FISCAL FEASIBILITY REPORT**

A fiscal feasibility report shall be required if forty percent (40%) or more of the land within a district is substantially undeveloped. The report shall be prepared by or at the direction of the City Treasurer. All costs for preparing this report shall be borne by the applicant/developer. An estimate of the report cost will be made prior to initiating the study and the applicant/developer shall deposit fifty percent (50%) of the cost prior to starting the report.

**15. DISCLOSURE REQUIREMENTS**

The applicant/developer shall be responsible for compliance with all applicable federal and state statutory disclosure requirements in transactions with purchasers of properties within the district. Specifically, the applicant/developer shall disclose in writing to prospective property owners the exact nature and extent of all existing and proposed special taxes and/or assessments on the property. The disclosure statement shall be issued to and signed by the prospective buyer prior to any binding commitment by the buyer to purchase the property.

**16. PROPERTY OWNER SUPPORT**

Where the formation of a district is applicant/developer initiated and where multiple property owners are involved, the district applicant shall be required to produce letters of support from the other property owners who are in favor of the district as an attachment to the district application.

**17. SPECIAL TAX FORMULA**

Where the district to be formed is a Mello-Roos district, the maximum special tax shall adhere the following:

- a. The special tax shall include the annual administrative cost of the City to administer the district.

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

- a. Recommends a special tax for the proposed CFD.

- b. Evaluates the special tax proposed to determine its ability to adequately fund identified public improvements, administrative costs and other related expenditures.
- c. The City Treasurer shall determine the method of bond sale, including competitive, negotiated and private placement sale approaches.

**18. ACQUISITION PROVISIONS**

The City allows for the formation of acquisition districts. The City shall make the final determination as to which public improvements and to what extent such improvements are eligible for financing through acquisition.

All improvements to be acquired by the City will be constructed in compliance with City standards and specifications, and shall be accepted by the City only after such compliance has been verified.

An acquisition agreement between the City and applicant/developer shall be required and approved by the City Council prior the sale of bonds for the subject district.

Upon completion of construction of improvements to be acquired by the City, the following shall be submitted to the Department of Public Works:

- a. The delivery to the City by the applicant/developer of all deeds, easements, or other documents necessary to complete the transfer of title to the improvements and the land or interests in land on which the improvements have been constructed.
- b. Issuance of a title insurance policy in favor of the City that ensures clear title to the land or interests in land to be conveyed to the City.
- c. The delivery to the City of a certified copy of the Developers "Notice of Completion" filed with the County of Sacramento Records Office thirty-five (35) days prior to acceptance of the improvements.
- d. The delivery to the City by the applicant/developer of lien waivers or releases from all contractors, subcontractors, and suppliers associated with construction of the improvements; or, in cases where this is not practical, other equivalent security such as a lien-free endorsement from a title company.
- e. The delivery to the City by the developers of certified payroll documents from contractors and applicant/developer for whose release is sought.
- f. Any other documentation required pursuant to the acquisition agreement between applicant/developer and the City.

**EXHIBIT A  
CITY OF SACRAMENTO**

**APPLICATION  
FOR  
SPECIAL DISTRICT FINANCING**

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**APPLICATION INSTRUCTIONS**

1. Please complete the following pages. If additional space is needed please attach additional sheets.
2. Application is to be accompanied by a \$5,000 non-refundable application fee.

**FINANCING PROGRAM APPLICATION INFORMATION**

**A. Applicant Information**

Applicant \_\_\_\_\_

Contact Person \_\_\_\_\_

Mailing Address \_\_\_\_\_  
\_\_\_\_\_

Phone ( ) -

**C. Name of Project**

Name, Location, Type and Acreage of Project

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**E. Land Use Summary**

(Type[s] of development; i.e., commercial, industrial, residential; units/acre by land use.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**B. Civil Engineering Information**

Name of Firm \_\_\_\_\_

Contact Person \_\_\_\_\_

Mailing Address \_\_\_\_\_  
\_\_\_\_\_

Phone ( ) -

**D. Landowner Information**

Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Mailing Address \_\_\_\_\_  
\_\_\_\_\_

Phone ( ) -

**F. Public Improvements Required**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PROJECT INFORMATION**

1. List the number of net developable acres within the proposed district.

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2. For all parcels within the proposed district list the Assessor's Parcel Number, zoning/land use, owner(s) and length of ownership (Attach a separate sheet if necessary).

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3. List all surrounding property owners which may be affected by or be included in the purposed district financing.

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4. What is the estimated time-line for build-out of the project.

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5. Identify the status of approvals for re-zoning applications, subdivision maps, environmental clearance, State and Federal permits etc., for development of the property.

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6. What are the future plans for the properties in the district; (i.e. sale to merchants or builders, home buyers, etc?)

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7. Describe and provide information as to the estimated construction value of any development existing or under-way, if available.

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8. List all existing trust deeds/loans, existing and proposed taxes, assessments, liens or other secured interests on all property within the district.

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9. State the current status of property taxes on the property. Have any property taxes or assessments on the property been delinquent at any time during the past three years? If yes, please explain.

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10. How will required in-tract improvements be financed (i.e. local subdivision streets, utilities etc.?)

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11. Has construction financing for the project been obtained? If yes, describe source and amount of such loan.

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**EXPERIENCE OF DEVELOPER OR DEVELOPER GROUP**

1. List prior experience with the formation of developer/landowner assessment and/or CFD financing.

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2. Identify and describe any current or recently completed developments which your group has taken part in.

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3. Are there any existing or prior bankruptcies of the developer group or any member or partner of the group.

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4. List the Name, Title and Phone number of the appropriate contact person if additional information is needed.

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**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.

Submitted By:

Firm: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**EXHIBIT B**  
**FUNDING AND REIMBURSEMENT AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF SACRAMENTO AND**

---

**FOR COSTS RELATED TO THE PROPOSED**  
**SPECIAL DISTRICT**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_, 19\_\_, by and between the CITY OF SACRAMENTO, a municipal corporation (herein "City"), and \_\_\_\_\_ (referred to herein as "Owners").

RECITALS

- A. The Owner(s) own and intend to develop certain real property within the \_\_\_\_\_ Community Plan area of the City of Sacramento.
- B. The land to be developed (hereafter "Subject Property") are described in Exhibit A attached.
- C. The Owner(s) have requested the City to consider the formation of a Special Assessment District and/or a CFD (hereafter "Proposed Special District") to provide a method of financing the public improvements that are necessary to serve development of the subject property.
- D. The Owner(s) are willing to provide advance funding to the City to pay all costs necessary for the planning and implementation of the Proposed Special District, including, but not limited to, a special benefit engineer, special tax consultant, real estate appraiser, market absorption analyst, financial advisor, special consultant studies, City staff costs, administration, and related expenses.
- E. The purpose of this Agreement is to set forth the terms and conditions of Owner(s) advance funding obligations and future reimbursement through the proposed district.

NOW, THEREFORE, the parties agree as follows:

- 1. Funding for Planning and Formation Costs. Owner(s) agree to pay in cash one hundred percent (100%) of the estimated costs as identified in Exhibit B. Owner(s) shall, upon five (5) days' written request from City, pay the initial cost to City in accordance with the payment schedule indicated on Exhibit B. In the event that actual costs exceed the estimates, the Owner(s) shall, upon five (5) days' written notice from City, pay any such additional costs in full.
- 2. Hiring of Consultants. Upon actual receipt from Owner(s) of the amounts specified in Exhibit B and subject to any required prior approval of the City Council, City agrees to enter into contracts with consultants to initiate the planning phase of the proposed district. The

selection of consultants shall be in the sole and exclusive discretion of City. City shall have full and exclusive control over the work program and the manner of performance thereof, and shall be the sole and exclusive owner of the product produced by the consultants. City shall be the sole and exclusive judge of whether and to what extent the said product satisfies the requirements of the consultant contract.

3. Disbursement to City. City shall disburse from the fund the sums required to pay, when due, the City's ongoing costs and expenses, both direct and indirect, as shown on Exhibit B, which are related to the proposed district. The City shall have sole discretion as to the disbursement of said monies, and shall make an accounting of said disbursement of monies at the time of reimbursement to Owner(s) as set forth in Section 4.
4. Conditions for Reimbursement to Owner(s). Reimbursement to Owner(s) for the costs advanced by Owner(s) pursuant to this Agreement is predicated on the following conditions:
  - a. *Formation of the Proposed District.* The proposed district, for the purpose of financing the infrastructure required for implementation of the \_\_\_\_\_ Community Plan, shall have been lawfully formed. In the event that a financial mechanism other than a Mello-Roos district is employed for this purpose, the provisions of this Agreement shall apply to that mechanism, to the extent feasible and to the extent legally permissible. In the event that City, in its sole and exclusive discretion, determines that neither a Mello-Roos district nor any other financial mechanism is feasible, the Owner(s) shall have no right to reimbursement.
  - b. *Issuance of Bonds.* Bonds shall have been issued by the district.
  - c. *Phasing.* In the event that bonds are issued in phases, and because the City Council will be required to prioritize, in its sole and exclusive discretion, the items on which bond proceeds will be expended and the order thereof, reimbursement shall be subject to the priority list, with the result that reimbursement hereunder may occur, if at all, in bond issues other than the first issue.
  - d. *Reimbursement Limited to Bond Proceeds.* Reimbursement shall be made solely from proceeds of bonds issued by the district, and only to the extent that such proceeds are actually in the hands of City, in amounts sufficient in City's sole discretion.
5. Disbursement to Owner(s). Any funds payable to Owner(s) as reimbursement hereunder shall be deposited by City into an escrow account or other mechanism established by Owner(s) and agreed to in advance by City. Owner(s) agree that the disbursement to the various parties comprising Owner(s) shall be made in accordance with the disbursement schedule provided to City by Owner(s), and set forth on Exhibit C. Owner(s) agree to pay all escrow fees and related transaction costs, including, but not limited to, any attorney fees incurred by Owner(s) in connection with allocation of the reimbursement. City's sole obligation, with respect to allocation, shall be to deposit the total amount to be reimbursed with the escrow holder, which, for this purpose, shall be deemed to be the agent of Owner(s). City is not responsible in any manner for the accuracy, fairness, or appropriateness of the allocation specified on Exhibit C.

6. City Obligation Arising from Agreement. Neither the City general fund, nor any other account or monies of City except the future bond proceeds from the proposed, shall be liable or in any way financially responsible for payment of any obligations arising from this Agreement. Said obligations are not a debt of City, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon its income, receipts, or revenues. This Agreement embodies all of Owner(s) reimbursement rights and no further note or other document shall be required to be executed by City.
7. Non-liability of City for Reimbursement. This Agreement shall terminate and the City shall not be obligated to reimburse the Owner(s) from any source if, within \_\_\_ ( ) years following the date of execution of this Agreement, the proposed district has not been completed and has not been approved by the City Council of the City of Sacramento. The City, in its sole discretion, determines that neither a special district, nor any other financial mechanisms, are feasible, or that reimbursement pursuant to proposed district or other scheme is unlawful, invalid, or otherwise inappropriate. Owner(s) shall have no right to reimbursement from the City for the funds which it has provided to the City under terms of this Agreement.
8. Indemnity. Owner(s) agree to indemnify, defend, and hold harmless City and its officers, employees and agents, from any and all damages, claims, costs, expenses, and losses of whatever nature and whatever kind, including attorneys' fees, made or caused either by signatories hereto or third parties not signatories hereto, that arise out of, or are in any way related to, caused by, or based upon this Agreement, the consultant studies, or the financial or other agreements or arrangements between all or any of the various persons or entities comprising Owner(s). Without affecting the generality of the foregoing, the provisions of this paragraph extend to damages, claims, costs, expenses, and losses relating to the quality or quantity of the performance of the consultants selected by City for planning and formation of the proposed district. For purposes of this paragraph, "City" shall include each consultant selected by City pursuant to this Agreement.
9. Account Debit. The City shall give the Owner(s) \_\_\_ days written notice should it appear that the account balance will become insufficient to pay the City's costs and expenses necessary for the proposed financing and shall, at the time, provide the Owner(s) with an estimate of additional costs and expenses to be incurred by the City for the financing. When the City determines the account balance will be insufficient to pay its costs and expenses, the City shall cease all work and effort related to said financing until such time as this Agreement has been amended and the Owner(s) have advanced additional funds to pay said estimated costs and expenses.
10. Interest Payments. Interest earned on the cash advances and repaid by the account to the Owner(s) shall be at the rate and method established by the City Treasurer of the City of Sacramento.
11. Notices. Any notice, tender, delivery, or other communications pursuant to the Agreement shall be in writing and shall be deemed to be properly given when delivered or mailed in the manner provided in this paragraph to the following persons:

- a. If to City: CITY MANAGER  
City of Sacramento  
915 I Street  
Sacramento, California 95814
- b. If to Owner(s):

Any other party may change that party's address for these purposes by giving written notice of the change to the other parties in the manner provided in this section. If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given 48 hours after it has been deposited in the United States mail, with postage prepared, and addressed as set forth above.

12. Attorneys' Fees; Prejudgment Interest. If the services of any attorneys are required by either party to secure the performance of this Agreement, or otherwise upon the breach of the default of either party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and other expenses, in addition to any other relief to which such party may be entitled. In the event of a judgment in the City's favor based upon this Agreement, Owner(s) agree that the City is entitled to prejudgment interest on amounts unpaid hereunder from and after the date such amount was required to be paid.
13. Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.
14. Waiver. The waiver by any party to this Agreement or a breach of any provisions of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
15. Statement of Binding Effect and Representation of Authority. The Owner(s) agree that this Agreement has the legal effect of binding all Owner(s) and that it has the legal status and authority to represent and to bind by its signatures each and every one of such Owner(s) to all provisions of this Agreement. The provisions set forth below for the approval as to form by legal counsel for the Owner(s), when executed by said counsel, shall constitute such counsel's legal opinion that all Owner(s) are jointly and severally bound by the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on this date first set forth above.

CITY OF SACRAMENTO, a municipal Corporation

By: \_\_\_\_\_  
WALTER J. SLIPE, City Manager

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

By: \_\_\_\_\_  
OWNER(S)

City of Sacramento, Beneficiary  
921 10th Street, Suite 700  
Sacramento, CA 95814

**EXHIBIT C**

**IRREVOCABLE LETTER OF CREDIT**

Date: \_\_\_\_\_  
Letter of Credit: \_\_\_\_\_

City of Sacramento:

This irrevocable letter of credit is issued to the City of Sacramento, a municipal corporation ("City") by \_\_\_\_\_ ("Financial Institution") at the request of and for the account of \_\_\_\_\_ ("Principal").

We hereby establish this irrevocable letter of credit in your favor in the amount of \_\_\_\_\_ (U.S. \$ \_\_\_\_\_) available with us at the address stated above by payment of your draft(s) drawn at sight accompanied by the following document:

Your signed and dated statement worded as follows:

I, the City Treasurer of the City of Sacramento or official representative thereof, hereby certifies that the Principal is in default to the City of Sacramento.

If we should, for any reason, dishonor this letter of credit upon presentation, we will specify the reason or reasons therefor in writing immediately upon dishonor.

Each draft presented hereunder must be accompanied by this original letter of credit for our endorsement thereon of the amount of each draft.

This letter of credit shall not expire of its own terms. If, after a minimum period of three (3) years from the present, we determine we wish to discontinue this letter of credit, we shall notify you by registered letter, addressed to the City Treasurer, that we have set an expiration date for this letter of credit thirty (30) days from the date of receipt of said registered letter. Prior to expiration, upon demand by the City of Sacramento, the whole or any portion of said funds shall be paid forthwith to the City of Sacramento as it sees fit.

Financial Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
By: \_\_\_\_\_  
Authorized Agent or Representative

NOTARY & CORPORATE RESOLUTION TO BE ATTACHED

## EXHIBIT D

### FORMATION PROCEEDINGS FOR MELLO-ROOS CFD

- Completed Initiate formation of Mello-Roos CFD (CFD).
- Written request signed by two members of the City Council.
  - Petition signed by 10% of voters.
  - Petition signed by 10% of the landowners of the proposed district area.
- Submit signed waivers and agreements of participating landowners.
- Week 2 City Council .
- Adopt resolution of intention to establish a CFD.
  - Adopt resolution establishing district boundaries.
  - Adopt resolution approving consultant agreements.
- Week 6 File Mello-Roos Engineering Report with City Clerk.
- Special tax consultants method of apportionment for special tax.
  - Detailed cost estimates of public improvements.
- Week 5-6 Notice of public hearing.
- Week 6 City Council public hearing on district formation.
- If protests are less than 50% of qualified landowner vote; adopt resolutions of formation and indebtedness are adopted.
  - If protests are greater than 50% of qualified landowner vote, district is abandoned.
  - Adopt resolution for special election
- Week 18 Special election to establish district and authorizing bonds to be issued.
- Require  $\frac{2}{3}$  majority of qualified landowner vote.
- Week 19 Initiate validation proceedings.
- Week 19-28 Validation of resolutions and agreements by California or County Superior Court.
- Week 29-30 Sell bonds (Phase 1).  
Notification to California Debt Advisory Commission (CDAC).
- Week 31 Close bond sale.  
Obtain proceeds.

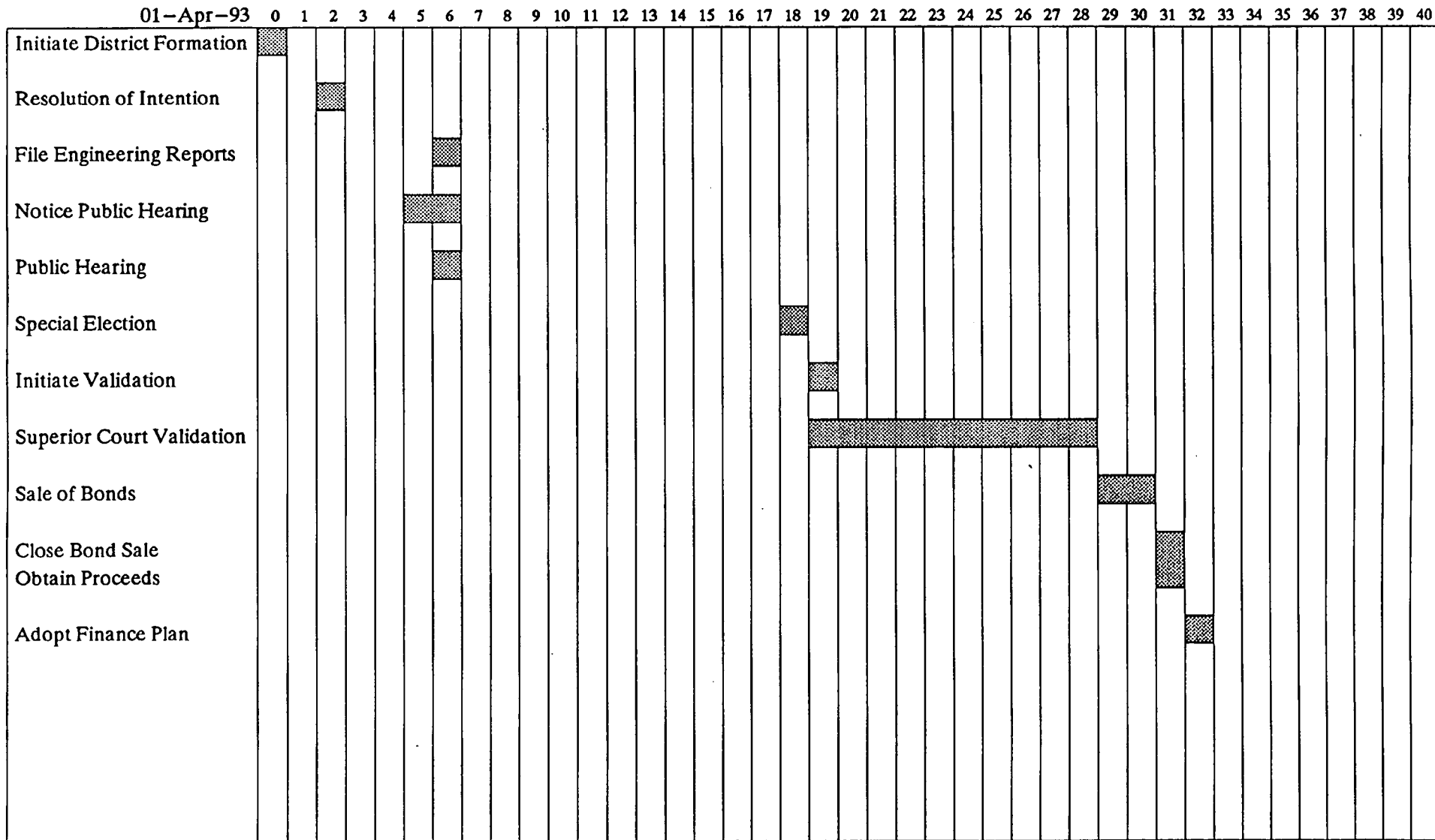


Week 32 City Council.

- Adopt financing plan.

# TIME-TABLE FOR IMPLEMENTATION MELLO-ROOS CFD/FINANCING PLAN

## TIME TABLE IN WEEKS



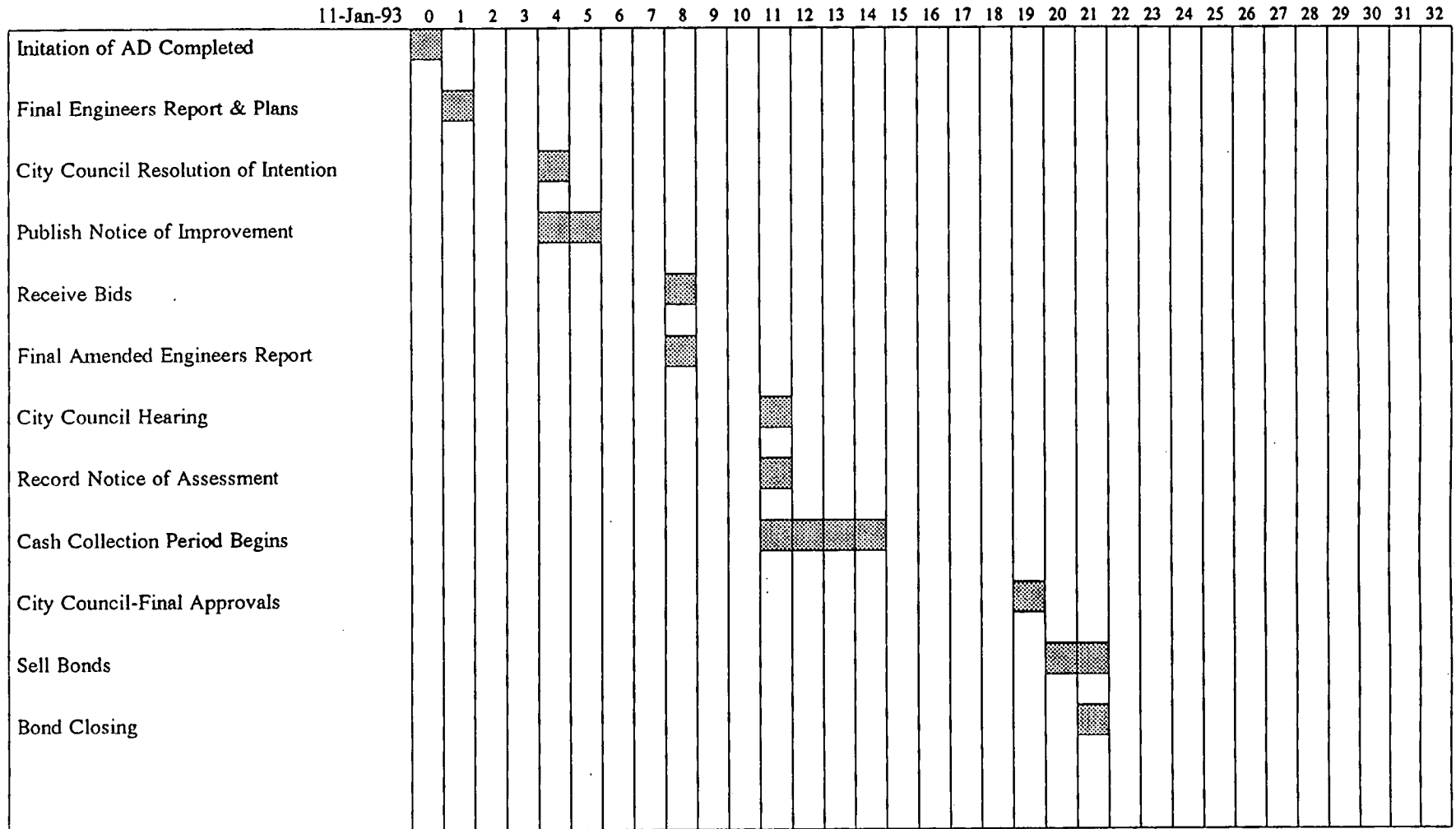
## **EXHIBIT E**

### **FORMATION PROCEEDINGS FOR SPECIAL ASSESSMENT DISTRICT**

- Completed     Initiate formation of Special Assessment District.
- City Council determination.
  - Petition signed by 60% of voters.
  - Resolution of intention if funding is received from external source or Council initiated project requires substantial engineering costs.
- Week 1        Finalize engineer's report, plans and specifications.
- Week 4        City Council.
- Adopt resolution of intention to establish a Special Assessment District.
  - Adopt resolution establishing district boundaries.
  - Adopt resolution approving legal Services.
  - Adopt resolution calling for construction bids.
  - Adopt resolution accepting report and setting a time and place of public hearing.
- Week 4-5     Publish and post notice of improvements.  
Publish notice inviting sealed bids.  
Record boundary map.
- Week 8        Receive construction bids.
- Week 8        Finalize amended engineer's report.
- Week 11      City Council public hearing on district formation.
- Adopt resolution overruling protests.
  - Adopt resolution approving amended engineers report.
- Week 11      Record notice of assessment and assessment diagram.
- Week 11      Begin cash collection period.
- Week 19      City Council-final approvals.
- Adopt resolution authorizing sale of bonds.
  - Adopt resolution awarding construction contract.
- Week 20      Sell bonds.
- Week 21      Close bond sale.  
Obtain proceeds.

# TIME-TABLE FOR IMPLEMENTATION OF SPECIAL ASSESSMENT DISTRICT

## TIME TABLE IN WEEKS



SDTMTBL

## EXHIBIT F

### COMPARISON OF MELLO-ROOS CFD VS. SPECIAL ASSESSMENT DISTRICT

	Mello-Roos	Special Assessment
Legal Basis	Mello-Roos Community Facilities Act of 1982.	Improvement Act of 1911, Municipal Improvement Act of 1913, Improvement Bond Act of 1915.
Financeable Facilities	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.
Direct Benefit Facilities	Yes.	Yes.
General Benefit Facilities	Yes.	No.
Financeable Services	Yes, police and fire protection, recreation, and park maintenance.	Yes, maintenance and repair of improvements financed.
Services Initiated by Petition	Yes.	Yes.
Public Hearing	Yes.	Yes.
Election	Yes.	Yes.