

County of Fresno

Debt Policy

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COUNTY OF FRESNO

DEBT POLICY

I. Introduction and Purpose

The County of Fresno recognizes that the foundation of a well-managed debt program is a comprehensive debt policy. A debt policy sets forth the parameters for issuing debt and managing outstanding debt, and provides guidance to decision makers, and staff, regarding the timing and purposes for which debt may be issued. The policy also should include the types and amounts of permissible debt, the method of sale that may be utilized, and structural features of debt that may be issued under that policy.

The County has established this Debt Policy to ensure financial stability of the County, to reduce the County's costs of borrowing, and to protect the County's good credit quality through proper debt management.

The debt issuance process is complex. Government officials need to understand the process in order to make informed and objective decisions that are necessary to complete a transaction, while not limiting the County's flexibility in responding to changing service priorities in the future.

This Debt Policy has been reviewed and approved by the Board of Supervisors, based on the review and approval by the County Debt Advisory Committee (DAC). This policy is a guideline for general use, and allows for exceptions in extraordinary circumstances. This policy, while providing a framework for debt issuance, should be applied in a flexible manner to take advantage of market opportunities or to respond to changing conditions without jeopardizing essential public services.

The County recognizes its long-term commitment to full and timely repayment of all debt is crucial for entry into the capital markets. It is the County's intention to adhere to this Debt Policy to ensure that the County maintains a sound debt position and that its good credit quality is protected. The County is committed to reviewing its outstanding debt annually during the County's "recommended budget" process to determine whether to retire callable debt, fixed or variable rate, in order to minimize interest costs.

The County Facilities Planning Committee is developing a County-wide master capital projects planning policy that will prioritize the County's capital needs, such as County program needs and the timing of any proposed capital projects. Although such policy is not in final form, it is the intention of the County that provisions of that policy pertaining to the capital acquisitions and improvements would be compatible with this Debt Policy.

All capital acquisition and improvement projects will be reviewed and approved by the Facilities Planning Committee prior to being placed on the DAC agenda for review.

II. Guiding Principles

This Debt Policy is guided by the following overarching principles:

- a. The amount of all outstanding debt shall be reasonable for the County's foreseeable future, considering the circumstances then prevailing, specifically including, but not limited to, the general economic conditions, and the anticipated needs of and financial demands upon the County.
- b. The County incurs debt in a prudent manner with a view toward using debt only (i) to meet the County's annual cash flow needs through the issuance of Tax and Revenue Anticipation Notes, (ii) when it is necessary to do so in order to meet capital or equipment needs that cannot reasonably be satisfied with lawfully available funds in one budget year, and in doing so, it shall be in a cost-effective manner, or (iii) to reduce the total cost of other currently outstanding debt or legal obligations.
- c. The debt financing structure is generally accepted, and the type of risks arising from such debt does not expose the County to a level of legal or financial risk that is above the level of such risks that the County normally would assume in other financing transactions for similar projects.
- d. Unless approved by the voters, the debt financing is not to be used as a means of financing the cost of current County operations (except for Tax and Revenue Anticipation Notes).
- e. Debt to be issued is not expected to cause financial instability for the County.
- f. Debt financing is carried out with those financing mechanisms that preserve the County's good reputation in the financing markets, and maximizes the County's creditworthiness.
- g. Debt financing which includes the use of capitalized interest shall detail the specific reasons for recommending the use of capitalized interest.
- h. The use of derivative products shall be limited to situations where the derivative can increase the County's financial flexibility, provide opportunities for interest rate savings, alter the pattern of debt service payments, create variable rate exposure, or limit or hedge variable rate payments. (See section IV.L for restrictions on the use of derivative products).
- i. The County will give first priority (including the dedication of staff resources) to County financings over financings which primarily benefit third parties, including, without limitation, conduit financings, financings for private development, financings in which the County would be a member of a joint powers agency governed by a board of directors other than the County's Board of

Supervisors, and financings for housing programs, and commercial and industrial development.

The provisions of this Debt Policy shall be subject to these guiding principles. Where there is not a specific policy for a given matter, these guiding principles shall be followed.

III. Debt Advisory Committee

The County established the DAC on February 9, 1993. The DAC is responsible for reviewing all potential financings issued by the County and making appropriate recommendations to the Board of Supervisors. The role of the DAC will vary depending on the purpose of the debt issuance. The DAC serves as a "clearing house" to ensure that there is a centralized point for all proposed/requested financing issues and that all parties affected by the issue are involved from the beginning of the process. The DAC may utilize the services of an independent financial advisor for assistance in analyzing all proposed/requested financing issues. The current version of the County of Fresno Debt Advisory Committee Policy Guidelines for Public Financing is included in this document as Attachment A.

IV. Allowable Methods of Financing Debt

The following debt financing mechanisms are allowable methods of financing debt, subject to the provisions of this Debt Policy:

- A. Tax and Revenue Anticipation Notes (TRANs) are short-term tax exempt notes maturing in one year. Annually, the County borrows money on a short-term basis to meet operating expenses in anticipation of receiving future taxes and revenues. The issuance of TRANs allows the County to smooth out cash flows, enabling the County to provide essential mandated services prior to receipt of major tax or revenue inflows. Cash flows used to document the need to borrow and to fix the amount of the borrowing are prepared by the Auditor-Controller/Treasurer-Tax Collector based on budget information provided by the County Administrative Office.
- B. Pension Obligation Bonds (POBs) are taxable bonds issued to pay down a portion or all of the Unfunded Actuarial Accrued Liability (UAAL) of the County's retirement system. POBs are issued to provide savings to the County. In analyzing the issuance of POBs, the County should consider the interest cost savings resulting from the issuance of the bonds as well as the impacts to the County's cost plan and compliance with federal and state agency reimbursement requirements. POBs should be issued only when there is a savings between current market conditions and the assumption rate adopted by the retirement system. The term of the POBs shall not exceed the UAAL amortization schedule adopted by the Board of Retirement.

- C. Lease Revenue Bonds (LRBs) are issued by a public entity (such as a joint powers authority) working in cooperation with the County, or to provide the County a means of financing capital projects or improvements (If the issuer is a nonprofit public benefit corporation, the bond are called "certificates of participation" or "COPs"). Under LRBs, the County typically enters into a lease-lease-back arrangement, and offers County real property as collateral for the lease. When causing the issuance of LRBs, the County shall take into consideration the useful life of the leased property, the type of leased property offered as collateral (with a view toward minimizing the number of County properties used as collateral), and compliance with state and federal reimbursement requirements. The County uses the Fresno County Financing Authority, a joint powers authority, as its third-party issuer.
- D. Certificates of Participation (COPs) for equipment acquisitions are lease-purchase agreements that are marketed to investors in a manner similar to bonds. In this type of leasing the County enters into a lease with a lessor (usually a bank or financing company) to lease an asset over a specified period of time at a predetermined annual cost. Lease payments made are sufficient to pay the principal and interest on the leased asset. The lessor identifies investors that are willing to provide funding for the asset in return for an undivided interest in the lease payments. COPs must have a provision that permits the County to terminate the COPs, without cost or penalty, if the Board of Supervisors does not allocate funds for COPs payments in any future years of the COPs. Typically, the equipment being acquired serves as collateral.
- E. Revenue Bonds are issued to finance facilities that have a definable user or revenue base. Revenue bonds are secured by a specific source of funds, either from operations of a project or enterprise fund, or from a dedicated revenue stream.
- F. Special Assessment or Special Improvement District Bonds are issued to finance improvements that benefit a specific area. The benefit is enjoyed by a limited segment of the community, and therefore, a special assessment is levied only on the properties to the extent that they receive special benefits from the project over and above general benefits conferred by such improvements on those properties. The limited revenue pledge for special assessment bonds increases their perceived risk, resulting in interest costs that are higher than interest costs for general obligation bonds. See Attachment B, Policy for Use of Public Financing for Private Development Projects, for further information on issuance of special assessment or special improvement district bonds.
- G. Leases (also called "financing leases") are appropriate for procuring assets that are too expensive to fund with current receipts in any one year, but with useful lives too short to finance with long-term debt. Leasing is also advantageous for assets that will be needed for a short period of time, or are subject to rapid technological obsolescence. Leases must have a provision that permits the County

to terminate the leases, without cost or penalty, if the Board of Supervisors does not allocate funds for lease payments in any future years of the leases.

- H. Conduit financings for public financing of private development projects are addressed in Attachment B – Policy for Use of Public Financing for Private Development Projects (Note: The Board of Supervisors has terminated the use of this policy for residential development per Board agenda item minute order, dated September 23, 1997). Conduit financings for those activities that have a general public purpose must insulate the County from credit risk or exposure to the maximum extent reasonably possible.
- I. “Pay-as-you-go” financing is an appropriate part of the County’s debt policy and finance plans undertaken by the County. Repair and replacement projects with short useful lives are not appropriate for long-term financing and should be considered in a pay-as-you-go plan. Careful planning of current revenues and prudent use of unreserved fund balance in this type of plan is a positive factor in credit analysis. Use of unreserved fund balance in a pay-as-you-go financing provides a cushion in the event of unanticipated revenue downturns and emergency situations. Use of a pay-as-you-go plan combined with a longer term financing plan is acceptable.
- J. Inter-fund borrowing is acceptable as a short-term financing method for cash flow needs. Fund restrictions should be evaluated and Board of Supervisors’ approval must be sought for inter-fund borrowing where the funds are not identified as available to the General Fund. Internal interest payments will be made at the County’s Treasury Investment Pool rate as calculated quarterly. This rate will be variable at the time of each debt payment.
- K. General Obligation (GO) Debt approved by the voters should only be used if other financing methods are not appropriate. The purpose of general obligation bonds is to finance public facilities at the lowest cost to the taxpayers. The security of general obligation bonds typically is of the highest quality, because it includes the legal means to levy and collect the tax to cover debt service.
- L. Derivatives may only be used after careful review and risk assessment, and compliance with the provisions of this section IV.L. As used in public finance, derivatives may take the form of interest rate swaps, options on swaps, and other hedging mechanisms such as caps, floors, collars and rate locks. The County will consider a derivative only after it has developed (1) a sufficient understanding of the proposed derivative products, (2) the staff and expertise to properly manage and evaluate the products (may include the assistance of a swap or financial advisor), and (3) a written derivative policy approved by the DAC and the Board of Supervisors, which shall include methods for measuring, evaluating, monitoring and managing risks associated with derivative products. Before using any derivatives, there shall be an analysis and determination that the use of a derivative will result in net monetary savings and benefits to the County.

M. Securitization of a future revenue stream or receivable is an allowable method of financing. One example is Tobacco Settlement Asset Backed Securitization bonds. The issuance of securitization bonds shifts the risk of non-payment to the bondholders. Where permitted by law, the County may issue or cause to be issued asset-backed bonds secured by a future revenue stream or receivable in order to take advantage of immediate cash flow or finance capital needs, or to create financial flexibility. Before issuing or causing the issuance of securitization bonds, there shall be an analysis of the collectibility of such future revenue streams or receivables, and a determination that the net monetary benefits from obtaining securitization bond proceeds outweigh the risk of the continued receipt of such future revenue stream or receivables. Asset-backed bonds may be issued on a tax-exempt basis if the County can demonstrate that the bond proceeds will be spent on tax-exempt uses such as capital improvements or refunding outstanding bonds or other debt.

Bonds issued by local government units generally bear interest that is excluded from gross income for federal income tax purposes. Federal tax requirements should be reviewed when considering each new financing issue. Generally, bonds issued for general government activities and facilities are tax-exempt bonds. Tax-exempt bonds carry the lowest rates of interest in the securities market.

V. Refundings

The County will consider undertaking a refunding (i.e., refinancing) for any of the following reasons: (1) to reduce interest costs of outstanding debt, (2) to restructure the debt service for a more favorable interest rate, and (3) to eliminate old bond covenants that may have become restrictive to the County, provided that the overall benefits to be obtained from eliminating such bond covenants are expected to outweigh the cost of the new debt. Most bond refundings will occur in order to take advantage of lower interest rates.

In evaluating refunding opportunities, the County will evaluate the present value savings to include the associated costs of the refunding. The present value of all refunding costs should be less than the present value of the interest savings to consider a refunding. The County may issue refunding bonds only if the net present value of the proposed debt service from the refunding bonds compared to the net present value of the debt service for the refunded bonds will result in a savings of at least two percent (2%). Refunding debt shall not extend the maturity beyond the original debt being refunded. If any refunding bonds have any variable interest, the County will take into account the full range of such costs in evaluating the cost of such new debt.

Refunding bonds shall be governed by the same principles for issuing new debt.

VI. Early Retirement of Debt

The County annually shall review callable outstanding debt and its current debt service requirements to determine if it is appropriate and in the County's best interests to retire debt early. Preference shall be given to calling bonds that will result in the greatest savings to the County. During its annual review of outstanding debt and future debt service requirements, the County shall also review any refinancing options for current outstanding debt, consistent with the principles of this Debt Policy.

VII. Evaluating Funding/Financing Alternatives

When reviewing the various funding alternatives under consideration, the County should be realistic in its assessment of whether certain financing methods are feasible and the risks associated with each financing method. In new or complex financing plans, significant costs for legal and financial advice may be incurred, as well as the use of County staff time. Additional time will be required to evaluate the new alternative methods and gain consensus among decision-makers that will be asked to authorize the debt. Some alternatives may provide the County with increased flexibility. However, in all cases, transaction costs must be reasonable in relation to the asset to be financed.

Fixed interest rate and variable interest rate financing should be considered when evaluating a financing plan. When any type of variable rate financing is selected, a monitoring plan shall be developed and utilized by the Auditor-Controller/Treasurer-Tax-Collector to ensure a combination of lowest possible interest costs and flexibility for the County. When issuing new debt (or refinanced debt), the County shall not have more than 20% of its par value of total outstanding debt (including the proposed issuance) in variable rate bonds (including any other financings, such as COPs, and leases). Call provisions should be evaluated for both fixed and variable rate debt. Call provisions shall be reviewed annually in developing the County's "recommended budget" to ascertain whether the County is in a position to call debt and realize interest savings. The bonds to be called should have the greatest savings to the County, if called.

A debt financing shall not be entered into unless the financing sources for the debt servicing of the issue have been identified. Such dedicated revenue streams to finance the debt service could include tobacco settlement revenues, property tax revenues, etc. The County should identify revenue sources early in the financing project, since the rating agencies, as a part of the review and evaluation of the County's credit, will want to know available sources for debt service on the proposed financing issue.

VIII. Debt Limitations and other Legal Limitations

California Constitution Article XVI, section 18 limits the amount of debt that the County may lawfully incur without approval of 2/3 of the qualified electorate: "(a) No county ... shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose, ..."

However, the County recognizes that judicial interpretations have created several exceptions to the foregoing rule, authorizing certain forms of long term financings without the necessity of such voter approval (e.g., leases), which are commonly called "debt" in this policy, but actually are exceptions to this debt limitation rule.

The County will evaluate legal limitations and affordability of debt prior to any new financings or refinancings. It is important for the County to consider its current debt levels as well as legal restrictions imposed by statute or by existing bond covenants. The County will employ specialized legal and financial advisors, as necessary, to assist in the evaluation of additional debt. Depending on the circumstances (e.g., new form of financing), the County may consider the use of a validation action (Code of Civ. Proc., sec. 860 et seq.) to determine the validity of a matter in connection with the issuance of a bond.

IX. Benchmarking and Measuring Debt Capacity

A comprehensive and routine analysis of debt capacity provides assurance that the amount of debt issued by a government is affordable and cost-effective. By analyzing debt capacity, the County will be better able to keep debt at affordable levels. Assessing debt on an ongoing basis is essential for effective debt management and for ensuring that debt-planning activities are integrated with the capital acquisition and improvement process.

The County will consider current market conditions and market capacity when evaluating new financing issues. In evaluating financing issues, the protection of the County's good credit rating is essential.

The County's incurring of additional debt may not necessarily affect the County's credit rating. Therefore, when considering whether to issue new debt, the County should give first priority to assessing its debt capacity, before considering whether the County's credit rating would be affected by such additional debt.

In assessing its debt capacity, the County will evaluate budgetary capacity with respect to its ability to absorb additional debt. Also, the County will evaluate affordability through the use of benchmarks. Key benchmarks or ratios to be considered are:

Debt Outstanding:

- Debt per capita in the County.
- Debt as a percentage of assessed value of real property in the County.
- Debt per capita as a percentage of personal income per capita in the County.

Debt Service:

- Debt service as a percentage of County discretionary revenue.
- Debt service as a percentage of County general fund budgeted expenditures.
- Debt service as a percentage of County budgeted operating revenues.

In evaluating the debt ratios, the County shall reference current ratio analysis from major rating agencies. Commonly used debt ratios of similar California counties will provide one measure against which the County can assess its debt burden. Moody's Investors Service issues a debt median analysis on similar type counties. At a minimum, the County will use the comparison group identified by Moody's Investors Service, currently Emerging Middle Counties, for benchmarking. The County will analyze the comparative data of other counties and be mindful of the County's ranking amongst its peers. The County desires to achieve a higher than average credit rating among its peers.

However, there is no single dominating ratio or figure that determines whether the issuer has too much debt or too little debt. Oftentimes, a combination of factors are considered when assessing the appropriate level of debt for an issue. Overemphasis on debt ratios to justify the issuance of debt should be avoided because debt ratios are one of many factors that influence the bond rating. Evaluation of trends relating to the County's financial performance, such as revenues and expenditures, net revenues available after meeting operating requirements, reliability of expected revenues to pay debt service, and unreserved fund balances, are considered necessary to properly evaluate the County's debt capacity.

The County's debt capacity analysis should ensure that an appropriate balance is struck between the County's capital needs and its ability to pay for them and provide management authority to respond to unforeseen circumstances.

The County shall establish an affordable debt level in order to preserve its good credit quality and to ensure sufficient revenue is available to pay annual debt service.

The debt capacity analysis shall be recalculated at the time of a proposed new bond issue to determine if the County has debt capacity available. The County shall analyze its debt capacity with and without pension bond debt service.

X. The Financing Team

It is the County's practice to engage outside financial advisors, bond counsel and disclosure counsel to assist the County in developing a bond issuance strategy and structure, preparing the bond documents, meeting securities disclosure requirements, and marketing the bonds to investors. Other firms, such as underwriters, paying agent, trustee, auction agent and actuary, also are retained as necessary. The financial advisor and the underwriter selected shall have the necessary expertise to assist the County in successfully marketing its financing plan. Financing team members engaged by the County should have knowledge of innovative financing plans, an understanding of how to minimize County costs, and an ability to complete the transaction timely.

Financing team members engaged by the County shall be selected through the County's selection process for service providers in accordance with County Board of Supervisors Administrative Policy No. 34 and the County of Fresno Purchasing and Contract Procedure Manual. The Auditor-Controller/Treasurer-Tax Collector shall be responsible

for seeking and recommending to the Board of Supervisors (or other County officers authorized to execute agreements for the County, such as the County Administrative Officer or Purchasing Agent) the engagement of the financial advisor and underwriter. County Counsel shall be responsible for seeking and recommending to the Board of Supervisors (or other County officers authorized to execute agreements for the County, such as the County Administrative Officer or Purchasing Agent) the engagement of bond counsel and disclosure counsel (and tax counsel, if used).

While the County should strive to keep costs to a minimum, price should not be considered the only factor in choosing professional services. A knowledgeable financing team engaged by the County that can identify creative solutions to meet the County's objective, and achieve savings on the long-term borrowing costs, consistent with this Debt Policy, is an equally important consideration and should be weighted carefully in the selection process.

Financial advisory, bond counsel and disclosure counsel services should be provided on an hourly or fixed-fee basis consistent with industry standards for the respective types of specialized services. Depending on the financing method utilized, financing team members engaged by the County may be compensated for services only upon completion of the sale of the bonds, etc. Out-of-pocket expenses may be reimbursed regardless of a successful sale.

County departments proposing new financing projects shall provide reasonable advance notice with respect to financing proposals to the County Administrative Office, Auditor-Controller/Treasurer-Tax Collector, and County Counsel prior to scheduling a meeting with the DAC. This will allow County staff on the financing team time to review and prepare for the DAC meeting and ensure proper communication, planning, scheduling and review of potential issues.

XI. Method of Sale

The County may utilize competitive, negotiated, limited-competitive (hybrid) or private placement methods of sale. The appropriate method should be determined on a case-by-case basis after evaluating the proposed financing. The County's goal is to protect the public's interest by obtaining the lowest possible interest cost under reasonable financing terms. Flexibility in structuring the financing should be evaluated when deciding which method of sale will be used. If in the opinion of the financial advisor pre-sale marketing will enhance the County's ability to sell the bonds, the financing team should evaluate the benefits of a negotiated sale where legally permissible.

In selecting a financing method, the financing team shall make an informed decision by reviewing certain factors on a case-by-case basis. After reviewing issuer characteristics, such as market familiarity, credit strength and policy goals, the financial advisor shall recommend the type of debt instrument, issue size, structure, and timing of the issue to the County. The financial advisor shall assist the County in obtaining the best possible

national credit rating for the issue and disseminate information about the issue to all potential bidders.

XII. Restrictions on Financial Advisors Purchasing County Debt

No investment firm that has, or has had, a financial advisory relationship with respect to a new issue of the County's bonds (*e.g.*, bonds, notes, or other evidences of indebtedness) shall acquire as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the County all or any portion of the issue, or arrange for the acquisition or participation by a person controlling, controlled by, or under common control with the investment firm, unless the issue is to be sold by the County at competitive bid and the County has, prior to the bid, expressly consented in writing to the acquisition or participation. The limitations and requirements set forth in this section also apply to any investment firm controlling, controlled by, or under common control with the investment firm having a financial advisory relationship. The use of the term "indirectly" does not preclude any investment firm which has a financial advisory relationship with respect to a new issue of bonds from purchasing any of those bonds from an underwriter, either for its own trading account or for the account of its customers, except to the extent that the purchase is made to contravene the purpose and intent of this section. (Gov. Code, sec. 53591).

XIII. Debt Structure

Maturity Structures. The term of County debt should correspond to the useful life of the project or equipment financed (for LRBs, the useful life of the leased property shall apply if it is not the same as the project), and shall be consistent with state and federal reimbursement requirements. Debt issued by the County should be structured to provide either for level principal or level debt service. Deferring the repayment of principal should be avoided except in unique circumstances where it will take a period of time before project revenues are sufficient to pay debt service. Ascending debt service generally should be avoided. Debt service payments that are, in effect, balloon payments for a substantial portion of the debt should be avoided unless the Board of Supervisors finds that (1) that there is no other reasonable alternative to such an arrangement, and (2) the expected benefits to the County of such an arrangement outweigh the burden upon the County of such an arrangement.

During the issuance process, the County will review various bond maturity structures to determine the maturities that meet the objectives of the County. The added interest costs associated with certain types of bonds and/or extending the bond maturity should be analyzed. Cash flow projections and budgetary constraints should not be the only underlying factors. Ultimately, the term and structure of the bonds must be within acceptable limits and within the County's debt servicing limitations.

Credit Enhancements. Credit enhancements can play a very important role in issuing debt. The primary credit enhancement currently used in the marketplace is bond insurance. Bond insurance guarantees the payment of principal and interest. In

considering a credit enhancement, both the costs and benefits should be evaluated. Since most costs are paid at the time of the issuance and most benefits accumulate over the life of the bonds, the present value of the savings should be greater than the premium charged. As part of the decision to purchase bond insurance, the County will consider the marketability of the bonds and the impacts of bond insurance on the perceived credit and liquidity risks to the investors. An insured issue will receive a higher rating, which should result in lower financing costs. Other credit enhancements include surety bonds and letters of credit. The County will review the use of credit enhancements for each debt issuance.

Reserve Fund and Coverage Policy. A debt service reserve fund is created from proceeds of a bond issue to provide a ready reserve to meet current debt service should moneys not be available from current revenues pledged to the repayment of the debt. Coverage is the ratio of pledged revenues to related debt service for a given year. The Auditor-Controller/ Treasurer-Tax Collector shall determine the appropriate reserve fund and coverage requirements through consultation with the financing team.

Capitalized Interest. A capitalized interest fund is created from the proceeds of the bond issue to cover interest payments until the revenue sources pledged to repay the debt are available or, in the case of a leased-based financing, the issuer has beneficial use and occupancy of the project constructed with the proceeds of the borrowing. (See section II.g. for restrictions on the use of capitalized interest).

Interest Rate Limitation. The financing team will consider any interest rate limitations imposed by law. The financing team also will review the current interest rate environment in determining if a financing is suitable given current market conditions.

XIV. Rating Agency Considerations

A carefully planned debt policy that is adhered to provides evidence to the credit rating agencies of the County's commitment to controlled borrowing practices. When used as intended, the debt policy is a positive factor in evaluating the County's creditworthiness. Financial stability and strong fiscal management are important to credit quality.

When evaluating the County's creditworthiness, rating agencies will analyze the County in four broad areas: economic base; debt burden; administrative management; and fiscal management. The County will provide all necessary information, including its Comprehensive Annual Financial Report and Quarterly Treasury Compliance Report, for the credit rating agencies to evaluate the County's creditworthiness. The County will make every reasonable effort to maintain and/or improve its high quality credit ratings to minimize borrowing costs and to ensure its access to the credit markets.

XV. Investor Outreach

The County currently undertakes investor outreach on an annual basis through its short-term borrowing program (TRAN). The County will continue with its efforts to reach out

to the investor market even when the County may not be in the market with a current financing issue. The County will continue to make available the Comprehensive Annual Financial Report, the Budget, and the Quarterly Investment Compliance Report to the investment community. Annual updates during the short-term borrowing program will continue to provide the rating agencies and the investors with current information on the County's status.

XVI. Trustee Services

The County will evaluate the need for a trustee, administrator or paying agent on all financings. If the services of a trustee, administrator or paying agent are required, the County will require periodic statements from those service providers and monitor all transactions initiated by the service providers related to the financing, to include principal and interest payments, payment of all costs of issuance, and payments of operating costs during the term of the issue. The County also will review the investment of all funds held with the trustee and advise on reinvestment of funds not immediately required for construction, to retire debt, or for administration of the bonds.

XVII. Arbitrage Restrictions

Arbitrage is the difference between the yield on an issuer's tax-exempt bonds and the investment income earned on the proceeds. Arbitrage restrictions have been put in place by the federal government for two primary reasons: (1) to ensure that the proceeds of tax-exempt financings are not solely being used to make investments in higher-yielding taxable securities, and (2) to ensure that bond proceeds are spent in an expeditious manner. The County will consult with its advisors to assist in the application of arbitrage to its financings. Consultation with advisors will occur prior to the financing to ensure understanding of and compliance with all requirements for a particular financing. The Auditor-Controller/Treasurer-Tax Collector will maintain a system of record keeping and reporting to meet the arbitrage rebate compliance requirements of the federal tax code.

XVIII. Continuing Disclosure

The County, through its County Administrative Officer, Auditor-Controller/ Treasurer-Tax Collector and County Counsel, with the assistance of disclosure counsel, will ensure that applicable state and federal regulations and laws regarding continuing disclosure are observed for all financings. If the County is an obligated party for continuing disclosure purposes, annual reports shall be filed with the appropriate state information depositories (SIDs), if any, and/or nationally recognized municipal securities information repositories (NRMSIRs) in a timely manner as required by the financing documents. All "material events" notices will be filed timely by the County with such SIDs, if any, and NRMSIRs, and promptly communicated by the County Auditor-Controller/Treasurer-Tax Collector in a written memorandum to the DAC, the Board of Supervisors, and the Fresno County Financing Authority (if the Authority issued the bonds). The County may engage the services of disclosure counsel to satisfy disclosure-reporting requirements.

XIX. Annual Debt Service Calendars

The County Auditor-Controller/Treasurer-Tax Collector shall maintain and update Annual Debt Service Calendars for all existing debt financings. These Calendars shall be presented to the DAC each time a proposed financing is presented to the DAC. The Annual Debt Service Calendars will be used as a guide for monitoring debt service payments in future budget cycles as well as to guide the DAC in reviewing the County's capacity to absorb additional debt. The most current Annual Debt Service Calendar for bond debt outstanding as of the date of adoption of this policy appears as Attachment C. The most current Annual Debt Service Calendar for outstanding capital leases as of the date of adoption of this policy appears as Attachment D. The County Auditor-Controller/Treasurer-Tax Collector shall replace prior Annual Debt Service Calendars with the most current Annual Debt Service Calendars as attachments to this Debt Policy.

XX. Annual Review of Debt Policy

The DAC annually shall review this Debt Policy and make recommended changes, if any, to the Board of Supervisors. The Board of Supervisors annually will review and either adopt or reject any recommended changes proposed by the DAC. The annual review will be presented by the Auditor-Controller/Treasurer-Tax Collector as a regular agenda item for discussion and action by the Board of Supervisors.

When new financing plans/structures are introduced, they must be reviewed by the DAC and a recommendation to amend the Debt Policy must be presented to the Board of Supervisors for approval prior to the issuance of the new debt structure.

XXI. New Financing Techniques/Methods

Counties operate in a dynamic environment characterized by changing federal regulations, new financing techniques and changing rating agency concerns. This policy is not intended to exclude new financing techniques that are consistent with the Guiding Principles, section II. Proposals with respect to financing methods not included in this Debt Policy should be addressed by the DAC and, if the DAC approves of such financing methods, the DAC should recommend their use to the Board of Supervisors. This Debt Policy should be amended to reflect new financing techniques approved by the DAC and the Board of Supervisors.

XXII. Conclusion

This Debt Policy is intended to be a guide for the County in issuing debt. The County is aware that as new financial techniques become available, the review and possible update of this policy may be required. Changing circumstances require flexibility and revision to this Debt Policy.

A copy of this Debt Policy will be on file with the Auditor-Controller/Treasurer-Tax Collector, Administration Division, located at 2281 Tulare Street, Room 105, Fresno, CA 93721. A copy of this Debt Policy may be obtained by written request or by contacting the Auditor-Controller/Treasurer-Tax Collector at (559) 488-3496.

Attachment A

Debt Advisory Committee Guidelines

COUNTY OF FRESNO
DEBT ADVISORY COMMITTEE

POLICY GUIDELINES FOR PUBLIC FINANCING

SCOPE AND AUTHORITY OF COMMITTEE

The Debt Advisory Committee will be responsible for reviewing all potential financings issued by the County and will make appropriate recommendations to the Board of Supervisors. The Committee's role will vary depending upon the purpose of the issuance.

The Debt Advisory Committee shall review all requests for financings and submit its report to the County Administrative Officer. When action by the Board of Supervisors is required, the County Administrative Officer shall submit the Committee's recommendations on the matter to the Board of Supervisors. All members of the Committee will have access to all pertinent documents pertaining to the issuance. The members will maintain the confidentiality of the applicant's detailed financial data. The Committee may, however, when appropriate, use this information as grounds for a negative recommendation.

DEBT ADVISORY COMMITTEE COMPOSITION

The Debt Advisory Committee will be comprised of the following County officials or their designee:

1. Two members, Board of Supervisors
2. County Administrative Officer
3. Auditor-Controller/Treasurer-Tax Collector
4. County Counsel

The Debt Advisory Committee shall seek input as may be appropriate from County departments, and other officials who may seek debt financings, or who may be otherwise concerned with debt related matters.

COUNTY FINANCINGS

The Committee will serve as a "clearing house" to ensure that there is a central focal point for all proposed/requested issues. This will ensure that all parties affected by an issuance are involved at the beginning, and the issue is structured and designed to meet the various needs and/or requirements of the affected departments. The Committee may review or comment on any of the following items, which is not necessarily an all-inclusive listing:

1. State and Federal reporting requirements
2. Legal liability of the County, if any
3. Impact on ability of the County to borrow short or long term (rating impact)
4. Impact of proposed issue on total outstanding debt service obligations and the County's maximum limit of debt service obligations from either a legal or a financial position
5. Financial stability of the parties involved

6. Adequacy of coverage and payment procedures in case of default, i.e., guarantees, insurance, collateral, etc.
7. Provision for accurate and timely redemption procedures, i.e., trustee, sinking funds, notification in case of early calls, registry of bonds, etc.
8. Responsibility, if any, of the County for monitoring the full compliance reporting requirements
9. Reinvestment of bond proceeds
10. Alternatives for the requested issuance
11. Departmental proposals for lease purchase plans for financing facilities and/or equipment

SCHOOL DISTRICT FINANCINGS

The Committee will not routinely review and/or comment on issues of other political entities that are required by law to be approved by the Board of Supervisors. Examples of such issues are:

1. School District General Obligation Bonds
2. School District TANS or TRANS (cash flow financings)

NON-COUNTY FINANCINGS

The Committee will review debt financing proposals and make appropriate recommendations to the Board of Supervisors based on the County's Policy for Use of Public Financing for Private Development Projects (enclosed Exhibit A). Any and all issues that may impact the County's credit rating, including refinancing of outstanding issues, will be reviewed by the Committee. The County is not obligated to assist with infrastructure financings on behalf of an applicant; and reserves the right at the County's discretion, to either provide or not provide assistance.

The following types of non-county financings will be reviewed by the Committee under appropriate circumstances:

1. 1911, 1913 and 1915 Improvement Act Bonds
2. Mello-Roos Community Facilities District Bonds
3. Marks-Roos Pooled Financing
4. Certificates of Participation
5. Revenue Bonds
6. Other types of financial instruments as deemed appropriate by the Committee

COUNTY PROJECT FINANCING PROCEDURES

All departments contacted by firms and individuals regarding potential debt financing shall refer said firms to the Committee. Departments shall not make commitments to work with firms or individuals for debt financing. Debt financing as used in this document includes equipment and facility lease/purchase agreements.

All departmental requests for financing or refinancing of projects and/or equipment will be submitted to the Committee. Upon receipt of a departmental request, the Committee will convene to review and comment on the requested financing.

Attachment B

Policy for Use of Public Financing for Private Development Projects



Agenda Item

DATE: September 23, 1997

TO: Board of Supervisors

FROM: Carolina Jimenez-Hogg, Director *Carolina Jimenez Hogg*
Public Works & Development Services Department

SUBJECT: County of Fresno Policy for Use of Public Financing for Private Development Projects

RECOMMENDED ACTION:

Review and take action on existing County of Fresno Policy for Use of Public Financing for Private Development Projects.

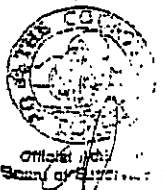
FISCAL IMPACT:

There is no cost to the County for these types of project financings. As required by the policy, all costs associated with a developer's request to utilize bond financing are paid by the developer.

Should your Board approve issuing bonds for a project at a developer's request, there is no obligation upon the County to repay any bond amounts should the developer or other property owners fail to pay the special assessments or taxes required to repay the bonds. The value of the land involved is the only collateral for repayment of the bonds. These types of bonds are typically unrated.

Any bonds that may be approved for issuance by your Board would be structured so that the County does not have the obligation of repaying the principal and/or interest on the bonds; however, any bond failure could impact the County's reputation for other financial transactions. A bond failure could also have the direct result of an investigation or legal action by the Securities and Exchange Commission (SEC) and/or

ADMINISTRATIVE OFFICE REVIEW *Jane Len-Bauer* Page 1 of 3
 BOARD ACTION: DATE September 23, 1997 APPROVED AS RECOMMENDED _____ OTHER X



APPROVED REVISION TO POLICY TERMINATING USE OF PUBLIC FINANCING FOR RESIDENTIAL PROJECTS EXCEPT FOR PROJECTS ALREADY IN THE "PIPELINE" AND DIRECTED STAFF TO RETURN WITH RECOMMENDATIONS FOR COMMERCIAL/INDUSTRIAL PROJECTS.

INANIMOUS X ARAMBULA _____ KOLIGIAN _____ LEVY _____ OKEN _____ PERCH _____

private investors which might involve the County if the SEC and/or the private investors believe that there was inadequate disclosure in the bond offering documents as required by law.

DISCUSSION:

This item is to provide information to your Board regarding the use of special assessment district and Mello-Roos bonds to finance public infrastructure for private development projects in the County of Fresno and the current status of development projects which may be eligible for such financing with your Board's approval. Since February of 1993, staff has provided your Board with several reviews and revisions of the current County private development financing policy. These reviews and revisions have been in response to changes in the State laws which allow these types of financings and concerns expressed both by your Board and the County's Debt Advisory Committee as to the County continuing the use of bond financing for private development projects.

The last review of this policy by your Board was in July of 1996 when extensive disclosure requirements to meet current SEC regulations were added to the policy. At the conclusion of your Board's review of the policy on June 13, 1995, your Board approved a two-year moratorium on accepting new applications for the use of public financing for private development projects except for those projects already in the development "pipeline." The following projects were considered in the "pipeline" if the developer wished to apply for bond financing:

- The Donavon Harris Lakeview Estates project near Millerton Lake.
- Projects within the Brighton Master Plan Area (Brighton Crest).
- The Kesterson project near Copper and Willow Avenues.
- Ball Ranch.
- Copper River.
- Quail Lake.

In addition, the County is party to an agreement with several developers/property owners within Community Facilities District No. 1 (CFD No. 1), Shaver Lake, which would allow consideration of the use of Mello-Roos bonds to finance public infrastructure for five designated projects in the Shaver Lake area.

Currently, the Quail Lake project has been completed with your Board approving the issuance of bonds on June 17, 1997. Two other projects, Brighton Crest and Ball Ranch, have made application to the County for use of bonds, however, neither bond request is active at this time. Representatives of the Harris project have discussed the use of bonds with County staff and have indicated that they may wish to use this type of financing, but have not made application. There are no current requests for bond financing consideration from developers within CFD No. 1.

The two-year moratorium on accepting new applications for the use of bonds to finance public infrastructure for private development projects expired on June 13, 1997. Since the expiration of the moratorium, there have been no new projects added to the development "pipeline" which would be allowed to apply for bond financing consideration and there have been no new requests for application for bond financing consideration.

ALTERNATES/OPTIONS:

1. At your discretion, your Board may void the current policy for use of public financing for private development projects and state that the County of Fresno does not offer this type of financing to private developers. There are no requirements in the special assessment district acts or the Mello-Roos act which requires your Board to offer or approve the use of bond financing.
2. Your Board may wish to consider a new moratorium on applications for the use of bond financing for private development projects.
3. Your Board may wish to consider a revision of the policy which would limit the use of this type of bond financing to low income housing projects, industrial projects and/or continue to allow the consideration of the use of bonds for residential development, but not allow projects that are predominantly for the second or vacation home market.
4. Your Board may wish to continue with the policy as is without a moratorium or limitations except for those already in the policy.

If your Board chooses to adopt either item 1, 2 or 3 above, you must consider if current projects that have made application to the County and projects in the "pipeline" will be allowed to continue with bond financing consideration. The status of CFD No. 1 and the agreement between the County and developers/property owners for bond financing consideration within CFD No. 1 should also be clarified.

If your Board wishes to consider item 3 above, it is recommended that direction be given to staff to provide revisions to the current policy for presentation to your Board at a later date. Any policy revisions should be reviewed by the Debt Advisory Committee prior to returning to your Board for consideration.

CJH:FF:ff/cf

APPROVED BY
BOARD OF SUPERVISORS FEBRUARY 9, 1993
REVISED JULY 25, 1995
REVISED JULY 16, 1996
REVISED _____

COUNTY OF FRESNO
POLICY FOR USE OF PUBLIC FINANCING
FOR PRIVATE DEVELOPMENT PROJECTS

It is the policy of the Board of Supervisors to consider requests from private developers to use public bond financing only when such financing will not have a negative impact on the general credit and public perception of the financial reputation and integrity of the County of Fresno, and that improvements to be funded constitute a public benefit. Accordingly, this policy is established for evaluation of "impact" and determination of "public benefit." Only facilities that provide "public benefit" will be considered for public financing. Public benefit, for the purpose of this policy, shall be as set forth in the various State statutes under which the financing is proposed to take place. However, all facilities or services set forth as providing "public benefit" in the various State statutes may not be deemed appropriate for public financing by the County.

When considering a private developer's request to utilize public financing, all costs associated with the process including the fees for all consultants and County staff will be paid by the developer. There will be no cost to the County. In order for the County to process the developer's request and prepare the County-developer agreement for deposit of funds to cover the costs, the developer shall pay the current application fee as set forth in the County Master Schedule of Fees. (See paragraph 10 of this policy for additional information.)

If, after having processed a developer's request to issue public bonds (including taking any steps under this policy that lead to the issuance of bonds), the County decides not to issue public bonds, the County shall not be obligated to issue the bonds; nor shall the County be responsible for reimbursing the developer for (i) funds that the developer advanced to the County pursuant to this policy; or (ii) funds that the developer expends in connection with the project.

All public financing projects authorized pursuant to this policy will be based on sound municipal financial practices.

When considering a private developer's request to utilize public financing, or when considering a public request to form an Improvement District utilizing mechanisms through 1911 or 1915 Improvement Bond Acts, provisions of the Municipal Improvement Act of 1913, or Mello-Roos Community Facilities Bonds, used to finance public infrastructure of a development, the following policy criteria shall be applied:

1. Where the County allows residential, commercial, and industrial development, or combinations thereof, and in the County's opinion, the public facilities and services of such development represent a significant public benefit, the County will consider the use of 1911 Act Bonds, 1915 Act Bonds, and Community Facilities District Bonds. Such financing shall be based on improved properties after final subdivision maps have been approved. Additionally, bonds may be sold only after completion of construction for acquisition of completed and approved facilities.

2. Petition For Formation and Waiver of Time Requirements of the Election

The following requirements apply to land secured financing:

a. Community Facilities Districts

The Mello-Roos Community Facilities Act of 1982, as amended, (the "Act") requires that a petition requesting the formation of a proposed community facilities district signed by landowners holding title to ten percent (10%) of the land by area within the proposed community facilities district be submitted to the County before formal action can be commenced to form the community facilities district. The form of the petition will be supplied by bond counsel once the completed application has been received and initial processing has been completed.

The Act also provides that the formation can be shortened if one hundred percent (100%) of the property owners within the proposed boundaries of the community facilities district execute a waiver regarding the timing of and certain procedures associated with the required special election, and the elections official concurs. The applicant should indicate on the application whether this waiver can be secured.

b. Assessment Districts

The County will expect that the applicant for an assessment district will be able to secure signatures from a sufficient number of landowners within the proposed assessment district on a petition, the form of which will be supplied by bond counsel, to satisfy the Special Assessment Investigation Limitation and Majority Protest Act of 1931. This act requires signatures from landowners representing at least sixty percent (60%) of the land by area within the proposed boundaries' of the assessment district. If the applicant does not believe that the requisite landowner support can be obtained, he or she should so indicate on the application.

3. All requests from private developers to use public bond financing shall be reviewed by the County Debt Advisory Committee. The Board established the

Debt Advisory Committee to review and make recommendations to the Board of Supervisors regarding all land-secured and other types of financing proposed to be issued by the County. The Committee shall review each proposed debt issue and make a recommendation to the Board of Supervisors whether the proposed debt issue is consistent with this policy. Any variation from this policy shall be noted in any such recommendation made to the Board. The Committee shall also comment on the economic viability of the public facilities and the development in which such facilities are located and the credit worthiness of the private developer and its "expected successors" as defined below. The Committee may make a recommendation to the Board whether or not to proceed with the sale and issuance of the bonds. In performing its function the Committee may, in its sole discretion, review a matter more than once and retain additional consultants to assist in its review. The cost of such consultants shall be borne by the proponent of the debt issue.

The Debt Advisory Committee shall be assisted by a financing team comprised of personnel from the Public Works & Development Services Department, the County Administrative Office, County Counsel, and the Auditor-Controller/Treasurer-Tax Collector. Because the financing team does not have expertise in land-secured financing, it will be assisted by professional consultants having expertise in such matters. Augmented with studies, reports and opinions prepared by such professional consultants, each such department will provide advice and assistance in its area of responsibility. The financing team will review information provided by the developer and any other person pursuant to this policy. Staff from the financing team will provide a report and recommendation to the Debt Advisory Committee on the approval or rejection of the public financing of a proposed project based on the criteria set forth in this policy. Such recommendation shall be consistent with the requirements of this policy.

Individual responsibilities for each County department involved in this process will be as follows:

County Administrative Office. This department coordinates the operations of the finance team in order to ensure efficient and effective administration of the process. This department will provide bond offering documents to the Board in advance of the Board's meetings to provide adequate time for review by Board members. This department participates in the evaluation of all aspects of project development and implementation to ensure compliance with County policies.

Public Works & Development Services. This department will review engineering studies, land use issues and district formation matters to ensure compliance with proper standards and procedures concerning such matters. This department will prepare agenda items and coordinate the preparation of agreements for the selection and commission of professional consultants and will continue to be the primary contact for developers to simplify process for

individuals dealing with the County.

County Counsel. This department will act as general legal counsel to the finance team, the Debt Advisory Committee and the Board of Supervisors. Since this department does not have expertise in land-secured financing, it will select and coordinate its services with Disclosure Counsel, and Bond Counsel.

In addition, Underwriter's Counsel will be subject to the approval of this department. This department will use the foregoing experts to address such legal issues as compliance with disclosure laws and regulations, development and review of all contracts and documents, and minimization of the County's exposure to potential liability in this process.

Auditor-Controller/Treasure-Tax Collector. This department will participate in the selection of the Financial Advisor and Underwriter. Since this department does not have expertise in land-secured financing, it will be assisted by a Financial Advisor to review economic feasibility studies, including absorption marketing reports and cash flow analyses for servicing the bonds. This department also coordinates with the other County departments the investigation of the fiscal soundness, credibility and reliability of the developer and its expected successors and the determination of the appropriate value to lien ratio. This department reviews bond offering documents for compliance with County borrowing policies. In addition, this department provides advice to the Board of Supervisors on the conditions of the bond market and viability of public financing as explained in item 17, below.

In the expert selection process, each of the departments of the finance team may submit their recommendation to the selecting department.

The following are those matters which at minimum the Debt Advisory Committee may review and comment upon with regard to land secured financing.

- a. Prior to the Board considering the resolution of intention to establish a community facilities district, the Debt Advisory Committee shall determine that the proposed rate and method of apportionment of the special tax is consistent with this policy. If a variance is requested, the request shall be noted and a recommendation made to the Board with regard thereto.
- b. Prior to the Board considering the resolution of intention to establish an assessment district, the Debt Advisory Committee shall determine that the proposed assessment lien and its apportionment to the parcels comprising the proposed assessment district is consistent with this policy. If a variance is requested, the request shall be noted and a recommendation made to the Board with regard thereto.
- c. Prior to the Board considering the resolution authorizing the sale and

issuance of bonds for either community facilities districts or for assessment districts, the Debt Advisory Committee shall determine that:

- 1) A current appraisal (unless the Debt Advisory Committee determines, pursuant to No. 9 below, that an appraisal is not required) and any related absorption study have been prepared consistent with this policy and that satisfactory land value to lien ratios exist.
- 2) The developer and each of the developer's expected successors has, to the satisfaction of the County, supplied a completed application requesting the issuance of public bonds, as required by Attachment B to this policy, entitled "Preliminary Disclosure Requirements." A developer's expected successor is a person or entity who, prior to the sale of any bonds, opens escrow with the developer whereby the land to be acquired by such person or entity will be encumbered by fifteen percent (15%) or more of the expected debt service on the bonds.
- 3) Any credit enhancement required by this policy will be provided. If a variance is requested, the request shall be noted and a recommendation made to the Board with regard thereto.
- 4) The rate and method of apportionment of the special tax is in compliance with this policy.
- 5) The structure of the proposed financing is consistent with this policy.
- 6) To date, the developer and its expected successors have, to the satisfaction of the County, complied with the disclosure requirements set forth in Attachment B to this policy.
- 7) An investigation of the developer and its expected successors as to background, financial condition and development experience has been appropriately conducted by County staff.

Any variation from this policy shall be noted and a recommendation made to the Board with regard thereto. In addition, the Debt Advisory Committee shall make any comment that it deems relevant in determining the economic viability of the proposed debt issue or the credit worthiness of the developer and its expected successors. The Committee may make a recommendation to the Board as to whether or not to proceed with the sale and issuance of the bonds.

If the proposed financing contemplates that bonds are to be issued in series, then each series shall be reviewed and commented upon by the Debt Advisory

Committee before that series is considered by the Board for issuance.

4. Private roads or other facilities which are gated to restrict public access may not be financed using public bonding mechanisms. Facilities which may be considered shall be public facilities on public land or in dedicated rights-of-way or easements, and for which a public agency has ownership and/or an ongoing responsibility to maintain and operate subject facilities.
5. The project must be consistent with the County General Plan, Specific Plan, if any, of the development or development agreements. If a developer proposes to initiate the public financing process prior to a project's General Plan, Specific Plan or development agreement approval, the developer shall sign a statement included with the County-developer agreement stating that he/she understands that the approval to begin public financing procedures under this policy does not in any way give an implied approval to any pending General Plan amendment, Specific Plan, or development agreement. If a project is consistent with the General Plan (determined by the Director of Public Works & Development Services Department) the initial procedure for public financing may be initiated when the criteria contained in this policy has been satisfied.
6. In evaluating the application and the proposed debt issue, the County may require any or all of the following to determine the economic viability of the proposed project and the timing of the sale of any bonds or series thereof.

- a. Absorption Study

An absorption study of the proposed project may be required for land secured financing. The absorption study shall be used as a basis to verify that the assumptions supporting the assessment spread or the special tax formula are appropriate and sufficient revenues can be collected to support the bonded indebtedness to be incurred.

The absorption study will also be used to evaluate the timing considerations identified by the applicant and the financing team. The absorption study will be provided to the appraiser and the appraisal is to reflect consideration of the absorption study.

- b. Appraisal

A current appraisal will be required of the property that comprises the financing district against which a lien will be placed to secure the bonded indebtedness to be incurred. The appraisal will be made by an appraiser retained by County. In addition, the appraisal shall be consistent with the guidelines attached hereto as Attachment A.

The "Bulk Land Value" as specified in Attachment A will serve as the

basis for establishing the land value to lien ratios. The County requires an overall minimum land value to lien ratio of 5 to 1. The lien component of the ratio shall include all debt represented by any overlapping community facilities district or assessment district affecting the property.

The County will also review the land value to lien ratios on an individual parcel and/or grouping of parcels within the boundaries of the financing district to determine the security of the debt issue.

c. Financial and Other Information Required of Developer and Its Expected Successors

Both at time of application and continuously until the sale and issuance of any bonds, the developer and its expected successors shall provide all financial and other information to the County, as required in Attachment B to this policy.

In addition, the County may require the developer and its expected successors to provide any and all information required to satisfy the reporting demands of underwriters, institutional buyers of the bonds and rating agencies.

Subsequent to the sale and issuance of the bonds, federal and state statutes and/or regulations regarding the particular type of financing may require the preparation and reporting of certain information by an "obligated person," as that term is defined under Securities and Exchange Commission Rule 15c2-12, including any and all amendments thereunder. The developer and its affected successors shall report such information, as required in Attachment B to this policy.

d. Equity Participation by Developer and Its Expected Successors

In evaluating the proposed debt issue, the County will consider the equity participation (e.g., contributed capital, committed lines of credit that are not already drawn down) of the developer and its expected successors in the proposed project. At the time the application for the proposed financing is received, an analysis will be made as to the equity interest that the developer has in the proposed project. In addition to the financing, the developer shall fund in-tract infrastructure and may be expected to contribute to other public improvements related to the proposed project.

7. The developer will provide the Manager of the County Service Area or District within ten days after lot sales to the end user copies of buyer-signed disclosure statements wherein the maximum lien or special tax on the property is disclosed. In cases when an intermediate home construction firm purchased

the lot or the development, the disclosure statement requirement shall apply to the transaction between the new home buyer and home construction firm. On phased developments a copy of the signed disclosure statement shall be filed with the County Service Area (CSA) or Community Facilities District (CFD). Further on phased developments, the CSA or CFD shall annually publish a report showing the then current status of lot sales, lien delinquencies, if any, and general fiscal status of the development securing the bonds sold. On phased developments the lot sale disclosure statement shall reference the availability of the CSA or CFD annual report to prospective buyers.

In addition to the above requirements the various State statutes require the following:

a. Community Facilities Districts

The Act requires that certain disclosure certificates regarding the existence of a community facilities district and the special tax obligation be provided to those individuals purchasing property within the district. The County will require that the statutorily prescribed disclosure be made to the initial purchaser of property within a community facilities district and it will make available the information necessary to complete the disclosure certificate required for secondary transfers. In its sole discretion, the County may require additional disclosure if to do so will aid subsequent purchasers to be made aware of the existence of the community facilities district and the lien obligations created by the special tax.

b. Assessment Districts

Consistent with the applicable provisions of the Streets and Highways Code dealing with notice as to the existence of an assessment district, the County considers the recordation of the notice of assessment lien with regard to a parcel sufficient notice as to the existence of an assessment district and the amount of the lien.

8. Projects submitted for consideration shall be at the stage where financial feasibility can be adequately evaluated and shall include information showing the method of apportionment of any special assessment/tax and other fiscal issues. For projects over \$1,000,000 in a total bond issue authorization (all phases), an independent financial feasibility analysis shall be prepared by a Financial Advisor selected by the County. The study shall consider market absorption, comparable sales, sales in prior phases, the current bond market, project financing, financial viability of developer and its expected successors, value of letters of credit, and any other financial considerations which bear on the credit worthiness of the proposed bond issue. (The cost of the financial study shall be provided by the developer as part of the deposit to cover County

costs.)

9. The County shall select the bond counsel; disclosure counsel, financial advisor, underwriter or placement agent or remarketing agent, and fiscal agent/trustee. Providers of letters of credit, liquidity supports and other types of credit enhancements are also subject to the approval of the County.

In addition to the consultants that compose the financing team, as noted above, the County shall select an assessment engineer for assessment districts or special tax consultant for community facilities districts to determine a fair and reasonable method to allocate the assessment or special tax required to meet debt service on the bonds and other related expenses of the proposed financing district.

Unless satisfactory and current information regarding land values for property within the proposed financing district is available, the County shall require that a real estate appraiser of its choice be retained and an appraisal made. In addition, the County reserves the right to retain additional professional consultants that it deems appropriate.

10. Any developer's financing request or petition to initiate the formation of a Special Assessment or Community Facilities District will only be considered after a deposit of a fee to compensate the County for all costs incurred in conducting proceedings has been received. The deposit shall be based on an estimate of all County staff costs coupled with Financial Feasibility Study Consultant, Bond Counsel, Disclosure Counsel (if used), Assessment Engineer/Special Tax Consultant, Financial Advisor, and other costs which may not be retrievable through the bond issue, or are incurred and irretrievable due to non-formation of a district. It is the intent that all of the County's costs be covered. In the event the bond financing requires a "Validation Proceedings," all costs associated therewith will also be the responsibility of the developer and be deposited with the County.

If, in the judgement of the County, the costs incurred or projected will cause the developer's deposit to fall below \$5,000, a written demand shall be made to the applicant to advance monies sufficient to bring the account to a balance that is projected to meet remaining costs required to establish the financing district. Failure to advance the requested monies within 10 (ten) days of a written demand by the County will result in all processing of the application to cease and no further actions to be taken toward establishing the financing district until the monies have been received. Waiver of this requirement can be made only by action of the Board.

Monies held are to be applied to pay the County and its staff in reviewing and processing the application as well as the costs of the assessment engineer, special tax consultant, appraiser, absorption consultant, financial advisor/consultant, legal counsel, all publication expenses, and any other costs

determined by the County to be necessary to establish the financing district.

11. When a developer requests public financing the work required of County staff shall be scheduled on a not to interfere basis with other already scheduled and committed staff activities and assignments. The Department will schedule action on the developer's request based on current workload. In lieu of this scheduling the Developer may negotiate with the Department the pursuit of the process on an overtime basis, providing such overtime work is not detrimental to other Department activities.
12. All statements and materials related to the sale of Bonds shall emphasize that neither the full faith and credit nor the taxing power of the County of Fresno is pledged to the payment of bonds, including interest and redemption premiums thereon.

Land secured bonds are termed "limited obligations" whose repayment is secured, in the case of community facilities districts, by a special tax, or in case of assessment districts, by a confirmed assessment lien. The following are the criteria that will be applied in evaluating the revenue stream that will be supporting a proposed land secured bond financing.

a. Community Facilities Districts

- 1) The rate and method of apportionment of the special tax must be both reasonable and equitable in apportioning the costs of the public facilities to be financed to each of the parcels within the boundaries of the proposed district. The County prefers that this apportionment of costs be based on the benefit that each parcel will receive from the public facilities.
- 2) The rate and method of apportionment of the special tax will provide for the administrative expenses of the proposed district, including, but not limited to, those expenses necessary for the enrollment and collection of the special tax and bond administration.
- 3) All property not otherwise exempted by the Act from taxation shall be subject to the special tax. The rate and method of apportionment may provide for exemptions to be extended to parcels that are to be dedicated at a future date to public entities, held by a home owner's association, or designated open space.
- 4) The annual special tax levy on each residential parcel developed to its final land use shall be approximately equal each year, except that a variation for administrative expenses will be allowed.
- 5) The maximum annual special tax, together with ad valorem property

taxes, County Service Area charges, special assessments or taxes for an overlapping financing district, or any other charges, taxes or fees payable from and secured by the property, including potential charges, taxes, or fees relating to authorized but unissued debt of public entities other than the County, in relation to the expected assessed value of each parcel upon completion of the private improvements to the parcel is of great importance to the County in evaluating the proposed financing.

The objective of the County is to limit the "overlapping" debt burden on any parcel to two percent (2%) of the expected assessed value of the parcel upon completion of the private improvements. In evaluating whether this objective can be met, the County will consider the aggregate public service needs for the proposed project. It will consider what public improvements the applicant is proposing be financed in relation to these aggregate needs and decide what is an appropriate amount to extend in public financing to the identified public improvements.

This evaluation will be based on information obtained from other affected taxing entities that have jurisdiction to impose a levy on the proposed project.

- 6) The total maximum annual special taxes that can be collected from taxable property in a district, taking into account any potential changes in land use or development density or rate, and less all projected administrative expenses, must be equal to at least one hundred ten percent (110%) of the gross annual debt service on any bonds issued by or on behalf of the district in each year that said bonds will remain outstanding.
- 7) The rate and method of apportionment of the special tax shall include a provision to protect against any changes in development that would result in insufficient special tax revenues to meet the debt service requirements of the district. Such provision shall be structured in such a manner that it shall not violate any provisions of the Act regarding cross-collateralization limitations for residential properties.
- 8) A formula to provide for the prepayment of the special tax may be provided; however, neither the County nor the community facilities district shall be obligated to pay for the cost of determining the prepayment amount which shall be paid by the applicant.

b. Assessment Districts

- 1) The apportionment of the assessment lien among the parcels comprising the proposed assessment district shall be based upon the direct and special benefit each parcel receives from the public facilities to be financed.
- 2) The assessment lien will provide for the administrative expenses of the assessment district including, but not limited to, those expenses necessary for the enrollment and collection of the annual assessment installments and bond administration.
- 3) All property within the boundaries of the proposed assessment district not statutorily exempted by the applicable provisions of the California Streets and Highways Code will be subject to an assessment lien.
- 4) The annual assessment installment levied on each parcel developed to final land use shall be approximately equal each year, except that variation for administrative expenses will be allowed.
- 5) The annual assessment installment, together with ad valorem property taxes, County Service Area charges, special assessments or taxes for an overlapping financing district, or any other charges, taxes or fees payable from and secured by the property, including potential charges, taxes, or fees relating to authorized but unissued debt of public entities other than the County, in relation to the expected assessed value of each parcel upon completion of the private improvements to the parcel is of great importance to the County in evaluating the proposed financing.

The objective of the County is to limit the "overlapping" debt burden on any parcel to two percent (2%) of the expected assessed value of the parcel upon completion of the private improvements. In evaluating whether this objective can be met, the County will consider the aggregate public service needs for the proposed project. It will consider what public improvements the applicant is proposing to be financed in relation to these aggregate needs and decide what is an appropriate amount to extend in public financing to the identified public improvements.

This evaluation will be based on information obtained from other affected taxing entities that have jurisdiction to impose a levy on the proposed project.

- 6) Consistent with the applicable statutory provisions of the California

Streets and Highways Code, a property owner shall have the right to prepay all or a part of the assessment lien.

13. All Bonds issued shall be superior to any Deeds of Trust or other existing encumbrances other than property taxes. If there is any question as to superiority, the Developer shall be required to have superior deed holders accept a secondary position to the new Bonds and shall provide recorded documents to County Counsel that superior deed holders have accepted a secondary position to the new Bonds.
14. Commencement of additional phases in a sequenced development and bond financing will be based on sound municipal financial practices and decisions will include the consideration of lot sales in prior phases, for which public financing has been used, before subsequent bonds are sold.
15. On projects currently consistent with the County's General Plan, upon the request of the private developer to finance public improvements by public bond financing, the Public Works & Development Services Department will consult with the County Counsel, potential Bond Counsels, and the Auditor-Controller/Treasurer-Tax Collector, in conjunction with the County's Fiscal Advisor, to determine the presence of any unusual circumstances relating to the project and if the public improvements meet the definition of public benefit noted in the introduction.

Upon submission by the private developer of all needed information, the Public Works & Development Services Department shall within 30 days notify the private developer of its findings and determination whether the improvements meet the definition of public benefit.

In the event it is determined that the project does not meet the definition of public benefit, the private developer may appeal the determination of the Department to the Board of Supervisors within 30 days after receipt of the notification from the Department.

Final Determination: Notwithstanding any preliminary approval given the private developer for financing public improvements by public bonds, the Board of Supervisors may, in its discretion, conclude it is not in the best public interest to issue bonds.

16. Assessment bonds to be issued under the Improvement Act of 1911 or the Improvement Bond Act of 1915 and proceedings to be taken under the provisions of the Municipal Improvement Act of 1913 or Mello-Roos and Revenue Bond financings shall have the following additional requirements.
 - a. Bonds shall be sold through a competitive process. However, the County may consider a negotiated sale of the bonds if it is determined that such

a sale and input from an underwriter at an early stage in the project's process would be in the best interest of the County. County staff will consult with Bond Counsel, Disclosure Counsel and the Financial Advisor on a project-by-project basis to make this determination and may make such recommendation to the Board of Supervisors if so determined.

- b. Based on requirements in State Law and County Ordinance, the contract for construction of the facilities to be acquired shall be advertised and awarded to the lowest responsible bidder.
- c. If required by the County, the private developer shall make and provide a report and debt limitation information as set forth in the Special Assessment Investigation, Limitations and Majority Protest Act of 1931 of the Streets and Highways Code, together with an estimated assessed value of each lot or parcel after the improvements are constructed prepared by an appraiser approved by the County.
- d. The private developer shall be required to pay the general prevailing wage rates for construction of improvements.
- e. At the time of submission of an application for a land secured financing, the County will consider whether it will allow the public facilities to be constructed by the proponent of the financing as if they were a public work. If this is to be allowed, the public facilities are to be constructed as public works consistent with all applicable statutory and County Ordinance requirements. Design engineering, project management and construction contract administration are to be provided by the financing proponent but subject to oversight and approval by the County.

At the time the financing district is established, the proponent of the financing shall enter into an acquisition funding agreement that will identify the public facilities to be constructed and the amount to be paid for each facility. Upon completion of the entire project or specified public facilities, the financing district will acquire the completed facilities consistent with the terms of the agreement.

- 17. On all financing requests the Auditor-Controller/Treasurer-Tax Collector shall assess the current bond market for viability of public financing. On developer requests prior to when a project is found to be consistent with the General Plan, the Auditor-Controller/Treasurer-Tax Collector, in conjunction with the County's Fiscal Advisor, shall present a report on the current bond market as part of the Board's consideration of the developer's request. On projects already consistent with the General Plan, the financing shall be part of the determination referenced in Number 15 above. If the Auditor-Controller/Treasurer-Tax Collector finds the current market unfavorable in such an instance, the project shall be denied insofar as staff's determination

as to public benefit. Appeal processes, as set forth in Number 15 above shall then be applicable should the developer wish to further pursue public financing.

18. Special Assessment or Community Facilities Districts shall have a time limit in which to seek approval from the Board of Supervisors to issue bonds after formation of the district. The time limit shall be ten years from the date of formation of the District by the Board. If within this time limit the owner(s)/developer(s) or other proponents do not request the issuance of bonds, the Special Assessment or Community Facilities District shall be terminated. Any requests for bonds within the district after the time limit has expired will require proceedings to form a new Special Assessment or Community Facilities District. Any requests to issue bonds during the ten-year period must meet the requirements of this policy.
19. The Board of Supervisors shall have the authority to review and approve any change of ownership within an existing Special Assessment or Community Facilities District which has been formed and a bond limit approved, but where bonds have not been requested or authorized for issuance. This does not apply to the sale of individual lots within the district, but to bulk land where the change in ownership is from owner/developer to another owner/developer.
20. In structuring a particular land secured financing, the County and its financing team will ensure that the following issues are addressed if determined to be applicable or appropriate for the particular debt issue.

- a. Limited Obligations of the County

Both the statutory authority providing for the issuance of the bonds as well as the proceedings resulting in the sale and issuance of the bonds must insure the bonds, including interest and redemption premiums thereon, are limited obligations of the County payable only from the revenue source identified and do not require the expenditure of the general funds or any other revenues of the County, or the taxing power of the County, to satisfy debt service obligations or to replenish any reserve fund established for the bonds.

- b. Structuring of Debt Service

Land secured financing shall be structured with level debt service, or as otherwise permitted in these Policies, and to mature within twenty-five (25) years of the date of the initial bonds issued.

- c. Redemption Provisions

- 1) Prepayment and optional redemption

a) Community Facilities Districts

It is the preference of the County that the bonds will have redemption provisions that provide call protection with the maximum premium to be paid not to exceed three percent (3%) and allow for bonds to be redeemed not later than the eleventh year without premium.

b) Assessment Districts

It is the preference of the County that the bonds will have redemption provisions that provide that the maximum premium to be paid will not exceed three percent (3%).

- 2) Unexpended construction proceeds. Land secured financing is to have redemption features that will allow the County to use unexpended proceeds to redeem bonds at par upon completion of the public facilities to be financed, or upon the County, in its sole discretion, determining that all or a portion of the public facilities cannot be constructed.

d. Reserve Funds

The County will require that for land secured financing, a reserve fund be established at a required funding level as determined appropriate by the financing team. For land secured financing, the County has determined the appropriate funding level to be the lesser of:

- 1) maximum annual debt service on all bonds then outstanding; or,
- 2) one hundred twenty-five percent (125%) of average annual debt service on all bonds then outstanding; or,
- 3) ten percent (10%) of the original proceeds of the bonds;
- 4) or as otherwise required by federal law.

e. Capitalized Interest

In land secured financing, the County is concerned with the degree to which property ownership, and therefore the responsibility for payment of the special tax or annual assessment installments, is concentrated in one or more individuals or entities. Capitalized interest is considered a means by which the County can assure itself and bond owners that debt service obligations will be met during the initial year(s) of the financing district. However, the amount of capitalized interest should be balanced against the annual levy on future landowners.

The amount of capitalized interest that will be required to be funded from bond proceeds in a particular land secured financing shall be based on the degree to which the property ownership is concentrated in one individual or entity. Whenever one individual or entity whose land holdings within the financing district is responsible for ten percent (10%) or more of the debt service on the bonds, then eighteen (18) months of capitalized interest will be required.

f. Underwriter

The underwriter shall contractually agree with the County that the underwriter will perform the investigatory responsibility placed upon it under the federal and state securities laws.

The County shall neither indemnify nor defend the underwriter for any cost, expense, loss, damage, liability, or claim, or for all of the foregoing, arising out of or in connection with the issuance and sale of the bonds.

If a negotiated sale is conducted, it shall be a precondition to the County's obligations to deliver and accept payment for the bonds under a bond purchase agreement with the underwriter that the underwriter execute and deliver a certificate to the County substantially to the following effect:

"With respect to the District (e.g, assessment district, Mello-Roos district), the County, the project, and the proceeds of the assessments or taxes, as described in the Official Statement made available by the County to provide for payment of the principal of and redemption price, if any, and interest on the Bonds, representatives of the County have responded fully to the underwriter and, to the best of the underwriter's knowledge, accurately to requests for information respecting the foregoing, that the underwriter has received from representatives of the County all such information that the underwriter requested, and that there are no pending or unanswered requests, or both, for such information from the County."

The underwriter's discount shall be negotiated and determined solely by the County and shall be competitive with and be comparable to such discounts on similar financing being issued by the County or other public entities. The County shall consider any other compensation the underwriter may be receiving in connection with the bond financing in determining the appropriate amount of the discount.

An original issue discount will be permitted only if the County determines that such discount results in a lower true interest cost on the bonds and

that, for land secured financing, the use of an original issue discount will not adversely affect the ability of the financing district to construct and finance public facilities identified by the bond documents.

21. Credit enhancements, if required by the County, are utilized either to improve the credit worthiness of the proposed financing or to insure that the debt service requirements of the proposed debt issue are met in a timely manner. It is important to the County to minimize the possibility of a debt issue being placed in default and to ensure that sufficient cash flows are available to meet debt service requirements.

The County will examine carefully the provider of the required credit facility and the form that the credit facility will take. The rating of the provider, as well as the provider's capitalization, are of principal concern, and a reduction in either during the term of the credit facility to a level unacceptable to the County may require that an alternate credit facility be secured from an acceptable provider. The County reserves the right, in its sole discretion to determine the acceptability of both the credit facility and its provider.

The nature and terms of the credit facility will vary with regard to the type of financing for which it is being required. The following are the principal considerations of the County in requiring credit enhancement.

If property, within the proposed boundaries of either an assessment district or community facilities district, owned by one or related entities is responsible for thirty-three percent (33%) or more of the debt service obligation of the proposed debt issue, a credit facility having the following terms may be required:

- a. The credit facility will name the County or the financing district as beneficiary.
- b. The face amount of the credit facility will be equal to twice the amount of the annual debt service obligation for which the property is responsible.
- c. The credit facility will have a term of one year and be subject to annual renewal or call.
- d. The credit facility may be drawn upon should there be a default by the property owner in the timely payment of the special tax obligation or the annual assessment installment.
- e. The face amount of the credit facility may be drawn should the credit facility not be timely renewed or a substitute credit facility acceptable to the County timely provided, or if the rating or the capitalization of the provider fall to a level not acceptable to the County.

- f. The face amount of the credit facility will be subject to periodic adjustments should the property owner sell or transfer portions of the property to unrelated third parties.

For purposes of this policy, parties will be considered to be related should they be so deemed by the Internal Revenue Code of 1986, as amended, and the regulation, promulgated there under. However, the County does reserve the right to apply a stricter standard than that provided by the Internal Revenue Code in determining parties to be related.

The County may, in its sole discretion, require additional credit enhancements for a particular land secured financing if it is determined that they are needed to bring the credit worthiness of the proposed debt issue to a level that is acceptable to the County.

22. It is the intent of the County to comply with all applicable federal or state requirements regarding disclosure in order to ensure that fair and accurate descriptions of debt issues are provided to the purchasers of the bonds. The County will require retention of disclosure counsel for all land secured financings. Decisions as to the adequacy of the disclosure will be determined by the County upon the advice of its counsel, bond counsel, and disclosure counsel. No preliminary or final offering statement for a particular land secured financing will be released for circulation unless it is deemed final by the County on the advice of its counsel, bond counsel, and disclosure counsel.

The proponent(s) of a particular land secured financing and all principal participants therein are expected to provide the information requested by the County, its counsel, disclosure counsel, and bond counsel and the underwriter and its counsel that is deemed necessary for disclosure purposes. At a minimum, information set forth in Attachment B to this policy shall be provided by the developer and its expected successors as requested by such parties. Failure on the part of the proponent and any principal participants to comply with such requests will jeopardize completion of the debt issue and be sufficient cause for the County to suspend or terminate their proposed financing.

The County's disclosure counsel shall be responsible for the preparation of that portion of the disclosure documents concerning information about the developer and its expected successors, their organization, management background experience, and financial capacity, based on information obtained from the developer and other appropriate sources. Such information shall be segregated in a distinct location in the disclosure document, such as an appendix or specific section. The County will not approve, authorize the use of, or certify any portion of the disclosure documents containing the developer's information, and any authorization or certification by the County in connection with the disclosure documents shall specifically state that it only

extends to that information provided by or on behalf of the County, and that it does not extend to the developer's information.

The disclosure documents shall state clearly and conspicuously at their beginning (such as on the cover and in the introduction) that the County assumes no responsibility for the accuracy or sufficiency of identified developer disclosure information..

If the liabilities of the developer and its expected successors with respect to paying the amounts that are to provide a source of payment of principal of and interest on the bonds are nonrecourse, then the disclosure documents shall qualify the developer's information prominently and boldly in an appropriate location immediately before, or as a part of, such information to clarify that the assets of the developer and its expected successors (other than the land subject to the taxes, assessments or similar payments) may not, or will not as the case may be, be made legally available to pay such liabilities if the developer and its expected successors fail to pay them a timely manner.

The developer and its expected successors who are identified at or prior to the issuance of any bonds shall sign indemnification and contribution agreements providing that the developer and such expected successors shall indemnify and defend and contribute payment to the County for any cost, expense, loss, damage, liability, or claim, to or against the County arising from inaccuracies or insufficiencies in the developer's information provided in the disclosure documents. Additionally, the developer and its expected successors will be required to execute those certificates and provide those written opinions of their respective counsel that are required by the terms of the bond purchase agreement. Failure to do so will result in the bonds not being issued and sold.

The disclosure requirements of this policy shall also apply to any "principal participant" in a developer, as that term is defined in Attachment B to this policy.

ATTACHMENT A

CRITERIA FOR APPRAISALS

- A. **Definition of Appraisal.** An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
- B. **Standards of Appraisal.** The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. A detailed appraisal shall be prepared for complex appraisal problems. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of the data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:
1. The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.
 2. An adequate description of the physical characteristics of the property being appraised, location, zoning, present use, an analysis of highest and best use.
 3. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. If a discounted cash flow analysis is used, it should be supported with at least one other valuation method such as a market approach using sales that are at the same stage of land development. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.
 4. A description of comparable sales, including a description of all relevant physical, legal and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
 5. A statement of the value of the real property.
 6. The effective date of valuation, date of appraisal, signature and certification of the appraiser.

- C. Conflict of Interest. No appraiser of review appraiser shall have any interest direct or indirect in the real property being appraised for the County that would in any way conflict with the preparation of review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation.
- D. Special Assessment or Community Facilities District Appraisal Premises. The valuation of proposed special assessment districts should be based on three premises:
1. Raw Land Value. (Premise #1). The total land within the project is valued "as is."
 - a. With any existing infrastructure.
 - b. Without proposed infrastructure being financed.
 - c. With existing parcel configuration.
 - d. Considering planned densities allowed by the specific plan of the project.

This is a typical type of land valuation.

2. Project Build Out Value. (Premise #2). The total land within the project is valued under projected conditions.
 - a. With proposed infrastructure being financed completed.
 - b. At the planned densities allowed by the specific plan.
 - c. Land development is at the stage of being marketed to merchant builders or tentative tract maps ready to be filed.

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

3. Bulk Land Value. (Premise #3). The total land within the project is valued under projected conditions:
 - a. With proposed infrastructure being financed completed.
 - b. With existing parcel configuration.
 - c. Considering planned densities allowed by the specific plan of the project.

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

ADDED BY THE BOARD OF SUPERVISORS
JULY 16, 1996

ATTACHMENT B

TO

**COUNTY OF FRESNO
POLICY FOR USE OF PUBLIC FINANCING
FOR PRIVATE DEVELOPMENT PROJECTS**

PRELIMINARY DISCLOSURE REQUIREMENTS:

I. INTRODUCTION:

A. PURPOSE.

The County recognizes that land-secured bond disclosure documents must fully disclose the structure and security for repayment of the bonds and interest on the bonds. However, the County does not possess the relevant information concerning such matters. Rather, such information is within the control and unique knowledge of the developer.

These disclosure requirements identify the responsibility of developers in disclosing all relevant information in connection with the issuance of land-secured bonds. In order to comply with full disclosure under federal securities law, developers are required to provide all information which meets the adequacy of disclosure provided in municipal bond offering materials. Adequacy of disclosure is tested against an objective standard: that is, an omitted fact is material if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available (*T.S.C. Industries, Inc. v. Northway Inc.* (1976) 426 U.S. 438, 449, 96 S.Ct. 2126.). The County shall be the sole judge whether information provided by the developer is adequate.

In addition, by issuing land-secured bonds, the County's reputation in the credit market is put at risk. Therefore, defaults of land-secured bonds can impair the County's creditworthiness or frustrate its future access to the credit markets for its own debt financings.

These disclosure requirements are hereby adopted in order to allow the County to comply with the law and to reduce the foregoing risks to the County.

The County acknowledges that the current state of law concerning land-

secured financings and the Securities and Exchange Commission's interpretation and enforcement thereof is subject to substantial development. However, developers who are requesting the County to issue bonds for their projects, informed the County that they do not wish to wait until such matters become settled. Therefore, in order to accommodate such developers, the County adopts these preliminary disclosure requirements in order to consider whether the County wishes to issue such bonds. As the County gains additional information concerning such matters, the County may modify these disclosure requirements at any time.

B. PRIMARY FOCUS OF THE COUNTY'S DISCLOSURE REQUIREMENTS.

The County recognizes that a viable project and the payment of special taxes or assessments are the most important credit aspects of a successful land-secured bond issuance.

The County also recognizes that the land to be financed is often concentrated in only one or a few owners at the time bonds are sold. Therefore, the success of a project depends to a significant degree upon the developer's financial commitment to a project, judgment, capacity and skill in identifying and developing a viable project and being able to market properties within the project to prospective and diverse buyers in the public. Such buyers are expected to assume the developer's obligation to pay the taxes and assessments. As the developer's obligation to pay the taxes and assessments is disbursed to such buyers, the risk of default on the bonds is thereby reduced.

Therefore, the developer requesting the issuance of a land-secured bond must disclose complete and accurate information to the County concerning itself (and, if requested by the County, the developer's principal participant(s)) and the project to be financed in order for the County to consider whether it will issue bonds for the developer's project.

The County further recognizes that the developer's business plan may include selling significant portions of the project to other developers shortly after the time that the bonds may be issued. Therefore, the County shares the same interest in both the developer and such other successor developers.

C. SECONDARY FOCUS OF THE COUNTY'S DISCLOSURE REQUIREMENTS.

The County believes that an appraisal of the land to be financed plays an important, but secondary, role in the County's consideration of a proposed project.

Land-secured financing projects are not presented to the investing market as failed projects intend to be paid from the proceeds of foreclosure sales of the

projects. Rather, they are presented to the investing market in bond offering documents based upon the primary assumptions that the projects are intended to and will be developed by capable developers, and that the principal of and interest on the bonds will be paid on a timely and regular basis, as scheduled, from taxes, assessments or other similar payments.

Therefore, while appraisals are a useful tool in evaluating the ultimate backup protection for the investing market, such information cannot serve as a substitute for the first line of protection for the investing market and the County (*i.e.*, whether the developer can develop and market a viable project).

D. THE COUNTY'S ACCESS TO INFORMATION.

Before the County will consider the issuance of bonds for a project, the developer must make full and accurate disclosure directly to the County. Because the developer gains the substantial benefit of access to the municipal finance market through the County's issuance of land-secured financings for its projects, the developer must disclose such information in such manner.

Furthermore, because the information that the developer provides to the County may be material and, hence, relevant to the investing public, the County must be free to disclose such material and relevant information to the investing public.

Any financial statements of a developer or any owner-principal participant of a developer (*i.e.*, a principal participant of developer who meets the definition of Section II.F.1. or II.F.2., herein) that are in the possession of the Public Works and Development Services Department will be held in a file separate from all other files kept by that department concerning the development.

E. DEVELOPER'S DISCLOSURE REQUIREMENTS ARE NOT LIMITED TO THE DEVELOPER.

The County is aware that developers and their principal participants typically operate through several entities and arrangements. In addition, developers and their principal participants insulate their non-project assets through the use of corporate or other structures so as to protect their non-project assets from creditors of the development.

However, the investing public may need to evaluate not only the developer's but also its principal participants' management, background, experience, financial capacity and commitment, and success in marketing other projects that are similar to the one being financed by the bonds. But, such qualities may not be fully measured by examining only the entities through which developers may seek to finance their projects.

Therefore, in order for the County to gain an understanding of the developer,

the County, in its sole discretion, may require the developer to disclose to the County information concerning the developer's principal participant(s) and related entities. In this regard, such disclosure to the County may involve persons who are not directly involved in the project or developments that are the subject of the developer's request for bond financing.

F. ENFORCEMENT, INTERPRETATION AND APPLICATION OF THESE DISCLOSURE REQUIREMENTS.

The County Administrative Officer or his designee shall have the authority to enforce these disclosure requirements on behalf of the County.

The provisions of these disclosure requirements shall be liberally construed in favor of disclosure to and cooperation with the County by the developer, its principal participant(s), and the developer's successor(s) who are subject to these disclosure requirements in order to accomplish the purpose of these disclosure requirements.

The County will apply these disclosure requirements to every developer and its successor seeking the issuance of land-secured bonds by the County. However, prior to the issuance of any bonds, the County Board of Supervisors, upon the recommendation of the County Debt Advisory Committee, may waive any requirement herein regarding the production of documents (other than an application, as that term is defined in Section III. herein, and those documents required to be provided along with an application) upon a determination by the County Board of Supervisors that:

- (a) the developer or expected successor seeking relief from a disclosure requirement demonstrates that it will be extremely difficult or impossible for the developer or the expected successor to comply with such disclosure requirement; and
- (b) the County will not be prejudiced by granting such requested relief.

Notwithstanding the above, the Board of Supervisors, upon the recommendation of the Debt Advisory Committee, shall determine whether an application is complete.

The compliance of developer, and its principal participant(s) and the expected successor(s) with these requirements shall not be any guarantee, agreement or commitment by the County that the County will issue bonds for the project.

II. DEFINITIONS:

- A. A "developer" is an entity or individual, or combination thereof, either:
 - 1. initiating or continuing a development;

2. engaging in or proposing to engage in significant work on the development; or
 3. intending to sell, transfer or assign all or a portion of the development or the entity's or individual's rights or responsibilities in the development to another party who will undertake that work or function as an intermediary with others that will do so.
- B. A "development" is:
1. planned activity to subdivide or alter the state of land for ultimate use by multiple new property owners who will purchase subdivided parcels; and
 2. when appropriate, sales efforts respecting those parcels directed to such ultimate owners.
- C. A "disclosure document" is an Official Statement or a periodic or other disclosure document.
- D. "Nonrecourse" means that the developer and its principal participant(s) are not directly legally liable for the payment of taxes, assessments or other similar payments that will be used to pay the principal of or interest on the bonds, but rather that the land on which the project is or will be located shall provide legal recourse for that purpose.
- E. "Bonds" means bonds or other securities issued by the County and to be sold in order to generate funds for payment of all or a part of project costs.
- F. A "principal participant" in a developer includes any and all of the following persons or entities:
1. a party owning ten percent (10%) or more of the equity in the developer;
 2. a party owning any percentage of such equity, together with indebtedness of the developer, which equity and indebtedness equal in value such a ten percent (10%) interest (excluding, however, an independent, third party lender which is not a joint venture partner); or
 3. the individuals or other parties functioning on behalf of the developer with respect to the project as a principal executive officer(s), key employee(s) (such as an administrative, financial or operating officer(s)), or key agent(s) for the project.

A principal participant who meets the definition of either Subsection II.F.1. or II.F.2 shall be known as an "owner principal participant."

- G. A "project" is the development infrastructure, the costs of which are to be paid from the proceeds of sale of the bonds.

III. THE APPLICATION FOR THE ISSUANCE OF BONDS:

At the time a developer requests the County to issue bonds for a project the developer shall submit to the County Department of Public Works and Development Services a written application requesting the issuance of bonds (the "application"). Such application shall completely and accurately disclose the following information to the satisfaction of the County:

A. BACKGROUND OF DEVELOPER.

1. With regard to the developer's organizational structure, the application shall describe the developer's form of organization (*e.g.*, corporation, partnership, sole proprietorship, limited liability company), and the state in which the developer is formed (If the Developer is not a California-formed entity, the developer shall provide documentation evidencing its authority to conduct business in the State of California);
2. The application shall describe the role, if any, of the developer in initiating the project and the development and in seeking the County's cooperation and participation in the issuance of the bonds.
3. With regard to the developer's principal executive, administrative, financial and operating officers, agents and employees for the project and the development, the application shall describe:
 - a. the experience and education or other training of those individuals or parties;
 - b. the role that such persons will play with regard to the development and the project; and
 - c. the significant roles in which they have functioned in any and all similar projects and developments in the past five (5) years and the outcome and status of those projects and developments.
4. The application shall describe any and all similar projects and developments undertaken by the developer in the past five (5) years and the outcome and status of those projects and developments.

B. FINANCIAL SOLVENCY/CREDIT WORTHINESS.

1. The application shall provide sufficient financial information, in the form of financial statements prepared in the ordinary course of business, regarding:
 - a. the developer for the past three (3) years;
 - b. the development including, but not limited to, the developer's assets, liabilities, and equity in the development, and income and expenditures for the development for the past three (3) years. With respect to equity, this shall include, but not be limited to, the amount of cash equity invested in the project by the developer;
 - c. a current *pro forma* cash flow analysis concerning the project that has been prepared by or for the developer that best reflects the developer's business plan for the project; and
 - d. the *pro forma* cash flow analys(es) and any update(s) thereof given to lender(s) providing construction financing for the project, provided that such *pro forma* cash flow anayls(es) or any update(s) thereof has been prepared no earlier than ninety (90) days prior to the date that the developer submits its application to the County, provided further however, if the *pro forma* cash flow anayls(es) or any update(s) thereof has been prepared in excess of such ninety (90) day period, then the developer shall prepare and submit a current *pro forma* cash flow anayls(es) or update(s) thereof.

Financial statements provided shall be audited by a Certified Public Accountant in accordance with generally accepted auditing standards and shall include a letter from the Certified Public Accountant addressed to the County Board of Supervisors, which shall be in such form and substance that is satisfactory to the County, providing that the County may rely upon the developer's audited financial statements in the process of issuing bonds for the project.

2. The application shall describe and discuss the facts and circumstances regarding the developer and any non-owner principal participant of the developer (provided, however, Subsections III.B.2.a., b., and e.-l. do not apply to a non-owner principal participant) where, in the past seven (7) years, any or all of them:
 - a. failed to pay taxes or assessments (including penalties or interest thereon), other similar payments or debts of any nature

when due under the governing law or agreements

- b. failed to pay any loan, line of credit or other indebtedness when due (including penalty or interest thereon);
- c. participated in or owned all or a portion of a development that experienced a draw on a reserve for the payment of debt service on the bonds;
- d. participated in or owned all or a portion of a development that experienced a technical default according to the terms of the governing law or the bond documents;
- e. appointed a receiver to manage his or its business affairs;
- f. made an assignment for the benefit of his or its creditors;
- g. took any action or suffered under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute;
- h. filed any voluntary petition in bankruptcy, or any of his or its creditors filed any involuntary petition in bankruptcy;
- i. admitted in writing to his or its inability to pay its debts as they become due;
- j. filed any answer admitting to, or failed to timely contest, a material allegation of a petition filed against it in any legal proceeding seeking reorganization, arrangement, composition, readjustment, liquidation or dissolution or similar relief;
- k. experienced the attachment, lien, levy, encumbrance, execution or other judicial seizure of all or substantially all of his or its assets if such attachment, lien, levy, encumbrance, execution or other seizure remained undismissed, undischarged, or not released for a period of ten (10) business days after the attachment, lien, levy, encumbrance, execution or other seizure thereof;
- l. offered a "deed in lieu of foreclosure" or reached any compromise with lenders in the settlement of debts;
- m. participated in or owned all or a portion of a project that was the subject of an inquiry, proceeding, enforcement action or lawsuit brought by the Securities and Exchange Commission;
- n. received a Wells letter from the Securities and Exchange Commission.

If any of the foregoing conditions in Subsection III.B.2., above, continue to exist, the developer shall describe and discuss the status of such matters, including the likelihood and expected time of their resolution.

3. The application shall describe and discuss the developer's plan of financing the project including, but not limited to:
 - a. the estimated cost of developing the project (*e.g.*, the cost of land acquisition, labor, materials, developer's profit and overhead, and planning, permitting, financing and marketing costs);
 - b. other significant obligations outstanding or intended to be issued against the project or the development (both from public and private sources), and their general relative priorities; and
 - c. any lender(s) or others that may be able to assume control of the development in the event of a default on any such obligations or other occurrence.
4. The application shall identify the name, address, telephone number and contact person of any lender with whom the developer currently is doing business in connection with the project.
5. The application shall indicate whether the liabilities of the developer with respect to paying the taxes or assessments (including penalty or interest thereon) or other payments that are to provide a source of payment of principal of and interest on the bonds are intended to be nonrecourse in nature. If so, the application shall describe and discuss any other nonrecourse projects initiated by or at the behest or with the participation of the developer as to which the developer permitted, in the past seven (7) years, any land to be sold at foreclosure or other similar sale.
6. The application shall discuss the intentions of the developer with respect to completion of the project and the development, transfer or assignment to other parties of rights or responsibilities regarding the project and the development and timely payment of taxes, assessments or other similar payment to be used to pay principal of or interest on the bonds.
7. The application shall identify (by name, court, case number and date of filing of the complaint) any pending, threatened or concluded litigation (except for small claims court actions) brought against the

developer with respect to the failure to perform any obligations or to pay any debts when they became due.

8. The application shall identify (by name, court, case number and date of filing the complaint) any pending, threatened or concluded litigation concerning any project in which the developer participated in or owned all or a portion of a project which was the subject of any defaulted bonds.

C. PROJECT INFORMATION.

1. The application shall describe and discuss the development plan and the intended character of the development, indicating:
 - a. its size and scope;
 - b. whether construction will proceed in phases;
 - c. the specific dates when construction is expected to commence and finish;
 - d. whether the developer anticipates any significant obstacles to timely completion of any portion of construction;
 - e. significant features;
 - f. landowner concentration;
 - g. prior foreclosures on the land to be included in the development;
 - h. ownership of properties by the Resolution Trust Corporation;
 - i. appropriate classifications of subdivided properties created or to be created;
 - j. location; and
 - k. other relevant information.

Maps or drawings may assist in the description.

2. The application shall describe and discuss the types of mortgages and subsidies or other concessions to be offered to buyers of individual lots.
3. The application shall describe and discuss the presence or absence of amenities in the surrounding area.

4. The application shall describe the land use entitlements and other governmental approvals that need to be obtained, or have been obtained, for the development to proceed and the status of those entitlements and approvals. The application shall also describe any other agreements, arrangements or undertakings that the developer has entered into or will enter into in order to complete the project.
5. The application shall include copies of any and all marketing, demand or absorption studies conducted by or on behalf of the developer respecting the development that were prepared within the one-year time period prior to the filing of the application with the County, if any such studies have been conducted (this includes draft studies if they are in draft form as of the date of such application).

The application shall further identify the party(ies) to whom the firms were responsible in the preparation of the studies and the nature of their charge with respect to producing a reliable study.

6. The application shall include copies of any and all appraisals conducted by or on behalf of the developer respecting the value of the land that were prepared within the one-year time period prior to the filing of the application with the County.

The application shall further identify the party(ies) to whom the firms were responsible in the preparation of the report and the nature of their charge with respect to producing a reliable appraisal.

The application shall state the standards forming the basis for the preparation of the appraisals.

7. The application shall describe the project and its relationship to the development including, among other things, a statement of expected sources and uses of proceeds associated with the issuance of and sale of the bonds.
8. The application shall state the amount of bond proceeds that the developer desires to use for financing the project.
9. The application shall state whether the developer anticipates the project to be financed through a series of bond issuances, and if so, the amount of bond proceeds that the developer desires to use to finance the project from each such series.
10. The application shall describe and discuss what specific alternative sources, other than land-secured financing through the County, the

developer has pursued in order to secure financing for the project. The developer shall explain why it cannot obtain financing through those alternative sources.

D. CONFLICT OF INTEREST.

1. The application shall describe any financial contributions or gifts made in the past five (5) years by or on behalf of the developer, any principal participant of the developer, or any principal executive, administrative, financial or operating officer of such participant or the developer, to any elected or principal executive, administrative or financial official of the County or other governmental entities taking action respecting the development, the project or the bonds. If such contributions or gifts have been made, the application shall describe the circumstances and the role(s) of such official(s) in decisions affecting the development, the project or the obligations.
2. The application shall describe any business relationship in the past five (5) years between the developer, any principal participant of the developer, or any principal executive, administrative, financial or operating officer of such participant or the developer, and any elected or principal executive, administrative or financial official of the governmental issuer or other governmental entity taking significant action respecting the development, the project or the obligations. If such a relationship has existed, the application shall describe the circumstances and the role of such official(s) in decisions affecting the development, the project or the obligations.

E. CERTIFICATION AS TO ACCURACY OF INFORMATION.

As part of the application, and any other updating information provided according to these disclosure requirements (as required in Subsection III.F., below), the developer shall state that the information contained in and accompanying its application, and such updating information required to be provided herein, may be included in the disclosure documents, and that the developer certifies that, upon having conducted a diligent investigation the information does not:

1. contain any untrue statement of a material fact; or
2. omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

F. UPDATE OF INFORMATION PROVIDED IN APPLICATION BY DEVELOPER.

The developer shall, on a quarterly basis until the bonds may be sold, provide the County with a written statement that details updated information concerning the matters that are required to be provided in the application, or state that there is no information which would cause the developer to modify the information contained in its application or last written statement given pursuant to these disclosure requirements.

In addition, the developer shall promptly bring to the County's attention, in writing, the occurrence of any new facts or circumstances that would materially change the representations previously given by the developer or its principal participant(s) in the application or any updating information (e.g., developer opens escrow with a expected successor, as defined in Section VII, herein.).

G. AUTHORIZATION TO THE COUNTY.

The application shall state that the developer agrees to the provisions of these disclosure requirements, and that the County may rely upon the information contained in the application or any updating information thereto.

H. FORM OF APPLICATION.

The County shall prescribe the form of the application and shall provide a blank copy thereof to any developer upon request.

I. SCOPE OF APPLICATION NOT A LIMITATION ON COUNTY'S INQUIRY.

The scope of information sought by an application required to be provided by a developer under these disclosure requirements shall not be construed as a limitation upon the scope of the information that the County may request from a developer concerning the developer, its principal participant(s), the project or the development.

IV. REVIEW OF APPLICATION BY THE COUNTY:

After receipt of the completed application or updating information required by these disclosure requirements, the County staff shall review said application or updating information and thereafter inform the developer that it has reviewed such application or updating information and whether it shall require any additional information. If County staff does not require additional information at such time, the County shall not be precluded from making a later request for such information.

V. OBLIGATION TO RESPOND TO THE COUNTY'S INQUIRIES:

After the developer has provided the County with its application or updating information required by these disclosure requirements, the developer shall, at any time thereafter promptly provide further details, descriptions, discussions or explanations, in writing, to questions posed by County staff seeking clarification or further explanation as to such application or updating information. Nothing in these disclosure requirements shall preclude the County from requiring the developer to explain, clarify or provide additional information in order to make complete and accurate any information required to be provided by the developer to the County hereunder.

Notwithstanding anything stated to the contrary herein, the County may, in its sole discretion, at any time after the developer files an application with the County and prior to the County's issuance of any bonds, require the developer and the developer's principal participants to provide any and all information, including, but not limited to, information (*e.g.*, the identity of the developer's owner-principal participants) or documents or records (*e.g.* an owner-principal participants' financial statements or other financial information) that the County deems necessary in order for the County to comply with the disclosure requirements under federal securities laws. The County's determination of whether such information is necessary shall be conclusive, unless the County grants the developer a waiver from providing such information pursuant to section I.F., herein.

VI. AUDIT OF THE DEVELOPER AND ITS PRINCIPALS; AUTHORIZATION TO VERIFY INFORMATION:

The County, either directly or through the use of outside auditors, shall have the right to audit the financial information of the developer and its owner principal participant(s), and to interview such principal participant(s) as well as the developer's principal executive, administrative, financial or operating officers, agents and employees, as the County deems necessary.

The developer and its principal participant(s) shall agree to allow the County to investigate their background and financial condition and to verify the information provided in the application and any updating information required herein.

VII. THE DEVELOPER AND ITS SUCCESSOR(S) ARE "OBLIGATED PERSONS:"

- A. So long as the developer is responsible for fifteen percent (15%) or more of the debt service on the bonds, and the bonds remain outstanding, the developer shall undertake, to the satisfaction of the County, all those continuing disclosure obligations of an "obligated person," as that term is defined under Securities and Exchange Commission Rule 15c2-12, including any and all amendments thereunder.

- B. The provisions of this Section VII. shall also apply to any and all of the developer's successors, assigns, heirs, transferees (the "developer's successor(s)") who acquire all or a portion of the land constituting the project and such land is encumbered by fifteen percent (15%) or more of the debt service on the bonds.
- C. The developer and developer's successor(s) shall contractually require the provisions of this Section VII. to be binding upon the developer's successors who qualify under the provisions of this Section VII.
- D. If the developer or any of developer's successors who are subject to the provisions of this Section VII. sell or transfer any portion of the land constituting the project to a developer's successor who shall be deemed to be an "obligated person" under this Section VII., the seller, transferor or assignor shall give the County prompt written notice of same, specifying the buyer, transferee or assignee of such land, including his or its name, address and telephone number.
- E. The County will record a notice in the Office of the County Recorder concerning the provisions of this Section VII.

VIII. DISCLOSURE REGARDING NEW OWNERS AND NON-OWNER PRINCIPAL PARTICIPANTS:

If at any time prior to the time that the County may sell any bonds,

- a. an individual or other party functioning on behalf of the developer with respect to the project as a principal executive officer, key employee (such as an administrative, financial or operating officer), or key agent for the project withdraws from or is added to the developer's organization, or
- b. the developer sells all or a portion of the developer's ownership interest in the project to another person or entity whereby the land to be acquired by such person or entity will be encumbered by fifteen percent (15%) or more of the expected debt service on the bonds,

the developer shall promptly give the County written notice of the facts and circumstances regarding the occurrence of such events. The new owner or co-owner of the project shall be considered a developer and shall promptly complete an application and comply with these disclosure requirements.

In addition, if, prior to the sale of any bonds, the developer opens escrow

with another person or entity whereby the land to be acquired by such person or entity will be encumbered by fifteen percent (15%) or more of the expected debt service on the bonds, such other person or entity shall be identified in the developer's application as an expected successor (hereinafter, an "expected successor"). Such expected successor shall be required to promptly submit its own application for the issuance of bonds following such opening of escrow and to comply with these disclosure requirements in the same manner required of the developer.

All disclosure requirements herein that apply to the developer's principal participant(s) also apply to any and all persons and entities that would be principal participant of the developer's successor(s) if the developer's successor(s) were a developer.

The provisions of this Section VIII. shall apply in addition to any other provisions of these disclosure requirements that are applicable to the developer and its principal participant(s).

-END-

COUNTY OF FRESNO

APPLICATION FOR USE OF PUBLIC FINANCING FOR A PRIVATE DEVELOPMENT PROJECT

NOTICE: ALL APPLICATIONS AND UPDATING INFORMATION MUST BE ACCOMPANIED BY THEIR RESPECTIVE, COMPLETED COVER SHEETS AND CERTIFICATION FORMS, AS PROVIDED IN EXHIBITS "A" AND "B" HERETO.

Subject to and in accordance with the "Attachment B to County of Fresno Policy for Use of Public Financing for Private Development Projects, Preliminary Disclosure Requirements (the Preliminary Disclosure Requirements)," adopted by the Board of Supervisors on July 16, 1996, the developer and its expected successors requesting public financing through the County for a private development project are required to complete and submit this application to the County. All definitions and terms used in the Preliminary Disclosure Requirements shall have the same meaning in this application.

The applicant's completed application shall be in typewritten form and shall be submitted to the County's Public Works and Development Services Department, Design Division, at 2220 Tulare Street, Fresno, California, 93721 (the Design Division is located on the 6th Floor; its mailing address is on the 7th Floor). The applicant may provide its responses to this application in a separate typewritten document as long as the applicant's responses clearly specify the sections and subsections of this application to which each such response applies. If the applicant is unable to comply with or answer a disclosure requirement herein, the applicant shall give a specific reason why it cannot do so.

As provided in the Preliminary Disclosure Requirements, the applicant shall, on a quarterly basis until the bonds may be sold, provide the County with a written statement that details updated information concerning the matters that are required to be provided in this application, or state that there is no information which would cause the applicant to modify the information contained in its application or last updating written statement given pursuant to the Preliminary Disclosure Requirements. In addition, the Preliminary Disclosure Requirements provide that the applicant shall promptly bring to the County's attention, in writing, the occurrence of any new facts or circumstances that would materially change the representations previously given by the applicant or its principal participant(s) in the application or any updating information (*e.g.*, the applicant opens escrow with an expected successor).

As part of this application, the applicant shall execute and submit a certification as to accuracy and completeness of the information contained herein and

accompanying this application. A form of such certification is attached hereto as Exhibit "A."

As part of any updating information that must be provided by the applicant according to the Preliminary Disclosure Requirements, the applicant shall execute and submit to the County a certification as to accuracy and completeness of the information contained in and accompanying such updating information. A form of such certification is attached hereto as Exhibit "B."

Nothing in this application shall preclude the County from requiring the applicant to explain, clarify or provide additional information in order to make complete and accurate any information required to be provided by the applicant to the County pursuant to the Preliminary Disclosure Requirements.

The compliance of the applicant with the Preliminary Disclosure Requirements shall not be any guarantee, agreement or commitment by the County that the County will issue bonds for the project.

I. APPLICATION REQUIREMENTS:

The applicant must disclose complete and accurate information in its application concerning itself and the project to be financed in order for the County to consider whether it will issue bonds for the project. Therefore, the applicant shall completely and accurately disclose the following information to the satisfaction of the County:

A. BACKGROUND OF APPLICANT:

1. With regard to the applicant's organizational structure, the applicant shall describe the applicant's form of organization (*e.g.*, corporation, partnership, sole proprietorship, limited liability company), and the state in which the applicant is formed (If the applicant is not a California-formed entity, the applicant shall provide documentation evidencing its authority to conduct business in the State of California):

2. The applicant shall describe the role, if any, of the applicant in initiating the project and the development and in seeking the County's cooperation and participation in the issuance of the bonds:

3. With regard to the applicant's principal executive, administrative, financial and operating officers, agents and employees for the project and the development, the applicant shall describe:

a. the experience and education or other training of those individuals or parties:

b. the role that such persons will play with regard to the development and the project:

c. the significant roles in which they have functioned in any and all similar projects and developments in the past five (5) years and the outcome and status of those projects and developments.

4. The applicant shall describe any and all similar projects and developments undertaken by the applicant in the past five (5) years and the outcome and status of those projects and developments.

B. FINANCIAL SOLVENCY/CREDIT WORTHINESS.

1. The applicant shall provide sufficient financial information, in the form of audited financial statements (as provided below) prepared in the ordinary course of business, regarding:
 - a. the applicant for the past three (3) years;
 - b. the development including, but not limited to, the applicant's assets, liabilities, and equity in the development, and income and expenditures for the development for the past three (3) years. With respect to equity, this shall include, but not be limited to, the amount of cash equity invested in the project by the applicant;
 - c. a current *pro forma* cash flow analysis concerning the project that has been prepared by or for the applicant that best reflects the applicant's business plan for the project; and
 - d. the *pro forma* cash flow analys(es) and any update(s) thereof given to lender(s) providing construction financing for the project, provided that such *pro forma* cash flow anayls(es) or any update(s) thereof has been prepared no earlier than ninety (90) days prior to the date that the applicant submits its application to the County, provided further however, if the *pro forma* cash flow anayls(es) or any update(s) thereof has been prepared in excess of such ninety (90) day period, then the applicant shall prepare and submit a current *pro forma* cash flow anayls(es) or update(s) thereof.

Financial statements provided shall be audited by a Certified Public Accountant in accordance with generally accepted auditing standards and shall include a letter from the Certified Public Accountant addressed to the County Board of Supervisors, which shall be in such form and substance that is satisfactory to the County, providing that the County may rely upon the applicant's audited financial statements in the process of issuing bonds for the project.

2. The applicant shall describe and discuss the facts and circumstances regarding the applicant and any non-owner principal participant of the applicant (provided, however, Subsections I.B.2.a., b., and e.-l. do not apply to a non-owner principal participant) where, in the past seven (7) years, any or all of them:
 - a. failed to pay taxes or assessments (including penalties or interest thereon), other similar payments or debts of any nature when due under the governing law or agreements:
 - b. failed to pay any loan, line of credit or other indebtedness when due (including penalty or interest thereon):
 - c. participated in or owned all or a portion of a development that experienced a draw on a reserve for the payment of debt service on the bonds:

l. offered a "deed in lieu of foreclosure" or reached any compromise with lenders in the settlement of debts:

m. participated in or owned all or a portion of a project that was the subject of an inquiry, proceeding, enforcement action or lawsuit brought by the Securities and Exchange Commission:

n. received a Wells letter from the Securities and Exchange Commission.

If any of the foregoing conditions in Subsection I.B.2., above, continue to exist, the applicant shall describe and discuss the status of such matters, including the likelihood and expected time of their resolution.

3. The applicant shall describe and discuss the applicant's plan of financing the project including, but not limited to:

a. the estimated cost of developing the project (*e.g.*, the cost of land acquisition, labor, materials, developer's profit and overhead, and planning, permitting, financing and marketing costs);

b. other significant obligations outstanding or intended to be issued against the project or the development (both from public and private sources), and their general relative priorities:

c. any lender(s) or others that may be able to assume control of the development in the event of a default on any such obligations or other occurrence:

4. The applicant shall identify the name, address, telephone number and contact person of any lender with whom the applicant currently is doing business in connection with the project.

5. The applicant shall indicate whether the liabilities of the applicant with respect to paying the taxes or assessments (including penalty or interest thereon) or other payments that are to provide a source of payment of principal of and interest on the bonds are intended to be nonrecourse in nature. If so, the applicant shall describe and discuss any other nonrecourse projects initiated by or at the behest or with the participation of the applicant as to which the applicant permitted, in the past seven (7) years, any land to be sold at foreclosure or other similar sale.

6. The applicant shall discuss its intentions with respect to completion of the project and the development, transfer or assignment to other parties of rights or responsibilities regarding the project and the development and timely payment of taxes, assessments or other similar payment to be used to pay principal of or interest on the bonds.

7. The applicant shall identify (by name, court, case number and date of filing of the complaint) any pending, threatened or concluded litigation (except for small claims court actions) brought against the applicant with respect to the failure to perform any obligations or to pay any debts when they became due.

8. The applicant shall identify (by name, court, case number and date of filing the complaint) any pending, threatened or concluded litigation concerning any project in which the applicant participated in or owned all or a portion of a project which was the subject of any defaulted bonds.

C. PROJECT INFORMATION.

1. The applicant shall describe and discuss the development plan and the intended character of the development, indicating (Maps or drawings may assist in the description):

a. its size and scope;

b. whether construction will proceed in phases;

c. the specific dates when construction is expected to commence and finish;

d. whether the applicant anticipates any significant obstacles to timely completion of any portion of construction;

j. location; and

k. other relevant information.

2. The applicant shall describe and discuss the types of mortgages and subsidies or other concessions to be offered to buyers of individual lots.

3. The applicant shall describe and discuss the presence or absence of amenities in the surrounding area.

4. The applicant shall describe the land use entitlements and other governmental approvals that need to be obtained, or have been obtained, for the development to proceed and the status of those entitlements and approvals. The applicant shall also describe any other agreements, arrangements or undertakings that the developer has entered into or will enter into in order to complete the project.

5. The application shall include copies of any and all marketing, demand or absorption studies conducted by or on behalf of the applicant respecting the development that were prepared within the one-year time period prior to the filing of the application with the County, if any such studies have been conducted (this includes draft studies if they are in draft form as of the date of such application).

The applicant shall further identify the party(ies) to whom the firms were responsible in the preparation of the studies and the nature of their charge with respect to producing a reliable study.

6. The applicant shall include copies of any and all appraisals conducted by or on behalf of the applicant respecting the value of the land that were prepared within the one-year time period prior to the filing of the application with the County.

The applicant shall further identify the party(ies) to whom the firms were responsible in the preparation of the report and the nature of their charge with respect to producing a reliable appraisal.

The applicant shall state the standards forming the basis for the preparation of the appraisals.

other governmental entity taking significant action respecting the development, the project or the obligations. If such a relationship has existed, the applicant shall describe the circumstances and the role of such official(s) in decisions affecting the development, the project or the obligations.

-END-

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EXHIBIT "A"

COVER SHEET

APPLICATION TO THE COUNTY OF FRESNO
FOR USE OF PUBLIC FINANCING
FOR A PRIVATE DEVELOPMENT PROJECT

Development: _____

Project: _____

Name of Developer: _____

Mailing Address: _____

Name and Title of Contact Person(s) _____

Telephone Number(s): _____

Fax Number: _____

We hereby certify that the information contained in and accompanying our application requesting the issuance of bonds to finance the _____ project may be included in the Official Statement and any periodic or other continuing disclosure document made available by or on behalf of the County to the public.

We further certify that, upon having conducted a diligent investigation, to the best of our knowledge, the aforementioned information does not:

1. contain any untrue statement of a material fact; or
2. omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

We agree to comply with the provisions of Attachment B to County of Fresno Policy for Use of Public Financing for Private Development Projects, entitled "Preliminary Disclosure Requirements" which were adopted by the Board of Supervisors on July 16, 1996. We further agree that the County may rely upon the information contained in or accompanying our application and any updating information hereto.

(Name of Developer)

By: _____
(Name and Title of Developer's Authorized Representative)

Date

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EXHIBIT "B"

COVER SHEET

UPDATING INFORMATION PROVIDED TO THE COUNTY OF FRESNO
IN CONNECTION WITH AN APPLICATION FOR USE OF PUBLIC FINANCING
FOR A PRIVATE DEVELOPMENT PROJECT

Development: _____

Project: _____

Name of Developer: _____

Mailing Address: (if changed) _____

Name and Title of Contact Person(s) _____

Telephone Number(s): (if changed) _____

Fax Number: (if changed) _____

We hereby certify that the information contained in and accompanying our updating information in connection with our application requesting the issuance of bonds to finance the _____ project may be included in the Official Statement and any periodic or other continuing disclosure document made available by or on behalf of the County to the public.

We further certify that, upon having conducted a diligent investigation, to the best of our knowledge, the aforementioned information does not:

1. contain any untrue statement of a material fact; or
2. omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(Name of Developer)

By: _____
(Name and Title of Developer's Authorized Representative)

Date

Attachment C

County of Fresno
Annual Debt Service Calendar
Outstanding Bond Debt

County of Fresno
Annual Debt Service Calendar
(Includes Bond Principal and Interest)
November 17, 2005

Fiscal Year Ending	1998 Pension Bonds	2002 Pension Bonds (Partial 1998 Refunding)	2004A Pension Bonds Fixed Rate	2004B Pension Bonds Auction Rate*	200- (Ju
2007	7,516,180	7,579,366	9,488,180	3,825,000	
2008	9,931,713	7,579,366	10,561,520	3,825,000	
2009	12,344,661	7,579,366	11,681,537	3,825,000	
2010	0	15,957,574	12,848,007	3,825,000	
2011	0	15,962,271	13,990,890	3,825,000	
2012	0	15,962,156	15,255,947	3,825,000	
2013	0	15,965,239	16,638,136	3,825,000	
2014	0	15,964,565	18,123,814	3,825,000	
2015	0	15,967,204	19,422,069	3,825,000	
2016	0	15,963,492	20,901,454	3,825,000	
2017	0	15,965,889	22,435,013	3,825,000	
2018	0	15,967,923	24,035,283	3,825,000	
2019	0	15,970,424	25,693,747	3,825,000	
2020	0	0	27,424,490	3,825,000	
2021	0	0	29,220,000	3,825,000	
2022	0	0	31,085,000	3,825,000	
2023	0	0	33,025,000	3,825,000	
2024	0	0	35,045,000	3,825,000	
2025	0	0	37,140,000	3,825,000	
2026	0	0	39,325,000	3,825,000	
2027	0	0	41,595,000	3,825,000	
2028	0	0	43,780,000	3,825,000	
2029	0	0	46,410,000	3,825,000	
2030	0	0	48,965,000	3,825,000	
2031	0	0	51,620,000	3,825,000	
2032	0	0	54,380,000	3,825,000	
2033	0	0	44,785,000	16,055,613	
2034	0	0	0	62,605,337	
Totals	<u>29,792,554</u>	<u>182,384,835</u>	<u>784,875,086</u>	<u>178,110,950</u>	

* Auction rate bonds initially priced at 1.05% plus 100 basis points. Interest rate on auction rate bonds subject to change every 28 days. Auction rate bonds priced at 4.10% as of November 17, 2005. This schedule reflects 5.10% for the remaining term of the auction rate b

Attachment D

County of Fresno
Annual Debt Service Calendar
Outstanding Capital Leases

Attachment D

County of Fresno
Annual Debt Service Calendar
Outstanding Capital Leases
(Includes Present Value of Minimum Lease Payments and Imputed Interest)
December 13, 2005

Fiscal Year Ending	ITSD Computer Equipment	ITSD Peoplesoft	Sheriff PSIS	Total Leases
2006	2,950,747	854,184		3,804,931
2007	1,385,731	427,092	1,930,336	3,743,159
2008	644,676		1,930,336	2,575,012
2009	239,361		1,930,336	2,169,697
2010			1,930,336	1,930,336
2011			1,930,336	1,930,336
Totals	<u>5,220,515</u>	<u>1,281,276</u>	<u>9,651,680</u>	<u>16,153,471</u>

Attachment E

Glossary of Terms

Arbitrage. The difference between interest cost and interest earnings.

Bond. An interest-bearing promise to pay a specified sum of money – the principal amount – on a specific date.

Bond counsel. Special legal counsel engaged by a public entity issuing bonds whose function is to structure the bonds in compliance with applicable laws and procedures, and to issue customary legal opinions to the issuer and underwriter at the closing of the bonds that, among other things, the bonds are valid and binding obligations of that issuing public entity according to the terms and conditions of the bonds, and for tax-exempt bonds, that the interest on the bonds is exempt from federal and state income taxes. Typically, bond counsel is a nationally-recognized law firm in the municipal securities industry.

Bond insurance. Non-cancelable insurance purchased by the issuer from a bond insurer pursuant to which the insurer promises to make scheduled payments of interest, principal and mandatory sinking fund payments on an issue if the issuer fails to make timely payments.

Bond rating. Designations assigned by credit rating agencies to give rating agencies relative indications of credit quality.

Callable bond. A bond issue in which all or part of its outstanding principal amount may be redeemed before maturity by the issuer under specified conditions.

Capitalized interest. Bond proceeds which are reserved to pay interest on an issue for a period of time early in the term of the issue.

Competitive sale. The sale of bonds to the bidder presenting the best sealed bid at the time and place specified in a published notice of sale.

Conduit financing. The issuance of securities by a government agency to finance a project of a third party, such as a non-profit or other private entity.

Continuing disclosure. The ongoing disclosure provided by an issuer (or other obligated party) pursuant to an undertaking entered into to allow the underwriter to comply with SEC Rule 15c2-12.

Costs of issuance. The expenses paid by or on behalf of the issuer in connection with the sale and issuance of bonds.

Credit enhancement. A credit support purchased by the issuer to raise the credit rating on a debt issue.

Credit rating agency. An agency which analyzes new and outstanding bond issues to assign a rating of comparative quality.

Debt limit. A statutory or constitutional limit on the amount of debt that an issuer may incur or that it may have outstanding at any one time.

Debt service. The total of interest, principal and mandatory sinking fund payments.

Derivative product. A financial instrument whose own value is based upon the value of other assets or on interest rate levels.

Disclosure counsel. Special counsel engaged by the issuer to prepare bond offering documents (and to issue certain customary legal opinions to the issuer and underwriter at the closing of the bonds), and to assist and advise the issuer in connection with the issuer's continuing disclosure obligations. Typically, disclosure counsel is a nationally-recognized law firm in the municipal securities industry. The same law firm may serve as bond counsel and as disclosure counsel to the issuer.

Direct debt. A comprehensive measure of the County's long-term obligations directly supported and backed by general revenues and taxes. Direct debt includes general obligation bonds, pension obligation bonds, unfunded pension benefit obligations, tax-supported lease obligations, capital leases paid from governmental funds and internal service funds, special assessment debt with a contingent County obligation, and other tax-supported bonded obligations. Excludes tax and revenue anticipation notes. (Moody's definition)

Discretionary revenue. Revenue received by the County during a fiscal year where the Board of Supervisors has sole discretion on the budgeting and expending of those revenues. Discretionary revenues include, but are not limited to, property tax, sales tax receipts, motor vehicle in-lieu tax, interest earnings, franchise fees, and certain fines and penalties.

Financial advisor. A consultant to an issuer who provides the issuer with advice with respect to the structure, timing, terms, or other similar matters concerning a new issue.

Issue. One or more bonds initially delivered by an issuer in a substantially simultaneous transaction and which are generally designated in a manner that distinguishes them from other bonds of other issues.

Lessee. The public entity (obligor) that agrees to lease specific property from another entity (the lessor) for a stream of lease payments, containing both a principal and interest component, for a specified period.

Lessor. The entity (usually public) that agrees to participate in a lease arrangement to facilitate the lessee's ability to borrow money through issuance of certificates of participation or lease revenue bonds.

Level debt service. Provides approximately equal annual payments to be made by the issuer through gradually increasing principal amounts coming due that are offset by declining interest payments.

Negotiated sale. A sale of bonds, the terms and price of which are negotiated by the issuer through an exclusive agreement with a previously selected underwriter and/or underwriting syndicate.

Par value. 100 percent of a security's face value.

Present value. A measure of the time value of money – i.e., the amount of money an investor would exchange today for a future stream of principal and interest payments.

Special tax counsel. A municipal bond lawyer or firm that specializes in Internal Revenue Code compliance.

Total bonded debt. Total general obligation debt issued by a municipality, regardless of the purpose.

Total direct debt. The sum of the total bonded debt and any unfunded debt (typically short-term notes) of a municipality.

Underwriter. The underwriter purchases the bonds from the issuer with the intent to resell the bonds to investors.

Attachment F

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