

**COUNTY OF MONTEREY**

**Debt Management Policy**

**July 25, 2017**

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## Section 1 – Introduction

The purpose of the County of Monterey (the “County”) Debt Management Policy (the “Policy”) is to ensure sound and uniform practices for issuing and managing debt. The County recognizes that it may need to enter into debt obligations to finance projects and to meet fiscal responsibilities. Accordingly, this Debt Management Policy confirms the commitment of the Board of Supervisors (the “Board”), staff, advisors and other decision makers to adhere to sound financial management practices.

The County's Comprehensive Annual Financial Report lists a number of legally separate organizations (“component units”) for which the Board is financially accountable. This Policy informs the actions of these component units to ensure a uniform approach to the issuance of debt.

The procedures set forth herein shall be followed in connection with all proposed offerings of bonds, notes, or other debt instrument financings authorized by the County, and any other entity for which the Board, or other County agency, is the governing body. The Board adopted a Public Financing Policy (“Debt Management Policy”) on May 19, 1998 which incorporated as an addendum the Mello-Roos Community Facilities District Financing Policy, previously adopted by the board on March 25, 1991. Revising resolutions were approved: on October 8, 2002 to address statutory changes and to more appropriately provide financial protection to the County for issuance of Mello-Roos debt; August 16, 2005 to add Certificates of Participation to General Obligation Bonds for purposes of calculating debt ceilings; on July 11, 2006 to establish the Capital Improvement Plan and Committee, and on April 21, 2008 to further amend policies, and on February 14, 2012 to delete reference to the Debt Advisory Committee (DAC). Those amendments and original policy are modified and restated herein. This revised policy as of July 25, 2017 ensures the County’s compliance with requirements pursuant to California Senate Bill 1029, which amended Section 8855 of the California Government Code and became effective in January 2017. Such requirements pertain to how the policy’s goals relate to the County’s planning goals, capital improvement program, and overall objectives. The updated policy herein also contains new language to ensure the County’s ongoing diligence with respect to financial disclosure, monitoring, and recordkeeping.

The proper utilization of debt is a major financing tool of the County – supplementing and/or leveraging other sources of financing such as allowed taxation, fees for services, fines and grants. Costs versus benefits/risks of borrowing will be a major consideration when evaluating each proposed use of debt as a source of financing specific county needs.

Debt is utilized by the County to address County-wide business needs and Board of Supervisor goals and objectives, and when it is determined to be the most prudent and cost-effective method for meeting general or specific needs and service requirements. Debt proposals must be closely coordinated with the county’s capital and operating budget processes and must consider the impact of the proposed debt issue on the county’s credit rating and total debt burden, as well as long-term goals, objectives and financial forecasts. Repayment of borrowed funds is of paramount concern to the County. Proper structuring and continued management of county debt is critical.

### **1.1 Policy Objectives**

The Policy objectives are as follows:

- Establish a systematic and prudent approach to debt issuance and debt management.
- Ensure access to debt capital markets and direct purchase investors (private placement providers) through prudent and flexible policies.

- Define specific limits or acceptable ranges for general fund supported debt and pension obligation debt.

## **1.2 Scope**

This Policy governs the issuance and management of all debt and lease financing activity by County entities and component units. The debt policies and practices of the County are subject to and limited by applicable provisions of state and federal law and to prudent debt management principles.

The County uses financing techniques prescribed under existing law for projects that require financing beyond the current fiscal year. These techniques can include, but are not limited to, certificates of participation, lease-back arrangements, and revenue and assessment bonds.

## **Section 2 – Debt Advisory Committee**

The Debt Advisory Committee (DAC) shall be reestablished, consisting of the Auditor-Controller, Treasurer-Tax Collector, and County Administrative Officer, or their designees, for the purpose of reviewing and advising the Budget Committee, Capital Improvements Committee, and the Board regarding proposed and existing debt issues in which the Monterey, or other entity for which the Board is the governing body, has complete or limited obligation for debt repayment. Such debt issues include, but are not limited to General Obligation Bonds, Revenue Bonds, Certificates of Participation (COPs), Tax Allocation Bonds, Special Assessment Bonds, Revenue Securitizations, Judgment Obligation Bonds, Conduit Debt, Mark-Roos and Mello-Roos financings, Tax and Revenue Anticipation Notes (TRANs), and other short term financings. The DAC may utilize the services of an independent municipal advisor when analyzing the proposed financing.

The Auditor-Controller or his or her alternate will chair the DAC. The Treasurer-Tax Collector or his or her alternate will act as the vice chair. The chair shall be responsible for providing the functions of a recording secretary if the DAC deems such services to be necessary.

### **2.1 DAC Responsibilities**

The DAC shall meet to consider County public financing proposals, refunding opportunities, or other debt management issues. A Debt Action Request (DAR) will be presented to the DAC by the County Administrative Office summarizing the action(s) requested (i.e., proposed financings, refunding opportunities, material events disclosure requirements, arbitrage issues, recommendations, policy, and other matters), all pertinent information surrounding the request, analysis, findings, and justification for a recommended course of action.

The DAC will consider and discuss the DAR and any additional relevant information required to make an informed decision. This may include seeking input and analysis from other internal and/or external resources, as deemed appropriate. The DAC will approve, modify, or deny the DAR, as determined by the DAC to be in the best interests of the County. If the DAC approves or modifies the DAR, the County Administrative Office will be responsible for implementation of requested action(s). If the DAC advises denial of the request, a written explanation of the Committee's reasoning will be provided to the requesting agency, committee, or department by the County Administrative Office within 10 days of the meeting, or as determined to be an appropriate and reasonable timeframe based on the requesting entity and purpose of the request.

For each individual issue, the DAC will analyze the current market conditions, benefits to be derived from the financing, potential risks, debt service burdens, revenue streams, sector expertise, cost of issuance, statutory restraints, current and projected market conditions, and other factors to determine debt structure, the method of sale, the financing team composition, term, use of credit enhancement, and method of awarding contracts.

### Section 3 – Issuance of Approval Process

The approved Monterey County Capital Improvement Plan (CIP) and other Board approved or referred projects are the primary foundation for debt financing consideration for County serviceable debt. Debt proposals may originate from the Board, the Budget Committee, the issuing agency, and/or the recommending department. Debt for projects not eligible as a CIP project (non-recurring, less than \$100,000, and/or useful life of less than five years) may be recommended by the agency or department proposing such issuance. A department, agency, or committee proposing a debt issue will submit a written report (in Board report format) to the County Administrative Officer, or designee, fully describing the proposed project, which specifically addresses the following:

- Purpose and feasibility of the proposed project.
- Public benefit derived from the project.
- Available project financing sources and alternatives (grants, etc.).
- Estimated total costs of the project (excluding cost of financing).
- Estimated timeline for completion of the project.
- Estimated additional ongoing operational costs resulting from the project.
- Appropriate revenue streams available for debt service.
- Proposed collateral to be pledged.
- Estimated total General Fund impact from debt service requirements and changed operational costs.

A DAR will be presented by the County Administrative Officer, or designee, for DAC review. DAC's review, findings, and recommendations will be presented to the Budget Committee for consideration and, if appropriate, referral for full Board consideration for approval to engage the financing team of external finance professionals. The County Administrative Office will be responsible for presentation, in coordination with the proposing department, agency, or committee.

#### **3.1 Standards of Debt Financing**

The County will minimize the level of direct debt by incurring debt only in those cases where public policy, public interest and/or economic efficiency favor debt over cash financing or grant funding. In addition, the County shall use self-supporting (debt-service neutral or better) debt when possible.

The County in most cases will issue debt to finance capital projects. Other possible reasons to issue debt include (but are not limited to) refinancing unfunded pension liabilities, allowing the County to cover periods of temporary cash shortfalls, refinancing bonds, and paying obligations imposed by law. Except to alleviate cash-flow timing issues within a fiscal year, the County will avoid using debt to finance

reoccurring operating expenses. All debt issuance will fall within the limits permitted by the California Constitution and state law.

## Section 4 – General Debt Policies

### **4.1 Purpose of Debt**

There are two basic types of debt: new money financings and refunding financings.

#### 4.1.1 New Money Financings

The County may issue long-term debt to generate funding for capital projects. Short-term debt may be issued to generate funding for cash flow needs.

#### 4.1.2 Refunding Financings

Refunding bonds are issued to retire all or a portion of an outstanding bond issue or other debt. Such bonds can be used to achieve present value savings on debt service, to modify interest rate risk, or to restructure the payment schedule, type of debt instrument used, or covenants of existing debt. The County must analyze each refunding bond on a present value basis to evaluate the economic effects. Policies on the administration of refunding bonds are detailed in Section 4.13 “Debt Refunding.”

### **4.2 Use of Debt**

Debt should be used when it is in the best overall interest of the County, including appropriate short-term borrowings and financing of certain assets with substantial useful and economic lives. The term of the debt must not exceed the useful life of the financed asset and, ideally, it should match or have a duration of less than the useful life of the asset.

Debt may be issued to finance needed equipment, facilities or infrastructure identified by the Capital Improvement Committee or adopted County Budget.

Debt may be issued to fund short-term operating and/or cash flow needs of the County, but must be repaid within 13 months from date of issuance. Debt may be issued for refunding existing debt when a reasonable overall net savings can be realized.

### **4.3 Legal Limitations**

All debt issued by the County shall be in compliance with all pertinent State and federal statutes and in compliance with all regulations promulgated by agencies that maintain jurisdiction over debt issuance. All debt issues by the County shall conform to the provisions of this policy, unless waived by the Board. The Board, by resolution dated August 16, 2005, extended the General Obligation bond debt ceiling of 1.25% of countywide assessed value to include COPs financings.

### **4.4 Bond Proceeds**

The use of proceeds from long-term financings will be limited to the uses authorized by law and allowed by the provisions of the particular debt issue. Generally, these limitations will allow for paying costs of planning, design, land, construction or acquisition of buildings, permanent structures, attached fixtures and/or equipment, movable furniture and equipment, and the costs of planning and issuing the debt.

The uses of short term financing will include funding the County’s cash flow deficit in anticipation of tax and revenue receipts.

Proceeds of debt will be held either (a) by a third-party trustee, which will disburse such proceeds to the issuer upon the submission of one or more written requisitions, or (b) by the issuer, to be held and accounted for in a separate fund or account, the expenditure of which will be carefully documented by the County.

#### **4.5 Avoiding Negative Impact on General Fund**

Expenditures and investment transactions related to borrowings for funds other than the County's General Fund shall be structured to eliminate, to the maximum extent possible, direct and or indirect negative impacts on the General Fund. Interim funding for project expenditures shall be established and financed from proceeds of borrowings (or other appropriate sources) to avoid delays in draw-downs or reimbursements which would have the effect of reducing General Fund interest earnings.

#### **4.6 Debt Issue Size**

The amount of any financing should be held to a minimum, taking into consideration any available existing funds to partially finance project costs. Reasonable revenue coverage will be required for all issues. Bond reserve funds and capitalized interest should generally be minimized or eliminated to reduce borrowing size, unless it is in the County's best interest to do otherwise, or if such funds are required as a function of law, regulation, or market conditions. Debt will only be issued to cover authorized costs as indicated in the preceding section on Bond Proceeds. Generally, debt will only be issued upon receipt of acceptable and reliable project construction bids. In certain situations, reliable estimates may be the basis for debt issuance.

#### **4.7 Debt Level/ Affordability Targets**

The County shall establish an affordable level of debt to preserve credit quality and ensure financial stability. As such, aggregate General Fund lease debt service should not fall more than within a range of four to six percent (4%-6%) of General Fund expenditures. The County shall maintain a debt affordability model with ratios recalculated at the time of a new debt issue. The DAC and the Board will be notified if any new issuance would cause the ratio to exceed the threshold. Both DAC and Board approval would be required before the County is allowed to exceed the ratio threshold.

A component unit may be allowed to exceed the above target ratio if the unit generates user fees through a business-type activity. The component unit must, however, repay the debt with money generated by user fees or other dedicated revenue sources.

The above target ratio does not include the County's pension and retiree health care unfunded actuarial accrued liabilities (UAAL), which itself is a form of "debt" owed to retirement plan members

#### **4.8 Tax Status**

It is the County's policy to issue tax-exempt obligations and to avoid taxable status on County borrowings unless it is determined that taxable status would be in the best interest of the County. Generally, tax-exempt bond issues are subject to IRS arbitrage rebate requirements. These requirements specify that any profit or arbitrage be rebated to the federal government. Rebate computations are typically required every five (5) years and upon final redemption or maturity of the bonds. Any excess earnings are required to be rebated to the federal government. As primarily a tax-exempt borrower, the County will comply with applicable IRS regulations and provisions including arbitrage rebate calculations, rebate of arbitrage profits, and any necessary tax filings.

#### **4.9 Taxpayer Equity**

If a debt issuance is to be financed by General Fund revenues, the proposing department must demonstrate a benefit to a significantly large proportion of the County's property taxpayers. If the project would primarily serve a definable group of taxpayers, the obligation to repay the debt should be borne by that group of taxpayers, when feasible. In certain instances, the Board may determine that exceptions to this general guideline would be in the best interests of the County.

#### **4.10 Authorized Method of Sale**

The County's goal is to protect the public's interest by obtaining the lowest possible interest cost. To obtain this goal, the County may use a competitive, negotiated, limited-competitive (hybrid) or private placement method of sale. The appropriate method should be determined on a case-by-case basis.

Before selecting a method of sale for public offerings, the financing team shall take into consideration the current market, the issuer's characteristics, and the proposed bond structure. Market considerations will focus on the supply and demand of competing issuances. Issuer characteristic considerations will include market familiarity, credit strength, and policy goals. Bond structure considerations will include the type of debt instrument, issue size, structure, and timing.

Determination of whether to sell bonds under a competitive bid or a negotiated sale will depend on many factors, including the market environment, timing considerations, structure of financing, and the type of bond or other financing instrument. For certain types of debt instruments and financing structures, competitive sale is generally the method by which the County can obtain the lowest interest cost, and is required for specified types of debt issues. However, in some circumstances, competitive sale may not be feasible or practical, and in some situations, the use of negotiated sales may provide a more favorable financial outcome. Thus, the method of sale must be analyzed by the County, and if used, the municipal advisor, prior to any debt issue. Private placement may be used for any debt issue structured specifically for one purchaser, typically, a bank, insurance company, broker dealer, or leasing company. Financial analysis and professional concurrence must precede any private placement issue.

##### **4.10.1 Competitive Sale**

In a competitive sale, competing underwriters deliver sealed bids to the County, at the time and place specified in the Official Notice of Sale. The County selects the underwriter offering the best terms at the time. Bids will be awarded on a True Interest Cost (TIC) basis, providing other bidding requirements are satisfied. TIC is a method of calculating bids for new issues that takes into consideration certain costs of issuance and the time value of money. In such instances where the County Administrative Office deems the bids received unsatisfactory, the County Administrative Office may enter negotiations for sale of the securities or reject all bids. The Official Notice of Sale will be carefully constructed to ensure the best possible bid for the bonds, in light of existing market conditions and other prevailing factors

##### **4.10.2 Negotiated Sale**

A negotiated sale is a sale of bonds whereby the terms and price are negotiated by the County and the municipal advisor through an exclusive agreement with a previously selected underwriter and/or underwriting syndicate. In many cases, County debt is issued via a negotiated process, which provides the County control over the financing structure, the issuance timing and flexibility of distribution.



#### **4.11 Debt Credit Rating**

The County seeks to maintain and, if possible, improve its current long and short-term debt ratings to enhance the County's reputation within the financial community and to minimize borrowing costs. Emphasis should be placed on protecting the General Fund and enhancing the County's financial condition. Further, the County will maintain good communication with the bond rating agencies and keep them apprised about the County's financial condition through provision of relevant reports and documents.

The County may solicit a credit rating review at its discretion, typically done in the context of a bond transaction. It is the County's policy to solicit ratings from Nationally Recognized Statistical Ratings Organizations (NRSRO) for its debt issues, including Fitch Ratings, Moody's Investor Services, and Standard & Poor's. A single credit rating may be utilized if/when it is financially advantageous to do so and upon advice from the County's municipal advisor, or/and underwriter.

#### **4.12 No Public Financing for the Purpose of Arbitrage**

The County shall be prohibited from issuing arbitrage bonds. Permitted investment of proceeds must be clearly defined prior to each issuance. Planning, contract, and construction delays must be managed to assure compliance with the various exceptions afforded by the Internal Revenue Service (IRS) concerning arbitrage, such as the 6-month, 18-month, 3-year and 5-year exceptions, when applicable.

#### **4.13 Debt Refunding**

The County is responsible for acting upon refunding opportunities that offer significant savings over the maintenance of existing debt. Periodically, the County will analyze and evaluate debt repayment opportunities based on current market conditions. Additionally, the County may request or receive analysis of an opportunity to refund existing debt from a municipal advisor or other municipal financial market participant. The County will consider such opportunities and evaluate the economic benefit they may present.

Outstanding debt issues may be refunded, if permissible by federal tax law and the terms of the debt instrument, if refunding results in an acceptable level of debt service savings. Other structural aspects are to be determined by the DAC, municipal advisor or/and underwriter.

As defined for federal tax law purposes, the County may issue current or advance refunding bonds when advantageous, legally permissible, prudent, and when the aggregate net present value savings (expressed as a percentage of the par amount of the refunding bonds) equal or exceed three percent (3%). Refunding's of current debt shall be made only if recommended by the DAC and the County Admirative Office, and approved by the Board. Refundings that produce negative savings will not be considered, unless there is a compelling public policy objective.

Within federal tax law constraints, a refunding will be considered if and when there is a net economic benefit or if it is imperative in order to modernize covenants essential to operations and management. A current refunding provides that all proceeds (aside from expenses and reserve fund, if required) are used to extinguish existing debt at a savings to the County in the overall repayment costs. Managers of existing projects may request refundings for the purpose of taking advantage of more favorable economic conditions and lower market interest rates, restructuring the principal and debt service payments, or eliminating burdensome covenants with bondholders. Advance refundings used to refinance outstanding debt before the date the outstanding debt becomes due or callable. Proceeds of advance refunding bonds

are placed into an escrow account with a fiduciary agent and used to pay interest and principal on the refunded bonds until final redemption at their maturity or call date.

The financial advantages of a refunding must outweigh the costs and risks of reissuing bonds. The request for refunding will be assessed with competing new capital projects requiring financing. In no event will the maturity date of the refunding issue exceed the original maturity date of the refunded debt.

Savings requirements for current or advance refunding undertaken to restructure debt may be waived at the recommendation of the County Administrative Office, in consultation with the municipal advisor, with DAC and Board approval, upon a finding that such a restructuring is in the County's overall best financial interest.

#### **4.14 Primary and Continuing Disclosure**

Primary disclosure shall include the preliminary official statement (POS) and the official statement (OS), which shall be prepared in a manner consistent with applicable securities laws and the Government Finance Officers Association (GFOA) guidelines. In connection with a debt issuance, the County may undertake to provide continuing disclosure in order to enable the underwriters of such debt to comply with the requirements of Securities and Exchange Commission (SEC) rule 15c2-12. Disclosure certifications shall be acknowledged by the Office of the Auditor-Controller who shall be responsible for the County's continuing disclosure undertakings.

After entering a Continuing Disclosure undertaking (i.e., a contract), the County shall comply with the terms of such undertaking. Not only must all filings be made in a timely manner, if for any reason there is a failure to make a timely filing, such failure also must be disclosed (and could reflect negatively on the County). The Office of the Auditor-Controller will take all reasonable steps to ensure that the County files timely annual reports and "listed event" (there are currently 15 such events) notices with the Municipal Securities Rulemaking Board's (MSRB's) Electronic Municipal Market Access system (EMMA), and that all such filings are (i) complete and accurate under the law and (ii) clear, concise and readable for the investing community.

The County may also (i) select certain staff members to be the County's "disclosure team" that, with the County Administrative Office, develops and employs disclosure practices and procedures that are effective, reasonable and defensible and (ii) engage with an external disclosure counsel to provide additional guidance and training. The County may also from time to time evaluate using the services of a dissemination agent, such as the County's municipal advisor or Digital Assurance Certification, LLC, or some other third-party entity to assist with compliance.

#### **4.15 Investment of Bond Proceeds**

Bond proceeds shall be invested as permitted by the instrument pursuant to which the bonds are issued and pursuant to the County's investment policies. The County Administrative Office will determine the investment structure reasonably expected to produce the results which are in the best interest of the County as it relates to the issue. Bond proceed investment can be managed by the County Treasury, Guaranteed Investment Contracts, or outside investment managers within the scope allowed by the instrument pursuant to which the bonds are issued.

#### **4.16 Timing of Debt Issuance**

Debt should be issued to correlate with the need for funds. For long-term projects, issuance should only occur when there is a verifiable need and reasonable expectation of compliance with statutes.

#### **4.17 Expenditure of Bond Proceeds**

Any new construction or project acquisition monies raised through debt issuance will adhere to the specific “Use of Proceeds” disclosures provided in the instrument pursuant to which the bonds are issued and any statutory requirements.

Annually, the Office of the Auditor-Controller shall submit a report to the California Debt and Investment Advisory Commission (CDIAC). The annual report will cover the period July 1, to June 30, inclusive and shall be submitted no later than seven months after the end of the reporting period by any method approved by CDIAC. The annual report shall, among other things, include the use of proceeds of issued debt during the reporting period, including the following:

1. Debt proceeds available at the beginning of the reporting period.
2. Proceeds spent during the reporting period and the purposes for which it was spent.
3. Debt proceeds remaining at the end of the reporting period.

#### **4.18 Arm’s Length Transactions**

The County will endeavor to have “Arm's Length Transactions,” in which the buyers (underwriters) of the debt have no relationship with the County. For Arm's Length Transactions, the County and the buyer are both acting in their own self-interest and are not subject to any pressure or duress from the other party.

#### **4.19 Records Retention**

Documentation relating to each particular financing will be retained for the term of the financing plus three years, including all refundings. Storage may be in hard copy or electronic format.

### Section 5 – External Finance Professionals

The County Administrative Office will be responsible for dissemination of requests for proposal (RFP), at least every three (3) years, to establish pre-approved lists of financing professionals from which issue specific teams will be selected. The County Administrative Office will assemble issue specific teams based on factors, including but not limited to, experience of the firm and individuals, issue specific expertise, scope of services to be provided, financial strength, recommended strategies, industry reputation, and pricing. Awards will not be based on price alone, but instead on which combination of professionals will result in the lowest overall borrowing costs to the County.

Most financing professionals are compensated from bond proceeds upon issuance. However, legal, municipal advisory, and feasibility consultant services may require payment for hourly services regardless of whether an issue is sold. Arbitrage rebate consultants, trustees, paying agents, and custodians generally charge annual fees for services provided after issuance.

#### **5.1 External Finance Professionals**

- A. **Bond Counsel:** Prepares necessary bond resolutions, bond indentures, establishes underlying legal framework for the issuance, reviews all documentation and opines as to legalities relating to the issue.
- B. **Disclosure Counsel:** Prepares the official statement or other disclosure for a debt issue.

- C. **Tax Counsel:** Opine on tax matters associated with the offering and preparation of filings necessitated by IRS rules.
- D. **Independent Municipal Advisor(s)** (MA): May be engaged by the County, if deemed advisable or appropriate by the DAC, to provide independent analysis to the County of proposed public financings on such terms and conditions as ratified by the Board. The County Administrative Office, subject to Board ratification, shall have the discretion to hire MAs with respect to any particular proposed public financing or more generally to provide advice with respect to the public financing needs of the County on a periodic basis. The MA, and any related entity, shall be prohibited from: (i) receiving any payments from the underwriter(s) with respect to the proposed public financing; and (ii) selling any securities or derivative products to the County during the period it is acting as MA to the County. In the event it is determined that it is not necessary or advisable for the County to hire a MA with respect to a particular proposed public financing, the County shall perform any responsibilities which might otherwise have been performed by the MA.
- E. **Feasibility Consultants:** Determine feasibility of complex debt issues as required by statute or at the County's discretion.
- F. **Underwriters:** Contractually commit to purchase and market the debt issue on negotiated sales, or may be the successful bidder(s) on competitive sales.
- G. **Underwriter's Counsel:** Selected by the underwriter to act as counsel to the underwriter on negotiated sales.
- H. **Special Tax Counsel:** Advises the County and bond counsel on tax related matters if tax counsel does not have the appropriate level of expertise. Customarily applicable to Mello Roos issuance.
- I. **Ratings Agency Analysts:** Conduct financial reviews of the County and the debt issue to assign short and/or long-term ratings and will monitor the County's financial condition for possible adjustments to the assigned rating. Subsequent reviews can be initiated by either the County or the ratings agency.
- J. **Credit Enhancement Providers:** Provide credit enhancements for debt issues including, but not limited to, insurance, liquidity facilitation, and letters of credit. Banks providing enhancement must be rated at least "A" by an NRSRO, approved by the County, and properly licensed to conduct business within the state of California. Bond insurance must be provided by nationally recognized municipal bond insurers who are rated at least "A" by an NRSRO. Contracts with credit enhancement providers should be structured, if possible, to protect the County's interests in the event of ratings downgrades, financial deterioration of the enhancement provider, and other material events likely to affect the issuance.
- K. **Arbitrage Consultants:** Calculate investment returns on bond proceeds, arbitrage rebate amounts, and prepare the associated tax returns and forms.
- L. **Trustees, Registrars, Paying Agents, and Fiscal Agents:** Banks or trust companies that provide vital corporate trust services throughout the term of the debt issue.

- M. **Investment Advisors:** Provide advice as to investment of proceeds of debt issuances in appropriate investment vehicles.

## Section 6 – Financial Disclosure, Monitoring, and Recordkeeping

To assure clear, comprehensive, and accurate financial information, the County is committed to meeting secondary disclosure requirements on a timely and comprehensive basis, cooperating fully with rating agencies, institutional and individual investors, County departments and agencies, other levels of government, and the general public. Complete and accurate disclosure supports the taxable or tax exempt status of bonds issued by the County and provides transparency regarding County finances and operations.

The County Administrative Office, Treasurer-Tax Collector, and Auditor-Controller, pursuant to their authority, shall be responsible for the following as they apply to County long-term and short-term debt issues:

- A) Providing the trustees and/or dissemination agents ongoing disclosure information for filing with the MSRB via EMMA. The County may elect to utilize the services of a dissemination agent for continuing disclosure reporting; however, the responsibility for ensuring the reports are filed timely remains with the County.
- B) Maintaining compliance with disclosure standards promulgated by State and Federal regulatory bodies.
- C) Ensuring the Comprehensive Annual Financial Report (CAFR) and continuing disclosure statements meet (at a minimum) the standards articulated by the Government Accounting Standards Board (GASB), the SEC, and Generally Accepted Accounting Principles (GAAP).
- D) Monitoring to ensure all covenants and annual continuing disclosure requirements are complied with, including requiring each County department, agency, district, or authority to notify the County Administrative Office immediately upon the occurrence of any event, specified in Rule 15c2-12 under the Securities Exchange Act of 1934, which must be filed with EMMA. Examples of such events are credit rating downgrades, major disasters, major litigation, default on existing debt, bankruptcy, etc. and for Tax and Revenue Anticipation Notes (TRANS) issuance, ensuring cash deficit requirements are met for each issuance, to meet arbitrage and rebate requirements and protect the tax-exempt status of each issuance.
- E) Submit an annual report to the CDIAC. The annual report will cover the period July 1, to June 30, inclusive and shall be submitted no later than seven months after the end of the reporting period by any method approved by CDIAC. The annual report shall consist of the following:
  1. Debt authorized during the reporting period, which shall include the following:
    - Debt authorized at the beginning of the reporting period.
    - Debt authorized and issued during the reporting period.
    - Debt authorized but not issued at the end of the reporting period.
    - Debt authority that has lapsed during the reporting period.

2. Debt outstanding during the reporting period, which shall include the following:
    - Principal balance at the beginning of the reporting period.
    - Principal paid during the reporting period.
    - Principal outstanding at the end of the reporting period.
  3. The use of proceeds of issued debt during the reporting period, which shall include the following:
    - Debt proceeds available at the beginning of the reporting period.
    - Proceeds spent during the reporting period and the purposes for which it was spent.
    - Debt proceeds remaining at the end of the reporting period.
- F) When applicable, applying the private business use, private payment or security, and the private loan financing tests to ensure the tax-exempt bond issues are not issues of private activity bonds. Monitoring shall include:
1. Reviewing the amount of existing private use of bond-financed facilities,
  2. Identifying any new sale, lease or license, management contract, or other arrangements involving the private use of a bond-financed facility, and
  3. Promptly consulting with bond counsel as to any possible private use of a bond-financed facility and any necessary remedial action. Generally, an issuer will not loan more than five percent (5%) of the proceeds of an issue to one or more nongovernmental persons. The issuer does not expect to allow and will not allow more than ten percent (10%) of the sale proceeds and investment proceeds of the issue or of the bond-financed facility to be privately used directly or indirectly by any nongovernmental person in any trade or business, other than as a member of the general public. For purposes of the preceding sentence, "10%" is reduced to "5%" for nongovernmental use of any facility financed or refinanced from the proceeds of an issue which are disproportionate to or not related to the governmental purposes of the issue. Absent an opinion of counsel a nongovernmental person is treated as "privately using" proceeds of the issue to the extent the nongovernmental person:
    - a. borrows proceeds of the issue,
    - b. uses the bond-financed facility (e.g., as owner, lessee, service provider, operator or manager), or
    - c. acquires the output (or throughput) of the bond-financed facility.
- G) When applicable, establishing and maintaining a system of monitoring, reporting and recordkeeping to meet the arbitrage rebate compliance requirements of the federal tax code. Arbitrage in the municipal bond market is the difference in the interest paid on the tax-exempt bonds and the interest earned by investing the bond proceeds in taxable securities. If interest rates on investments are higher than the interest on the bonds, there is positive arbitrage. The tax code requires that, to the extent the investment yield exceeds the bond yield, such excess must be rebated to the federal government, subject to the exceptions discussed in paragraph 3, below. The system shall include annually:

1. Ensuring investments of proceeds comply with yield restrictions throughout their investment life;
  2. Tracking the investment earnings on bond proceeds since issuance and calculating any rebatable earnings (rebatable earnings are amounts earned from the investment of the gross bond proceeds at a yield in excess of the yield on the issue);
  3. Applying exceptions to the application of rebatable earnings for certain investments of bond proceeds [e.g., if investments were (i) during a temporary period, (ii) part of a reasonably required reserve or replacement fund, or (iii) as part of a minor portion (an amount not exceeding the lesser of 5% of the sale proceeds of the issue or \$100,000)];
  4. Remitting any rebatable earnings to the federal government no later than sixty (60) days after the end of every fifth (5th) bond year throughout the term of a bond issue. The County Administrative Office has the authority to contract with parties specializing in arbitrage/rebate calculations, if deemed necessary; and
  5. Satisfying the Arbitrage Rebate/Yield Reduction Filing Requirements-Form 8038-T or Form 8038-R, if applicable.
- H) Ensuring debt service for all existing and anticipated debt is properly budgeted and appropriated for each fiscal year and documenting any specific revenue sources for repayment.
- I) Initiating scheduled debt service payments.
- J) Reconciling bank statements for money managed by trustees.
- K) Validating all payments for construction and other debt related expenditures.
- L) Retaining all material records related to bond financings, in a combination of paper and electronic forms, including, but not limited to:
1. Records relating to the bond transaction, including documents prepared by bond counsel, audited financial statements, offering documents (including the official statements), minutes and resolutions authorizing the bond financings, appraisals, surveys, feasibility studies, documents related to government grants, publications/articles related to County bond financings, correspondence, any IRS correspondence or examinations, and arbitrage related documents and calculations;
  2. Documentation evidencing expenditure of bond proceeds;
  3. Documentation evidencing use of bond-financed property;
  4. Documentation of allocation of bond proceeds to issuance costs;

5. Copies of construction and purchase contracts, requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to bond proceeds spent for construction or purchase of bond financed facilities;
  6. Copies of all agreements, contracts, leases, subleases, ownership documentation, and entity formation documentation;
  7. Documentation evidencing all payments and security for the bonds;
  8. An asset list or schedule of all bond-financed facilities or equipment;
  9. Depreciation schedules for bond-financed depreciable property; and
  10. The tracking of purchases and sales of bond-financed assets.
- M) Maintaining material records for as long as the bonds are outstanding plus three (3) years after the final redemption date of the bonds.
- N) Ensuring all County staff involved with debt issuance will be provided pertinent educational resources, enrolled in training/educational seminars and classes, and trained by knowledgeable staff to ensure compliance with all applicable Federal and State laws and regulations.

## Section 7 – Types of Debt Permitted to be Issued

The County may engage in issuance of the following types of debt when circumstances, resources, and appropriate planning suggest their need and use.

### **7.1 Short-term Debt**

- A. Bond Anticipation Notes: used to obtain interim project financing when bonds are approved but not yet issued.
- B. Grant Anticipation Notes: used to eliminate cash flow deficits associated with funding delays on State or federally funded programs.
- C. Tax and Revenue Anticipation Notes: used to eliminate cash flow deficits before receipt of taxes and other revenue in the same fiscal year.
- D. Other types of short-term debt promulgated by statute or regulatory authority that serves a beneficial public purpose (includes dry period loans).

### **7.2 Long-term Debt**

- A. General Obligation Bonds and Limited Obligation Bonds: used for acquisition and improvements of land and buildings.
- B. Special Assessment Bonds: used for facilities of local benefit to property.
- C. Tax Allocation Bonds: used for public projects within a redevelopment project area.



- D. Certificates of Participation and Lease Revenue Bonds: use unrestricted.
- E. Revenue Bonds: used for revenue producing facilities.
- F. Taxable Bonds: Required if there is a private, non-governmental purpose of financing. Used to avoid arbitrage rebate restriction on projects with anticipated completion dates beyond three (3) years after issuance.
- G. Mello-Roos Bonds: used for community facilities development.
- H. Marks-Roos Bonds: issued by a joint power authority (JPA) to provides loans to local agencies to finance public capital improvements, working capital, and insurance programs. Voter approval is not required.
- I. Pension Obligation Bonds and Other Post-Employment Benefits (OPEB) Bonds: issued to fund the obligation to pay pension benefits and other post-employment benefits.
- J. Judgment Obligation Bonds: issued to finance legal obligations resulting from litigation.
- K. Other securitizations of County revenues: issued to obtain lump sum cash from a multi-year income stream.

## Section 8 – Permitted Structural Features

- A. Maturity of the debt issued cannot exceed that permitted by law.
- B. Maturity of the debt shall not exceed the estimated useful life of the project being constructed or improved with the proceeds of the debt, regardless of the legally permitted final maturity.
- C. Compound interest bonds (also known as zero coupon bonds or capital appreciation bonds) are sold at a deep discount from par but do not require interest or principal payments until maturity or sinking fund dates. Subject to specific structural restrictions, they are to be used for projects that will not generate sufficient revenue to permit semi-annual debt service until some time in the future. Premium bonds are those sold at a premium over par. The premium cannot exceed that permitted by law.
- D. In most cases, annual debt service will be approximately level with semi-annual interest coupons. Non-level debt service may be utilized if the structure results in a favorable financial outcome. Annual payments may be considered for multi-participant JPA or MOU financings.
- E. A mandatory redemption feature may be used on revenue bonds to call bonds with revenues produced in excess of those required to debt service. An optional call feature should be used on special assessment bonds to call bonds from proceeds of assessment prepayments.
- F. Credit enhancements, such as bond insurance or a letter of credit, are to be used if they result in an overall net debt service savings. In any event, credit enhancement is required for the

use of Mello-Roos bonds in the County. A cost versus benefit analysis must be reviewed by the County Administrative Office to determine whether to purchase bond insurance or to issue bonds based on the stand-alone credit rating.

- G. Debt issues should be structured to be senior lien obligations; junior lien obligations are to be avoided due to the higher interest rate demanded by investors, but may be required dependent on the credit and structure of bond issuance.
- H. Derivative products such as interest rate swaps and hedges, while permissible, impose additional risks. Use of derivatives must first be analyzed by the County's MA, reviewed by the DAC, and approved by the Board.
- I. If necessary for federal tax law purposes, a reimbursement resolution should be approved by the Board for qualifying capital projects that require expenditures prior to the issuance of the debt to enable those expenditures to be reimbursed in the debt issue sizing.

## Section 9 – Specific Permitted Features by Type of Debt

### **9.1 General Obligation**

General obligation bonds pursuant to State law require a two-thirds majority of those voting in a local election to authorize a bond issue for a specific purpose. They may be issued to acquire, construct, and improve real property, but cannot be used to purchase equipment or for operations and maintenance. Both competitive and negotiated sales are permissible. The bonds cannot be sold at a discount from par and the interest rate cannot be higher than the statutory limit of twelve percent (12%) nor that approved by the voters. The maximum aggregate outstanding amount of general obligation bonds may not exceed 1.25% of the assessed valuation of all real and personal property in the County, except that for water conservation and flood control projects and construction of certain County roads, the maximum may increase to 3.75%. The maximum maturity cannot exceed forty (40) years, and in no event shall it exceed the useful life of the project being financed. Annual debt service shall be approximately level. If the proceeds of the debt issue are to be used for construction of a project, the issue should be sized to include a reasonable contingency factor, depending upon the certainty of the cost of the project. An optional call feature should be included, and any funds remaining after construction of the project should be used to call outstanding bonds. A debt service reserve is not required. A credit enhancement may be employed if it reduces the overall net cost of the issue.

### **9.2 Revenue Obligations**

Enterprise Revenue bonds are to be used to acquire or construct a specific project and are to be repaid solely from the revenue, or net revenue, produced by such enterprise. Bondholders are only entitled to repayment from such revenue or net revenue and have no recourse to the general fund. The net revenue coverage ratio (gross revenue less operations and maintenance cost) goal of 1.25 times annual debt service is desired. A debt service reserve equal to the highest annual debt service (limited by Tax Code to 10% or proceeds) may be dictated by the market. There is no stated maximum maturity, but in no event shall it exceed the useful life of the project being financed. Annual debt service should be approximately level unless rate increases have been implemented. If the proceeds of the debt issue are to be used for construction of a project, the issue should be sized to include a reasonable contingency factor, depending upon the certainty of the cost of the project. An optional call feature should be included, and any funds remaining after construction of the project should be used to call outstanding bonds. A credit enhancement may be employed if it reduces the overall net cost of the issue. Estimated costs of issuance

may be included in sizing the issue. Capitalized interest from the dated date of the bonds to six months after the anticipated completion of the project or until revenues are sufficient to pay debt service may be included in the issue sizing, as determined by the MA and/or Debt Advisory Committee (DAC).

### **9.3 Fixed and Variable Rate Debt**

To maintain a predictable debt service burden, the County will give preference to debt that carries a fixed interest rate. An alternative to the use of fixed rate debt is floating or variable rate debt. It may be appropriate to issue short-term or long-term variable rate debt to diversify the County's debt portfolio, reduce interest costs, provide interim funding for capital projects, or improve the match of assets to liabilities.

Fixed rate debt should be considered as a primary structural tool for project financings, so that annual debt service requirements are not subject to interest rate exposure and will not vary as interest rates change. However, other forms of rate structures may be used if they result in favorable financial outcomes.

Budgetary safeguards should be in place before incurring variable rate debt, and such debt should never amount to more than twenty percent (20%) of all outstanding debt. Before incurring variable rate debt, careful consideration should be given to current market conditions and trends, including the costs and availability of Liquidity Facilities. The County's cost for administering variable rate debt should be considered when comparing fixed and variable rate debt.

Variable rate debt may be used if interest rates are high and market expectations are that rates will decline. While variable rate debt permits the County to obtain lower rates than fixed rate debt, the County is subject to interest rate risk. The frequency with which the interest rate on the debt is reset has a direct effect on the amount of interest to be paid. Variable rate debt should only be used if the County can be converted to fixed rate debt. The County will consider the use of interest rate caps on any variable rate issue.

The use of synthetic interest rate swaps may be employed if their use is determined advisable by the County's MA, reviewed by the DAC, and approved by the Board.

### **9.4 Lease-backed Debt**

COPs provide long-term financing through a lease or installment sale agreement that does not constitute indebtedness under the State constitutional debt limitation and are not subject to other statutory restrictions applicable to bonds, including interest rate limitation, election requirements, competitive sale requirements, or semiannual or fixed rate interest payment restrictions. COP debt was aggregated with General Obligation debt by Board of Supervisor resolution on August 16, 2005 to maximize aggregate County debt 1.25% of countywide assessed value. Rental interruption, earthquake, and other insurance should be provided. COPs shall require specific noticing for public hearings to be held for any such financing.

Lease revenue bonds are like COPs because they are both based on a lease agreement and are not subject to the constitutional debt limitation. The financed project may be revenue producing or non-revenue producing. The issuer (lessor) must lease to another public entity and receive lease payments in return that are sufficient to meet the debt service on the issue. Title must revert to the issuer after the bonds are paid in full. Lease revenue bonds cannot bear an interest rate above the legal maximum.

### **9.5 Special Obligation Debt**

Assessment district debt may be levied to provide infrastructure improvements to defined communities of interest. Sizing of the issue may include engineering costs, legal and financing costs, and a debt service reserve. The ratio of land value to assessment lien must be at least 4 to 1 on a per parcel basis. As there is generally no obligation of the issuer to make up any delinquencies or defaults, it is necessary to provide a covenant to foreclose. Balloting for the assessment protest procedures must be in compliance with Proposition 218.

Tax allocation bonds may be issued by redevelopment agencies to revitalize blighted and economically depressed areas of the County and to promote economic growth. They may be structured as tax-exempt bonds or federally taxable bonds. If tax increment is the sole source of repayment, it must meet a reasonable coverage test for annual debt service. The bonds must be sold by competitive sale and cannot bear an interest rate above the legal maximum. However, the bonds can be sold to the JPA at negotiated sale. Refunding bonds can be negotiated, as can housing bonds. The issue must include capitalized interest to cover the period before sufficient incremental taxes will be realized. A professional analysis of projected tax increment is required for any tax allocation bond. The County must pursue all appropriate pass-through agreements prior to debt issuance. The County may contract with a professional firm to prepare an economic feasibility determination in support of debt issuance.

### **9.6 Conduit Issues**

Industrial development bonds may be issued under the California Industrial Development Financing Act to assist private companies in financing certain projects. Bonds issued under the Act are repaid solely by private enterprise, and no taxes or other public moneys are obligated. The maximum term is forty (40) years, the interest rate cannot exceed 12%, and they may be sold at either competitive or negotiated sale.

There are a number of federal tax law limitations and restrictions applicable to industrial development bonds.

The County may act as a conduit issuer for entities qualifying under statute for tax exempt financing when the County is expressly held harmless as documented in the bond covenants.

The County may utilize the California Statewide Communities Development Authority (CSCDA) short-term Tax and Revenue Anticipation Note (TRAN) program and affiliated long-term CaLease program when appropriate to reduce cost of issuance. The County is a member of the Authority. In addition, the County may participate in other joint powers or related agreements with public or quasi-public entities for beneficial issuance of debt instruments.

### **9.7 Taxable Debt**

Taxable debt may be issued when facilities include private uses that exceed statutory thresholds. Taxable debt may be used when its use is determined to be structurally favorable to the overall financing. There are no arbitrage restrictions on taxable debt. There are also no restrictions as to use of the bond proceeds and on the amount of private participation. Taxable debt may be sold by competitive or negotiated sale. Taxable debt may be issued in conjunction with tax exempt debt when economically in the best interest of the County.

### **9.8 New Financing Methods and Techniques**

Changing federal regulations and the shifting concerns of rating agencies mean that the County operates in a dynamic financial environment. This policy is not intended to hinder the County's use of any new financing techniques that may arise.

Proposals for financing methods not included in this policy should be addressed to the DAC. If the DAC approves of such financing methods, the DAC should recommend their use to the County Administrative Office. This policy should then be amended to reflect any new financing techniques recommended by the DAC and approved by the Board.

## **Section 10 – Mello-Roos Debt**

### **10.1 Local Goals and Policies**

Adopted by the Board of Supervisors on March 29, 1991, the County's Mello-Roos Policy is restated and incorporated into this Debt Management Policy with only minor modifications. Section 53312.7(a) of the California Government Code required the County to consider and adopt local goals and policies concerning the use of the Mello-Roos Community Facilities Act of 1982 (the "Act"), prior to the initiation of proceeding on or after January 1, 1994 to establish a Community Facilities District (also known as Mello-Roos district) under the Act. This policy was intended to satisfy the requirements of the Act and provides specific guidance for approval of public financing for provision of public facilities and services in proposed development projects through Community Facilities Districts. In addition, this policy established the standards and guidelines for the review of these proposed development financings by County staff and its designated agent(s), the Budget Committee, and ultimately the Board. In those cases in which fixed lien special assessment or other types of land based financing is substituted for Community Facilities Districts, the County will apply applicable provisions of this policy.

### **10.2 Priorities for Financing**

The priority that various kinds of public facilities and services will have for financing through the County's use of the Act are as follows:

- Public facilities to be owned and operated by the County that constitute regional or backbone infrastructure required to serve proposed development;
- Other public facilities (excluding in-tract infrastructure) to be owned and operated by the County for which there is a clearly demonstrated public benefit; and
- Services authorized to be financed pursuant to the Act; and
- In-tract infrastructure to be owned and operated by the County.

Generally, public facilities to be owned or operated by a public agency other than the County, including such public facilities financed in lieu of the payment of development fees imposed by such public agency, will not be financed through the County's use of the Act; provided, however, that the County may consider the financing of such facilities on a case-by-case basis. Generally, privately owned facilities (that is, facilities not owned by a local agency) will not be financed through the County's use of the Act; provided, however, that the County may consider the financing of such facilities on a case-by-case basis.

### 10.3 Mello-Roos Policies

- A) **Consideration of Community Facilities Districts.** The Board of Supervisors will consider the use of community facilities districts (CFDs) as well as other financing methods to assist certain types of residential, and/or nonresidential development, where, in the County's opinion, the financing of public facilities satisfies a public need and represents a significant public benefit, while having the financial security to reasonably assure a sound investment for potential bondholders and minimize any County exposure to liability for actions taken on behalf of public financing projects. Effective January 1, 2008, CFD policies must include a statement of priority for services.

While recognizing that public facilities proposed to be financed must meet a public need and must benefit properties within the proposed development project, public benefit implies that a significant public benefit will also result to the community at large. An example of significant public benefit is a public facility having regional impact such as an all-weather bridge, a freeway overpass, or a regional water or wastewater treatment plant. In respect of the foregoing, the County will give priority to the financing of backbone regional public infrastructure improvements that produce significant public benefit. Significant public benefit can also take the form of the provision of affordable housing through reduced housing costs.

CFD financing will be permitted for public improvements that will benefit the expected long-term property owners, and whose useful life will be equal or greater than the longer of (a) five (5) years or (b) the term of the bonds.

- B) **Consistency with Comprehensive General Plan.** The proposed development project must be consistent with the County's Comprehensive General Plan and have secure appropriate land use approvals from the County to allow for the implementation of the development of the area as contemplated.
- C) **Ownership of Facilities.** Facilities which, upon completion, are to be owned, operated, or maintained by public agencies shall be considered public facilities. Limited exceptions will be made for certain facilities that are to be owned, operated, or maintained by private utilities and homeowner associations.
- D) **Appraisal.** An appraisal of the property subject to any lien required to secure any public financing shall be required. A minimum property value to lien/debt ratio of 4:1 (including any overlapping assessment or community facilities districts) must be present pursuant to Premise 3 entitled "Bulk Land Value" as set forth in Attachment A as determined by an M.A.I appraisal. The appraisal shall be reviewed by the County and shall be prepared as set forth in Attachment A hereto.
- E) **Absorption Study.** Unless waived by the County, an absorption study of the proposed development project shall be required for CFD financings. The absorption study shall be used as a basis for verification that sufficient revenues can be produced to fully and timely satisfy debt service requirements and costs of services and to determine if the financing of the public facilities and services is appropriate given the timing of the development. Additionally, the projected absorption rates will be provided to the appraiser for use in the appraisal.

- F) **Rate and Apportionment of Special Tax.** With regard to CFDs, the proposed rate and method of apportionment of the special tax shall comply with the following criteria:
1. The rate and method of apportionment shall not provide for an annually increasing maximum special tax for any classification. However, subject to County approval in its sole discretion, under appropriate circumstance, as determined by the County, an increase in the maximum special tax may be permitted, not to exceed two percent (2%) annually.
  2. The total projected annual special tax revenues must exceed the projected annual gross debt service on the bonds by at least ten percent (10%). In structuring the special tax, projected annual interest earnings on bond reserve funds shall not be included as revenue for the purpose of this calculation.
  3. In limited cases, as determined by the County in its sole discretion, a special tax for services may be permitted and the annual special tax may increase to reflect projected increases in costs to provide the applicable services in an amount to be determined by the County, in its sole discretion.
  4. The projected annual special tax revenues shall include amounts projected to be sufficient to pay reasonable annual administrative expenses and other direct costs to the CFD.
  5. All property not otherwise statutorily exempted or owned (or to be owned) by a public entity shall bear its appropriate share of the special tax liability.
  6. The special tax shall be apportioned on a reasonable basis to categories and classes of property within the CFD subject to the special tax.
  7. A formula to prepay the special tax may be permitted.
  8. The projected ad valorem property tax and other direct and overlapping debt for the proposed development project (including estimated CSA charges, projected benefit assessments, levies for authorized but unissued debt and any other anticipated municipal charges which may be included in a property owners annual tax bill), including the proposed maximum special tax, may not exceed two percent (2%) of the anticipated original sales value of each improved parcel upon completion of the bond financed improvements and the reasonably anticipated private improvements. Real estate market fluctuation downward can cause the overall rate, as a percentage of sales price or appraised value, to be in excess of the two percent (2%) limitation.
  9. A backup special tax or other security device to protect against changes in densities resulting in insufficient annual special tax revenues to pay annual debt service and administrative expenses may be required at the sole discretion of the County.
- G) **Credit and Structure for Bond Issues.** Each bond issue shall be structured to adequately protect bondholders and to not negatively impact the bonding capacity or credit rating of the County through a combination of credit enhancements, foreclosure covenants, and special reserve funds. Specifically:



1. A credit enhancement will be required whenever one entity or related entities are responsible for twenty percent (20%) or more of the debt service obligation of the proposed debt issue. The required credit enhancement shall take the form of, and shall be provided as set forth in Attachment B, hereto.
  2. A foreclosure covenant will be required and shall be included in any applicable bond indenture or fiscal agent agreement.
  3. The County will require that capitalized interest on the initial series of bonds be funded from proceeds of the bonds and be limited to the amount necessary to pay debt service on the bonds until the first interest payment date occurring after the levy of the special taxes on the real property tax roll. Inclusion of capitalized interest on subsequent series of bonds will be at the County's discretion and will only be permitted if a direct benefit inures to the ultimate property owners.
  4. A reserve fund equal to the lesser of ten percent (10%) of the original principal amount of the bonds, maximum annual debt service or one hundred twenty five percent (125%) of average annual debt service (Reserve Requirement) shall be funded from the proceeds of each series of bonds. A reserve fund surety bond or letter of credit, provided by a municipal bond insurer, a major banking institution or other equivalent source, may be substituted, at the County's sole discretion.
- H) **Level Debt Service Requirement.** Bond issues should be structured with approximately level debt service. To the extent that bonds are issued in series, individual series of bonds may have uneven debt service if the intent is to create level debt service at such time as all series of bonds are issued and to minimize the potential of fluctuating annual special taxes.
- I) **Maximum Term of Bonds.** If a single series of bonds is contemplated, the term of the bonds shall not, by statute, exceed forty (40) years. It is County policy to attempt to restrict such bonds to a term of thirty (30) years. If multiple series of bond issue are contemplated, in no instance should an individual residential parcel be encumbered for debt service beyond a thirty-five (35) year period.
- J) **Disclosure.** Disclosure of the special tax lien shall be in compliance with applicable statutory authority. The County, in its sole judgment, may require additional property owner notification if it deems such disclosure will assist subsequent property owners to be made aware of the lien obligation. In addition, applicants for CFD financings and all major landowners will be required to co-operate prior to and subsequent to all bond sales with initial and continuing disclosure to bondholders and the financial markets. Applicants and landowners will cooperate in the preparation, verification, and dissemination of the identity of land owners, development project plans, timetables, and statistics, and financial pro-forma information, and any other information the County and its financing team deem appropriate.
- K) **Payment of Initial Fees and Costs by Applicant.** No proposal to initiate the formation of a CFD financing will be considered valid without the payment of a fee to compensate the County for all costs incurred to perform its analysis of the proposal and to pay for the costs of conducting the proceedings. Applicants for public financing projects shall submit proposals to the Clerk



to the Board of Supervisors. The County will review the proposal within sixty (60) days after it is deemed complete and make its determination whether or not to formally consider the proposed district. The applicant(s) shall deposit a minimum \$25,000 estimated fee amount with the Clerk to the Board of Supervisors at the time the proposal is submitted. Additional deposits will be required as needed to cover costs. The minimum fee will be increased to an amount determined by the County in its sole discretion to be appropriate given the size and scope of the proposed project or financing. The estimated fee amount shall be in the form of cash or other negotiable instrument. Failure to submit any requested increase in the deposit will result in a suspension of the processing of the financing.

- L) **Independent Review by County.** The County will perform an independent review of the proposed public financing and may take recommendations to the Board regarding the financial risk, impact on the County's bonding capacity, economic feasibility and related issues. The applicant(s) shall be required to provide current and two (2) prior year financial statements, preferably audited, of the entity responsible for the development and initial payment of special taxes and other materials to assist the County or its agent in its fiscal review.
- M) **County to Select Professionals.** The County shall select the bond counsel, underwriter, financial advisor, appraiser, absorption consultant, special tax consultant and other professionals and consultants it deems appropriate. No payment from special tax or bonds will be made for property owner consultants.
- N) **Cooperation by County Departments.** All appropriate County departments will cooperate with the initiating department, the County Administrative Office and the Debt Advisory Committee (DAC) in conducting the necessary reviews and proceedings.
- O) **Limited Security for Bonds.** All statements and materials related to the sale of CFD bonds shall emphasize and state that neither the faith, credit nor the taxing power of the County is pledged to the repayment of the bonds.
- P) **County to Acquire Completed Facilities.** It is the desire of the County that it incur no liability for the design, engineering and maintenance of the public improvements to be financed through bond proceeds. It is the preference of the County to use the "acquisition district" approach to pay for CFD financed public infrastructure, under which bond proceeds will be released only upon completion of the financed improvement or approved components thereof and acceptance by the entity which is to own, operate, and maintain the improvement. All contracts for public improvements to be owned, operated or maintained by the County shall be consistent with the requirements set for the in Attachment C, hereto.
- Q) **County's Use of Financial Consultant.** The County may, at its sole discretion, employ a financial consultant to assist the County during its fiscal review period and all costs for consulting services will be borne by the applicant(s).
- R) **Disbursement of Bond Proceeds.** The financing documents will provide that bond proceeds will be used and disbursed at times and in the manner as specified in the indenture or fiscal agent agreement pursuant to which the bonds are issued.

- S) **Report in Event of Default.** For outstanding bond issues, all County departments and agencies with administrative responsibilities will notify the Board and file a written report of the circumstances if an event of default under the financing documents has occurred.
  
- T) **Refunding of CFD Bonds.** All proposed refunding or refinancing issues will be submitted to the County for review with complete disclosure of the benefits and costs of the proposed refinancing. A preliminary and final official statement or disclosure statement for any bonds to be refunded shall be filed with the County Treasurer-Tax Collector, County Counsel, Office of the Auditor-Controller, and Clerk of the Board of Supervisors.
  
- U) **Right to Modify or Waive Policies.** The County has the right to waive or modify any of the policies included herein if, in the County's judgment, benefit inures to the ultimate property owners, the CFD and/or to the County.

## 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 assumption and limiting conditions affecting the appraisal.
  2. An adequate description of the physical characteristics of the property being appraised; location, zoning, present use, and analysis of the 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 or review appraiser shall have any interest direct or indirect in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making the appraisal shall not be based on the amount of valuation.
- D. **Community Facilities District Appraisal Premises.** The valuation of proposed special tax districts should be based on three premises:
1. Raw Land Value. (Premise #1). The total land within the project is valued "as is":
    - a. Without 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.

## Attachment B – Policy on Credit Enhancement

- A. With regard to formation of a Community Facilities District pursuant to the Mello-Roos community Facilities Act of 1982, as amended, if a property owner or owners would be responsible for ten percent (10%) or more of the total annual special tax to be levied within the proposed boundaries of the District, then said property owner or owners will be required to provide a Letter of Credit naming the County of Monterey as beneficiary.
- B. The Letter of Credit will be drawn down by the County to call and redeem all bonds allocable to said property owner or owners, pay interest thereon through redemption, bond call premiums and an associated costs and penalties when the property owner or owners are deemed to be in default under the terms of the required contractual agreement between the property owner or owners and the County for payment of annual assessed special taxes.
- C. The terms of the agreement with the bank providing the Letter of Credit shall require the bank to provide sixty (60) days notice of termination or expiration for any cause to the County, and permit, if fifteen (15) days prior to expiration no replacement or renewal Letter of Credit is in place that will be in effect upon the expiration date, the County to draw upon the Letter of Credit and call and redeem the allocable bonds, pay interest thereon through redemption, call premiums and any associated costs and penalties.
- D. The Letter of Credit is to be in an amount equal to 110% of the gross principal amount of the bonds allocable to the said property owner or owners plus an amount sufficient to pay the maximum accrued interest and bond premium, if any, through call and redemption of the allocable bonds in event of default in payment of special tax by said property owner or owners. The Letter of Credit shall be in force and renewed continuously for a period beginning on the date before the delivery of the bonds and continuing until such time as the said property owner or owners annual tax liability falls below ten percent (10%) of the gross annual special tax being levied within the boundaries of the proposed District. The amount of the Letter of Credit may be reduced on an annual basis, commencing on the anniversary date of the day prior to delivery of the bonds as the aforementioned property owner or owners sell portions of their property.
- E. The Letter of Credit must be issued by a financial institution acceptable to the County, the long term unsecured obligations of which are rated at least “single-A” or better by a NRSRO.
- F. “Property owner or owners” as used here shall mean owners at the time of commencement of the CFD, owners owned or controlled by said owner or any related owners and any successor property owner.

## Attachment C – Construction Contracts for Community Facilities Within Mello-Roos Districts

With regard to the construction of public facilities that are to be financed from the proceeds of bonds sold pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, (commencing with Section 53311 et seq. of the Government Code) (the “Act”) the following policies are to be applied:

- A. The appropriate County department will be specified as the District’s representative to administer the construction of each of the facilities to be owned and maintained by the County.
- B. The facilities to be owned and maintained by the County are to be constructed and/or acquired, by the District.
- C. Consistent with this policy, the County finds, pursuant to Section 53329.5(c) of the Act, that it will not serve the public interest to allow the property owners to elect to perform the construction of the facilities after the publication of the notice of the award of the contract and declaration to this effect is to be included in each resolution of intention submitted to the Board of Supervisors pursuant to Section 53321.

## Attachment D – Required Basic Contractual Terms

Prior to delivery of the bonds, property owner or owners agree for timely payment of all annual assessed special taxes to the property owner or owners or its successors. An agreement will specify that a required Letter of Credit will be liquidated and applied to payment of the bonds via bond call provisions specified in the bond indenture in the event of default by the property owner or owners or its successors.

A default condition is defined as any installment (Section 2605 et seq. Revenue and Taxation Code) of property taxes where a lien for Mello-Roos assessments attaches to some installment and where such installment remains unpaid as of 5:00 p.m. on the delinquent date established for a tax installment (normally December 10 and April 10).

The agreement shall remain in full force and effect, and will be binding upon the property owner or owners or its successors in fee title as long as the property owner or owners (as defined by County Policy on Credit Enhancement) or its successors are responsible for payment of 10% or more of the total annual special tax to be levied for any fiscal year.