

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** INTENT TO FORM  
COMMUNITY FACILITIES  
DISTRICT NO. 14 AT THE HITACHI CAMPUS

**DATE:** 07-11-11

Approved

Date

7/15/11

**COUNCIL DISTRICT:** 2

## RECOMMENDATION

Adopt a resolution of intention to form Community Facilities District No. 14 (Raleigh/Charlotte) to authorize the levy of special tax pursuant to the City of San José Community Facilities District Financing Procedure, to set a public hearing on September 20, 2011 at 1:30 p.m., regarding the formation of the District, to hold an election immediately following the close of the public hearing and authorizing other related actions.

## OUTCOME

The desired outcome for these proceedings is the commencement of the formation of CFD No. 14 to provide for the operation and maintenance of necessary improvements in order for the development of the Hitachi site.

## BACKGROUND

On June 21, 2005, the City Council adopted an amendment to the Edenvale Area Development Plan that allowed for intensification in the plan area. This amendment and the corresponding Planned Development Zoning approved the development of a 342 acre mixed residential, commercial, and industrial development in southeast San José called the Hitachi Campus and Santa Teresa Transit Village. Subsequently, a Planned Development Permit (PD05-087) was filed and approved by the Planning Director on June 2, 2006. This Planned Development Permit allowed for the construction of a public street network and park improvements to support the future construction of the residential, commercial, and industrial components of the project. Following the approval of the Planned Development Permit, the developer, Hitachi Global Storage Technologies ("Developer"), proceeded to obtain construction related permits with the City for the completion of the public roadway system and public park improvements. In May 2009, the street network and park improvements were completed and were opened for public use.

The development includes the construction of many public right-of-way enhancements above and beyond City standard public facilities including certain public landscape improvements, Type 2-median landscaping, and dual purpose storm basins. The Developer has requested that the City initiate the formation of a Community Facilities District ("District") to fund the maintenance of those extraordinary public facilities. In addition, it is proposed to also include within the District the maintenance of the three public parks (RAMAC Park, Raleigh Linear Park, and Charlotte Commons) that were also completed by the Developer. Because this project consists of several large undeveloped parcels, it is contemplated that as these large parcels ("Improvement Areas") come forward for future subdivision, the special tax for the subdividing Improvement Area will then be apportioned further based upon the resulting uses of the property.

### ANALYSIS

Staff recommends that Council initiate formation proceedings to form Community Facilities District No. 14 (Raleigh/Charlotte) ("CFD No. 14") to fund the operation and maintenance of the enhanced improvements and other items associated with the project.

For CFDs, an election with two-thirds voter approval is required to approve the special tax. Because there are fewer than 12 registered voters residing within the proposed district boundaries at the time of the election, the qualified elector will be the Developer (property owner) who will cast a ballot based on acreage. If the District is approved by the Developer, a maximum tax rate is established with an annual inflation adjustment which may not be raised above the adjusted amount for that year without subsequent approval from qualified electors.

To expedite the process and avoid delays, the Developer has submitted a waiver to waive any time requirements required by law to allow the election to be accelerated and held immediately following the close of the public hearing.

Three attachments as listed below provide detail for the district:

Attachment A	Proposed Boundaries Map
Attachment B	Description of Proposed Services
Attachment C	Rate and Method of Apportionment of Special Tax for Improvement Area No. 1

The resolution of intention will contain a separate Rate and Method of Apportionment for each of the ten Improvement Areas. Each Rate and Method of Apportionment will be identical, except that the Assessor's Parcel Number and Maximum Special Tax will be unique, as shown in the following table.

Improvement Area No.	Assessor's Parcel Number	Maximum Special Tax
1	706-07-006	\$79,268.95
2	706-07-009	\$8,510.31
3	706-07-010	\$7,279.48
4	706-07-011	\$10,983.69
5	706-07-012	\$9,260.53
6	706-07-013	\$63,852.26
7	706-07-014	\$49,262.52
8	706-07-015	\$121,620.54
9	706-07-017	\$105,140.63
10	706-07-020	\$21,186.41

The proposed schedule of events for the formation of CFD No. 14 follows:

1.	City Council	Adopt a Resolution of Intention Set Public Hearing Set Election	8/2/2011
2.	Public Works	Mail Ballots and Notice of Public Hearing	8/9/2011
3.	City Clerk	Publish Notice of Public Hearing	9/6/2011
4.	City Council	Conduct Public Hearing	9/20/2011
5.	City Council	Conduct Special Election	9/20/2011
6.	Public Works	Record Notice of Special Tax Lien	9/23/2011
7.	Public Works	Property Owner Invoices	10/11/2011

The Public Hearing on September 20, 2011, will allow for public testimony to be presented to Council. Council must consider all objections or protests to the proposed special tax. At the close of the Public Hearing, Council will conduct a special election whereby the Developer will cast a ballot in favor of or opposed to the special tax, with votes weighted by the acreage of land owned. If approved, the proposed special tax will commence immediately and will be adjusted annually beginning Fiscal Year 2011-2012.

The Notice of Public Hearing is scheduled to be published on September 6, 2011, and mailed along with the property owner ballot on or before August 9, 2011. The notice will include the text of the Resolution of Intention, the time and place of the hearing, a statement that public testimony will be heard, and a description of the voting procedure. Each completed ballot must be received by the City Clerk prior to the close of the public hearing in order to be included in the tabulation. Although this is a mailed ballot election, the Developer may submit its ballot to Council at the hearing.

### EVALUATION AND FOLLOW-UP

On September 20, 2011, Council will conduct a Public Hearing and a special election. If the district is approved, staff will bring forward appropriation and funding sources recommendations for Council approval.

### POLICY ALTERNATIVES

Not applicable.

### PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet the \$1 million threshold under Criterion 1, this memorandum will be posted on the City's website for the August 2, 2011 Council Agenda. These actions were initiated at the request of and with support from the Developer and were prepared by Public Works. City staff has met with the Developer regularly regarding the District and their development plans. Staff will mail the notice and ballot for the proposed special tax to the Developer at least 30 days prior to the date set for the public hearing and election.

### COORDINATION

This memorandum and related documents were prepared in cooperation with the Departments of Transportation, Parks Recreation and Neighborhood Services, Finance, the City Attorney's Office, and the City Manager's Budget Office.

### FISCAL/POLICY ALIGNMENT

These actions are in compliance with the Council-approved Budget strategy in that staff costs are funded by the Developer's deposit. If District formation is approved by the qualified voters, the costs of services provided through the district will be funded through annual special taxes on the properties within the district.

**COST IMPLICATIONS**

The formation of this Community Facilities District would relieve the General Fund of the future obligation to maintain the parks located in its boundaries. While these parks would be maintained by PRNS, expenses for this maintenance would be supported through the special tax. In 2009-2010 and 2010-2011, these parks were maintained by the Developer on a year-to-year basis. In 2011-2012, the maintenance of these parks by the City was assumed in the Five Year General Fund Forecast prepared for the City Council in February 2011. After negotiations with the Developer, the Developer agreed to provide the maintenance in 2011-2012. Upon establishment of this district, funding for this obligation will belong to the CFD on an annual basis and therefore can be removed from subsequent Five Year General Fund Forecasts.

The Developer has deposited funds sufficient to pay formation costs for the District. Any unused funds will be returned to the Developer. If all funds are exhausted prior to the certification of election results, the Developer must provide additional funds to continue the process or the formation process will be discontinued.

**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.).
465	6288	Community Facilities District No. 14 Feasibility Study		\$38,000		2011-2012 Proposed Capital Budget V-679	02/28/2011, 28888

**CEQA**

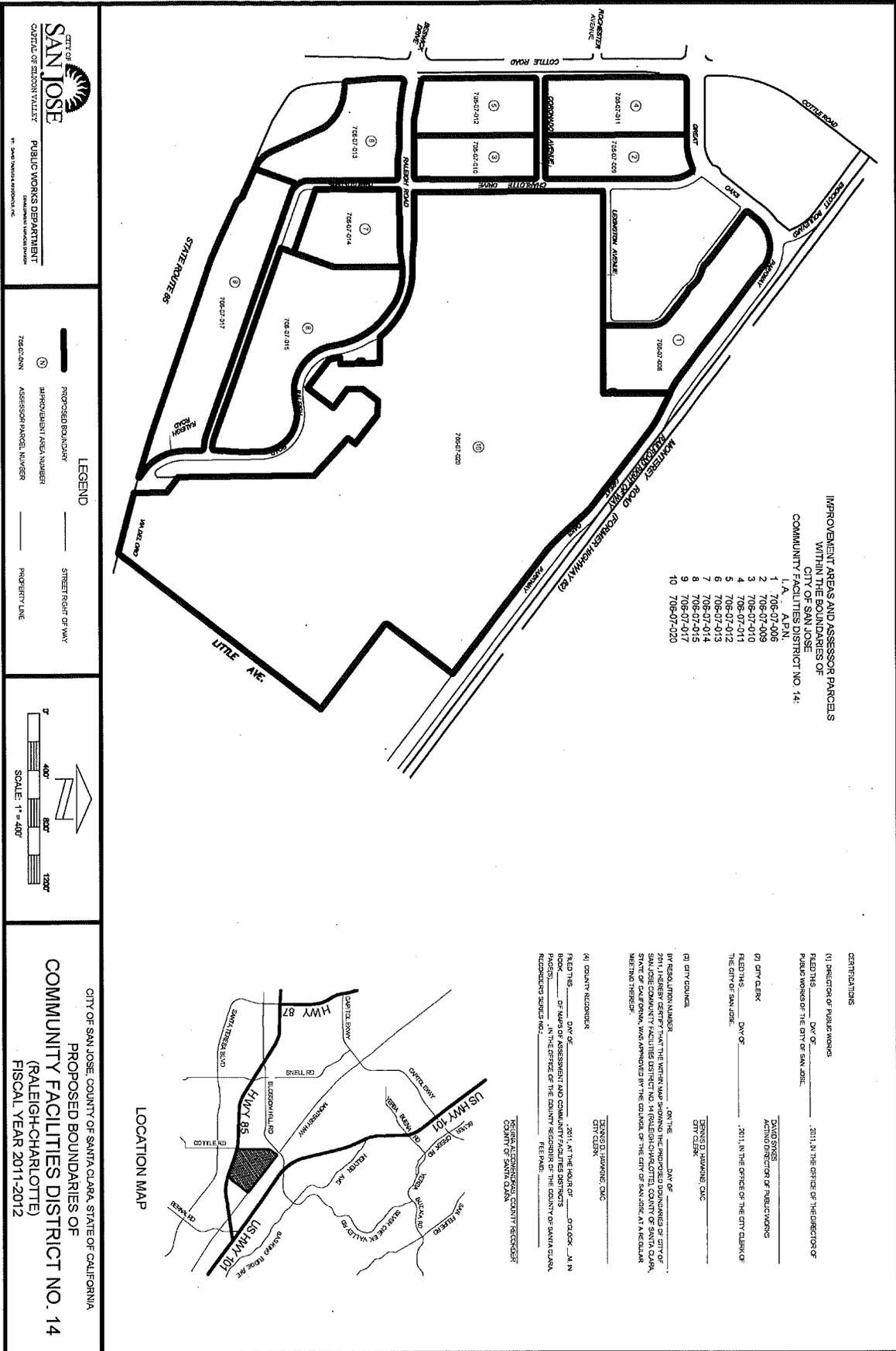
Resolution No. 72772, Hitachi Mixed Use Project Fund EIR

/s/  
 DAVID SYKES  
 Acting Director of Public Works

For questions please contact HARRY FREITAS, DEPUTY DIRECTOR, at 408-535-8300.

Attachments  
 PD:tmb  
 CMcfd14ROIv4.doc

# ATTACHMENT A



## ATTACHMENT B

### DESCRIPTION OF PROPOSED SERVICES

The services proposed to be financed by Community Facilities District No. 14 (Raleigh/Charlotte) (the "CFD No. 14") of the City of San José will provide for the maintenance of various improvements associated with the Hitachi Mixed Use development project. Maintenance of the improvements may include but will not be limited to necessary repairs, replacements, equipment, supplies, water, fuel, power, electricity, supervision and all other items needed for safe and proper maintenance of the items set forth below. This list identifies those improvements that are authorized for maintenance by the CFD No. 14; however, not all items on this list are guaranteed to be funded by the district.

#### Items Authorized to be Maintained

- Three public parks; a roughly ten acre site located at the northeast corner of Charlotte Drive and Lexington Avenue, a roughly five acre linear site on the easterly side of Raleigh Road, and an approximate one acre site at the southern bend in Charlotte Road.
- Storm water detention basins within parks including associated pipelines and structures
- Median island landscaping on Raleigh Road at the intersection of Charlotte
- Median Island landscaping along Great Oaks Parkway between Charlotte and the border of the campus industrial parcel and the City of San Jose Police substation
- Street trees along the easterly side of Cottle Road between SR 85 and Great Oaks Parkway
- Frontage and parkstrip landscaping within ROW along Charlotte, Coronado, Raleigh from park to Cottle, Lexington excluding south side of Lexington Avenue and Great Oaks excluding easterly side along railroad across from campus industrial parcel.
- Tree trimming, trash removal and weed control on parcel designated as lot H at intersection of Endicott and Great Oaks Parkway

## ATTACHMENT C

### RATE AND METHOD OF APPORTIONMENT FOR IMPROVEMENT AREA No. 1 OF COMMUNITY FACILITIES DISTRICT No. 14 OF THE CITY OF SAN JOSE (RALEIGH-CHARLOTTE)

A Special Tax, hereinafter defined, shall be levied on all Assessor's Parcels of Taxable Property in Improvement Area No. 1 of Community Facilities District No. 14 of the City of San Jose (Raleigh-Charlotte) ("CFD No. 14 (IA No. 1)") and collected each Fiscal Year commencing in Fiscal Year 2011-2012 in an amount determined by the City Council of the City of San Jose, through the application of this Rate and Method of Apportionment as described below. All of the real property in CFD No. 14 (IA No. 1), unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other map or plan recorded with the County. The square footage of an Assessor's Parcel is equal to the Acreage of such parcel multiplied by 43,560.

**"Act"** means, collectively, the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 commencing at Section 53311 of the California Government Code, as incorporated into and modified by Chapter 14.27 of Title 14 of the Municipal Code of the City.

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 14 (IA No. 1): the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 14 (IA No. 1), or any designee thereof related to the reduction of the Maximum Special Tax in accordance with Section C herein; the costs of the City, CFD No. 14 (IA No. 1) or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 14 (IA No. 1) for any other administrative purposes of CFD No. 14 (IA No. 1), including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure as a result of delinquent Special Taxes.

**"Assessor's Parcel" or "Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

## ATTACHMENT C

**“Assessor’s Parcel Map”** means an official map of the County Assessor of the County designating parcels by Assessor’s Parcel number.

**“Authorized Maintenance Services”** means, for each Fiscal Year, the street maintenance (including maintenance of trees, lighting, and landscaping), park maintenance, sports field maintenance, open space maintenance, storm drainage maintenance, and other maintenance services eligible to be funded by CFD No. 14 (IA No. 1), as defined in the Resolution of Formation.

**“CFD Administrator”** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

**“CFD No. 14”** means Community Facilities District No. 14 of the City of San Jose (Raleigh-Charlotte).

**“CFD No. 14 (IA No. 1)”** means Improvement Area No. 1 of CFD No. 14 as identified on the boundary map for CFD No. 14, and further set forth in the Resolution of Formation.

**“City”** means the City of San Jose.

**“Consumer Price Index” or “CPI”** means, for each Fiscal Year, that year’s annual average consumer price index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose Area.

**“Council”** means the City Council of the City, acting as the legislative body of CFD No. 14 (IA No. 1).

**“County”** means the County of Santa Clara.

**“Developed Property”** means, for each Fiscal Year, all Taxable Property, exclusive of Public Property and Property Owner Association Property, for which a building permit for new construction, other than the construction of a garage, parking lot, or parking structure, was issued after January 1, 2011 and on or before May 1 of the Fiscal Year preceding the Fiscal Year for which the Special Taxes are being levied. Notwithstanding the foregoing, an Assessor’s Parcel, or portion thereof, shall not be considered to constitute “Developed Property” merely by reason of the placement thereon of one or more temporary, portable structures which are used as part of a residential sales operation.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Land Use Class”** means any of the classes listed or described in Sections B and C below.

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**“Maximum Special Tax”** means the maximum Special Tax, determined in accordance with Section C below, that can be levied in any Fiscal Year on any Assessor’s Parcel.

**“Property Owner Association Property”** means, for each Fiscal Year, any property within the boundaries of CFD No. 14 (IA No. 1) that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

**“Proportionately”** means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Developed Property. For Undeveloped Property, “Proportionately” means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Undeveloped Property. The term “Proportionately” may similarly be applied to other categories of Taxable Property. Notwithstanding the above, Assessor’s Parcels that have been delinquent in paying their Special Taxes may be taxed disproportionately to cover the shortfall generated by the delinquency and the other costs resulting from the delinquency.

**“Public Property”** means property within the boundaries of CFD No. 14 (IA No. 1) owned by, irrevocably offered or dedicated to, or over, through or under which an easement for purposes of public right-of-way has been granted, to the federal government, the State, the County, the City, or any local government or other public agency, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

**“Rate and Method of Apportionment”** means this Rate and Method of Apportionment for CFD No. 14 (IA No. 1).

**“Residential Property”** means all Assessor’s Parcels of Developed Property for which a building permit has been issued by the City permitting the construction thereon of one or more residential dwelling units.

**“Resolution of Formation”** means the Council resolution establishing CFD No. 14 (IA No. 1).

**“Special Tax”** means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Developed Property, Undeveloped Property, Taxable Public Property, and Taxable Property Owner Association Property within CFD No. 14 (IA No. 1) to fund the Special Tax Requirement, but in no event greater than the Maximum Special Tax.

**“Special Tax Requirement”** means that amount required in any Fiscal Year for CFD No. 14 (IA No. 1) to: (i) pay for Authorized Maintenance Services, (ii) create a sinking fund for replacement of facilities that will be maintained by Authorized Maintenance Services, (iii) pay Administrative Expenses of CFD No. 14 (IA No. 1), (iv) cure delinquencies in the payment of Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

**“State”** means the State of California.

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**“Subdivision”** means a subdivision of property by recordation of a final map, parcel map, or lot line adjustment, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) and Title 19 of the San Jose Municipal Code or recordation of a condominium plan pursuant to California Civil Code 1352 that, in either case, creates successor Assessor’s Parcels for the purpose of levying property taxes.

**“Taxable Land Area”** means the measure of Taxable Property for a Parcel, in Acreage, which shall be determined pursuant to Section C.

**“Taxable Property”** means all of the Assessor’s Parcels within the boundaries of CFD No. 14 (IA No. 1) which are not exempt from the Special Tax pursuant to law or Section E below.

**“Taxable Public Property”** means all Public Property located within the boundaries of or annexed into CFD No. 14 (IA No. 1) which is not exempt from the Special Tax pursuant to Section E below.

**“Taxable Property Owner Association Property”** means all Property Owner Association Property located within the boundaries of or annexed into CFD No. 14 (IA No. 1) which is not exempt from the Special Tax pursuant to Section E below.

**“Undeveloped Property”** means, for each Fiscal Year, all Taxable Property not classified as Developed Property, Taxable Public Property, or Taxable Property Owner Association Property.

### **B. ASSIGNMENT TO LAND USE CLASSES**

Each Fiscal Year, commencing with Fiscal Year 2011-2012, all Taxable Property within CFD No. 14 (IA No. 1) shall be classified as Developed Property or Undeveloped Property or Taxable Public Property or Taxable Property Owner Association Property or Public Property or Property Owner Association Property and shall be subject to Special Taxes in accordance with this Rate and Method of Apportionment determined pursuant to Sections C, D, and E herein.

### **C. MAXIMUM SPECIAL TAX RATE**

The Maximum Special Tax may be levied in any Fiscal Year for each Assessor’s Parcel classified as Developed Property, Undeveloped Property, Taxable Public Property or Taxable Property Owner Association Property, prior to Subdivision, is shown below in Table 1. The Maximum Special Tax may be adjusted by the percentage change in the Consumer Price Index in accordance with Subsection (1) herein or reapportioned in accordance with Subsection (2) herein.

**ATTACHMENT C**

**TABLE 1**

**Maximum Special Tax  
Improvement Area No. 1 of CFD No. 14  
Fiscal Year 2011-2012**

Assessor's Parcel Number	Maximum Special Tax
706-07-006	\$79,268.95

(1) Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2012, the Maximum Special Tax shall be adjusted based on the percentage change in the Consumer Price Index. Any increase in the Maximum Special Tax is subject to a maximum annual increase of five percent (5 %) per Fiscal Year.

(2) Subdivision of Taxable Property

If a Subdivision occurs within the boundaries of CFD No. 14 (IA No. 1), the Taxable Land Area for each Assessor's Parcel resulting from such Subdivision shall be determined by the CFD Administrator on each July 1, commencing on July 1, 2012, from the final map, parcel map, or lot line adjustment which created such Assessor's Parcel(s). The Maximum Special Tax for each successor Parcel shall be equal to the proportionate share of the Maximum Special Tax associated with the subdivided Parcel(s), based on the Taxable Land Area contained within each successor Parcel as a percentage of the total Taxable Land Area of all successor Parcels resulting from such Subdivision. The sum of the Maximum Special Tax amounts for all Assessor's Parcels within CFD No. 14 (IA No. 1) after Subdivision shall be equal to the sum of Maximum Special Tax amounts for all Assessor's Parcels prior to Subdivision for that Fiscal Year, as determined in accordance with Section C above.

**D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

Commencing with Fiscal Year 2011-2012 and for each following Fiscal Year, the Council or its designee shall determine the Special Tax Requirement and levy the Special Tax until the amount of Special Tax levy equals the Special Tax Requirement. The Special Tax shall be levied each Fiscal Year as follows:

(1) First, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property at up to 100% of the applicable Maximum Special Tax;

(2) Second, if additional monies are needed to satisfy the Special Tax Requirement after the first step in Subsection (1) has been completed, the Special Tax shall be levied

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Proportionately on each Assessor's Parcel of Undeveloped Property at up to 100% of the Maximum Special Tax; and

(3) Third, if additional monies are needed to satisfy the Special Tax Requirement after the first two steps in Subsections (1) and (2) have been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property and Taxable Property Owner Association Property at up to 100% of the Maximum Special Tax.

### **E. EXEMPTIONS**

(1) Change from Public Property or Property Owner Association Property Classification:

No Special Tax shall be levied on Public Property or Property Owner Association Property in CFD No. 14 (IA No. 1) unless an Assessor's Parcel which is exempt from the Special Tax changes classification from Public Property or Property Owner Association Property, in which case the tax-exempt status will be revoked.

(2) Change to Public Property or Property Owner Association Property Classification:

When an Assessor's Parcel which has previously been classified as Taxable Property is reclassified to Public Property or Property Owner Association Property in its entirety, or any portion thereof as a result of Subdivision, it shall not be granted tax-exempt status and shall be classified as Taxable Public Property or Taxable Property Owner Association Property, respectively.

### **F. MANNER OF COLLECTION**

The Special Tax will be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 14 (IA No. 1) may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor's Parcels as permitted by the Act.

### **G. TERM OF SPECIAL TAX**

The Special Tax shall be levied in perpetuity to fund the Special Tax Requirement, unless no longer required to pay for Authorized Maintenance Services as determined at the sole discretion of the Council or as may be otherwise terminated pursuant to the Act.