



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: 08-29-11

Approved

Date 9/8/11

COUNCIL DISTRICT: 2

**SUBJECT: COMMUNITY FACILITIES DISTRICT NO. 14 (RALEIGH-CHARLOTTE)
PUBLIC HEARING AND SPECIAL ELECTION**

RECOMMENDATION

It is recommended that the City Council hold a public hearing, conduct a special election, and take the following actions related to the formation of Community Facilities District No. 14 (Raleigh-Charlotte).

1. Adoption of a resolution for each of the following items to:
 - a. Establish Community Facilities District No. 14 and authorize the levy of a special tax.
 - b. Declare the results of the special election; and if approved, direct the recording of the notice of the special tax lien for Community Facilities District No. 14.

If approved by voters:

2. Approval of an ordinance imposing the levy of special taxes for Community Facilities District No. 14 (Raleigh-Charlotte).
3. Establish a new fund for Community Facilities District No. 14 (Raleigh-Charlotte).
4. Adopt the following Appropriation Ordinance and Funding Source Resolution amendments in the Community Facilities District No. 14 (Raleigh-Charlotte) Fund:
 - a. Establish an estimate for Earned Revenue in the amount of \$476,365;
 - b. Establish a Personal Services appropriation for the Department of Parks, Recreation and Neighborhood Services in the amount of \$15,476;
 - c. Establish a Non-Personal/Equipment appropriation for the Department of Parks, Recreation and Neighborhood Services in the amount of \$192,234;
 - d. Establish a Personal Services appropriation for the Department of Transportation in the amount of \$9,191;
 - e. Establish a Non-Personal/Equipment appropriation for the Department of Transportation in the amount of \$67,581;

- f. Establish an overhead appropriation to the Department of Finance in the amount of \$6,770; and
- g. Establish an Ending Fund Balance in the amount of \$185,113.

OUTCOME

Approval of the formation of Community Facilities District (CFD) No. 14 will provide funding for the ongoing operation and maintenance of the enhanced improvements associated with the Hitachi Campus and Santa Teresa Transit Village project.

BACKGROUND

The Edenvale Area Development Plan allows for the development of a 342 acre mixed residential, commercial, and industrial development in southeast San José. In May 2009, a public street network and park improvements were completed and opened for public use to support the future construction of the residential, commercial, and industrial components of the project. These improvements include 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 requested that the City initiate the formation of a Community Facilities District to fund the maintenance of those enhanced public facilities. Also included in the District is 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 come forward for future subdivision the special tax for the subdivided Improvement Area will then be apportioned further based upon the resulting uses of the property.

On August 2, 2011, Council adopted a resolution of intention to form Community Facilities District No. 14 (Raleigh-Charlotte), hereinafter CFD No. 14, to authorize the levy of a special tax to fund the operation and maintenance of the enhanced improvements and other items associated with the project. The boundaries of CFD No. 14 are Monterey Highway on the north, Little Avenue on the east, State Route 85 on the south, and Cottle Road on the west.

The resolution of intention, adopted on August 2, 2011, contains a separate Rate and Method of Apportionment for each of the ten Improvement Areas. Each Rate and Method of Apportionment is identical, except that the Assessor's Parcel Number and Maximum Special Tax are unique, as shown in the table on the following page.

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

ANALYSIS

It is recommended that the City Council open a public hearing to receive and record any public comments regarding the establishing of Community Facilities in District No. 14. If there is not a majority protest from the qualified electors, in this case the developer/owner, at the close of the public hearing, Council may adopt a resolution authorizing the levy of a special tax within CFD No. 14.

As permitted by law, all qualified electors within CFD No. 14 have submitted waivers to expedite the election process. The waiver by the single qualified elector, along with the concurrence of the City Clerk as the election officer, authorizes the election to be held immediately upon the close of the public hearing for the formation of CFD No. 14.

Therefore, following the adoption of the resolution authorizing the tax levy, Council may conduct a special election for the property owners to vote on the special tax, and will direct the City Clerk to tabulate the ballots and report the results. If the election results in a two-thirds voter approval, the final actions for Council are the adoption of a resolution declaring the ballot tabulation results and approval of an ordinance imposing the levy of a special tax on those properties within CFD No. 14.

The special tax for CFD No. 14 shall be collected at the same time and the same manner as ordinary ad valorem property taxes, provided that CFD No. 14 may in any particular case, bill the taxes directly to the property owners instead of the County tax roll. The Director of Public Works of the City of San José is the City official responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and for estimating future special tax levies pursuant to Section 53340.2 of the California Government Code. The special tax has an annual escalator not to exceed the percentage change in the Consumer Price Index, with a 5% cap.

For the past two years, the owner has paid for the maintenance at the parks located within the CFD. Beginning in January 2012, pending voter approval of the district, the City will assume

responsibility for the maintenance and will be reimbursed by special tax payments. Based on the level of funding the City is able to receive for parks maintenance, the City will need to evaluate the appropriate service delivery method prior to taking over the maintenance responsibilities in January 2012. Actions recommended in this memorandum would allocate resources to the Departments of Transportation and Parks, Recreation and Neighborhood Services (PRNS) to enable the provision of improvements as outlined in Attachment B and appropriate overhead costs associated with the delivery of services in the new district. Due to the fact that special tax payments collected in 2011-2012 would represent an entire year and only a portion of the special tax proceeds would be utilized in 2011-2012 due to the timing of the election, the remaining fund balance would be carried forward for use in future years.

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 (Typical)

When each Improvement Area develops and subdivides further, staff may need to bring forward additional Council actions to apportion the special tax to address the particular land uses and density provisions within the Improvement Area.

EVALUATION AND FOLLOW-UP

This is the final Council action in the formation process for community facilities districts. If approved, a notice of special tax lien will be filed with the Santa Clara County Recorder's Office and the property owner will be invoiced directly for the 2011-2012 special tax. Future year special taxes will be adjusted by the average annual percentage change in the Consumer Price Index for the San Francisco-San Jose-Oakland area (capped at 5%) and placed on the County tax roll for collection.

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 September 20, 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. The ballot and Notice of Public Hearing were delivered to the qualified elector on August 9, 2011. The Notice of Public Hearing will be published in the San José Post Record by September 6, 2011.

COORDINATION

This memorandum and related documents were prepared in cooperation with the Departments of Transportation, Parks, Recreation and Neighborhood Services, Finance, Planning, Building and Code Enforcement, and the City Attorney's 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. Upon establishment of this district, funding for this obligation will belong to the CFD on an annual basis. Appropriation actions for Departments of Transportation and Parks, Recreation and Neighborhood Services are required in order to provide the services funded by the special tax.

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.

CEQA

Resolution No. 72772, Hitachi Mixed Use Project Fund EIR

/s/

DAVID SYKES
Acting Director of Public Works


JENNIFER A. MAGUIRE
Budget Director

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

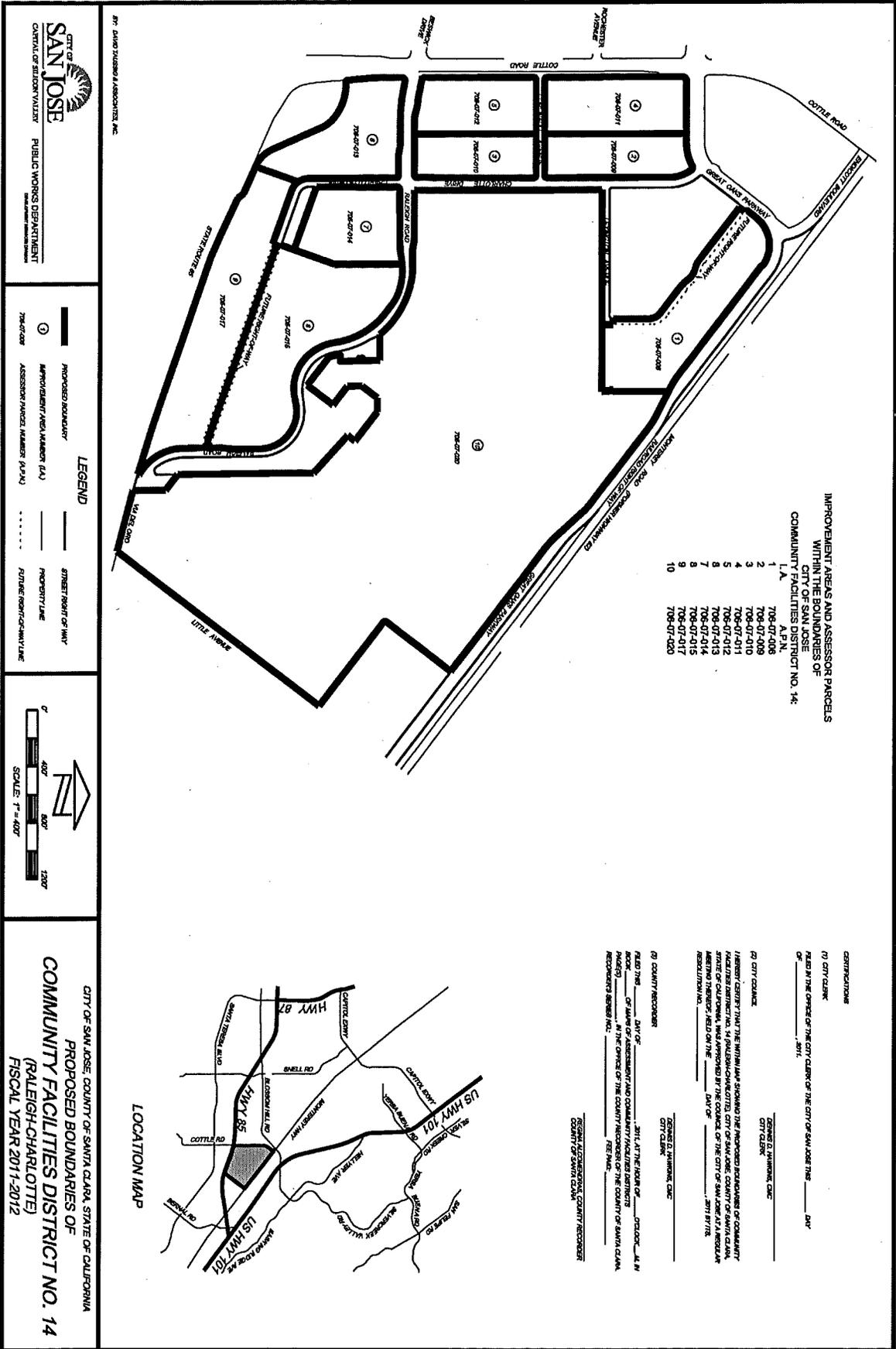
If approved by voters, I hereby certify that there will be available for appropriation in the Community Facilities District No. 14 (Raleigh-Charlotte) Fund in the Fiscal Year 2011-2012 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$476,365.


JENNIFER A. MAGUIRE
Budget Director

Attachments

PD:tmb
CMcfd14election v4.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 right-of-way 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.

ATTACHMENT C

“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 Subdivision (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.