



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: September 10, 2012

Approved

Date

9/20/12

COUNCIL DISTRICT: 10

**SUBJECT: COMMUNITY FACILITIES DISTRICT NO. 13 (GUADALUPE MINES)
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. 13 (Guadalupe Mines).

- (a) Adoption of a resolution for each of the following items to:
 - (1) Establish Community Facilities District No. 13 (Guadalupe Mines) and authorize the levy of a special tax; and
 - (2) Declare the results of the special election.

If approved by voters:

- (b) Direct the recording of the notice of the special tax lien for Community Facilities District No. 13 (Guadalupe Mines);
- (c) Approval of an ordinance imposing the levy of special taxes for Community Facilities District No. 13 (Guadalupe Mines);
- (d) Establish a new fund for Community Facilities District No. 13 (Guadalupe Mines);
- (e) Adopt the following 2012-2013 Appropriation Ordinance and Funding Source Resolution amendments in the Community Facilities District No. 13 (Guadalupe Mines) Fund:
 - (1) Establish an estimate for Earned Revenue in the amount of \$95,084;
 - (2) Establish an estimate for Transfers from Other Funds in the amount of \$10,121;
 - (3) Establish a Personal Services appropriation for the Department of Transportation in the amount of \$6,000;
 - (4) Establish a Non-Personal/Equipment appropriation for the Department of Transportation in the amount of \$52,000;
 - (5) Establish an overhead expense appropriation in the amount of \$2,700;

- (6) Establish an appropriation for the Community Facilities District No. 13 Feasibility project in the amount of \$30,000; and
 - (7) Establish an Ending Fund Balance in the amount of \$14,505.
- (f) Adopt the following 2012-2013 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:
- (1) Establish a Transfer to the Community Facilities District No. 13 (Guadalupe Mines) Fund in the amount of \$10,121; and
 - (2) Decrease the Ending Fund Balance by \$10,121.

OUTCOME

Approval of the formation of Community Facilities District No. 13 (Guadalupe Mines) will provide funding for the operation and maintenance of unique improvements needed for the development of this site.

BACKGROUND

On September 16, 2011 the Director of Planning, Building and Code Enforcement approved PD10-024 for an 89 unit residential development located on the west side of Guadalupe Mines Road approximately 1,130 feet southerly of Via Campagna. The project includes construction of typical roadway improvements with the exception of two elements, a set of stormwater treatment facilities to comply with the Municipal Regional Stormwater Permit and a sanitary sewer pump station needed to serve the new development, since the units lie below the only available sanitary sewer.

Stormwater mitigation measures include several bioretention swales adjacent to the roadways that treat the site's post construction stormwater runoff. Additionally, the unique topography of this site create a downhill sanitary sewer collection on-site that require a pump station to convey the sewage to an existing gravity sewer system along Guadalupe Mines Road. The Developer has requested that the City initiate the formation of a Community Facilities District, hereinafter "District", to fund the maintenance of these non-standard facilities. The special tax for these improvements will be apportioned equally among all units.

On August 14, 2012, the City Council adopted a resolution of intention to form the Community Facilities District No. 13 (Guadalupe Mines), hereinafter "CFD No. 13", pursuant to the City of San José Community Facilities District Financing Procedure, hereinafter "Law", to authorize the levy of a special tax to fund the operation and maintenance of the enhanced improvements.

ANALYSIS

The resolution of intention directs the City Engineer to study the proposed services and to file with the City Clerk a Community Facilities District report for CFD No. 13. In estimating the fare and reasonable costs of the services, staff concludes that a maximum special tax per residential unit of \$732 annually for the 2012-13 fiscal year is sufficient for the maintenance and operation of district services compared to the \$747 maximum special tax adopted in the resolution of intention. This reduction to the maximum special tax will not have any effect on the list of proposed services nor the level of service.

At the October 2, 2012 meeting, the City Council will open a public hearing to receive and record any public comments. If there is not a majority protest from the qualified electors, in this case the developer/owner, at the close of the public hearing, the City Council may adopt a resolution of formation that includes the reduced maximum special tax and authorizing the levy of a special tax within CFD No. 13. The resolution of formation will set forth the City Council's finding that all proceedings involved with the formation of the District were valid and in conformity with the Law.

As permitted by law, all qualified electors within CFD No. 13 have submitted waivers to expedite the election process. The unanimous waiver by the qualified elector, along with the concurrence of the City Clerk as the election officer, authorize the election to be held immediately upon the close of the October 2, 2012 public hearing for the formation of CFD No. 13.

Therefore, following the adoption of the resolution authorizing the tax levy, the City 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 the City Council are the adoption of a resolution declaring the ballot tabulation results and approve an ordinance imposing the levy of a special tax on those properties within CFD No. 13.

The special tax for CFD No. 13 shall be collected at the same time and the same manner as ordinary ad valorem property taxes, provided that CFD No. 13 may in any particular case, bill the taxes directly to the property owners instead of the County tax roll. For 2012-2013, the property owner would be invoiced directly for the 2012-2013 special tax. In subsequent years, these year special taxes will be placed on the County tax roll. The Director of Public Works of the City of San José, or another officer as designated by the City Manager, is the City officer of the City responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and who will be responsible 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.

A series of appropriation actions are recommended in this memorandum, contingent upon the district being approved by qualified voters. In the newly established Community Facilities

District No. 13 (Guadalupe Mines) Fund, an appropriation of \$30,000 would be established to cover staff costs associated with the formation of the district. These costs are offset by a reimbursement from the developer. In addition, special assessment funds in the amount of \$65,084 would be recognized and a transfer of \$10,121 from the Storm Sewer Operating Fund would be recognized, which would cover the proportionate share of the storm water treatment associated with the public street. Partially offsetting these funds would be the anticipated maintenance and operations costs associated with the district, including maintenance of the sanitary pump station and stormwater quality treatment measures. Associated overhead costs would also be appropriated.

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

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 2012-2013 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 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)**

This memorandum will be posted on the City's website for the October 2, 2012 Council Agenda. These actions were initiated at the request 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 Public Hearing were delivered to the qualified elector on September 4, 2012. The Notice of Public Hearing will be published in the San José Post Record by September 25, 2012.

COORDINATION

This memorandum and related documents were prepared in cooperation with the Departments of Transportation, Environmental Services, 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 the Community Facilities District would commit the City to an ongoing contribution to cover the proportionate share of the stormwater treatment associated with the public streets. There are sufficient funds in the Storm Sewer Operating Fund to cover this cost of \$10,121. The addition of resources for the Department of Transportation is recommended in this memorandum. The addition of Non-Personal/Equipment resources in the amount of \$52,000 in the newly established Community Facilities District No. 13 Fund will allow for the contractual maintenance of the Sanitary Sewer Pump Station, while the addition of \$6,000 for Department of Transportation Personal Services will allow for associated contract oversight.

The Developer has deposited funds sufficient to pay formation costs for the district. The recognition and appropriation of these funds are recommended as part of this memorandum. 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.

September 10, 2012

Subject: Community Facilities District No. 13 (Guadalupe Mines) Public Hearing and Election

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CEQA

Mitigated Negative Declaration, File No. PDC10-005

Planning has issued a mitigated negative declaration for the Brookside Estates Project. The environmental impacts that need to be addressed are identified in the Mitigation Monitoring and Reporting Program (MMRP) for the project. The mitigations that are required for this project have been incorporated into the project design and the construction documents.

Construction activities shall adhere to the guidelines as stated in the MMRP for the following required mitigation measures:

- Air Quality
- Biological Resources
- Cultural Resources
- Geology and soils
- Greenhouse Gas Emissions and Energy
- Hazardous Materials
- Hydrology and Water Quality
- Noise

/s/

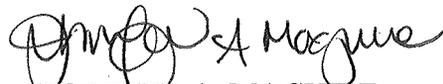
DAVID SYKES
Director of Public Works



JENNIFER A. MAGUIRE
Budget Director

For questions please contact Thomas Borden, Special Districts Manager, at 408-535-6831.

If approved by the voters, I hereby certify that there will be available for appropriation in the Community Facilities District No. 13 (Guadalupe Mines) Fund in the Fiscal Year 2012-2013 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$95,084.



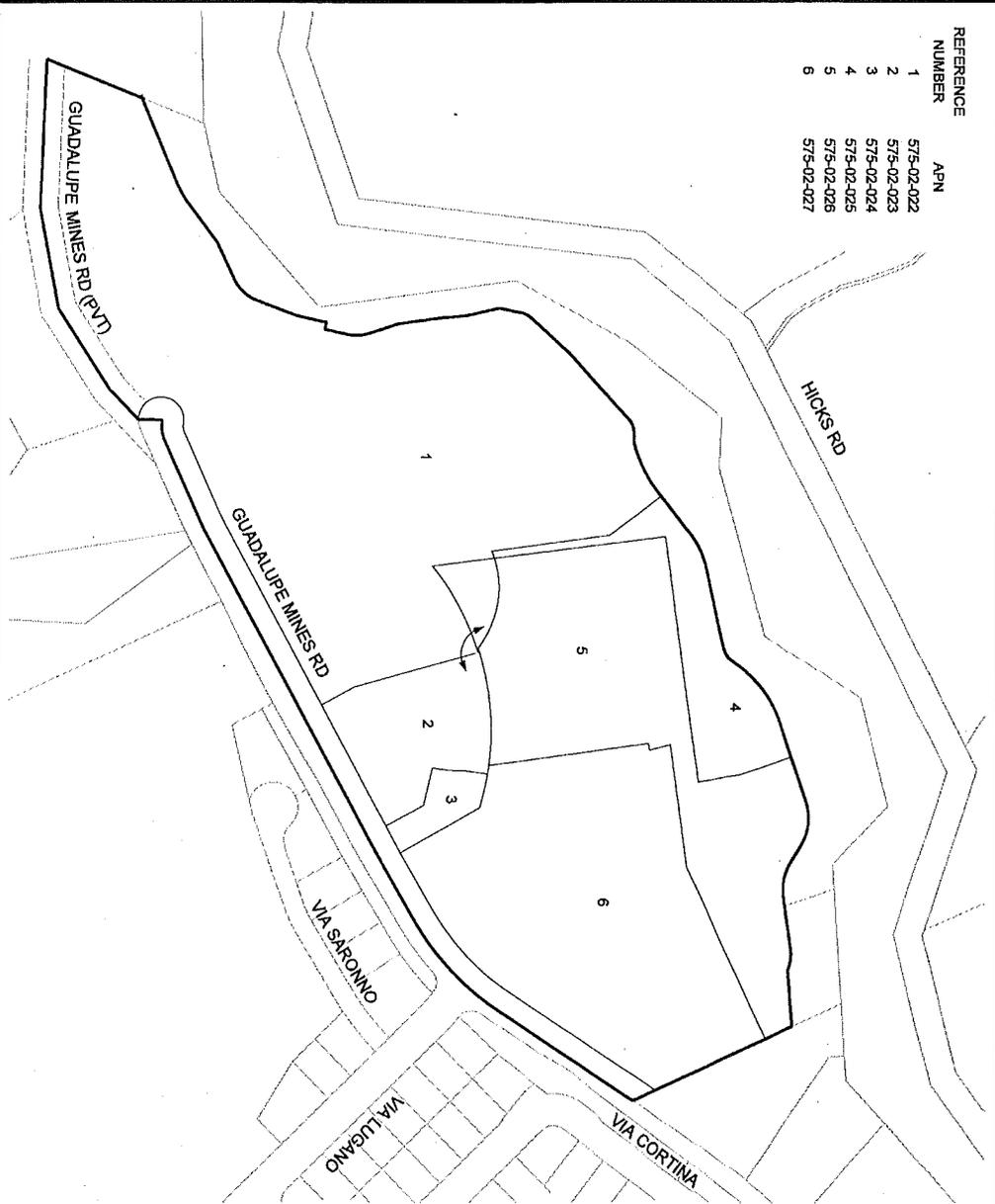
JENNIFER A. MAGUIRE
Budget Director

Attachments

ML:tmb
CMcfd13PH&E v2

ATTACHMENT A

REFERENCE NUMBER	APN
1	575-02-022
2	575-02-023
3	575-02-024
4	575-02-025
5	575-02-026
6	575-02-027



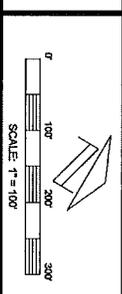
CITY OF SAN JOSE
 CAPITAL OF SILICON VALLEY
 PUBLIC WORKS DEPARTMENT
 Department of Public Works
 300 FERRIS AVENUE
 SAN JOSE, CALIFORNIA 95128

LEGEND

--- DISTRICT BOUNDARY
 --- STREET RIGHT OF WAY
 --- PRIVATE STREET

--- PROPERTY LINE
 --- RESIDENT NUMBER
 --- ASSESSOR'S PARCEL NUMBER (APN)

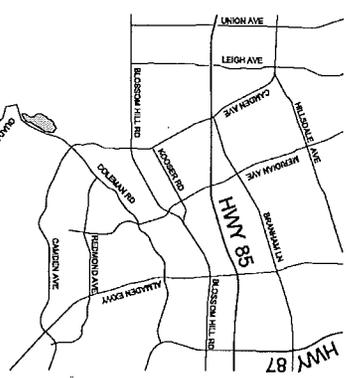
123-12-123



CITY OF SAN JOSE, COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA
COMMUNITY FACILITIES DISTRICT 13
 (GUADALUPE MINES)
 FISCAL YEAR 2012-2013

SHEET 1 OF 1

LOCATION MAP



CERTIFICATIONS

TO CITY CLERK
 FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN JOSE THIS _____ DAY OF _____ 2013.

FOR THE CITY COUNCIL

 CITY CLERK

I HEREBY CERTIFY THAT THE MAP IS SHOWING THE ADOPTED PROPOSED BOUNDARIES OF DISTRICT 13 IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AS SHOWN ON THIS MAP, AND THAT THE BOUNDARIES OF DISTRICT 13 OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AS SHOWN ON THIS MAP, WERE ADOPTED BY THE CITY COUNCIL OF SAN JOSE AT A REGULAR MEETING THEREOF, HELD ON THE _____ DAY OF _____ 2013 BY THE RESOLUTION NO. _____.

TO COUNTY RECORDER

 COUNTY RECORDER

FILED THIS _____ DAY OF _____ 2013, AT THE HOUR OF _____ O'CLOCK _____ IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA. FEE PAID: _____

_____ COUNTY RECORDER
 COUNTY OF SANTA CLARA

ATTACHMENT B

DESCRIPTION OF PROPOSED SERVICES

The services proposed to be financed by Community Facilities District No. 13 (Guadalupe Mines) (the "CFD No. 13") of the City of San José will provide for the maintenance of various improvements associated with the Brookside Estate 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. 13; however, not all items on this list are guaranteed to be funded by the district.

Items Authorized to be Maintained

- Six bioretention areas along the west side of Sycamore Creek (public) from Aspen Creek to Sycamore Creek (private)
- Surface treatments to the six bioretention areas
- Sanitary sewer pump station
- Fence surrounding the pump station facility
- Litter and graffiti removal at the pump station facility

ATTACHMENT C

RATE AND METHOD OF APPORTIONMENT FOR COMMUNITY FACILITIES DISTRICT NO. 13 OF THE CITY OF SAN JOSE (GUADALUPE MINES)

A Special Tax, hereinafter defined, shall be levied on all Assessor's Parcels of Taxable Property in Community Facilities District No. 13 of the City of San Jose (Guadalupe Mines) ("CFD No. 13") and collected each Fiscal Year commencing in Fiscal Year 2012-2013 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. 13, 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. 13: 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. 13, 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. 13 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. 13 for any other administrative purposes of CFD No. 13, 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.

"Assessor's Parcel Map" means an official map of the County Assessor of the County designating parcels by Assessor's Parcel number.

ATTACHMENT C

“Authorized Maintenance Services” means, for each Fiscal Year, the six bioretention areas, surface treatments to the six bioretention areas, sanitary sewer pump station, and fence surrounding the pump station, and other maintenance services eligible to be funded by CFD No. 13, 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. 13” means Community Facilities District No. 13 of the City of San Jose (Guadalupe Mines).

“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. 13.

“County” means the County of Santa Clara.

“Developed Property” means, in any Fiscal Year, all Taxable Property for which a development application has been submitted to the City prior to June 30 of the preceding Fiscal Year.

“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.

“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.

“Rate and Method of Apportionment” means this Rate and Method of Apportionment for CFD No. 13.

“Residential Property” means all Assessor’s Parcels for which a development application has been submitted for the construction thereon of one or more residential dwelling units.

“Resolution of Formation” means the Council resolution establishing CFD No. 13.

ATTACHMENT C

“**Special Tax**” means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Residential Property and Subsequent Non-Residential Property within CFD No. 13 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. 13 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. 13, (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.

“**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.

“**Subsequent Non-Residential Property**” means (i) a Parcel of Non-Residential Property which had, in any prior Fiscal Year; been taxed as Residential Property. Notwithstanding the foregoing, if the City determines that, in conjunction with a particular Parcel being changed from a residential to a non-residential designation, there was a corresponding transfer of the residential land uses to another Parcel in the CFD, the City may but is not required to categorize that Parcel as Subsequent Non-Residential Property.

“**Taxable Property**” means all of the Assessor’s Parcels within the boundaries of CFD No. 13 which are not exempt from the Special Tax pursuant to law or Section E below.

B. MAXIMUM SPECIAL TAX RATE

The Maximum Special Tax for Residential Property in the CFD is \$732 per Unit for Fiscal Year 2012-13. Beginning January 2, 2013 and each January 2 thereafter, this Maximum Special Tax shall be adjusted by applying the average annual change in the Consumer Price Index that has occurred since the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

C. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2012-2013 and for each following Fiscal Year, the CFD Administrator shall determine the Special Tax Requirement and levy the Special Tax each Fiscal Year as follows:

Step 1: Determine the Special Tax Requirement for the Fiscal Year in which the Special Tax will be collected;

ATTACHMENT C

Step 2: Calculate the total Special Tax revenues that could be collected from Developed Property within the CFD based on application of the Maximum Special Tax rates determined pursuant to Section B above;

Step 3: If the amount determined in Step 1 is greater than the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed Property pursuant to Section B above. Even though the Special Tax Requirement is greater than the total Special Tax revenues that can be collected in the CFD, only the Maximum Special Tax may be collected unless a higher Maximum Special Tax is approved by two-thirds of the Electors voting in an election to increase the Maximum Special Tax.

If the amount determined in Step 1 is equal to the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed Property pursuant to Section B above.

If the amount determined in Step 1 is less than the amount calculated in Step 2, levy the Special Tax on all Parcels of Developed Property in equal percentages up to 100% of the Maximum Special Tax for each Parcel until the amount of the Special Tax levy equals the Special Tax Requirement for that Fiscal Year.

D. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982. If a Parcel had been taxed in any prior Fiscal Year as Residential Property and becomes Subsequent Non-Residential Property, the City has the discretion to levy a Special Tax against such Parcel if the Special Tax revenues generated from the Parcel are needed to meet the Special Tax Requirement.

E. 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. 13 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. If the CFD Administrator determines in the first year of the special tax that the improvements do not require maintenance services, then the special tax will commence collection in the subsequent year.

ATTACHMENT C

F. 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.

G. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.