



Council Meeting: July 28, 2009

SUBJECT: Public Hearing, Landowner Election, and Approval of Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1

REPORT IN BRIEF

The City Council is being asked to hold a public hearing and landowner election to consider an Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and changes to the boundary map for the Community Facilities District No. 1.

Since the Community Facilities District was formed, the development plan for and configuration of many of the legal parcels has changed. As a result, certain inconsistencies now exist between the original Community Facilities District documents and the current and proposed development plans for these parcels.

At the conclusion of the public hearing, Council will be asked to call a special election on the matters raised in the Resolution of Consideration and the property owners within the district will then vote on these changes.

The changes consist of amending and restating the Rate and Method of Apportionment of Special Tax for the Community Facilities District, and amending the Boundary Map for the Community Facilities District.

Staff recommends the City Council approve the Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 by adopting the following resolutions and ordinance set forth in Attachment A, B, C and D:

- Resolution Calling Special Election (Attachment A)
- Resolution Declaring Results of Special Election (Attachment B)
- Resolution of Change (Attachment C)
- Adoption of Ordinance Ordering Levy of Special Taxes (Attachment D)

BACKGROUND

The property within the Community Facilities District No. 1 is currently held by three owners: Downtown Sunnyvale Mixed Use, LLC, which is an affiliate of RREEF; Target Corporation; and the Sunnyvale Redevelopment Agency.

Since the Community Facilities District was formed in 2001, the development plan for many of the parcels has changed. Specifically, (a) a number of condominium “air parcels” have been created, the classification of which is unclear under the original Rate and Method, and (b) the boundaries of the Target Corporation parcel, which was not previously in the Community Facilities District, now overlaps a portion of the boundaries.

On June 23, 2009, the City Council adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto”. The Resolution of Consideration: (i) approved the proposed amended and restated Rate and Method as attached as Exhibit A to the Resolution of Consideration, (ii) approved the proposed amended boundary map for the Community Facilities District, and (iii) set a public hearing for July 28, 2009.

EXISTING POLICY

The Goals and Policies adopted by Council outline how projects eligible for Community Facilities District financing will be evaluated. These policies are generally designed to ensure that the Community Facilities Districts created are made for the public good. Because the Goals and Policies only concern the formation of community facilities districts, they do not apply to the change proceedings being considered today.

DISCUSSION

Working collaboratively with staff, both Downtown Sunnyvale Mixed Use and Target Corporation submitted a petition asking the City Council to initiate the change proceedings and waiving certain time periods associated with the change proceedings. In addition, the Redevelopment Agency submitted the same waivers of time periods associated with the change proceedings. All three property owners (Downtown Sunnyvale Mixed Use, Target Corporation and the Redevelopment Agency) will submit a ballot for the change proceedings.

To complete the proposed changes the following actions must be taken:

Public Hearing, Protests, Continuation

- The City Council, acting as the legislative body of the Community Facilities District, will hold a public hearing to receive public testimony on the proposed changes to the Rate and Method and Boundary Map.
- Protests against the proposals described in the Resolution of Consideration may be made orally, or in writing by any interested persons. (Any protests pertaining to the regularity or sufficiency of the proceedings must be in writing. All written protests not personally presented by the author at the hearing must be filed with the clerk at or before the time fixed for the hearing.)
- The City Council may continue the public hearing, but must complete it within 30 days. (However, if the City Council finds that the complexity of the proposed changes or the need for public participation requires additional time, the hearing may be continued for a period not to exceed 6 months.)

Election and Election-Related Actions

- Resolution Calling Special Election (Attachment A) - After completion of the public hearing, the City Council will call a special election on the matters raised in the Resolution of Consideration that was presented at the June 23 Council meeting. The vote will be by district landowners with each owner having one vote for each acre or portion of acre owned. The ballots have been submitted by the three property owners and are on file with the City Clerk, who will open and tabulate the ballots after the Resolution Calling Special Election is adopted.

Post-Election Legislative Actions

- Resolution Declaring Results of Special Election (Attachment B) - Following the election, the City Council adopts this resolution determining the outcome of the election.
- Resolution of Change (Attachment C) - If two-thirds of the landowner votes cast are in favor of the proposed changes, the City Council considers a Resolution of Change determining that the proposed changes are lawfully authorized.

- Adoption of Ordinance Ordering Levy of Special Taxes (Attachment D) - This ordinance orders levy of the special taxes to support the outstanding bonds, and is necessary because the Rate and Method has been amended. The City Council will hold a first reading of the amended ordinance tonight. (Any changes to the Community Facilities District will be effective starting with the special taxes to be levied for the 2009/2010 tax year.) The second reading will be scheduled for the next subsequent Council meeting.

FISCAL IMPACT

All debt service on the Bonds is and will continue to be paid from the special taxes levied on the non-exempt property within the Community Facilities District, which, once the change proceedings are completed, will consist solely of the property currently owned by Downtown Sunnyvale Mixed Use.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

Also, State law requires a notice be published in a local newspaper at least seven-days prior to the date of the public hearing. Staff published a notice of the hearing on July 15, 2009 in the *Sunnyvale Sun*, setting July 28, 2009 as the date for the hearing. The City also notified the three affected property owners by mail.

ALTERNATIVES

1. Approve the Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 by adopting the following resolutions and ordinance set forth in Attachment A, B, C and D:
 - Resolution Calling Special Election (Attachment A)
 - Resolution Declaring Results of Special Election (Attachment B)
 - Resolution of Change (Attachment C)
 - Adoption of Ordinance Ordering Levy of Special Taxes (Attachment D)
2. Do not adopt the Resolutions and Ordinance.

RECOMMENDATION

Staff recommends Alternative #1; to approve the Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 by adopting the following resolutions and ordinance set forth in Attachment A, B, C and D:

- Resolution Calling Special Election (Attachment A)
- Resolution Declaring Results of Special Election (Attachment B)
- Resolution of Change (Attachment C)
- Adoption of Ordinance Ordering Levy of Special Taxes (Attachment D)

These changes will not adversely affect the interest of the Bond holders, or the ability of the City to levy special taxes sufficient to pay debt service on the Bonds.

If this action is not taken, certain inconsistencies now existing between the original Community Facilities District documents and the current and proposed development plans for these parcels would remain.

Reviewed by:

Hanson Hom Director, Community Development
Prepared by: Brice McQueen, Redevelopment Manager

Reviewed by:

Mary Bradley
Director, Finance

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Resolution Calling Special Election
- B. Resolution Declaring Results of Special Election
- C. Resolution of Change
- D. Adoption of Ordinance Ordering Levy of Special Taxes

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE CALLING A SPECIAL ELECTION TO AMEND AND RESTATE THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX AND CHANGE THE BOUNDARY MAP FOR THE CITY OF SUNNYVALE COMMUNITY FACILITIES DISTRICT NO. 1 AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

WHEREAS, the City Council (this “City Council”) of the City of Sunnyvale (the “City”) has conducted proceedings under the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the “Act”), to form the City of Sunnyvale Community Facilities District No. 1 (the “Community Facilities District”), to authorize the levy of special taxes upon the land within the Community Facilities District, and to issue bonds secured by the special taxes, all as described in those proceedings.

WHEREAS, the Rate and Method of Apportionment of Special Tax for the Community Facilities District (the “Rate and Method”), was approved by this City Council pursuant to Resolution No. 115-99 adopted by the City Council on February 23, 1999, and subsequently amended pursuant to Resolution No. 134-00, adopted by the City Council on April 25, 2000, and is attached as Exhibit A to the Amendment to Notice of Special Tax Lien recorded in the office of the Recorder for the County of Santa Clara on May 8, 2000, as Document No. 15239631.

WHEREAS, on May 24, 2001, the City issued its \$36,000,000 initial principal amount City of Sunnyvale Community Facilities District No. 1 Special Tax Bonds, Series 2001 (the “Bonds”), a portion of which were subsequently redeemed. The outstanding Bonds are secured by the special taxes levied within the Community Facilities District under the Rate and Method.

WHEREAS, pursuant to landowner petitions received by the City Council, the City has been asked to (i) amend and restate the Rate and Method to cure ambiguities, to reflect the current parcelization of the property within the Community Facilities District, and to make certain changes consistent with the current development plan for the property within the Community Facilities District, and (ii) change the boundaries of the Community Facilities District to exclude certain parcels.

WHEREAS, the proposed changes may only be considered by this City Council following a public hearing and must be approved by two-thirds of the votes cast on the proposition at an election of the qualified electors in the Community Facilities District.

WHEREAS, on June 23, 2009, this City Council adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” (the “Resolution of Consideration”), pursuant to which the Council (i) approved the proposed amended and restated Rate and Method (the “Amended and Restated Rate and Method”) in the form attached as Exhibit A to the Resolution of Consideration, (ii) approved the proposed amended boundary map for the Community Facilities District, and (iii) set a public hearing for July 28, 2009.

WHEREAS, the public hearing was held on this date, and the proposed amendment and restatement of the Rate and Method, and the proposed changes to the boundary map for the Community Facilities District, were not opposed by more than 50% of the owners of land within the Community Facilities District.

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the Community Facilities District on the issues of (i) amending and restating the Rate and Method and (ii) changing the boundary map for the Community Facilities District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

SECTION 1. Approval of Ballot. As authorized by Section 53338 of the Act, the proposition to approve the Amended and Restated Rate and Method and change the boundary map for the Community Facilities District shall be placed upon a ballot, the form of which is attached hereto as Exhibit "A" and by this reference incorporated herein. This form of the ballot is hereby approved.

SECTION 2. Landowner Election Authorized. This Council hereby finds that fewer than 12 persons have been registered to vote within the Community Facilities District for each of the 90 days preceding the close of the public hearing heretofore conducted and concluded by this Council for the purposes of these proceedings. Accordingly, and pursuant to the Act, this Council finds that for purposes of these proceedings the qualified electors are the landowners within the Community Facilities District and that the vote shall be by the landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in the Community Facilities District as of the close of the public hearing.

SECTION 3. Landowner Election Called. This Council hereby calls a special election to consider the measures described in Section 1 above, which shall be held in the Council Chambers on July 28, 2009, at 7:00 p.m. or as soon thereafter as is practicable. The results of the election shall be canvassed later at the same meeting of this Council on July 28, 2009, or a later date as may be directed by the Council. The City Clerk is hereby designated as the official to conduct the election and to receive all ballots until the close of business on the election date.

This Council hereby further finds that the provisions of Section 53326 of the Act requiring a minimum period of time before holding the special election are for the protection of the qualified electors of the Community Facilities District. There are on file with the City Clerk written waivers executed by all of the qualified electors of the Community Facilities District allowing for a shortening of the time for the special election and waiving any requirement for notice, analysis and arguments in connection with the election. Accordingly, this Council finds and determines that the qualified electors have been fully apprised of and have agreed to the shortened time for the election and waiver of analysis and arguments, and have thereby been fully protected in these proceedings. This Council also finds and determines that the City Clerk has concurred in the shortened time for the election. Analysis and arguments with respect to the ballot measures are hereby waived, as provided in Section 53327 of the Act.

SECTION 4. Evidence of Qualified Electors; Mailed Ballots Authorized. It is hereby acknowledged that the City Clerk has on file the Resolution of Consideration, a certified map of the current boundaries of the Community Facilities District, and a sufficient description to allow

the City Clerk to determine the qualified electors of the Community Facilities District. Pursuant to Section 53327 of the Act, the election shall be conducted by messenger or mail-delivered ballot pursuant to Section 4000 of the California Elections Code. This Council hereby finds that paragraphs (a), (b), (c) (1) and (c)(3) of Section 4000 are applicable to this special election.

SECTION 5. Mailing of Ballots. This Council acknowledges that the City Clerk will cause to be delivered to each of the qualified electors within the Community Facilities District a ballot in the form set forth in Exhibit "A." Each ballot shall indicate the number of votes to be cast by the respective landowner to which it pertains. The Sunnyvale Redevelopment Agency is a qualified elector of the Community Facilities District and this Council, acting as the governing board of the Agency, hereby authorizes the Executive Director to execute a ballot in favor of the propositions.

Each ballot will be accompanied by written instructions necessary for the use and return of the ballot. The envelope to be used to return the ballot will be enclosed with the ballot, have the return postage prepaid, and shall contain the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing official.

SECTION 6. Return of Ballots. The voted ballots shall be returned to the City Clerk no later than 7:00 p.m. on July 28, 2009. The City Clerk shall accept the ballots of the qualified electors in the meeting room of this Council, whether ballots are personally delivered or received by mail. The City Clerk shall have available ballots which may be marked at the meeting room of this Council on the election day by any qualified electors.

SECTION 7. Effective Date. This Resolution shall take effect upon its adoption.

Adopted by the City Council at a regular meeting held on _____, 2009, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

EXHIBIT A

FORM OF LANDOWNER BALLOT

**City of Sunnyvale
Community Facilities District No. 1**

This ballot is for a special, landowner election in the City of Sunnyvale Community Facilities District No. 1. You must return this ballot in the enclosed postage paid envelope to the office of the City Clerk by no later than the hour of 7:00 p.m. on July 28, 2009, either by mail or in person.

The City Clerk's office is located at 603 All America Way
Sunnyvale, California 94086

The City Clerk's mailing address is P.O. Box 3707
Sunnyvale, CA 94088-3707.

To vote, mark a cross (X) on the voting line after the word "YES" or after the word "NO." All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk and obtain another.

BALLOT MEASURE: Shall (i) the Rate and Method of Apportionment of Special Tax for the City of Sunnyvale Community Facilities District No. 1 (the "CFD") be amended and restated as set forth in the form of Amended and Restated Rate and Method of Apportionment of Special Tax attached as Exhibit A to the resolution entitled "A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto" (the "Resolution of Consideration") adopted by the City Council of the City of Sunnyvale on June 23, 2009 (the "Resolution of Consideration"), which Amended and Restated Rate and Method of Apportionment of Special Tax I have read and understand, and (ii) the boundary map for the CFD be amended as set forth in the form attached as Exhibit B to the Resolution of Consideration?

YES: _____

NO: _____

ATTACHMENT A

By execution in the space provided below, I also indicate my waiver of (i) the time limit pertaining to the conduct of the election, (ii) any requirement for analysis and arguments with respect to the ballot measure, and (iii) any irregularity in the proceedings relating to the ballot measure.

The exact legal name of the land owner:	_____, a _____
The Property that is the subject of this Ballot is identified as:	County of Santa Clara Assessor Parcel Numbers: _____ _____ _____ _____
The total acreage of the Property and number of votes represented by this Ballot:	_____ acres / _____ votes

Dated: _____, 2009

_____,
a _____

By: _____,
a _____,
its _____

By: _____

Its: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE DECLARING RESULTS OF SPECIAL ELECTION TO AMEND AND RESTATE THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX AND CHANGE THE BOUNDARY MAP FOR THE CITY OF SUNNYVALE COMMUNITY FACILITIES DISTRICT NO. 1 AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

WHEREAS, the City Council (this “City Council”) of the City of Sunnyvale (the “City”) has conducted proceedings under the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the “Act”), to form the City of Sunnyvale Community Facilities District No. 1 (the “Community Facilities District”), to authorize the levy of special taxes upon the land within the Community Facilities District, and to issue bonds secured by the special taxes, all as described in those proceedings.

WHEREAS, the Rate and Method of Apportionment of Special Tax for the Community Facilities District (the “Rate and Method”), was approved by this City Council pursuant to Resolution No. 115-99 adopted by the City Council on February 23, 1999, and subsequently amended pursuant to Resolution No. 134-00, adopted by the City Council on April 25, 2000, and is attached as Exhibit A to the Amendment to Notice of Special Tax Lien recorded in the office of the Recorder for the County of Santa Clara on May 8, 2000, as Document No. 15239631.

WHEREAS, on May 24, 2001, the City issued its \$36,000,000 initial principal amount City of Sunnyvale Community Facilities District No. 1 Special Tax Bonds, Series 2001 (the “Bonds”), a portion of which were subsequently redeemed. The outstanding Bonds are secured by the special taxes levied within the Community Facilities District under the Rate and Method.

WHEREAS, pursuant to landowner petitions received by the City Council, the City has been asked to (i) amend and restate the Rate and Method to cure ambiguities, to reflect the current parcelization of the property within the Community Facilities District, and to make certain changes consistent with the current development plan for the property within the Community Facilities District, and (ii) change the boundaries of the Community Facilities District to exclude certain parcels.

WHEREAS, the proposed changes may only be considered by this City Council following a public hearing and must be approved by two-thirds of the votes cast on the proposition at an election of the qualified electors in the Community Facilities District.

WHEREAS, on June 23, 2009, this City Council adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” (the “Resolution of Consideration”), pursuant to which the Council (i) approved the proposed amended and restated Rate and Method (the “Amended and Restated Rate and Method”) in the form attached as Exhibit A to the Resolution of Consideration, (ii) approved the proposed amended boundary map for the Community Facilities District, and (iii) set a public hearing for July 28, 2009.

WHEREAS, the public hearing was held on this date, and the proposed amendment and restatement of the Rate and Method, and the proposed changes to the boundary map for the Community Facilities District, were not opposed by more than 50% of the owners of land within the Community Facilities District.

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the Community Facilities District on the issues of (i) amending and restating the Rate and Method and (ii) changing the boundary map for the Community Facilities District.

WHEREAS, following the public hearing, this City Council, acting as the legislative body of the Community Facilities District, adopted a resolution entitled "A Resolution of the City Council of the City of Sunnyvale Calling a Special Election to Amend and Restate the Rate and Method of Apportionment of Special Tax and Change the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto" calling for a special landowner election of the qualified electors within the Community Facilities District to be held on July 28, 2009.

WHEREAS, the special election was held on July 28, 2009, and the ballots were submitted to the City Clerk as the official conducting the election.

WHEREAS, the City Clerk has completed a Canvass and Statement of Results of Election (the "Canvass"), a copy of which is attached as Exhibit "A", and the Council hereby approves the Canvass.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

SECTION 1. Issues Presented. The issues presented at the July 28, 2009 special election were the approval of an Amended and Restated Rate and Method of Apportionment of Special Tax, and the approval of an amendment to the boundary map for the Community Facilities District.

SECTION 2. Approval by Electors. Pursuant to the Canvass on file with the City Clerk, the issues presented at the special election were approved by the qualified electors within the Community Facilities District by more than two-thirds of the votes cast at the special election.

SECTION 3. Validation of Prior Proceedings. It is hereby found that all prior proceedings and actions taken by this Council with respect to the Community Facilities District were valid and in conformity with the Act.

SECTION 4. Effective Date. This Resolution shall take effect upon its adoption.

Adopted by the City Council at a regular meeting held on _____, 2009, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

EXHIBIT A TO RESOLUTION NO. _____

CANVASS AND STATEMENT OF RESULT OF ELECTION

**City of Sunnyvale
Community Facilities District No. 1**

I hereby certify that on July 28, 2009, I canvassed the returns of the election held on July 28, 2009, in the City of Sunnyvale Community Facilities District No. 1, and the total number of ballots cast and the total number of votes cast for and against the measure are as follows, and the totals as shown for and against the measure are full, true and correct:

	Qualified Landowner Votes	Votes Cast	YES	NO
City of Sunnyvale Community Facilities District No. 1 Special Election – July 28, 2009	_____	_____	_____	_____

BALLOT MEASURE: Shall (i) the Rate and Method of Apportionment of Special Tax for the City of Sunnyvale Community Facilities District No. 1 (the "CFD") be amended and restated as set forth in the form of Amended and Restated Rate and Method of Apportionment of Special Tax attached as Exhibit A to the resolution entitled "A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto" (the "Resolution of Consideration") adopted by the City Council of the City of Sunnyvale on June 23, 2009 (the "Resolution of Consideration"), which Amended and Restated Rate and Method of Apportionment of Special Tax I have read and understand, and (ii) the boundary map for the CFD be amended as set forth in the form attached as Exhibit B to the Resolution of Consideration?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 28th DAY OF JULY 2009.

By: _____
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE DECLARING COMPLETION OF CHANGE PROCEEDINGS FOR THE CITY OF SUNNYVALE COMMUNITY FACILITIES DISTRICT NO. 1 AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

WHEREAS, the City Council (this “City Council”) of the City of Sunnyvale (the “City”) has conducted proceedings under the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the “Act”), to form the City of Sunnyvale Community Facilities District No. 1 (the “Community Facilities District”), to authorize the levy of special taxes upon the land within the Community Facilities District, and to issue bonds secured by the special taxes, all as described in those proceedings.

WHEREAS, the Rate and Method of Apportionment of Special Tax for the Community Facilities District (the “Rate and Method”), was approved by this City Council pursuant to Resolution No. 115-99 adopted by the City Council on February 23, 1999, and subsequently amended pursuant to Resolution No. 134-00, adopted by the City Council on April 25, 2000, and is attached to the Amendment to Notice of Special Tax Lien recorded in the office of the Recorder for the County of Santa Clara on May 8, 2000, as Document No. 15239631.

WHEREAS, on May 24, 2001, the City issued its \$36,000,000 initial principal amount City of Sunnyvale Community Facilities District No. 1 Special Tax Bonds, Series 2001 (the “Bonds”), a portion of which were subsequently redeemed. The outstanding Bonds are secured by the special taxes levied within the Community Facilities District under the Rate and Method.

WHEREAS, pursuant to landowner petitions received by the City Council, the City has been asked to (i) amend and restate the Rate and Method to cure ambiguities, to reflect the current parcelization of the property within the Community Facilities District, and to make certain changes consistent with the current development plan for the property within the Community Facilities District, and (ii) change the boundaries of the Community Facilities District to exclude certain parcels.

WHEREAS, the proposed changes may only be considered by this City Council following a public hearing and must be approved by two-thirds of the votes cast on the proposition at an election of the qualified electors in the Community Facilities District.

WHEREAS, on June 23, 2009, this City Council adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” (the “Resolution of Consideration”), pursuant to which the Council (i) approved the proposed amended and restated Rate and Method (the “Amended and Restated Rate and Method”) in the form attached as Exhibit A to the Resolution of Consideration, (ii) approved the proposed amended boundary map for the Community Facilities District, and (iii) set a public hearing for July 28, 2009.

WHEREAS, the public hearing was held on this date, and the proposed amendment and restatement of the Rate and Method, and the proposed changes to the boundary map for the Community Facilities District, were not opposed by more than 50% of the owners of land within the Community Facilities District.

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the Community Facilities District on the issues of (i) amending and restating the Rate and Method and (ii) changing the boundary map for the Community Facilities District.

WHEREAS, following the public hearing, this City Council, acting as the legislative body of the Community Facilities District, adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Calling a Special Election to Amend and Restate the Rate and Method of Apportionment of Special Tax and Change the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” calling for a special landowner election of the qualified electors within the Community Facilities District to be held on July 28, 2009.

WHEREAS, the special election was held on July 28, 2009, and the ballots were submitted to the City Clerk as the official conducting the election.

WHEREAS, the Council subsequently adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Declaring Results of Special Election to Amend and Restate the Rate and Method of Apportionment of Special Tax and Change the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” on July 28, 2009, in which it found that two-thirds of the votes cast at the election were in favor of the ballot measure.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

SECTION 1. Approval of Rate and Method and Boundary Map. This Council hereby approves (i) the Amended and Restated Rate and Method of Apportionment of Special Tax, attached hereto as Exhibit “A”, and (ii) the amended boundary map for the Community Facilities District, attached hereto as Exhibit “B.”

SECTION 2. Future Levy of Special Taxes. From the effective date of this Resolution, the special taxes levied in the Community Facilities District shall be levied in accordance with the Amended and Restated Rate and Method of Apportionment of Special Tax.

SECTION 3. Recordation of Documents. The City Clerk is hereby directed to complete, execute and cause to be recorded in the office of the Recorder of the County of Santa Clara an Amended and Restated Notice of Special Tax Lien in the form required by the Act, such recording to occur no later than 15 days following adoption of this resolution.

SECTION 4. Effective Date. This Resolution shall take effect upon its adoption.

Adopted by the City Council at a regular meeting held on _____, 2009, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

EXHIBIT A

AMENDED AND RESTATED

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

CITY OF SUNNYVALE
Community Facilities District No. 1

AMENDED AND RESTATED
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

This Amended and Restated Rate and Method of Apportionment of Special Taxes (this “Rate and Method”) restates and amends the Rate and Method of Apportionment of Special Taxes for the City of Sunnyvale Community Facilities District No. 1 (the “CFD”) approved by the qualified electors of the CFD at a special election held on February 23, 1999, as subsequently amended and approved by the qualified electors of the CFD at a special election held on April 25, 2000.

GENERAL

A Special Tax shall be levied on all Taxable Parcels within the CFD and collected according to the Rate and Method of Apportionment of Special Taxes described herein.

The Special Tax shall be collected by the Santa Clara County Auditor’s office by means of inclusion on the annual ad-valorem property tax billings or in such other manner (including by means of direct billing of the affected Property Owners) as the City Council or its designee may determine.

DEFINITIONS

Act: Means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 (commencing with Section 53311), Division 2, of Title 5 of the Government Code of the State of California.

Annual Administrative Cost: Means the following actual or reasonably estimated costs directly related to the administration of the CFD and the Bonds, as determined by the Finance Director of the City or its designee: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designees thereof or both); the costs of levying and collecting the Special Taxes (including any charges levied by the County in connection therewith); the costs of remitting the Special Taxes to the Fiscal Agent; the fees and expenses of the Fiscal Agent (including its legal counsel) in the discharge of the duties required of it under the Fiscal Agent Agreement; the costs to the City, the CFD, or any designees thereof of complying with arbitrage rebate requirements, including without limitation, rebate liability costs and periodic rebate calculations; the costs to the City, the CFD, or obligated persons of complying with disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs of any State reporting requirements; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, the CFD, or any designee thereof related to an appeal of the Special Tax; and the City’s annual administration fees and third party expenses. Administrative costs shall also include amounts estimated or advanced by the City or the CFD for any other administrative purposes of the CFD, including attorney’s fees and expenses, and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

Annual Special Tax Requirement: Means the amount necessary in any Fiscal Year for the following purposes:

- (i) to pay principal of and interest on the Bonds due in the Calendar Year which commences in such Fiscal Year,
- (ii) to create or replenish reserve funds,
- (iii) to cure any delinquencies in the payment of principal of or interest on the Bonds that have occurred in the prior Fiscal Year (based on delinquencies in the payment of Special Taxes which have already taken place) or are expected to occur in the Fiscal Year in which the Special Tax will be collected,
- (iv) to pay Annual Administrative Costs, and
- (v) to pay the costs of constructing Facilities.

The Annual Special Tax Requirement may be reduced in any Fiscal Year by (i) credits from available monies from sources identified in the Fiscal Agent Agreement, including without limitation excess interest earnings in the reserve fund, (ii) proceeds from the collection of penalties and interest associated with delinquent Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Finance Director.

Assessor Parcel: Means any legally created lot or parcel within the boundaries of the CFD referenced by an Assessor's parcel number assigned by the Santa Clara County Assessor's office, and shall include without limitation parcels of land, condominium parcels and air parcels.

Bonds: Means any bonds or other indebtedness of the CFD issued under the Act.

Calendar Year: Means January 1 through December 31.

City: Means the City of Sunnyvale.

City Council: Means the City Council of the City, in its capacity, as legislative body of the CFD.

CFD: Means the City of Sunnyvale Community Facilities District No. 1.

Commercial Parcel: Means any Assessor Parcel which is wholly or partially classified by the Finance Director for commercial use, as set forth in Table No. 1 under the definition of Taxable Parcel below.

County: Means the County of Santa Clara.

Exempt Parcels: Means all Assessor Parcels: (1) owned by the State, the federal government, the City or any other governmental entity (except as otherwise provided in the Act), (2) used exclusively for landscaping, open space or common area, (3) County Assessor Parcel No. 209-35-028 and any successor or resulting parcels following the subdivision of County Assessor Parcel No. 209-35-028 or (4) classified as Exempt in Table No. 1 under the definition of "Taxable Property" below unless these parcels subsequently become Provisional Taxable Parcels.

Facilities: Means the facilities the CFD is authorized to fund.

Finance Director: Means the City's Finance Director or any duly appointed deputy or designee.

Fiscal Agent: Means the fiscal agent or trustee under the Fiscal Agent Agreement.

Fiscal Agent Agreement: Means the indenture, fiscal agent agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended or supplemented from time to time.

Fiscal Year: Means the period starting on July 1 and ending the following June 30.

Maximum Annual Special Tax per Taxable Parcel: Means the rate of \$6.00 multiplied by the Taxable Parcel Area of each Taxable Parcel or Provisional Taxable Parcel.

Property Owner: The Property Owner as shown on the records in the Santa Clara County Assessor's office for each Assessor Parcel, or if more accurate and updated information is known then that information would supersede the records in the Santa Clara County Assessor's office.

Provisional Taxable Parcel: Means any Assessor Parcel, or portion thereof, that was originally classified or planned to be classified by the City as a Commercial Parcel (see Table No. 1 under the definition of Taxable Parcel) and was subsequently re-classified as an Exempt Parcel and the Special Tax obligation for the Assessor Parcel was not pre-paid per the Mandatory Property Owner Buy Down provisions described herein, or means any Assessor Parcel, or portion thereof, that was originally classified or planned to be classified by the City as an Exempt Parcel (see Table No. 1 under the definition of Taxable Parcel) and was subsequently re-classified as a Taxable Parcel and the Special Tax obligation for the Assessor Parcel was not pre-paid per the "Prepayment Calculation of Special Taxes For A Taxable Parcel After Bonds Are Issued" as described herein.

Special Tax: The annual amount of tax each Taxable Parcel or Provisional Taxable Parcel pays based upon the Rate and Method of Apportionment of Special Taxes.

State: Means the State of California.

Taxable Parcel: Means an Assessor Parcel that is not classified as an Exempt Parcel as shown below in Table No. 1.

Table No. 1

Assessor's Parcel Number	Current & Future Land Use	Taxable or Provisional Taxable or Exempt
209-34-019	Commercial	Taxable
209-34-020	Residential	Exempt
209-34-021	Governmental	Exempt
209-34-022	Commercial/Residential	Taxable
209-34-023	Commercial/Residential	Taxable
209-34-024	Commercial	Taxable
209-34-025	Governmental	Exempt
209-34-026	Commercial/Residential	Taxable
209-34-029	Commercial	Taxable
209-34-030	Commercial	Taxable
209-35-013	Residential	Exempt
209-35-014	Governmental	Exempt
209-35-015	Commercial	Taxable
209-35-016	Commercial	Taxable
209-35-017	Commercial	Taxable
209-35-018	Governmental	Exempt
209-35-019	Commercial	Taxable
209-35-023	Commercial	Taxable
209-35-024	Residential	Exempt
209-35-029	Commercial	Taxable

Taxable Parcel Area: Means square footage of each Taxable Parcel or Provisional Taxable Parcel as shown on the Santa Clara County Assessor's maps or databases or, if more accurate and updated information is known, then the more accurate information would supersede the records in the Santa Clara County Assessor's office.

ASSIGNMENT OF SPECIAL TAXES

The Special Taxes will be assigned to all Taxable Parcels and Provisional Taxable Parcels based upon the Calculation of Special Taxes described below.

CALCULATION OF SPECIAL TAXES

Each Fiscal Year, on or about July 1, but in sufficient time to include the ensuing year's Special Tax levy on the County of Santa Clara's secured property tax roll, the City shall:

- 1) Classify all parcels within the boundaries of the CFD as; Taxable Parcels, Provisional Taxable Parcels or Exempt Parcels. In conjunction with classifying all Parcels in the boundaries of the CFD as Taxable Parcels, Provisional Taxable Parcels or Exempt Parcels, modify Table No. 1 to reflect each Fiscal Year's classifications.
- 2) Calculate the Taxable Parcel Area for each Taxable Parcel and Provisional Taxable Parcel within the boundaries of the CFD.
- 3) Calculate the Maximum Annual Special Tax per Taxable Parcel and Provisional Taxable Parcel that can be levied on each Taxable Parcel and Provisional Taxable Parcel within the boundaries of the CFD.
- 4) Determine the Annual Special Tax Requirement for the ensuing Fiscal Year.
- 5) If the total Annual Special Tax Requirement identified in Step No. 4 above is less than the total Maximum Annual Special Tax for all Taxable Parcels and Provisional Taxable Parcels then proportionately reduce the Maximum Annual Special Tax for all Taxable Parcels and Provisional Taxable Parcels until it equals the Annual Special Tax Requirement identified in Step No. 4 above.
- 6) If the total Annual Special Tax Requirement identified in Step No. 4 above is equal to or greater than the total Maximum Annual Special Tax for all Taxable Parcels and Provisional Taxable Parcels then apply the Maximum Annual Special Tax for all Taxable Parcels and Provisional Taxable Parcels.

SAMPLE CALCULATION OF FY 2009-10 SPECIAL TAXES

- 1) Classify all parcels within the boundaries of the CFD as; Taxable Parcels, Provisional Taxable Parcels or Exempt Parcels. In conjunction with classifying all Parcels in the boundaries of the CFD as Taxable Parcels, Provisional Taxable Parcels or Exempt Parcels, modify Table No. 1 to reflect each Fiscal Year's classifications.

Assessor's Parcel Number	Current & Future Land Use	Taxable or Provisional Taxable or Exempt
209-34-019	Commercial	Taxable
209-34-020	Residential	Exempt
209-34-021	Governmental	Exempt
209-34-022	Commercial/Residential	Taxable
209-34-023	Commercial/Residential	Taxable
209-34-024	Commercial	Taxable
209-34-025	Governmental	Exempt
209-34-026	Commercial/Residential	Taxable
209-34-029	Commercial	Taxable
209-34-030	Commercial	Taxable
209-35-013	Residential	Exempt
209-35-014	Governmental	Exempt
209-35-015	Commercial	Taxable
209-35-016	Commercial	Taxable
209-35-017	Commercial	Taxable
209-35-018	Governmental	Exempt
209-35-019	Commercial	Taxable
209-35-023	Commercial	Taxable
209-35-024	Residential	Exempt
209-35-029	Commercial	Taxable

- 2) Calculate the Taxable Parcel Area for each Taxable Parcel and Provisional Taxable Parcel within the boundaries of the CFD.

Assessor's Parcel Number	Current & Future Land Use	Taxable or Provisional Taxable or Exempt	Total Taxable Parcel Area (Sq. Ft.)
209-34-019	Commercial	Taxable	82,874
209-34-020	Residential	Exempt	0
209-34-021	Governmental	Exempt	0
209-34-022	Commercial/Residential	Taxable	49,452
209-34-023	Commercial/Residential	Taxable	49,709
209-34-024	Commercial	Taxable	7,848
209-34-025	Governmental	Exempt	0
209-34-026	Commercial/Residential	Taxable	32,335
209-34-029	Commercial	Taxable	66,173
209-34-030	Commercial	Taxable	66,177
209-35-013	Residential	Exempt	0
209-35-014	Governmental	Exempt	0
209-35-015	Commercial	Taxable	83,487
209-35-016	Commercial	Taxable	47,156
209-35-017	Commercial	Taxable	10,690
209-35-018	Governmental	Exempt	0
209-35-019	Commercial	Taxable	24,840
209-35-023	Commercial	Taxable	219,149
209-35-024	Residential	Exempt	0
209-35-029	Commercial	Taxable	<u>39,115</u>
Total			779,005

- 3) Calculate the Maximum Annual Special Tax per Taxable Parcel and Provisional Taxable Parcel that can be levied on each Taxable Parcel and Provisional Taxable Parcel within the boundaries of the CFD.

Assessor's Parcel Number	Current & Future Land Use	Taxable or Provisional Taxable or Exempt	Total Taxable Parcel Area (Sq. Ft.)	Max. Annual Special Tax per Taxable Parcel (\$6.00/sq. ft.)
209-34-019	Commercial	Taxable	82,874	\$497,244.00
209-34-020	Residential	Exempt	0	\$0.00
209-34-021	Governmental	Exempt	0	\$0.00
209-34-022	Commercial/Residential	Taxable	49,452	\$296,712.00
209-34-023	Commercial/Residential	Taxable	49,709	\$298,254.00
209-34-024	Commercial	Taxable	7,848	\$47,088.00
209-34-025	Governmental	Exempt	0	\$0.00
209-34-026	Commercial/Residential	Taxable	32,335	\$194,010.00
209-34-029	Commercial	Taxable	66,173	\$397,038.00
209-34-030	Commercial	Taxable	66,177	\$397,062.00
209-35-013	Residential	Exempt	0	\$0.00
209-35-014	Governmental	Exempt	0	\$0.00
209-35-015	Commercial	Taxable	83,487	\$500,922.00
209-35-016	Commercial	Taxable	47,156	\$282,936.00
209-35-017	Commercial	Taxable	10,690	\$64,140.00
209-35-018	Governmental	Exempt	0	\$0.00
209-35-019	Commercial	Taxable	24,840	\$149,040.00
209-35-023	Commercial	Taxable	219,149	\$1,314,894.00
209-35-024	Residential	Exempt	0	\$0.00
209-35-029	Commercial	Taxable	<u>39,115</u>	<u>\$234,690.00</u>
Total			779,005	\$4,674,030.00

- 4) Determine the Annual Special Tax Requirement for the FY 2009-10.

FY 2009-10 Special Tax Requirement

(i) Principal & Interest on Bonds	\$1,727,920.00
(ii) Replenishment of Reserve Fund	\$0.00
(iii) Prior Year Delinquencies	\$0.00
(iv) Administrative Costs	\$9,200.00
(v) Future Construction	\$0.00
(vi) Less Credits	<u>\$0.00</u>
Total	\$1,737,120.00

- 5) If the total Annual Special Tax Requirement identified in Step No. 4 above is less than the total Maximum Annual Special Tax for all Taxable Parcels and Provisional Taxable Parcels then proportionately reduce the Maximum Annual Special Tax for all Taxable Parcels and Provisional Taxable Parcels until it equals the Annual Special Tax Requirement identified in Step No. 4 above.

Assessor's Parcel Number	Current & Future Land Use	Taxable or Provisional Taxable or Exempt	Total Taxable Parcel Area (Sq. Ft.)	Max. Annual Special Tax per Taxable Parcel (\$6.00/sq. ft.)	FY 2009-10 Special Tax per Taxable Parcel (Approx. \$2.23/sq. ft.)
209-34-019	Commercial	Taxable	82,874	\$497,244.00	\$184,802.51
209-34-020	Residential	Exempt	0	\$0.00	\$0.00
209-34-021	Governmental	Exempt	0	\$0.00	\$0.00
209-34-022	Commercial/Residential	Taxable	49,452	\$296,712.00	\$110,274.08
209-34-023	Commercial/Residential	Taxable	49,709	\$298,254.00	\$110,847.17
209-34-024	Commercial	Taxable	7,848	\$47,088.00	\$17,500.42
209-34-025	Governmental	Exempt	0	\$0.00	\$0.00
209-34-026	Commercial/Residential	Taxable	32,335	\$194,010.00	\$72,104.51
209-34-029	Commercial	Taxable	66,173	\$397,038.00	\$147,560.60
209-34-030	Commercial	Taxable	66,177	\$397,062.00	\$147,569.52
209-35-013	Residential	Exempt	0	\$0.00	\$0.00
209-35-014	Governmental	Exempt	0	\$0.00	\$0.00
209-35-015	Commercial	Taxable	83,487	\$500,922.00	\$186,169.46
209-35-016	Commercial	Taxable	47,156	\$282,936.00	\$105,154.18
209-35-017	Commercial	Taxable	10,690	\$64,140.00	\$23,837.86
209-35-018	Governmental	Exempt	0	\$0.00	\$0.00
209-35-019	Commercial	Taxable	24,840	\$149,040.00	\$55,391.25
209-35-023	Commercial	Taxable	219,149	\$1,314,894.00	\$488,685.06
209-35-024	Residential	Exempt	0	\$0.00	\$0.00
209-35-029	Commercial	Taxable	<u>39,115</u>	<u>\$234,690.00</u>	<u>\$87,223.38</u>
Total			779,005	\$4,674,030.00	\$1,737,120.00

COLLECTION OF THE ANNUAL SPECIAL TAX

Each year, the City will coordinate with the Santa Clara County Auditor's office to have the Annual Special Tax for each applicable Taxable Parcel placed on the property tax roll, or will effect a direct billing of the Annual Special Tax to the Property Owners of the Taxable Parcel.

TERM OF SPECIAL TAX

The Special Tax shall be levied and collected annually in order to satisfy the Annual Special Tax Requirement. The Special Tax may be levied annually for a period not to exceed forty (40) years commencing in Fiscal Year 2000-01.

PROPERTY OWNER APPEALS OF SPECIAL TAX LEVIES

Any Property Owner claiming that the amount or application of the Special Tax is not correct and requesting a refund may file a written notice of appeal and refund to that effect with the Finance Director not later than one calendar year after having paid the Special Tax that is disputed. The Finance Director shall promptly review the appeal, and if necessary, meet with the Property Owner, consider written and oral evidence regarding the amount of the Special Tax, and decide the appeal. If the Finance Director's decision requires that the Special Tax be modified or changed in favor of the Property Owner, a cash refund shall not be made (except for the last year of

levy), but an adjustment shall be made to the next Special Tax levy. Any dispute over the decision of the Finance Director shall be referred to the City Council and the decision of the City Council shall be final. This procedure shall be exclusive and its exhaustion by any Property Owner shall be a condition precedent to any legal action by such owner.

MANDATORY PROPERTY OWNER BUY DOWN

In the event a Taxable Parcel (as show in Table No. 1) or a Provisionally Taxable Parcel is subsequently changed to an Exempt Parcel or the Taxable Parcel Area for a Taxable Parcel or a Provisionally Taxable Parcel is reduced as determined by the Finance Director, the Property Owner may be responsible for prepaying the Special Tax obligation associated with the reclassification of the Assessor Parcel or the reduction in the Taxable Parcel's or Provisionally Taxable Parcel's Taxable Parcel Area. The City's Finance Director will determine if the Property Owner is required to prepay the Special Tax obligation associated with the reclassification of the Assessor Parcel or the reduction in the Taxable Parcel's or Provisionally Taxable Parcel's Taxable Parcel Area. The prepayment calculation will be calculated similarly and pursuant to the section entitled "Prepayment Calculation of Special Taxes For A Taxable Parcel After Bonds Are Issued" as described below. The City will provide written notice and a calculation of the buy down amount to the affected Property Owner regarding their mandatory buy down requirement.

PREPAYMENTCALCULATION OF SPECIAL TAXES FOR A TAXABLE PARCEL AFTER BONDS ARE ISSUED

PREPAYMENT CALCULATION OF SPECIAL TAXES FOR A TAXABLE PARCEL PRIOR TO JUNE 16, 2011

The Special Tax obligation for a Taxable Parcel may be prepaid on any date prior to May 18, 2011 if the Taxable Parcel is not delinquent in their Special Tax payments based upon the following formula. The Property Owner requesting the prepayment must provide the City a minimum of 75 days notice prior to the redemption date of the Bonds to be redeemed with the proceeds of the prepaid Special Taxes. The prepayment must be received by the Finance Director 45 days prior to the next Bond redemption date.

- 1) Determine the Maximum Annual Special Tax per Taxable Parcel for the Taxable Parcel which is proposed to be prepaid.
- 2) Determine the total Maximum Annual Special Taxes for all Taxable Parcels within the boundaries of the CFD which have not prepaid their Special Taxes.
- 3) Determine the Taxable Parcel's pro-rata share of the prepayment obligation by dividing the Maximum Annual Special Tax for the Taxable Parcel which is proposed to be prepaid by the Total Maximum Annual Special Taxes for all Taxable Parcels within the boundaries of the CFD which have not prepaid their Special Taxes.
- 4) Calculate the total amount of outstanding unpaid principal of the Bonds.
- 5) Determine the Taxable Parcel's pro-rata share of the outstanding unpaid principal of the Bonds by multiplying the Taxable Parcel's pro-rata share of prepayment obligation as calculated in Step No. 3 by the total amount of outstanding unpaid principal of the Bonds in Step No. 4.
- 6) Calculate the total amount of interest due through August 1, 2011 for the Bonds.
- 7) Determine the Taxable Parcel's pro-rata share of the interest due through August 1, 2011 for the Bonds by multiplying the Taxable Parcel's pro-rata share of prepayment obligation as calculated in Step No. 3 by the total amount of interest due through August 1, 2011.
- 8) Calculate the redemption premium on the outstanding unpaid principal of the Taxable Parcel's pro-rata share of the Bonds pursuant to the terms and conditions in the Fiscal Agent Agreement for the Bonds, if any.

- 9) Calculate the reserve fund credit to be applied to the Taxable Parcel's pro-rata share of the Bonds pursuant to the terms and conditions in the Fiscal Agent Agreement for the Bonds, if any.
- 10) Calculate the City administrative fee for the prepayment of Special Taxes as determined by the Finance Director.
- 11) Calculate the prepayment of Special Taxes for each Taxable Parcel as follows:

The Taxable Parcel's pro-rata share of the outstanding unpaid principal of the Bonds as calculated in Step No. 5, plus,

The Taxable Parcel's pro-rata share of the interest due through August 1, 2011 as calculated in Step No. 7, plus,

The Taxable Parcel's pro-rata share of the redemption premium due on the outstanding unpaid principal of the Bonds as calculated in Step No. 8, less,

The Taxable Parcel's pro-rata share of the Reserve Fund as calculated in Step No. 9, plus,

A City administrative processing fee for calculating and administering the prepayment, including any filing costs or other out of pocket costs for removing the lien as determined by the Finance Director, to reasonably reflect the City's cost for performing these tasks. The City's administrative processing fees may include any outside consulting or administrative fees associated with the pre-payment.

In addition, the Finance Director has the authority to adjust the prepayment amount per Taxable Parcel calculated above if the; (1) Property Owner has paid a portion or all of their current property tax bill and that portion attributable to the payment of Special Taxes have not been used in the calculations described above, (2) if the City will earn interest on the prepayment funds received, (3) if the prepayment calculation described above is in conflict with any of the CFD or Bond documents which pertain to the prepayment of Special Taxes.

PREPAYMENT CALCULATION OF SPECIAL TAXES FOR A TAXABLE PARCEL ON OR AFTER JUNE 16, 2011

The Special Tax obligation for a Taxable Parcel may be prepaid on any date on or after June 16, 2011 if the Taxable Parcel is not delinquent in their Special Tax payments based upon the following formula. The Property Owner requesting the prepayment must provide the City a minimum of 75 days notice prior to the redemption date of the Bonds to be redeemed with the proceeds of the prepaid Special Taxes. The prepayment must be received by the Finance Director 45 days prior to the next Bond redemption date.

- 1) Determine the Maximum Annual Special Tax per Taxable Parcel for the Taxable Parcel which is proposed to be prepaid.
- 2) Determine the total Maximum Annual Special Taxes for all Taxable Parcels within the boundaries of the CFD which have not prepaid their Special Taxes.
- 3) Determine the Taxable Parcel's pro-rata share of the prepayment obligation by dividing the Maximum Annual Special Tax for the Taxable Parcel which is proposed to be prepaid by the Total Maximum Annual Special Taxes for all Taxable Parcels within the boundaries of the CFD which have not prepaid their Special Taxes.
- 4) Calculate the total amount of outstanding unpaid principal of the Bonds.

- 5) Determine the Taxable Parcel's pro-rata share of the outstanding unpaid principal of the Bonds by multiplying the Taxable Parcel's pro-rata share of prepayment obligation as calculated in Step No. 3 by the total amount of outstanding unpaid principal of the Bonds in Step No. 4.
- 6) Calculate the total amount of interest due at the next interest payment date for the Bonds.
- 7) Determine the Taxable Parcel's pro-rata share of the interest due at the next interest payment date for the Bonds by multiplying the Taxable Parcel's pro-rata share of prepayment obligation as calculated in Step No. 3 by the total amount of interest due at the next interest payment date.
- 8) Calculate the redemption premium on the outstanding unpaid principal of the Taxable Parcel's pro-rata share of the Bonds pursuant to the terms and conditions in the Fiscal Agent Agreement for the Bonds, if any.
- 9) Calculate the reserve fund credit to be applied to the Taxable Parcel's pro-rata share of the Bonds pursuant to the terms and conditions in the Fiscal Agent Agreement for the Bonds, if any.
- 10) Calculate the City administrative fee for the prepayment of Special Taxes as determined by the Finance Director.
- 11) Calculate the prepayment of Special Taxes for each Taxable Parcel as follows:

The Taxable Parcel's pro-rata share of the outstanding unpaid principal of the Bonds as calculated in Step No. 5, plus,

The Taxable Parcel's pro-rata share of the interest due at the next interest payment date as calculated in Step No. 7, plus,

The Taxable Parcel's pro-rata share of the redemption premium due on the outstanding unpaid principal of the Bonds as calculated in Step No. 8, less,

The Taxable Parcel's pro-rata share of the Reserve Fund as calculated in Step No. 9, plus,

A City administrative processing fee for calculating and administering the prepayment, including any filing costs or other out of pocket costs for removing the lien as determined by the Finance Director, to reasonably reflect the City's cost for performing these tasks. The City's administrative processing fees may include any outside consulting or administrative fees associated with the pre-payment.

In addition, the Finance Director has the authority to adjust the prepayment amount per Taxable Parcel calculated above if the; (1) Property Owner has paid a portion or all of their current property tax bill and that portion attributable to the payment of Special Taxes have not been used in the calculations described above, (2) if the City will earn interest on the prepayment funds received, (3) if the prepayment calculation described above is in conflict with any of the CFD or Bond documents which pertain to the prepayment of Special Taxes.

EXHIBIT B

AMENDED BOUNDARY MAP

AMENDED BOUNDARY MAP
 COMMUNITY FACILITIES DISTRICT No. 1
 CITY OF SUNNYVALE
 COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SUNNYVALE THIS _____ DAY OF _____, 2009.

 CITY CLERK
 CITY OF SUNNYVALE
 COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING AMENDED BOUNDARIES OF COMMUNITY FACILITIES DISTRICT No. 1, CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE, AT A REGULAR MEETING THEREOF, HELD ON THE _____ DAY OF _____ 2009, BY ITS RESOLUTION NO. _____.

 CITY CLERK
 CITY OF SUNNYVALE
 COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA

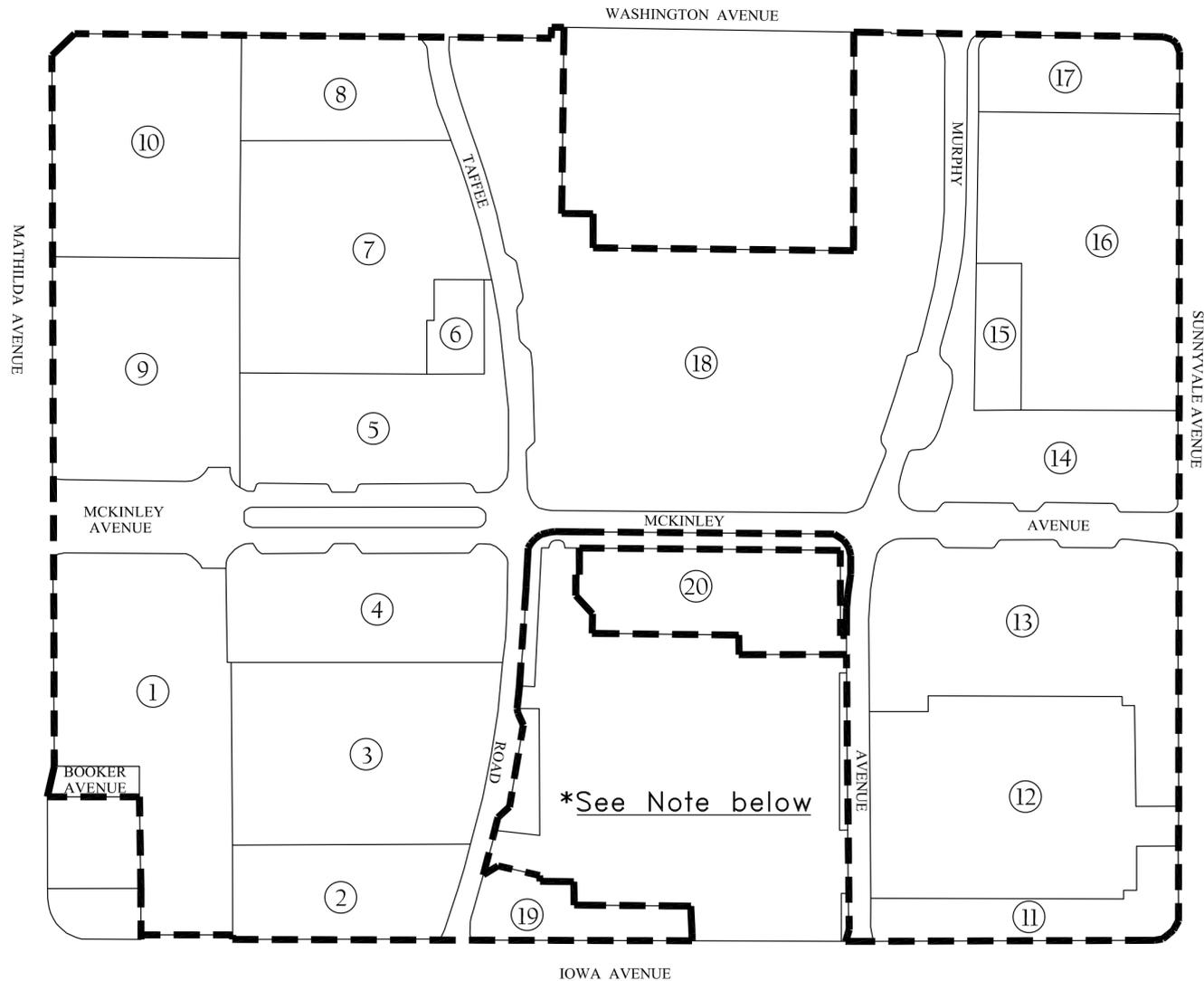
FILED THIS _____ DAY OF _____, 2009, AT THE HOUR OF _____ O'CLOCK ___M IN BOOK _____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE _____, DOCUMENT No. _____ IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

 COUNTY RECORDER
 COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA

THIS AMENDS THE BOUNDARY MAP FOR COMMUNITY FACILITIES DISTRICT No. 1, CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PRIOR RECORDED AT BOOK 34 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE 4, ON JANUARY 21, 1999, IN THE OFFICE OF THE COUNTY RECORDER FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

 COUNTY RECORDER
 COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA

ASSESSOR PARCELS WITHIN BOUNDARY;
 FOR PARTICULARS OF LINES AND DIMENSIONS OF PARCELS, REFERENCE IS MADE TO THE ASSESSOR PARCEL NUMBERS OF THE COUNTY OF SANTA CLARA.



Reference Number	Assessor's Parcel Number
1	209-34-019
2	209-34-020
3	209-34-021
4	209-34-022
5	209-34-023
6	209-34-024
7	209-34-025
8	209-34-026
9	209-34-029
10	209-34-030
11	209-35-013
12	209-35-014
13	209-35-015
14	209-35-016
15	209-35-017
16	209-35-018
17	209-35-019
18	209-35-023
19	209-35-024
20	209-35-029

LEGEND

- DISTRICT BOUNDARY
- ASSESSOR PARCEL BOUNDARIES

***Note:** Assessor Parcel Number 209-35-028 is not located within the boundaries of Community Facilities District No. 1 and will not be taxed.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE LEVYING SPECIAL TAXES WITHIN
THE CITY OF SUNNYVALE COMMUNITY FACILITIES
DISTRICT NO. 1**

WHEREAS, the City Council (this “City Council”) of the City of Sunnyvale (the “City”) has conducted proceedings under the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the “Act”), to form the City of Sunnyvale Community Facilities District No. 1 (the “Community Facilities District”), to authorize the levy of special taxes upon the land within the Community Facilities District, and to issue bonds secured by the special taxes, all as described in those proceedings.

WHEREAS, the Rate and Method of Apportionment of Special Tax for the Community Facilities District (the “Rate and Method”), was approved by this City Council pursuant to Resolution No. 115-99 adopted by the City Council on February 23, 1999, and subsequently amended pursuant to Resolution No. 134-00, adopted by the City Council on April 25, 2000, and is attached as Exhibit A to the Amendment to Notice of Special Tax Lien recorded in the office of the Recorder for the County of Santa Clara on May 8, 2000, as Document No. 15239631.

WHEREAS, on May 24, 2001, the City issued its \$36,000,000 initial principal amount City of Sunnyvale Community Facilities District No. 1 Special Tax Bonds, Series 2001 (the “Bonds”), a portion of which were subsequently redeemed. The outstanding Bonds are secured by the special taxes levied within the Community Facilities District under the Rate and Method.

WHEREAS, pursuant to landowner petitions received by the City Council, the City has been asked to (i) amend and restate the Rate and Method to cure ambiguities, to reflect the current parcelization of the property within the Community Facilities District, and to make certain changes consistent with the current development plan for the property within the Community Facilities District, and (ii) change the boundaries of the Community Facilities District to exclude certain parcels.

WHEREAS, the proposed changes may only be considered by this City Council following a public hearing and must be approved by two-thirds of the votes cast on the proposition at an election of the qualified electors in the Community Facilities District.

WHEREAS, on June 23, 2009, this City Council adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” (the “Resolution of Consideration”), pursuant to which the Council (i) approved the proposed amended and restated Rate and Method (the “Amended and Restated Rate and Method”) in the form attached as Exhibit A to the Resolution of Consideration, (ii) approved the proposed amended boundary map for the Community Facilities District, and (iii) set a public hearing for July 28, 2009.

WHEREAS, the public hearing was held on this date, and the proposed amendment and restatement of the Rate and Method, and the proposed changes to the boundary map for the Community Facilities District, were not opposed by more than 50% of the owners of land within the Community Facilities District.

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the Community Facilities District on the issues of (i) amending and restating the Rate and Method and (ii) changing the boundary map for the Community Facilities District.

WHEREAS, following the public hearing, this City Council, acting as the legislative body of the Community Facilities District, adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Calling a Special Election to Amend and Restate the Rate and Method of Apportionment of Special Tax and Change the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” calling for a special landowner election of the qualified electors within the Community Facilities District to be held on July 28, 2009.

WHEREAS, the special election was held on July 28, 2009, and the ballots were submitted to the City Clerk as the official conducting the election.

WHEREAS, subsequently, on July 28, 2009, this Council adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Declaring Results of Special Election to Amend and Restate the Rate and Method of Apportionment of Special Tax and Change the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” in which it found that two-thirds of the votes cast at the election were in favor of the ballot measure, and a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Declaring Completion of Change Proceedings for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto,” in which it approved the Amended and Restated Rate and Method and the amended boundary map for the Community Facilities District.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. LEVY OF SPECIAL TAXES UNDER AMENDED AND RESTATED RATE AND METHOD. This Council authorizes and levies special taxes within the Community Facilities District pursuant to the Act, at the rate and in accordance with the method of apportionment set forth in the Amended and Restated Rate and Method, which Amended and Restated Rate and Method is by this reference incorporated herein. The special taxes are hereby levied according to the Amended and Restated Rate and Method commencing in fiscal year 2009-10 and in each fiscal year thereafter until payment in full of any bonds issued by the City for the Community Facilities District (the “Bonds”) and all costs of administering the Community Facilities District, all as contemplated by the Amended and Restated Rate and Method, the Resolution of Formation (as amended by the Resolution of Change) and the Resolution Determining Necessity (as amended by the Resolution of Change).

SECTION 2. DETERMINATION OF SPECIAL TAX RATE. The Finance Director (or a designee of such official) of the City is hereby authorized and directed each fiscal year to determine the specific special tax rate and amount to be levied for the next ensuing fiscal year for each parcel of real property within the Community Facilities District, in the manner and as provided in the Amended and Restated Rate and Method.

SECTION 3. EXEMPTIONS; MAXIMUM SPECIAL TAX LEVY. Properties or entities of the State, federal or local governments shall be exempt from any levy of the special taxes, except as otherwise set forth in the Amended and Restated Rate and Method and the Act. In no event may the special taxes be levied on any parcel within the Community Facilities District in excess of the maximum tax specified in the Amended and Restated Rate and Method.

SECTION 4. COLLECTIONS OF SPECIAL TAXES. All of the collections of the special tax shall be used as provided for in the Act, in the Amended and Restated Rate and Method and in the Resolution of Formation (as amended by the Resolution of Change) including, but not limited to, the payment of principal of and interest on the Bonds, the replenishment of the reserve fund for the Bonds, the payment of the costs of the City in administering the Community Facilities District, the costs of collecting and administering the special tax, and the payment of the costs of facilities.

SECTION 5. MANNER OF COLLECTION; DELINQUENT PAYMENTS. The special taxes shall be collected either by direct billing of the property owner or in the same manner as ordinary ad valorem taxes are collected and, in either case, shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that this Council may provide for other appropriate methods of collection by resolutions of the Council. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments.

SECTION 6. RESCINDING PRIOR SPECIAL TAX ORDINANCE. This Ordinance rescinds in its entirety Ordinance No. 2588-99, adopted by this Council on March 2, 1999.

SECTION 7. SEVERABILITY. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 8. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within 15 days after adoption of this ordinance.

SECTION 9. EFFECTIVE DATE. This ordinance shall be in full force and effect 30 days from and after the date of its adoption.

Introduced at a regular meeting of the City Council held on _____, 2009, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2009, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
SEAL

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney