

RESOLUTION NO. _____

**A RESOLUTION OF CONSIDERATION OF THE COUNCIL
OF THE CITY OF SAN JOSE TO ALTER COMMUNITY
FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL)**

(ALTERATION NO. 1B)

WHEREAS, on September 3, 2002, the City Council (“Council”) for the City of San José (“City”), pursuant to Chapter 14.27 of Title 14 of the City’s Municipal Code, which incorporates and modifies by reference the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code (together, the “Act”), completed all actions necessary to form and levy special taxes within Community Facilities District No. 8 (Communications Hill) (“CFD 8”); and

WHEREAS, on February 17, 2004, Council completed all actions necessary to annex territory (“Annexation Area No. 1”) to CFD 8; and

WHEREAS, on June 14, 2016, Council completed all actions necessary to annex additional territory (“Annexation Area No. 2”) to CFD 8; and

WHEREAS, the Director of the Department of Public Works (“Director”) submitted a memorandum dated August 19, 2019 recommending that Council commence proceedings to alter the services and facilities financed by CFD 8 (“Change Proceedings”) and approve an agreement to reimburse the City for costs that it advances to pay for the costs of the change proceedings (“Reimbursement Agreement”); and

WHEREAS, on September 10, 2019, Council approved the Reimbursement Agreement and adopted Resolution No. 79228 that commenced the Change Proceedings and set a public hearing on November 5, 2019 to consider the proposed changes; and

WHEREAS, the Director submitted a memorandum dated October 28, 2019, recommending that Council repeal Resolution No. 79228 and adopt a new resolution of consideration to defer the hearing date for the Change Proceedings from November 5, 2019 until November 19, 2019; and

WHEREAS, the Director's recommendation included planning and design work related to the future purchase, construction, improvement, operation, expansion or rehabilitation of a vineyard and other open space facilities on public lands within CFD No. 8; and

WHEREAS, the City has determined the cost to conduct the Change Proceedings ("Change Costs") and desires to advance funds to cover a portion of this amount, subject to the Reimbursement Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

1. Resolution No. 79228 is hereby repealed and the November 5, 2019 hearing date is cancelled.
2. Council hereby determines the public convenience and necessity require the list of authorized work financed by CFD 8 be altered and the rate and method of apportionment be amended.
3. The proposed additions to work financed by CFD 8 shall consist of those items listed in Exhibit A hereto ("Additional Work") and by this reference incorporated herein. The Additional Work shall be in addition to the services previously authorized by the qualified electors pursuant to the Resolution of Formation of CFD 8, Resolution No. 71194, adopted September 3, 2002 ("Resolution of

Formation”), and shall apply to the entirety of CFD 8, including Annexation Area No. 1 and Annexation Area No. 2.

4. The proposed alterations to CFD 8 will result in changes to the rate and method of apportionment of special tax within CFD 8 but will not change the Maximum Special Tax set forth therein. The revised rate and method of apportionment for CFD 8 is attached hereto as Exhibit B.
5. The City has determined that the Change Costs will be the actual amount of the City’s costs to conduct the Change Proceedings. Pursuant to Section 53314.9 of the Act, the City will advance a maximum of \$30,000 to apply to the Change Costs, subject to the Reimbursement Agreement. The Reimbursement Agreement is attached hereto as Exhibit C.
6. If the Change Costs exceed the maximum amount of the City’s advance, then the City shall suspend the Change Proceedings until additional funds are deposited with the City to cover the remainder of the costs.
7. The territory included in CFD 8 is generally described as Curtner Avenue on the north; a line approximately 500 feet easterly of State Route 87 on the west; Hillsdale Avenue on the south; and a line approximately 790 feet westerly of Hillsdale Avenue on the east. The following maps have been filed for CFD 8 as public record:
 - a. The map entitled, “Proposed Boundaries of Community Facilities District No. 8 (Communications Hill),” City of San José, Santa Clara County, California, filed for record in the office of the County Recorder of the County of Santa Clara on August 5, 2002, under Recorder’s File No. 16402569, Book 37 of Maps of Assessment and Community Facilities Districts at page 31.

- b. The map entitled “Amended Map of Proposed Boundaries of Community Facilities District No. 8 (Communications Hill),” City of San Jose, Santa Clara County, California, filed for record in the office of the County Recorder of the County of Santa Clara on September 6, 2002, under Recorder’s File No. 16464029, Book 38 of Maps of Assessment and Community Facilities Districts at page 14.
 - c. The map entitled, “Annexation Area No. 1 of Community Facilities District No. 8 (Communications Hill),” City of San Jose, Santa Clara County, California, filed for record in the office of the County Recorder of the County of Santa Clara on January 28, 2004, under Recorder’s File No. 17589990, Book 39 of Maps of Assessment and Community Facilities Districts at page 30.
 - d. The map entitled, “Annexation Map No. 2 of Community Facilities District No. 8 (Communications Hill),” City of San Jose, Santa Clara County, California, filed for record in the office of the County Recorder of the County of Santa Clara on May 18, 2016, under Recorder’s File No. 23308741, Book 51 of Maps of Assessment and Community Facilities at page 39.
8. The Council hereby sets November 19, 2019, at 6:00 p.m., or as soon thereafter as the Council may reach the matter, at the City Council Chambers, 200 East Santa Clara Street, San José, California, as the time and place for the public hearing on this Resolution.
9. At the hearing, protests against the proposed changes to the types of facilities or services to be financed by CFD 8 may be made orally, or in writing by any interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or

defects to which objection is made. All written protests not personally presented by the author thereof at the hearing shall be filed with the City Clerk at or before the time fixed for the hearing. The Council may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

10. If 50 percent or more of the registered voters residing within CFD 8, or the owners of one-half or more of the area of the land in CFD 8 not exempt from the special tax, file written protests against changing the public facilities or services financed by the district, those changes in the facilities or services shall be eliminated from the resolution ordering changes in the types of public facilities or services to be financed and the changes shall not be included in a resolution for a period of one year from the date of the Council's decision on the hearing.
11. At the conclusion of the hearing the Council may abandon the proceedings or may, after passing upon all protests, submit the question of changing the types of facilities and services financed by the district to the qualified electors of CFD 8 at an election the time, place and conditions of which shall be specified by a separate Council resolution. The qualified electors for the election to be held in these Change Proceedings shall be the registered voters in CFD 8. The voting procedure shall be by mailed or hand-delivered ballot among the registered voters in CFD 8, with each voter having one vote.
12. The City Clerk is hereby directed to cause notice of said public hearing to be given by publication on time in a newspaper of general circulation published in the area of CFD 8. The publication of said notice shall be completed at least seven days before the date herein set for said hearing. Said notice shall be in the form specified in the Act.

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A

CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL) ALTERATION NO. 1A

DESCRIPTION OF ADDITIONAL WORK

The work shown below is proposed to be financed by Community Facilities District No. 8 (Communications Hill) (“CFD No. 8”) of the City of San José. This list of items identifies work that would be authorized to be funded by CFD No. 8; however, not all items on this list are guaranteed to be funded by CFD No. 8.

Authorized Work

- Planning, cost estimating, and design work related to the future purchase, construction, improvement, operation, expansion or rehabilitation of a vineyard and other open space facilities on public lands within CFD No. 8, including, without limitation, environmental evaluations.

EXHIBIT B

CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in Community Facilities District No. 8 (Communications Hill) [herein "CFD No. 8"] shall be levied and collected according to the tax liability determined by the City Council, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 8, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 8 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

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 subdivision map or other parcel map recorded at the Santa Clara County Recorder's Office.

"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, and Chapter 14.27 of Title 14 of the Municipal Code of the City.

"Administrator" means the individual(s) designated by the City to administer the CFD in accordance with the authority and powers granted by the City Council.

"Airspace Parcel" means an Assessor's Parcel that shares common vertical space of an underlying land parcel with other parcels that have been assigned Assessor's Parcel numbers.

"Assessor's Parcel" or "Parcel" means a lot, parcel or Airspace Parcel shown on 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 of Santa Clara designating parcels by Assessor's Parcel number.

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“Church Property” means any Parcel within the CFD that meets both of the following criteria: (1) a structure has been built that is used as a place of worship, rectory, convent or private school, and (2) the Parcel is exempt from ad valorem property taxes because it is owned by a religious organization.

“City” means the City of San Jose.

“City Council” means the City Council of the City of San Jose, acting as the legislative body of CFD No. 8.

“Developed Property” means, in any Fiscal Year, all Taxable Property for which a building permit for new construction has been issued prior to June 30 of the preceding Fiscal Year.

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

“Index” means the Consumer Price Index of the San Francisco-Oakland-San Jose area for all urban consumers.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C below, that can be levied on Taxable Property in any Fiscal Year.

“Non-Residential Property” means Parcels of Developed Property within CFD No. 8 that are not Residential Property.

“Public Agency” means the federal government, State of California or other local governments or public agencies.

“Residential Property” means Parcels of Developed Property for which a building permit was issued for construction of a residential structure, including single family detached, duplex, triplex, fourplex, townhome, condominium or apartment units.

“Special Tax” means a special tax levied in any Fiscal Year to pay the Special Tax Requirement.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to (i) pay authorized expenses, (ii) create a sinking fund for replacement of facilities, (iii) pay administrative expenses of CFD No. 8, (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.

“Subsequent Non-Residential Property” means (i) a Parcel of Non-Residential Property which had, in any prior Fiscal Year, been taxed as Residential Property, or (ii) a Parcel that was, in the City’s sole discretion, expected to be Residential Property and subsequently had a building

EXHIBIT B

permit issued for a non-residential use. 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 CFD No. 8, the City may but is not required to categorize that Parcel as Subsequent Non-Residential Property.

“Taxable Property” means all Assessor’s Parcels within the boundaries of CFD No. 8 which are not exempt from the Special Tax pursuant to law or Section E below.

“Unit” means a residential dwelling unit, including individual single-family detached, duplex (2 units), triplex (3 units), fourplex (4 units), townhome, condominium, or apartment units.

B. DATA FOR ANNUAL ADMINISTRATION OF SPECIAL TAX

After July 1 of each Fiscal Year, the Administrator shall categorize all Parcels of Taxable Property in CFD No. 8 as either Residential Property, Non-Residential Property or Subsequent Non-Residential Property, as defined in Section A above. For each Parcel of Residential Property, the Administrator shall determine the number of Units on the Parcel by referencing the building permit, site plan, condominium plan, apartment plan or other development plan for the Parcel. If an individual Assessor’s Parcel contains both Residential Property and Non-Residential Property, the Administrator shall determine both the number of Units on the Parcel and the Acreage of the Parcel for purposes of applying the Maximum Special Tax as set forth in Section C.3 below.

C. MAXIMUM SPECIAL TAX

1. Residential Property

The Maximum Special Tax for Residential Property in CFD No. 8 is \$667 per Unit for Fiscal Year 2002-03. Beginning January 2, 2003 and each January 2 thereafter, this Maximum Special Tax shall be adjusted by applying the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

2. Non-Residential Property

The Maximum Special Tax for Non-Residential Property in CFD No. 8 is \$300 per Acre for Fiscal Year 2002-03. Beginning January 2, 2003 and each January 2 thereafter, this Maximum Special Tax shall be adjusted by applying the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

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3. *Subsequent Non-Residential Property*

The Maximum Special Tax for Subsequent Non-Residential Property shall be determined in the first Fiscal Year in which the property is categorized as Subsequent Non-Residential Property. If the Parcel had been taxed as Residential Property in the prior Fiscal Year, the Maximum Special Tax for the Parcel shall be equal to the Maximum Special Tax levied on the Parcel in the prior Fiscal Year adjusted by the increase, if any, in the Index that has occurred since January of the prior year. Beginning the next January 2, and each January 2 thereafter, the Maximum Special Tax on the Parcel shall again be adjusted by the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

If the Parcel of Subsequent Non-Residential Property had never been taxed as Residential Property, but had been expected to be developed as Residential Property, the Administrator shall apply the following steps to determine the Maximum Special Tax for the Parcel:

Step 1: Estimate the number of Units that were expected to be developed on the Parcel before the land use changed to a non-residential use;

Step 2: Multiply the Maximum Special Tax per Unit for Residential Property for the then current Fiscal Year by the number of anticipated Units from Step 1 to determine the Maximum Special Tax for the Parcel.

Beginning the next January 2, and each January 2 thereafter, the Maximum Special Tax on the Parcel shall again be adjusted by the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

D. **METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX**

Each Fiscal Year, the Special Tax shall be levied on all Parcels of Developed Property as follows:

Step 1: Determine the Special Tax Requirement (see definition in Section A above) for the Fiscal Year in which the Special Tax will be collected;

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 C above;

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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 in the CFD. Even though the Special Tax Requirement is greater than the total Special Tax revenues that can be collected in CFD No. 8, only the Maximum Special Tax may be collected unless a higher Maximum Special Tax is approved by two-thirds of the registered voters 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 in the CFD.

If the amount determined in Step 1 is **less than** the amount calculated in Step 2, levy the Special Tax against 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.

The Special Tax for CFD No. 8 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 8 may (under the authority provided in the Act), in any particular case, bill the taxes directly to the property owner off the County tax roll, and the Special Taxes will be equally subject to penalties and foreclosure if delinquent.

E. 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. In addition, no Special Tax shall be levied on Church Property except that, if a Parcel that had been taxed in any prior Fiscal Year as Residential Property, Non-Residential Property or Subsequent Non-Residential Property becomes Church 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.

F. 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.

EXHIBIT C

REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF SAN JOSE AND COMMUNITY FACILITIES DISTRICT NO. 8 TO REPAY COSTS OF DISTRICT CHANGE PROCEEDINGS

This Agreement ("Agreement") is made and entered into this _____ day of _____ 2019, by and between the City of San José, a municipal corporation of the State of California ("City"), and Community Facilities District No. 8 (Communications Hill), a legally constituted California community facilities district ("District").

RECITALS

WHEREAS, On September 10, 2019, the City Council adopted Resolution No. _____ ("Alteration 1A") and Resolution No. _____ ("Alteration 1B") which commenced proceedings to change the facilities and services financed by the District ("Change Proceedings") pursuant to Chapter 14.27 of Title 14 of the City's Municipal Code, which incorporates and modifies by reference the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code (together, the "Act"); and

WHEREAS, the City will incur costs to conduct the Change Proceedings ("Change Costs"); and

WHEREAS, Section 53314.9 of the Act provides that, either before or after formation of a community facilities district, the City may accept advances of funds from any source, may provide for the use of those funds for any authorized purpose and may agree to reimburse the advances from District funds under all of the following conditions: (1) the proposal to repay the advances is included in the resolution of consideration to modify the District; (2) any proposed change is approved by the qualified electors of the District and, (3) if the qualified electors of the District do not approve the proposed change, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election; and

WHEREAS, the City has agreed to advance funds in the amount of \$30,000 to apply to the Change Costs, subject to an agreement to reimburse the City for its advance; and

EXHIBIT C

WHEREAS, the City and District desire to enter into this Agreement to specify the terms of the City's advance of funds and the District's reimbursement;

NOW, THEREFORE, in consideration of their mutual promises and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows:

Section 1. City's Advance. The City agrees to provide \$30,000.00 in direct payments and/or the value of in-kind services ("Advance") to be used to cover the Change Costs. The Change Costs include:

- A. City staff time and expenses in conducting the Change Proceedings;
- B. Fees and expenses of any consultants employed by the City in connection with the Change Proceedings (such as engineering, legal counsel, financial advisory and special tax consultant);
- C. Costs of studies or reports necessary or deemed advisable by City staff in conducting the Change Proceedings;
- D. Costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the Change Proceedings; and
- E. Any and all other actual costs and expenses incurred by the City or the value of work in-kind provided by the City in connection with the Change Proceedings.

Section 2. No Obligation for Further Advances. The Advance shall be the maximum amount that the City is obligated to provide for the Change Costs. If the Change Costs exceed the Advance, the City shall be under no obligation to proceed with the Change Proceedings until additional funds are deposited with the City to pay for such additional costs.

Section 3. Reimbursement of Advance. The Advances are subject to reimbursement as follows:

EXHIBIT C

- A. If two-thirds or more of the qualified electors casting votes approve either or both of Alteration 1A or Alteration 1B, the District shall, within ten (10) business days after the certification of the results of the special election, reimburse the City, without interest, for the Change Costs up to the total of the Advance. Any unexpended, unencumbered portion of the Advance shall be returned to the City.
- B. If the City Council determines not to submit Alteration 1A or Alteration 1B to the qualified electors in the District, or if two-thirds or more of the qualified electors casting votes do not approve either Alteration 1A or Alteration 1B in an election called by the City, the District shall not be obligated to repay any amounts of the Advance and the City shall be entitled to the return of any unexpended portion of the Advance, without interest, less an amount equal to any Change Costs which had been committed but not yet paid by the time of the election.

Section 4. Agreement Not Debt or Liability of City. This Agreement is not a debt or liability of the City, as provided in Section 53314.9(b) of the Act. No councilmember, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. Relationship to Other Fees and Charges. Neither the Change Costs nor the Advance shall apply to any fees or charges set by the City other than those in connection with conducting the Change Proceedings.

Section 6. No Commitment by City. This Agreement in no way obligates the City to approve any project proposed by Alteration 1A or Alteration 1B or to submit the proposed changes to the qualified electors of the District.

Section 7. Accounting. The Advance may be commingled with other City funds for purposes of investment and safekeeping, but the City shall maintain a record of the expenditures made from the Advance and any other Change Costs.

Section 8. Notices. All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to the

EXHIBIT C

addresses set forth below, or to any other address provided by one party to the other in writing.

To City: City of San José
Department of Public Works
Development Services Division
Attn: Thomas M. Borden
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

To District: City of San José
Department of Public Works
Development Services Division
Attn: Thomas M. Borden
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

The effective date of such written notice shall be the date of personal delivery or the date of receipt by certified mail or three calendar days after mailing in the United States Mail.

Section 9. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, arrangements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement, which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

Section 10. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The venue for any suit brought pursuant to this Agreement shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Section 11. No Third-Party Beneficiaries. This Agreement shall not be deemed to be an Agreement for the benefit of any third party; and no third party shall have any right or action hereunder for any cause whatsoever.

EXHIBIT C

APPROVED AS TO FORM:

“City”

CITY OF SAN JOSE, a municipal
corporation

EGAN HILL
Senior Deputy City Attorney

By _____
TONI J. TABER, CMC
City Clerk

“District”

COMMUNITY FACILITIES DISTRICT NO.
8 (COMMUNICATIONS HILL), a legally
constituted community facilities district

By _____
TONI J. TABER, CMC
City Clerk