

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN JOSE DIRECTING AND AUTHORIZING CERTAIN
ACTIONS RELATED TO COMMUNITY FACILITIES
DISTRICT NO. 9 (BAILEY/HIGHWAY 101)**

WHEREAS, the Council of the City of San José (alternatively, the “City Council”) previously conducted proceedings under and pursuant to the San José City Charter and Chapter 14.27 of the San José Municipal Code, which incorporates and modifies the Mello-Roos Community Facilities Act of 1982, as amended (collectively, the “Act”), to form Community Facilities District No. 9 (Bailey/Highway 101) (“CFD 9”), to authorize the levy of special taxes upon the land within CFD 9 pursuant to Ordinance No. 26808, and to issue bonds secured by the special taxes, the proceeds of which were to be used to finance certain public improvements (the “Facilities”), all as described in those proceedings; and

WHEREAS, on December 19, 2002, pursuant to such proceedings, the Notice of Special Tax Lien was recorded in the office of the Santa Clara County Recorder as Document No. 16697131 (the “Notice of Special Tax Lien”) to give notice of the lien securing the obligation to pay special taxes to owners of all non-exempt property in CFD 9; and

WHEREAS, on February 13, 2003, the City issued its \$13,560,000 City of San José Community Facilities District No. 9 (Bailey/Highway 101), Special Tax Bonds, Series 2003 (“CFD 9 Bonds”) pursuant to the authorization specified by the Council in Resolution No. 71381 and a Fiscal Agent Agreement dated as of January 1, 2003 between the City and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent Agreement”); and

WHEREAS, as of this date, approximately \$8,600,000 of the CFD 9 Bonds remain outstanding; and

WHEREAS, the Notice of Special Tax Lien identifies two components of the special taxes levied within CFD 9 pursuant to the Rate and Method of Apportionment of Special Tax: an Annual Special Tax levied to secure repayment of the CFD 9 Bonds, and a City Advance Special Tax levied to secure repayment of the City's advance of City funds in the amount of approximately \$5.5 million paid by the City to Coyote Valley Research Park LLC ("CVRP"), the former developer of real property within CFD 9, to complete the Facilities pursuant to an agreement between the City and CVRP, entitled: "First Amended and Restated Bailey Extension Cooperation Agreement Between the City of San José and Coyote Valley Research Park, LLC", dated July 17, 2003 (the "Cooperation Agreement"); and

WHEREAS, under the Rate and Method of Apportionment of Special Tax, the City Advance Special Tax is due and payable upon the issuance of the first Building Permit (as defined in the Rate and Method of Apportionment of Special Tax) and interest on the City Advance Special Tax is calculated pursuant to the terms of the Cooperation Agreement; and

WHEREAS, at an election duly and regularly held in the City on November 6, 2018, the voters, by more than the required two-thirds vote, approved Measure T, entitled: "San José Disaster Preparedness, Public Safety and Infrastructure Bond" ("Measure T") which authorizes the City to issue general obligation bonds in the principal amount of not to exceed \$650,000,000 for the purpose of acquiring property for and constructing improvements in order to improve emergency and disaster response, repair deteriorating bridges vulnerable to earthquakes, repave streets and potholes in the worst condition, prevent flooding and water contamination including the acquisition of land in the Coyote Valley for these purposes, and repair critical infrastructure; and

WHEREAS, on July 25, 2019, pursuant to Resolution No. 79194, adopted by the City Council on June 25, 2019, the City issued its first series of general obligation bonds authorized under Measure T in the principal amount of \$239,900,000 (“Measure T Bonds”) with \$50 million of the Measure T Bonds issued as taxable bonds and allocated by the City Council for the acquisition of land in the Coyote Valley for preventing flooding and water contamination; and

WHEREAS, the City has been working with the Santa Clara Valley Open Space Authority (“OSA”) and the Peninsula Open Space Trust (“POST”) to acquire land in the Coyote Valley for the purposes specified in Measure T and conservation purposes; and

WHEREAS, on this date, the City Council approved the Coyote Valley Master Transfer and Conservation Agreement by and among POST, the City and OSA (the “Master Transfer Agreement”), specifying the rights and obligations of the parties related to, among other things, the acquisition of real property located in the Coyote Valley including approximately 596 acres owned by parties associated with Brandenburg Properties (the “Brandenburg Property”) and the acquisition of approximately 100 acres owned by parties associated with the Sobrato Organization (the “Sobrato North Property”); and

WHEREAS, on this date, the Council approved separate agreements for the purchase of the Brandenburg Property and the Sobrato North Property with proceeds of Measure T Bonds; and

WHEREAS, following City’s acquisition of the Brandenburg Property and the Sobrato North Property, the City will maintain ownership of a portion of the Brandenburg Property (the “Brandenburg East Property”) subject to a conservation easement in favor of the OSA and will transfer the Sobrato North Property to POST pending acquisition by OSA; and

WHEREAS, the Brandenburg Property and the Sobrato North Property are located in CFD 9 and are subject to payment of the Annual Special Tax and the City Advance Special Tax as specified in the Notice of Special Tax Lien; and

WHEREAS, as of June 30, 2019, the City Advance Special Tax remains outstanding in the amount of \$13,361,226.72, including interest accrued at the rate specified in the Cooperation Agreement; and

WHEREAS, in connection with the grant of a conservation easement in favor of OSA over the portion of the Brandenburg East Property and other properties in the Coyote Valley as set forth in the Master Transfer Agreement, OSA, as consideration for the City's grant of the conservation easement, has agreed to pay to the City \$5 million in exchange for the City's waiver of a portion of the principal amount of the City Advance Special Tax in the amount of approximately \$500,000 and the interest accrued thereon; and

WHEREAS, as the Brandenburg Property and the Sobrato North Property will not be developed, and will instead be held as open space and used to prevent flooding and water contamination, it is in the public interest for the City to use a portion of the Measure T proceeds to redeem the CFD 9 Bonds in order that payment of the Annual Special Tax cease, which will facilitate the acquisition of these properties;

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

Section 1. The City Council finds that the recitation of facts set forth in the recitals are true and correct.

Section 2. The City Council directs that the Director of Finance redeem the outstanding CFD 9 Bonds using funds held under the Fiscal Agent Agreement and the proceeds of the Measure T Bonds allocated for the acquisition of land in the Coyote Valley. The date of redemption of the outstanding CFD 9 Bonds will to the extent possible be scheduled to occur close in time to the date, on which the sale of the Brandenburg Property and the Sobrato North Property concurrently closes.

Section 3. The City Council waives the payment of outstanding principal of the City Advance Special Tax in the amount of approximately \$500,000 and the accrued interest thereon and authorizes the City to accept OSA's payment of \$5 million as payment in full of the City Advance Special Tax. The City Council finds that on or after the later of (i) the date on which OSA makes payment of \$5 million into the escrow to be established for such payment; and (ii) the date of redemption of the CFD 9 Bonds, CFD 9 will no longer be obligated to repay any indebtedness and the Annual Special Tax and the City Advance Special Tax shall cease to be levied within CFD 9 ("Special Tax Termination Date"). The City Council directs that the City Manager transmit to the City Clerk and the Director of Public Works a memorandum substantially in the form attached to this Resolution as Exhibit A notifying them of the Special Tax Termination Date, which memorandum shall be filed with this Resolution in the records of the City Clerk. In accordance with California Government Code Section 53330.5, the City Council directs that promptly following the Special Tax Termination Date, the City Clerk shall execute and the Director of Public Works shall record an addendum to the Notice of Special Tax Lien in the Office of the Santa Clara County Recorder stating that the obligation to pay the Annual Special Tax and the City Advance Special Tax has ceased and that the lien imposed by the Notice of Special Tax Lien is extinguished from and after the Special Tax Termination Date.

Section 4. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and, following consultation with the City Attorney, to

execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the transactions described herein or to otherwise effectuate the purposes of this Resolution. Any such actions previously taken by such officers are hereby ratified and confirmed.

Section 5. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any remaining provisions hereof.

Section 6. This Resolution shall take effect from and after the date of its passage and adoption.

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
FORM OF NOTIFICATION OF SPECIAL TAX TERMINATION DATE



Memorandum

TO: Toni J. Taber, CMC
City Clerk

FROM: David Sykes
City Manager

Matt Cano, Director of Public
Works

[or Authorized Designee
of City Manager]

SUBJECT: Notification of Special Tax
Termination Date Per Resolution
No. _____

DATE:

Pursuant to Section 3 of Resolution No. _____, entitled: "A Resolution of the City Council of the City of José Directing and Authorizing Certain Actions Related to Community Facilities District No. 9 (Bailey/Highway 101)" (the "Resolution"), this memorandum is to notify you that the Special Tax Termination Date referenced in Section 3 of the Resolution is [DATE], which date is the later of: (i) the date on which OSA makes payment of \$5 million into the escrow to be established for such payment; and (ii) the date of redemption of the CFD 9 Bonds.

Pursuant to Section 3 of the Resolution, this memorandum shall be filed with the Resolution in the records of the City Clerk.

Capitalized terms in this memorandum that are not defined in this memorandum are defined in the Resolution.

SIGNATURE BLOCK OF
CITY MANAGER OR
AUTHORIZED DESIGNEE

cc: Thomas Borden
Danielle Kenealey