

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF CHANGE OF THE CITY COUNCIL OF  
THE CITY OF SAN JOSE ALTERING COMMUNITY  
FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL)**

**(ALTERATION NO. 1A)**

**WHEREAS**, on September 3, 2002, the City Council of the City of San José ("City") adopted Resolution No. 71194 ("Resolution of Formation"), pursuant to Chapter 14.27 of the San José Municipal Code which incorporates and modifies the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, et seq., of the California Government Code (collectively, the "Act"), thereby establishing Community Facilities District No. 8 (Communications Hill) ("CFD 8") and authorizing the levy of a special tax on taxable property within CFD 8 in accordance with a Rate and Method of Apportionment of Special Tax set out in the Resolution of Formation ("Original RMA"); and

**WHEREAS**, on October 29, 2019, the City Council adopted Resolution No. 79284 ("Resolution of Consideration"), thereby declaring its intention to add police protection services to the list of services authorized to be financed by CFD 8 and amend the Original RMA to allow the City to levy taxes to pay for the new services (collectively, "Alteration 1A"); and

**WHEREAS**, in accordance with the Resolution of Consideration, the City Council held a public hearing on November 19, 2019 to consider Alteration 1A. At the hearing, all persons interested in these matters were given an opportunity to appear and be heard, and the City Council heard and considered the testimony of all interested persons for or against the proposed changes; and

**WHEREAS**, the proposed changes set forth in Alteration 1A were not precluded by a majority protest under the Act. Accordingly, at the conclusion of the hearing the City

Council adopted Resolution No. 79327, calling a special election to submit Alteration 1A to CFD 8's qualified electors; and

**WHEREAS**, on March 10, 2020, the City Clerk conducted a special municipal election regarding the proposed changes as specified in the Resolution of Consideration; and

**WHEREAS**, on April 7, 2020, the City Council reviewed and approved the canvass and Statement of Results of Election on file with the City Clerk and declared the results of the special municipal election; and

**WHEREAS**, pursuant to the Statement of Result of Election, Alteration 1A was approved by CFD 8's qualified electors by more than two-thirds (2/3) of the votes cast.

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

1. The above-stated recitals are hereby adopted as findings.
2. All prior proceedings taken by the City Council in connection with the changes to CFD 8 and the levy of special taxes have been duly considered and are hereby found and determined to be valid and in conformity with the Act.
3. The City Council hereby determines that the proposed changes specified in Alteration 1A are lawfully authorized as follows:
  - a. The services identified in the Resolution of Formation that are authorized to be financed by CFD 8 is supplemented by adding the services identified in Exhibit A to this resolution, which is incorporated herein by reference; and

- b. The Original RMA is replaced with the Rate and Method of Apportionment set forth in Exhibit B to this resolution, which is incorporated herein by reference.
4. The City Clerk is hereby directed to cause to be recorded in the Santa Clara County Recorder's office an amendment to the Notice of Special Tax Lien in accordance with the Act and the Streets and Highways Code.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

## **EXHIBIT A**

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

#### **DESCRIPTION OF ADDITIONAL SERVICES**

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- Police protection services, including, without limitation, private security, community service officer and/or park ranger services for trails, terraces, overlooks, and staircases designated as parkland and common areas within CFD No. 8.

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

#### RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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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.

**"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,

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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 permit issued for a non-residential use. Notwithstanding the foregoing, if the City determines that, in conjunction with a particular Parcel being

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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