RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ESTABLISHING COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES), AND CALLING AN ELECTION FOR THE PURPOSE OF SUBMITTING THE LEVY OF THE SPECIAL TAX AND THE ESTABLISHMENT OF AN APPROPRIATIONS LIMIT TO THE QUALIFIED ELECTORS OF THE PROPOSED COMMUNITY FACILITIES DISTRICT

WHEREAS, the City Council, on October 21, 2008, adopted its Resolution No. 7789 (the "Resolution of Intention"), (i) declaring its intention to establish Community Facilities District No. 2008-1 (Public Services) (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, Part 1, Division 2, Title 5 (commencing with Section 53311) of the California Government Code) (the "Act"), (ii) proposing to levy a special tax therein for the purpose of providing for the financing of certain services (the "Services") described in Exhibit B thereto, and (iii) calling a public hearing on the establishment of the CFD; and

WHEREAS, before the time for the hearing, as directed in the Resolution of Intention, the Planning and Neighborhood Services Director filed with the City Council the report required by California Government Code section 53321.5 (the "Hearing Report"), by submitting it to the City Clerk and including said report in the Council packet; and

WHEREAS, a notice of the hearing was duly published as required by the Act, as evidenced by the affidavit of publication on file with the City Clerk; and

WHEREAS, pursuant to the Act and the Resolution of Intention, a noticed public hearing was convened by the Council on December 16, 2008, not earlier than the hour of 7:00 p.m. at the City Hall, 455 East Calaveras Blvd., Milpitas, California, relative to the establishment of the CFD; and

WHEREAS, at the hearing, the testimony of all interested persons, including all taxpayers, property owners, and registered voters within the CFD, desiring to be heard on the establishment of the CFD, the extent thereof, the furnishing of specified types of services, the proposed special tax, the establishment of an appropriations limit for the CFD, or any other matters set forth in the Resolution of Intention was heard and a full and fair hearing was conducted thereon; and

WHEREAS, written protests against the establishment of the CFD, the furnishing of specified type or types of services in the CFD as listed in the Hearing Report, or the levying of the special tax have not been filed by six registered voters residing within the territory proposed to be included in the CFD or by the owners of one-half or more of the area of land in the territory proposed to be included in the CFD and not exempt from this special tax; and

WHEREAS, on the basis of all of the foregoing, the City Council has determined at this time to establish the CFD and to submit to the qualified electors of the CFD the levy of the special tax therein (as such tax is more particularly described in Exhibit B hereto) and the establishment of an appropriations limit for the CFD; and

WHEREAS, the Santa Clara County Registrar of Voters has certified that fewer than twelve persons were registered to vote within the territory of the CFD as of October 30th, 2008, which date is within the 90-day period preceding the close of the hearing; and

WHEREAS, the City Council has received a written instrument from each landowner in the CFD consenting to the shortening of election time requirements, waiving analysis and arguments, and waiving all notice requirements relating to the conduct of the election; and

WHEREAS, the City Clerk has concurred in the election date set forth herein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas, that:

1. **Recitals**. The foregoing recitals are true and correct.
2. **Hearing Report**. The City Council hereby makes the Hearing Report a part of the record of the hearing.

3. **No Majority Protest**. The proposed special tax to be levied in the CFD has not been precluded by majority protest pursuant to Section 53324 of the Act.

4. **Establishment of CFD**. As proposed in the Resolution of Intention, a community facilities district is hereby established pursuant to the Act, designated "Community Facilities District No. 2008-1 (Public Services)".

5. **Finding of Procedural Regularity**. The City Council finds and determines that all prior proceedings had and taken by the City Council with respect to the formation of the CFD are valid and in conformity with requirements of the Act.

6. **Boundaries of CFD**. The boundaries of the CFD shall be as set forth in the map entitled "Map for City of Milpitas, Community Facilities District No. 2008-1 (Public Services), October 2008, County of Santa Clara" that was filed with the Santa Clara County Recorder on October 30, 2008, in Book 44 of maps of Assessment and Community Facilities Districts at page 30.

7. **Description of Services**. The Services to be financed by the CFD are set forth in Exhibit A hereto. The Services authorized to be financed by the CFD are in addition to those provided in the territory of the CFD and do not supplant Services already available within that territory.

8. **Special Tax**. As stated in the Resolution of Intention, except where funds are otherwise available, subject to the approval of the qualified electors of the CFD, a special tax sufficient to pay the costs of the Services (including incidental expenses as described in the Resolution of Intention), secured by recordation of a continuing lien against all nonexempt real property in the CFD, will be levied annually in the CFD. The rate, method of apportionment, and manner of collection of the special tax are specified in Exhibit B hereto.

9. **Apportionment of Tax**. The special tax as apportioned to each parcel is based on the cost of making the Services available to each parcel, or other reasonable basis, and is not based on or upon the ownership of real property.

10. **Tax Roll Preparation**. The office of the Finance Director, 455 East Calaveras Blvd., Milpitas, telephone 408-586-3145, is hereby designated as the office that will be responsible for annually preparing a current roll of special tax levy obligations by assessor's parcel number and that will be responsible for estimating future special tax levies pursuant to Government Code section 53340.2. The Finance Director may cause these functions to be performed by his or her deputies, assistants, or other designated agents.

11. **Appropriations Limit**. The City Council proposes that the appropriations limit, as defined by Article XIII B, Section 8(h), of the Constitution of the State of California, for the CFD be established in the amount of special taxes collected.

12. **Accountability Measures**. Pursuant to Section 50075.1 of the California Government Code, the City shall create a separate account into which tax proceeds will be deposited; and the Finance Director annually shall file a report with the City Council that will state (a) the amount of funds collected and expended and (b) the status of the Services financed in the CFD.

13. **Special Election; Voting Procedures**. The City Council hereby submits the questions of levying the special tax and the establishment of the annual appropriations limit for the CFD to the qualified electors within the CFD, in accordance with and subject to the Act. The special election shall be held on December 16, 2008, and shall be conducted as follows:

(a) Qualified Electors. The City Council hereby determines that the Services are necessary to meet increased demands placed upon the City as a result of development occurring within the boundaries of the CFD. Because fewer than twelve registered voters resided within the CFD on October 30, 2008 (a date within the 90 days preceding the close of the public hearing on the establishment of the CFD), the qualified electors shall be the landowners within the CFD, and each landowner who was the owner of record at the close of the hearing shall have one vote for each acre or portion of an acre of land that such landowner owns within the CFD.

(b) Consolidation of Elections; Combination of Propositions on Ballot. The elections on the questions of levying the special tax and establishing an appropriations limit for the CFD shall be consolidated, and the two propositions shall be combined into a single ballot proposition for submission to the voters, as authorized by Government Code Section 53353.5.

(c) Mail Ballot Election. Pursuant to Government Code section 53327.5, the election shall be conducted as a mail ballot election. The City Council hereby ratifies the City Clerk's delivery of a ballot to each landowner in the CFD. The City Council hereby ratifies the form of the ballot, which is attached hereto as Exhibit C.

(d) Return of Ballots. The City Clerk shall accept the ballots of the landowners up to 4:00 p.m. on December 16, 2008. The City Clerk shall have available ballots that may be marked at the City Clerk's office on the election day by voters. Once all qualified electors have voted, the City Clerk may close the election.

(e) Canvass of Election. The City Clerk shall commence the canvass of the returns of the special election as soon as the election is closed (on December 16, 2008, or when all qualified electors have voted) at the City Clerk's office. At the conclusion of the canvass, the City Clerk shall declare the results of the election.

(f) Declaration of Results. The City Council shall declare the results of the special election following the completion of the canvass of the returns and shall cause to be inserted into its minutes a statement of the results of the special election as ascertained by the canvass of the returns.

14. Filing of Resolution and Map with City Clerk. The City Council hereby directs the City Clerk to file a copy of this resolution and the map of the boundaries of the CFD in her office.

15. Lien to Secure Special Tax. Upon a determination by the City Council that two-thirds of the votes cast upon the question of levying the special tax were in favor thereof, the City Clerk shall record the notice of special tax lien provided for in Section 3114.5 of the California Streets and Highways Code. Upon recordation of the notice of special tax lien, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the CFD, and this lien shall continue in force and effect until collection of the tax by the City Council ceases.

16. CEQA Exemption. The Council hereby determines that the formation of the proposed CFD is not a project pursuant to the California Environmental Quality Guidelines section 15378(b)(4), and authorizes the City Clerk to file a notice of exemption with the County Clerk to that effect.

PASSED AND ADOPTED this _____ day of _____ 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Robert Livengood, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

EXHIBIT A

CITY OF MILPITAS
COMMUNITY FACILITIES DISTRICT NO. 2008-1
(PUBLIC SERVICES)

List of Authorized Services

The community facilities district is established to finance any one or more of the following types of services within the District:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Maintenance and lighting of parks, parkways, streets, roads, street landscaping, and open space.

(d) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems.

(e) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment.

EXHIBIT B

City of Milpitas
Community Facilities District No. 2008-1
(Public Services)
Santa Clara County, California

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

1. Basis of Special Tax Levy

A Special Tax authorized under the Mello-Roos Community Facilities Act of 1982 (Act) applicable to the land in the Community Facilities District No. 2008-1 (Public Services) (CFD) of the City of Milpitas (City) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate, as described below.

2. Definitions

"**Act**" means the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311 and following of the California Government Code.

"**Administrative Expenses**" means the actual or estimated costs incurred by the City to form the CFD and to determine, levy and collect the Special Taxes, including, but not limited to, compensation of City employees for administrative work performed in relation to the CFD, the fees of consultants and legal counsel; the costs of collecting installments of the Special Taxes upon the general tax rolls; preparation of required reports; and any other costs required to administer the CFD as determined by the City.

"**Administrator**" means the Finance Director of the City, or his or her designee.

"**Affordable Housing**" means a Dwelling Unit on a Developed Parcel that is subject to deed restrictions, resale restrictions, and/or regulatory agreements recorded on the property that provide housing for persons that meet Low, Very Low, or Extremely Low income levels pursuant to the California Health & Safety Code Sections 5079.5, 50105, or 50106. The Dwelling Unit shall no longer be considered Affordable Housing following the termination of the agreement containing covenants or similar instruments.

"**Annexation Parcel**" means any Parcel that is annexed to the CFD after it is formed.

"**Annual Costs**" means for each Fiscal Year, the total of 1) Authorized Services 2) Administrative Expenses; and 3) any amounts needed to cure actual or estimated delinquencies in Special Taxes for the current or previous Fiscal Year.

"**Authorized Services**" mean those services, as listed in the resolution forming the CFD.

"**Base Year**" means the Fiscal Year beginning July 1, 2009 and ending June 30, 2010.

"**Certificate of Occupancy**" means a permit issued by the City authorizing the occupancy of a Dwelling Unit.

"**CFD**" means the Community Facilities District No. 2008-1 (Public Services) of the City of Milpitas, Santa Clara County, California.

"**City**" means the City of Milpitas in Santa Clara County, California.

"**Council"** means the City Council of the City of Milpitas acting for the CFD under the Act.

"**County**" means the County of Santa Clara, California.

"**County Assessor's Parcel**" means a lot or Parcel with an assigned Assessor's Parcel Number in the maps used by the County Assessor in the preparation of the tax roll.

"County Median Income" means the current median income for the County as determined by the U.S. Department of Housing and Urban Development, or successor agency as published annually by the State Department of Housing and Community Development pursuant to the Health & Safety Code Section 50093 et. seq.

"Developed Parcel" means a Parcel that has Certificate of Occupancy for residential land uses issued after January 1, 2009:

"**Dwelling Unit(s)**" means the number of taxable developed residential unit(s) assigned to a Parcel, or a portion thereof, by the Administrator.

"**Extremely Low-Income Affordable**" means a Dwelling Unit located on a Developed Parcel that is Affordable Housing for households with incomes at or below 30 percent of the County Median Income.

"**Fiscal Year**" means the period starting July 1 and ending the following June 30.

"**Low-Income Affordable**" means a Dwelling Unit located on a Developed Parcel for Affordable Housing for households with incomes at or below 80 percent of the County Median Income.

"**Market-Rate**" means a Dwelling Unit located on a Developed Parcels that is not Affordable Housing.

"**Maximum Annual Special Tax**" means the greatest amount of Special Tax that can be levied against a Developed Parcel calculated by summing the Maximum Annual Special Tax Rate for each Dwelling Unit and Tax Category assigned to a Developed Parcel.

"**Maximum Annual Special Tax Rate per Unit**" means the amount shown in **Attachment 1** for a Fiscal Year that is assigned to a Dwelling Unit by Tax Category.

"**Parcel**" means any County Assessor's Parcel in the CFD based on the equalized tax rolls of the County as of January 1 of each Fiscal Year.

"**Parcel Number**" means the Assessor's Parcel Number for any Parcel based on the equalized tax rolls of the County as of January 1 of each Fiscal Year.

"**Public Parcel**" means any Parcel, in its entirety, that is or is intended to be publicly owned that is normally exempt from the levy of general *ad valorem* property taxes under California law, including public streets, schools, parks, and public drainageways; public landscaping, wetlands, greenbelts, and public open space. These parcels are exempt from the levy of Special Taxes. Any such Parcel shall be a Tax-Exempt Parcel.

"**Second Family Unit**" means an attached or detached additional residential dwelling unit on a single-family residential Developed Parcel. The Second-Family Unit is not considered a Dwelling Unit in terms of assigning the Maximum Annual Special Tax.

"**Special Tax(es)**" mean(s) any tax levy under the Act in the CFD.

"**Tax Category**" means the four categories of housing Dwelling Units shown in **Attachment 1**.

"**Tax Collection Schedule**" means the document prepared by the Administrator for the County Auditor-Controller to use in levying and collecting the Special Taxes each Fiscal Year.

"**Tax Escalation Factor**" means an annual percentage increase in the Maximum Annual Special Tax Rate per Unit based upon the Consumer Price Index (CPI) (as of February, San Francisco, All Urban Consumers (CPI-U) Index), the CPI

(prior calendar year annual average, San Francisco, All Urban Wage Earners and Clerical Workers), or 2 percent, whichever is greater. The Tax Escalation Factor is applied in each Fiscal Year following the Base Year.

"**Taxable Parcel**" means any Parcel that is not a Tax-Exempt Parcel.

"**Tax-Exempt Parcel**" means a Parcel not subject to the Special Tax. Tax-Exempt Parcels are Public Parcels (subject to the limitations set forth in **Section 4**, below), Undeveloped Parcels, and nonresidential use parcels, such as commercial, office, retail, industrial, etc.

"**Undeveloped Parcel**" means a Parcel which is not a Developed Parcel.

"**Very Low-Income Affordable**" means a Dwelling Unit located on a Developed Parcel, that is Affordable Housing for households with incomes at or below 50 percent of the County Median Income.

3. Duration of the Special Tax

Parcels in the CFD will remain subject to the Special Tax in perpetuity.

If the Special Tax ceases to be levied, the City shall direct the County Recorder to record a Notice of Cessation of Special Tax. Such notice will state that the obligation to pay the Special Tax has ceased and that the lien imposed by the Notice of Special Tax Lien is extinguished. The Notice of Cessation of Special Tax shall additionally identify the book and page of the Book of Maps of Assessment and Community Facilities Districts where the map of the boundaries of the CFD is recorded.

4. Assignment of Maximum Annual Special Tax

A. Classification of Parcels. By June 30 of each Fiscal Year, using the Definitions in **Section 2** above, the parcel records of the Assessor's Secured Tax Roll as of January 1, and other City development approval records, the Administrator shall cause:

1. Each Parcel to be classified as a Developed Parcel or Tax-Exempt Parcel;
2. Each Developed Parcel is assigned a number of Dwelling Units; and
3. Each Dwelling Unit is further classified as a Market Rate, Low-Income Affordable, Very Low-Income Affordable, or Extremely Low-Income Affordable.

B. Assignment of Maximum Annual Special Tax.

Attachment 1 shows the Base Year Maximum Annual Special Tax Rates per Unit. Each Fiscal Year following the Base Year, the Maximum Annual Special Tax Rate per Unit may be increased in accordance with the Tax Escalation Factor.

The Maximum Annual Special Tax is then assigned to Taxable Parcels using the steps below.

1. **Developed Parcels**. Dwelling Units are assigned by the Administrator by Tax Category (as shown in **Attachment 1**) to Developed Parcels. The Maximum Annual Special Tax for each Developed Parcel is the sum of the Maximum Annual Special Tax Rates per Unit (as increased by the Tax Escalation Factor each Fiscal Year after the Base Year) for each Dwelling (and Tax Category assigned thereto).
2. **Undeveloped Parcels**. Undeveloped Parcels are Tax-Exempt Parcels until developed as one of the residential uses discussed above.

C. Conversion of a Tax-Exempt Parcel to a Taxable Parcel. If a Tax-Exempt Parcel is not needed for public use and is converted to a taxable use or transferred to a private owner, it shall become subject to the Special Tax. The Maximum Annual Special Tax for such a Parcel shall be assigned according to the **Sections 4.A** and **4.B** above. Conversely, if a privately owned parcel is converted to a public use, it shall become tax-exempt.

5. Calculating Annual Special Taxes

The Administrator shall compute the Annual Costs and determine the Maximum Annual Special Tax for each Taxable Parcel based on the assignment of the Special Tax in **Section 4**. The Administrator will then determine the tax levy for each Taxable Parcel using the following process:

A. Compute the Annual Costs using the definition of Annual Costs in **Section 2**.

B. Calculate the Special Tex levy for each Developed Parcel by the following steps:

Step 1 Compute 100 percent of the Maximum Annual Special Tax Revenue for all Developed Parcels.

Step 2: Compare the Annual Costs with the Maximum Annual Special Tax revenue calculated in the previous step.

Step 3: If the Annual Costs are less than the Maximum Annual Special Tax Revenue, decrease proportionately the Special Tax levy for each Developed Parcel until the revenue from the Special Tax levy equals the Annual Costs.

C. Levy on each Taxable Parcel the amount calculated above.

D. Prepare the Tax Collection Schedule and, unless an alternative method of collection has been selected pursuant to **Section 9**, send it to the County Auditor requesting that it be placed on the general, secured property tax roll for the Fiscal Year. The Tax Collection Schedule shall not be sent later than the date required by the Auditor for such inclusion.

The Administrator shall make every effort to correctly calculate the Special Tax for each Parcel. It shall be the burden of the taxpayer to correct any errors in the determination of the parcels subject to the tax and their Special Tax assignments.

6. Records Maintained for the CFD

As development and subdivision occurs within the CFD, the Administrator will maintain a file containing records of the following information for each Parcel:

- The current County Assessor's Number;
- Number of Dwelling Units assigned by the Administrator to Developed Parcels; and
- The Tax Category for each Dwelling Unit assigned to a Developed Parcel.

The file containing the information listed above will be available for public inspection.

7. Interpretation, Application and Appeal of Special Tax Formula and Procedures

Any taxpayer who feels that the amount of the Special Tax assigned to a Parcel is in error may file a notice with the Administrator appealing the levy of the Special Tax. The Administrator will then promptly review the appeal, and if necessary, meet with the applicant. If the Administrator verifies that the tax should be modified or changed, the Special Tax levy shall be corrected and, if applicable in any case, a refund shall be granted.

Interpretations may be made by Resolution of the Council for purposes of clarifying any vagueness or ambiguity as it relates to the Special Tax rate, the method of apportionment, the classification of properties or any definition applicable to the CFD.

Wihtout Council approval, the Administrator may make minor, non-substantive administrative and technical changes to the provisions of this Exhibit that do not materially affect the rate, method of apportionment, and manner of collection of the Special Tax for purposes of administrative efficiency or convenience or to comply with new applicable federal, state or local law.

8. Prepayment of the Special Tax Obligation

The Maximum Annual Special Tax for a Taxable Parcel may not be prepaid. The Special Tax is collected to fund Authorized Services in perpetuity, or until the Council determines that the Special Tax should no longer be collected.

9. Manner of Collection

The Special Tax will be collected in the same manner and at the same time as *ad valorem* property taxes, provided, however, that the Administrator or its designee may directly bill the Special Tax and may collect the Special Tax at a different time, such as on a monthly or other periodic basis, or in a different manner, if necessary, to meet the City's financial obligations.

Attachment 1
City of Milpitas
CFD No. 2008-1 (Public Services)
Maximum Annual Special Tax Rates Per Unit Base Year 2009-2010

Dwelling Unit Tax Category	Maximum Annual Special Tax Rate Per Unit
	[1]
Market Rate	$510
Low-Income Residential [2]	$408
Very Low-income Residential [3]	$255
Extremely Low-Income Residential	$0

"att_1"

[1] May be increased by the Tax Escalation Factor in each Fiscal Year after the Base Year 2009-2010.

[2] Initially set at 80% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

[3] Initially set at 50% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

[4] Initially set at 0% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

EXHIBIT C

OFFICIAL BALLOT

SPECIAL TAX ELECTION
CITY OF MILPITAS
COMMUNITY FACILITIES DISTRICT
NO. 2008-1 (PUBLIC SERVICES)
(December 16, 2008)

Number of votes entitled to cast:

INSTRUCTIONS TO VOTERS: To vote on the measure, mark an (X) in the voting square 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, City of Milpitas, 455 East Calaveras Blvd., Milpitas, California, to obtain another.

MEASURE SUBMITTED TO QUALIFIED ELECTORS

Ballot Measure: Shall the City of Milpitas be authorized to levy a special tax at the rates and apportioned as described in Exhibit C to the Resolution Declaring its Intention to Establish Community Facilities District No. 2008-1 (Public Services) adopted by the City Council on October 21, 2008 (the "Resolution"), which is incorporated herein by this reference, within the territory identified on the map entitled "Map for City of Milpitas, Community Facilities District No. 2008-1 (Public Services), October 2008, County of Santa Clara" to finance certain services as set forth in Section 5 to the Resolution (including incidental expenses), and shall an appropriation limit be established for the CFD in the amount of special taxes collected?	YES NO

NOTE: This is a special landowner election. You must return this ballot to the City Clerk, City of Milpitas, to her office at City Hall, 455 East Calaveras Blvd., Milpitas, California, by 4:00 p.m. on December 16, 2008.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DECLARING THE RESULTS OF THE SPECIAL ELECTION HELD ON DECEMBER 16, 2008 IN COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)

WHEREAS, the City Council on December 16, 2008, duly adopted its Resolution No._____ (the "Resolution of Formation"), which ordered a consolidated election in Community Facilities District No. 2008-1 (Public Services) (the "District") on the levy of the special tax and the establishment of an appropriations limit for the District; and

WHEREAS, pursuant to the terms of the resolution, the special election was held on December 16, 2008, and the City Clerk has duly canvassed the returns of the election as required by the resolution and has filed with the City Council a statement of all votes cast at the election showing the whole number of votes cast in the District and the whole number of votes cast for and against the measure and also filed, attached to the statement, her certificate as to the correctness of the statement (the "Statement of Election Results"), which is attached hereto as Exhibit A; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas that:

1. **Recitals**. The foregoing recitals are true and correct.

2. **Canvass**. The canvass by the City Clerk as shown by the Statement of Election Results is hereby ratified, confirmed, approved, and entered upon the minutes of this meeting.

3. **Measure**. At the election, the following measure was submitted to the qualified electors of the District:

> Shall the City of Milpitas be authorized to levy a special tax at the rates and apportioned as described in Exhibit C to the Resolution Declaring its Intention to Establish Community Facilities District No. 2008-1 (Public Services) adopted by the City Council on October 21, 2008 (the "Resolution"), which is incorporated herein by this reference, within the territory identified on the map entitled "Map for City of Milpitas, Community Facilities District No. 2008-1 (Public Services), October 2008, County of Santa Clara" to finance certain services as set forth in Section 5 to the Resolution (including incidental expenses), and shall an appropriation limit be established for the CFD in the amount of special taxes collected?

4. **Votes Cast; Election Results**. The total number of votes cast in the District at the election was 14. The number of votes cast in favor of the measure was fourteen (14) and the number of votes cast against the measure was zero (0). Therefore, more than two-thirds of all the votes cast at the election on the measure were in favor of the measure and the measure passed.

5. **Notice of Special Tax Lien**. The City Clerk is hereby directed to record a Notice of Special Tax Lien with the County Recorder of Santa Clara County, in accordance with the provisions of Section 3114.5 of the California Streets and Highways Code within fifteen (15) days of the adoption of this resolution.

PASSED AND ADOPTED this _____ day of _____ 2008, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Robert Livengood, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

EXHIBIT A

STATEMENT OF ELECTION RESULTS

I, Mary Lavelle, City Clerk of the City of Milpitas (the "City"), hereby certify that:

1. On December 16, 2008, at City Hall, 455 East Calaveras Blvd., Milpitas, California, I canvassed the returns of the election called for December 16, 2008, in Community Facilities District No. 2008-1 (Public Services) on the following measure:

> **Ballot Measure:** Shall the City of Milpitas be authorized to levy a special tax at the rates and apportioned as described in Exhibit C to the Resolution Declaring its Intention to Establish Community Facilities District No. 2008-1 (Public Services) adopted by the City Council on October 21, 2008 (the "Resolution"), which is incorporated herein by this reference, within the territory identified on the map entitled "Map for City of Milpitas, Community Facilities District No. 2008-1 (Public Services), October 2008, County of Santa Clara" to finance certain services as set forth in Section 5 to the Resolution (including incidental expenses), and shall an appropriation limit be established for the CFD in the amount of special taxes collected?

2. The total number of qualified landowner votes eligible to be cast, the total number of votes actually cast at the election, and the total number of votes cast for and against the measure are set forth below. The totals as shown for and against the measure are full, true, and correct. More than two-thirds of all the votes cast at the election on the measure were in favor of the measure and the measure passed.

Qualified Landowner Votes	Votes Cast	YES	NO
14	14	14	0

Dated:_____ _____

Mary Lavelle, City Clerk

REGULAR

NUMBER: **278**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS LEVYING AND APPORTIONING THE SPECIAL TAX IN COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by Councilmember _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Robert Livengood, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

AN ORDINANCE OF
THE CITY COUNCIL OF THE CITY OF MILPITAS
LEVYING AND APPORTIONING THE SPECIAL TAX IN
COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)

WHEREAS, City Council has established Community Facilities District No. 2008-1 (Public Services) (the "District") pursuant to Resolution No._____ (the "Resolution of Formation"), duly adopted on December 16, 2008, for the purpose of providing for the financing of certain public services in and for the City;

WHEREAS, at an election held in the District on December 16, 2008, the qualified electors of the District authorized the levy of the special tax described in the Resolution of Formation;

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

1. **Recitals**. The foregoing recitals are true and correct.

2. **Levy of Special Tax**. Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution of Formation.

3. **Collection of Special Tax**. Pursuant to Section 53340 of the California Government Code and the Resolution of Formation, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.

4. **Claims for Refund**. Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

(a) All claims shall be filed, in writing, with the City Finance Director during the Fiscal Year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.

(b) Pursuant to Government Code section 935(b), the claim shall be subject to the provisions of Government Code sections 945.6 and 946.

(c) The City Council shall act on a timely claim within the time period required by Government Code section 912.4.

(d) The procedure described in this Ordinance, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

5. **No Mandatory Duty of Care**. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

6. **Severability**. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

7. **Effective Date and Publication**. This Ordinance shall take effect thirty (30) days after adoption, and thereafter the same shall be in full force and effect. Prior to the expiration of 15 days from the passage thereof, this Ordinance shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara. At the election of the City, this Ordinance may be published in summary form if prior to adoption the complete text is posted in the City Clerk's Office pursuant to Government Code Section 36933(c).

Economic & Planning Systems

Public Finance
Real Estate Economics
Regional Economics
Land Use Policy

HEARING REPORT

TRANSIT AREA SPECIFIC PLAN COMMUNITY FACILITIES DISTRICT NO. 2008–1 (PUBLIC SERVICES)

Prepared for:

City of Milpitas

Prepared by:

Economic & Planning Systems, Inc.

December 9, 2008

EPS #18078

SACRAMENTO
2150 River Plaza Drive, Suite 400
Sacramento, CA 95833
www.epsys.com
phone: 916-649-8010
fax: 916-649-2070

BERKELEY
phone: 510-841-9190
fax: 510-841-9208

DENVER
phone: 303-623-3557
fax: 303-623-9049

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I. INTRODUCTION

PURPOSE

The City of Milpitas (City) retained Economic & Planning Systems, Inc., (EPS) to support its efforts to create a Mello-Roos Community Facilities District (CFD) as part of its Public Facilities Financing Plan for the Transit Area Specific Plan (TASP). The objective of establishing a CFD is to generate sufficient revenue to cover the gap between the cost of City services and the income generated by anticipated new development in the TASP.

EPS used land use information provided by the City regarding anticipated development and the results of the Fiscal Mitigation and Services Plan for the TASP (Fiscal Study), also prepared by EPS, to estimate the appropriate CFD tax rate to be levied on property owners in the TASP. This Hearing Report presents a description of the CFD, the methodology for calculating the special tax rate, and the results of that analysis.

The Resolution of Intention to form the CFD was adopted by the City Council (Council) on October 21, 2008. The Resolution of Formation will be adopted by the Council on December 16, 2008.

PROJECT AREA DESCRIPTION

The TASP is a 437-acre in-fill region centered on the area surrounding the City's existing Great Mall and Montague Light Rail stations and the future Bay Area Rapid Transit (BART) station proposed near the intersection of Montague Expressway and Capitol Avenue. The TASP forms the outer boundaries of the eventual CFD and is located at the southern edge of the City immediately adjacent to San Jose.

Initial CFD boundaries are in the TASP with additional annexations to take place as development of the TASP progresses. The initial area to be annexed into the CFD is made up of the Swenson and Milpitas Station development projects located on adjacent sites of approximately 13.77 gross acres in total in the northeast section of the TASP, bounded by South Milpitas Boulevard on the east, Piper Drive to the west, and railroad tracks to the south (see **Map 1**).

The existing land uses in the TASP include some industrial uses near the City's Great Mall. The TASP proposes redevelopment that would provide approximately 4,000 residential units in the first phase of the TASP, a 9-year period, and 7,100 units by the end of Phase IV (20 years). The initial CFD identified in **Map 1** will contain 798 units at buildout. Further description of the initial CFD area is provided in **Chapter II**.

MAP 1

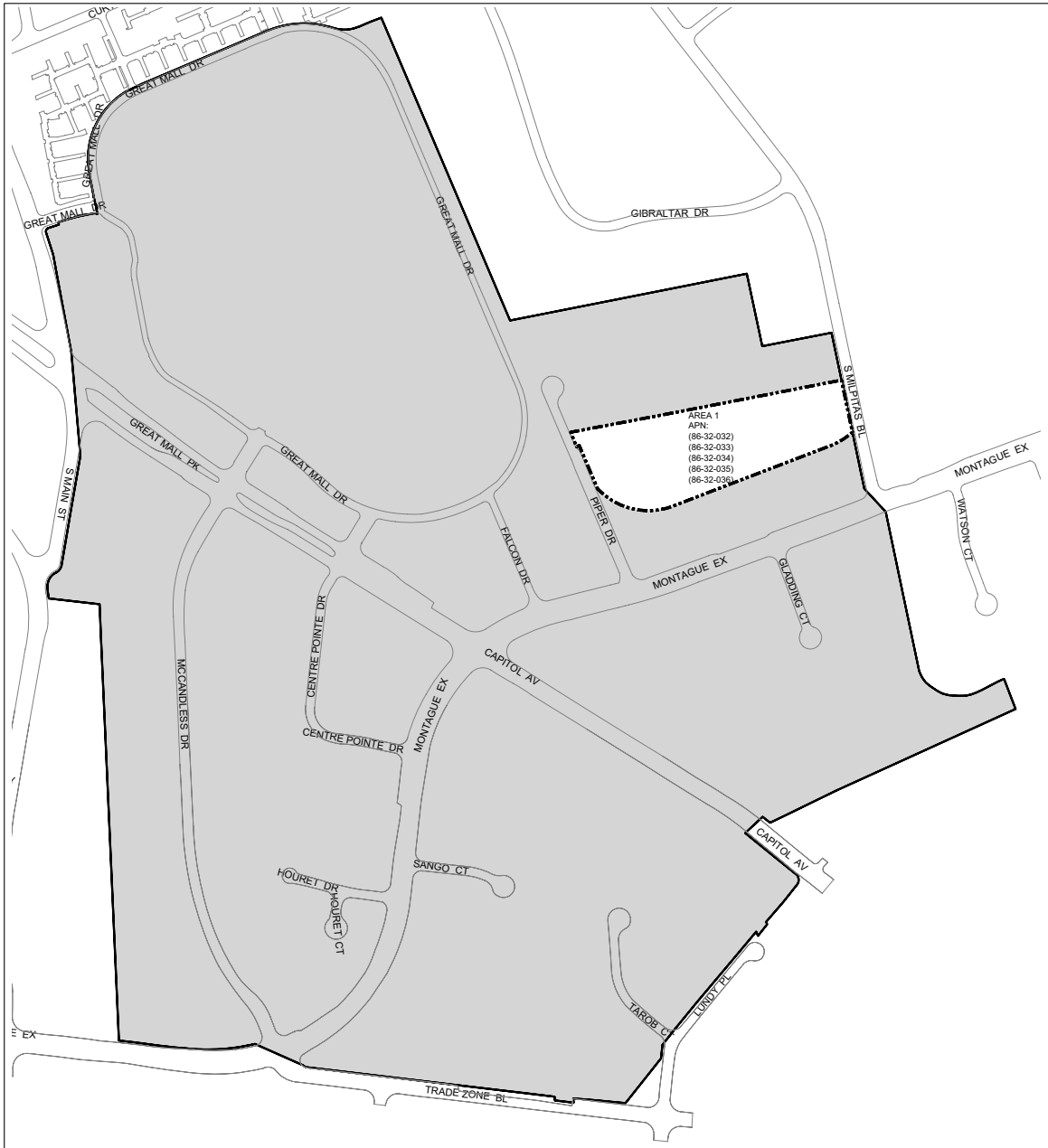

EXHIBIT MAP FOR
CITY OF MILPITAS CFD NO.2008-1 (PUBLIC SERVICES)
OCTOBER 2008
COUNTY OF SANTA CLARA

PROPOSED BOUNDARIES OF
COMMUNITY FACILITIES DISTRICT 2008-1 (PUBLIC SERVICES)
CITY OF MILPITAS
SANTA CLARA COUNTY
STATE OF CALIFORNIA

FILED IN THE OFFICE OF THE CLERK OF THE CITY OF MILPITAS THIS ____ DAY OF OCTOBER, 2008

_____
MARY LAVELLE, CITY CLERK

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING PROPOSED BOUNDARIES OF COMMUNITY FACILITIES DISTRICT 2008-1, CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MILPITAS AT A REGULAR MEETING THEREFORE, HELD ON THE ___ DAY OF OCTOBER, 2008, BY RESOLUTION NO. _____.

_____
MARY LAVELLE, CITY CLERK

FILED THIS ___ DAY OF _____, 20__, AT THE HOUR OF _____ O'CLOCK __M. IN BOOK _____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE ___, IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

_____
COUNTY RECORDER OF THE COUNTY OF SANTA CLARA

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W E
S

0 75 150 225 300 375
Survey Feet

Legend

PROPOSED CFD BOUNDARY

PROPOSED FOR ANNEXATION IN THE FUTURE

SHEET 1 OF 1

BACKGROUND

The City commissioned EPS to prepare the Fiscal Study for the TASP. The City's goal for the TASP is to ensure that sufficient revenues are generated by development of the TASP to adequately fund services without an adverse impact on the City's fiscal situation. To prepare the Fiscal Study, EPS used pending TASP development plans, City budget figures and interviews with City staff to determine revenues and costs associated with the TASP and its fiscal impacts. The results of the Fiscal Study demonstrate this:

> *"Annual ongoing operating costs associated with the new development will exceed revenues generated in Phase I by about $2.0 million, equivalent to approximately $510 per Phase I TASP unit."*

The TASP is in a City Redevelopment Area; therefore, the Fiscal Study nets out from the property tax revenue the amount of tax increment that flows to the Redevelopment Agency rather than to the General Fund. The loss of this property tax revenue adversely impacts the resources available for ongoing services but does provide benefit to the TASP through redevelopment-funded capital improvement projects.

The tax rate for this CFD is based on the $510 per unit gap in General Fund revenue anticipated as a result of the Phase I development planned for the TASP. This CFD is considered a "Master CFD," which means that all new projects in the TASP will be required to annex into the CFD.

ORGANIZATION OF THE REPORT

This report consists of five chapters including this introduction. **Chapter II** describes the land uses in the CFD. **Chapter III** describes the public services to be funded in the CFD, the costs, and cost allocations. **Chapter IV** describes the structure of the CFD and the Tax Formula. **Chapter V** discusses feasibility of the CFD.

Two exhibits are attached to this report. **Exhibit A** is the Rate, Method of Apportionment, and Manner of Collection of Special Tax. **Exhibit B** is the List of Authorized Facilities and Services.

II. LAND USE

The project land uses for the initial annexation area of the CFD and the TASP for Phase I and at buildout are shown in **Table 1**. Taxable uses include all residential land uses; commercial uses are not subject to the CFD. The initial development projects, Swenson and Milpitas Station, propose 480 and 318 residential units, respectively. There is no commercial use proposed for these developments.

The outer boundary of the CFD, the TASP, is expected to include 7,100 residential units in multifamily structures. Additional land uses include 287,000 square feet of retail, 994,000 square feet of office space, and 42 acres of parks, linear parks, and trails.

Table 1
Projected Land Uses

Land Use	Initial Annexation	TASP Phase I	TASP Buildout
Residential			
Total Residential Units	798	3,969	7,109
Commercial			
Retail (sq.ft.)	0	100,022	287,076
Office (sq.ft.)	0	0	993,840
Hotel Rooms	0	0	350

"lu"

Source: City of Milpitas, EPS

III. AUTHORIZED FACILITIES AND SERVICES OF THE CFD

The public services funding program will enable the City to provide public services to the area inside the CFD. This chapter describes the services eligible to be financed or otherwise funded and the estimated cost of these public services. **Table 2** displays the summary of the Fiscal Study for Phase I of the TASP on which the CFD initial tax rate has been based.

AUTHORIZED SERVICES OF THE CFD

The CFD is authorized to fund certain services required to serve the TASP through the levy of a special tax. Authorized services under the CFD are the maintenance of publicly owned recreation areas in the CFD, public safety services to the full extent permitted by the Mello-Roos Act, flood and storm protection, and other services authorized under the Mello-Roos Act that may be approved by landowner vote.

PUBLIC SAFETY

The CFD revenue will fund the following public safety functions:

- Police Protection Services
- Fire Protection and Suppression Services
- Ambulance and Paramedic Services

A total of about four officers currently patrol the non-mall component of the TASP based on the existing citywide level of service of officers per daytime population.[1] As redevelopment is initiated and population increases, new officers will be required to patrol increasing daytime population. The citywide level of service is 1.0 officer per 1,000 daytime population. The annual cost per officer is $205,000.[2]

Fire protection service in the TASP is provided by the Milpitas Fire Department. The Fiscal Study assumed a citywide level of service of 0.7 firefighters per 1,000 daytime population. Based on interviews with the Milpitas Fire Department, the average annual cost per firefighter is $176,000.[3]

---

[1] Total of resident population and ½ of employment population.

[2] Includes overtime and equipment.

[3] Includes benefits.

Table 2
City of Milpitas CFD Hearing Report
Fiscal Impact of TASP Phase I

Item	Formula	Amount
MILPITAS GENERAL FUND REVENUES		
Taxes		
Total Property Tax (City Share)		$2,302,000
(less) Redevelopment		($1,482,000)
Property Tax		$820,000
Property Tax in Lieu of VLF		$491,000
Sales and Use Tax		$993,000
Real Estate Transfer Tax		$43,000
Garbage Commercial Franchise Tax		$4,000
Garbage Non-Commercial Franchise Tax		$70,000
Other Franchise Taxes		$182,000
Business License Tax		$1,000
Hotel/Motel Tax		$185,000
Subtotal	*a*	$2,789,000
Other Revenues		
Licenses and Permits		$256,000
Fines and Forfeitures		$92,000
Motor Vehicle License Fees		$63,000
Subtotal	*b*	$411,000
Total General Fund Revenues	*c = a + b*	**$3,200,000**
MILPITAS GENERAL FUND EXPENDITURES		
General Administration		$135,000
Police		$2,152,000
Fire		$1,332,000
Public Works		$1,069,000
Parks and Recreation		$526,000
Total General Fund Expenditures	*d*	**$5,214,000**
Net Annual Fiscal Balance	*e = c - d*	**($2,014,000)**
New Residential Units End of Phase I	*f*	**3,969**
Additional CFD Required per Unit *(Rounded)*	*g = e / f*	**($510)**
		"calc"

Note: Real $2008.

Sources: Milpitas Final Budget FY 2007-08, EPS.

PARKS, PARKWAYS, AND OPEN SPACE MAINTENANCE SERVICES

The CFD revenue will be used to cover park, parkway, and open space maintenance, including maintaining, repairing, and lighting of parks, parkways, streets, roads, and open space, and appurtenances relating thereto, in the publicly owned areas of the CFD, including, without limitation, public easements and right-of-way.

Approximately 31 acres of parks are planned as part of the TASP. These parks will require maintenance and related facilities, such as a storage yard, play structures, picnic tables, paths, and signage, among other things. The City's Parks and Recreation Department estimates a cost of $20,700 per acre[4] will be incurred for park maintenance costs. These costs include landscape and hardscape maintenance, turf care, tree pruning, irrigation, trash and cleanup, repair of furniture, fixtures and equipment, flower bed plantings, and program management and overhead.

FLOOD AND STORM PROTECTION SERVICES

Authorized costs include the costs of operating, maintaining, and repairing flood and storm drainage systems.

[4] Includes costs for water consumption.

IV. STRUCTURE OF THE CFD

DESCRIPTION OF THE CFD

Parcels in the CFD will pay special taxes based on the Rate, Method of Apportionment, and Manner of Collection of Special Tax (Special Tax Formula). The attached exhibits are documents contained in the Resolution of Formation. **Exhibit A** is the Special Tax Formula. **Exhibit B** is the List of Authorized Facilities and Services. The purpose of the CFD is to maintain public services for new residents in the TASP at a level currently provided citywide.

DEFINITION OF SERVICES ANNUAL COSTS

Each year, the CFD administrator will approve the costs of providing authorized services of the CFD for the upcoming fiscal year. These costs are funded by the levy and collection of the special tax. The annual services costs will include the following items:

- The costs of CFD authorized services to be incurred in the upcoming fiscal year.
- Administrative expenses for such fiscal year.
- An amount equal to the amount of delinquencies in payment of the special tax levied in the previous fiscal year or anticipated for the current fiscal year.

DETERMINATION OF PARCELS SUBJECT TO SPECIAL TAX

All new, residential development in the TASP will be subject to the tax on receipt of certificate of occupancy. The administrator will prepare a list of the parcels subject to the special tax by using the records of the City's Building and Safety Department and the County Assessor.

TERMINATION OF THE SPECIAL TAX

The special tax is levied and collected in perpetuity or until such time as the City determines it no longer needs the special tax to fund authorized services of the CFD.

CLASSIFICATION OF PARCELS

Before assigning the maximum annual special tax, each parcel in the CFD is classified as either a taxable parcel or a tax-exempt parcel. Tax-exempt parcels are public parcels,

undeveloped parcels, and nonresidential parcels, such as commercial, office, retail, or industrial.

Taxable parcels are further classified as market-rate residential, low-income residential, very low-income residential, and extremely low-income residential as defined in **Section 2** of the Special Tax Formula. As development of the TASP occurs, it is expected that 3,969 residential units will be created. The tax rate will be applied to the multifamily parcels based on the number of developed units on each parcel and based on any covenants or restrictions as to the income level of the families eligible for occupancy.

ASSIGNMENT OF MAXIMUM ANNUAL SPECIAL TAX

Section 4 of the Special Tax Formula describes in detail the precise method for assigning the maximum annual special tax to parcels in the CFD. The Special Tax Formula assigns a total maximum annual special tax to residential parcels based on the number of units and any affordability restrictions.

The initial CFD is projected to have 798 residential units. As development of the TASP progresses, future developments will also be annexed into the CFD. Phase I of the TASP is projected to have 3,969 residential units. Each market-rate unit is assigned a special tax of $510 per year, low-income restricted units $408 per year, very low-income units $255 per year, and extremely low-income units $0 per year (as shown in **Table 3**, which is **Attachment 1** in the Special Tax Formula) in the base year of Fiscal Year 2009–2010.

AFFORDABLE HOUSING

The CFD rate is reduced for homes that are subject to affordability restrictions. Housing units restricted to households at or below 80 percent of County median income (i.e., low-income households) will have an initial rate set at 80 percent of the level of market-rate units. Housing units restricted to households at or below 50 percent of County median income (i.e., very low-income households) will be subject to a tax rate initially set at 50 percent of the market-rate units. Homes restricted to households earning at or below 30 percent of County median (i.e., extremely low-income) are not subject to the special tax. If the restrictions on unit affordability expire and the units are converted to market rate, the tax rate will increase to the same level as the market-rate units.

Table 3
City of Milpitas CFD Hearing Report
Maximum Annual Special Tax Rates per Unit Base Year 2009-2010

Dwelling Unit Tax Category	Maximum Annual Special Tax Rate per Unit [1]
Market Rate	$510
Low-Income Residential [2]	$408
Very Low-income Residential [3]	$255
Extremely Low-Income Residential [4]	$0

"tax"

[1] May be increased by the Tax Escalation Factor in each Fiscal Year after the Base Year 2009-2010.

[2] Initially set at 80% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

[3] Initially set at 50% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

[4] Initially set at 0% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

BASE YEAR FOR SERVICES SPECIAL TAX

The base year is Fiscal Year 2009–2010.

TAX ESCALATION FACTOR FOR SPECIAL TAX

The special tax increases based on the Consumer Price Index (CPI) as further defined in **Section 2** of the Special Tax Formula or by 2 percent, whichever is greater, in each fiscal year after the base year.

SETTING THE SPECIAL TAX LEVY FOR TAXABLE PARCELS

To determine the annual levy, the administrator will use the process presented in **Section 5** of the Special Tax Formula and shown below:

Compute the annual costs using the definitions in **Section 2** of the Special Tax Formula:

Step 1: Compute 100 percent of the maximum annual special tax revenue for all developed parcels.

Step 2: Compare the annual costs with the maximum annual special tax revenue calculated in the previous step.

Step 3: If the annual costs are less than the maximum annual special tax revenue, decrease proportionately the special tax levy for each developed parcel until the revenue from the special tax levy equals the annual costs.

PREPAYMENT OF THE FACILITIES SPECIAL TAX OBLIGATION

The special tax may not be prepaid because it is collected in perpetuity or until the Council determines that the special tax should no longer be collected.

TAX-EXEMPT PARCELS CONVERTED TO TAXABLE PARCELS

Tax-exempt public parcels converted to private use will become taxable as described in **Section 4C** of the Special Tax Formula.

TAXABLE PARCELS ACQUIRED BY A PUBLIC AGENCY

Taxable parcels acquired by a public agency for public use after the CFD is formed will become tax-exempt as described in **Section 4C** of the Special Tax Formula.

MANNER OF COLLECTION

The special tax will be collected in the same manner and at the same time as ad valorem property taxes. As specified in **Section 9** of the Special Tax Formula, the administrator or its designee may directly bill the special tax and may collect the special tax at a different time, such as on a monthly or other periodic basis, or in a different manner, if necessary, to meet the City's financial obligations.

V. FEASIBILITY ANALYSIS

A feasibility analysis of the CFD is important because such an analysis tests the financial strength of the project and the likelihood that the funding sources used will support adequately the total costs required for developing the necessary infrastructure. To assess the feasibility of the CFD, the following 2-percent tax burden test was performed.

TWO-PERCENT TAX BURDEN TEST

An industry guideline is the principle that the total taxes on a developed residential unit should not exceed 2 percent of the value of the property. Proposition 13 limited general property taxes to 1 percent of the value of the property. Based on the 2-percent rule, other bonded debt, special assessments, and other special taxes should not exceed 1 percent of the value of the property.

Table 4 sums the property tax and other ad valorem taxes, such as school district and infrastructure bond assessments, for Tax Rate Area 12-003, the Tax Rate Area in which the initial CFD is being formed. After adding the special tax and the Infrastructure CFD cost for the initial CFD annexation area to the ad valorem taxes, the burden is estimated to be 1.52 percent for for-sale condominiums and 1.69 percent per unit for apartment complexes. The estimated value of the condominium and apartment units is based on the Fiscal Study. This burden is decreased as home prices increase. Thus, the proposed special taxes are within the 2-percent guideline.

Table 4
City of Milpitas CFD Hearing Report
Two-Percent Test

Item	Assumptions/ Formula	Value	
		Condo	Apartment
Assumptions			
Tax Rate Area	*12-003*		
Estimated Unit Value			
Condominium (Sale) [1]	*a*	$420,000	$227,000
Apartment (Rent) [1]			
Property Taxes			
Maximum Tax		1.0000%	1.0000%
Retirement Levy		0.0388%	0.0388%
Library Retirement		0.0024%	0.0024%
Milpitas Unified School Bond No. 2		0.0332%	0.0332%
SJ-Evergreen College 1998		0.0099%	0.0099%
San Jose College 2004		0.0031%	0.0031%
SCVWD-State Water Project		0.0059%	0.0059%
SCVWD Zone W-1 Bond		0.0002%	0.0002%
Total Tax Rate	*b*	**1.0935%**	**1.0935%**
2% Test Calculation			
CFD Special Tax	*c*	$510	$510
Infrastructure CFD [2]	*d*	$1,280	$844
CFDs as % of Estimated Unit Value	*e = (c + d) / a*	0.4262%	0.5965%
Total Tax Rate	*f = b + e*	**1.5197%**	**1.6900%**

"two_pct"

Source: County of Santa Clara Tax Rates, FY 08-09, David Taussig & Assoc., and EPS.

[1] Based on rounded values included in EPS Fiscal Study.

[2] The property owners have requested that the City consider forming a CFD to fund public infrastructure through the issuance of CFD bonds. The property owner's consultant, David Taussig & Associates, developed the proposed special tax rates for the two housing product types shown in this table.

EXHIBITS

EXHIBIT A: RATE, METHOD OF APPORTIONMENT, AND MANNER OF COLLECTION OF SPECIAL TAX

EXHIBIT B: DESCRIPTION OF SERVICES

EPS
Economic & Planning Systems
Public Finance
Real Estate Economics
Regional Economics
Land Use Policy

EXHIBIT A

RATE, METHOD OF APPORTIONMENT, AND MANNER OF COLLECTION OF SPECIAL TAX

EXHIBIT A

City of Milpitas
Community Facilities District No. 2008–1
(Public Services)
Santa Clara County, California

RATE, METHOD OF APPORTIONMENT, AND
MANNER OF COLLECTION OF SPECIAL TAX

1. BASIS OF SPECIAL TAX LEVY

A Special Tax authorized under the Mello-Roos Community Facilities Act of 1982 (Act) applicable to the land in the Community Facilities District No. 2008–1 (Public Services) (CFD) of the City of Milpitas (City) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate, as described below.

2. DEFINITIONS

"**Act**" means the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311 and following of the California Government Code.

"**Administrative Expenses**" means the actual or estimated costs incurred by the City to form the CFD and to determine, levy, and collect the Special Taxes, including compensation of City employees for administrative work performed in relation to the CFD, the fees of consultants and legal counsel, the costs of collecting installments of the Special Taxes on the general tax rolls, preparation of required reports, and any other costs required to administer the CFD as determined by the City.

"**Administrator**" means the Finance Director of the City, or his or her designee.

"**Affordable Housing**" means a Dwelling Unit on a Developed Parcel that is subject to deed restrictions, resale restrictions, or regulatory agreements recorded on the property that provide housing for persons that meet Low-, Very Low-, or Extremely Low-Income levels pursuant to the California Health and Safety Code Sections 5079.5, 50105, or 50106. The Dwelling Unit shall no longer be considered Affordable Housing following termination of the agreement containing covenants or similar instruments.

"**Annexation Parcel**" means any Parcel that is annexed to the CFD after it is formed.

"**Annual Costs**" means for each Fiscal Year, the total of (1) Authorized Services, (2) Administrative Expenses, and (3) any amounts needed to cure actual or estimated delinquencies in Special Taxes for the current or previous Fiscal Year.

"**Authorized Services**" mean those services, as listed in the resolution forming the CFD.

"**Base Year**" means the Fiscal Year beginning July 1, 2009 and ending June 30, 2010.

"**Certificate of Occupancy**" means a permit issued by the City authorizing the occupancy of a Dwelling Unit.

"**CFD**" means the Community Facilities District No. 2008–1 (Public Services) of the City of Milpitas, Santa Clara County, California.

"**City**" means the City of Milpitas in Santa Clara County, California.

"**Council**" means the City Council of the City of Milpitas acting for the CFD under the Act.

"**County**" means the County of Santa Clara, California.

"**County Assessor's Parcel**" means a lot or Parcel with an assigned Assessor's Parcel Number in the maps used by the County Assessor in the preparation of the tax roll.

"**County Median Income**" means the current median income for the County as determined by the U.S. Department of Housing and Urban Development, or successor agency as published annually by the State Department of Housing and Community Development pursuant to the Health and Safety Code Section 50093 et. seq.

"**Developed Parcel**" means a Parcel that has Certificate of Occupancy for residential land uses issued after January 1, 2009.

"**Dwelling Unit(s)**" means the number of taxable developed residential unit(s) assigned to a Parcel, or a portion thereof, by the Administrator.

"**Extremely Low-Income Affordable**" means a Dwelling Unit located on a Developed Parcel that is Affordable Housing for households with incomes at or below 30 percent of the County Median Income.

"**Fiscal Year**" means the period starting July 1 and ending the following June 30.

"**Low-Income Affordable**" means a Dwelling Unit located on a Developed Parcel for Affordable Housing for households with incomes at or below 80 percent of the County Median Income.

"**Market Rate**" means a Dwelling Unit located on a Developed Parcels that is not Affordable Housing.

"**Maximum Annual Special Tax**" means the greatest amount of Special Tax that can be levied against a Developed Parcel calculated by summing the Maximum Annual Special Tax Rate for each Dwelling Unit and Tax Category assigned to a Developed Parcel.

"**Maximum Annual Special Tax Rate per Unit**" means the amount shown in **Attachment 1** for a Fiscal Year that is assigned to a Dwelling Unit by Tax Category.

"**Parcel**" means any County Assessor's Parcel in the CFD based on the equalized tax rolls of the County as of January 1 of each Fiscal Year.

"**Parcel Number**" means the Assessor's Parcel Number for any Parcel based on the equalized tax rolls of the County as of January 1 of each Fiscal Year.

"**Public Parcel**" means any Parcel, in its entirety, that is or is intended to be publicly owned that is normally exempt from the levy of general ad valorem property taxes under California law, including public streets, schools, parks, public drainageways, public landscaping, wetlands, greenbelts, and public open space. These parcels are exempt from the levy of Special Taxes. Any such Parcel will be a Tax-Exempt Parcel.

"**Second-Family Unit**" means an attached or detached additional residential dwelling unit on a single-family residential Developed Parcel. The Second-Family Unit is not considered a Dwelling Unit in terms of assigning the Maximum Annual Special Tax.

"**Special Tax(es)**" mean(s) any tax levy under the Act in the CFD.

"**Tax Category**" means the four categories of housing Dwelling Units shown in **Attachment 1**.

"**Tax Collection Schedule**" means the document prepared by the Administrator for the County Auditor-Controller to use in levying and collecting the Special Taxes each Fiscal Year.

"**Tax Escalation Factor**" means an annual percentage increase in the Maximum Annual Special Tax Rate per Unit based on the Consumer Price Index (CPI) (as of February, San

Francisco, All Urban Consumers [CPI-U] Index), the CPI (prior calendar year annual average, San Francisco, All Urban Wage Earners and Clerical Workers), or 2 percent, whichever is greater. The Tax Escalation Factor is applied in each Fiscal Year following the Base Year.

"**Taxable Parcel**" means any Parcel that is not a Tax-Exempt Parcel.

"**Tax-Exempt Parcel**" means a Parcel not subject to the Special Tax. Tax-Exempt Parcels are Public Parcels (subject to the limitations set forth in **Section 4**, below), Undeveloped Parcels, and nonresidential use parcels, such as commercial, office, retail, industrial, etc.

"**Undeveloped Parcel**" means a Parcel that is not a Developed Parcel.

"**Very Low-Income Affordable**" means a Dwelling Unit located on a Developed Parcel that is Affordable Housing for households with incomes at or below 50 percent of the County Median Income.

3. DURATION OF THE SPECIAL TAX

Parcels in the CFD will remain subject to the Special Tax in perpetuity.

If the Special Tax ceases to be levied, the City will direct the County Recorder to record a Notice of Cessation of Special Tax. Such notice will state that the obligation to pay the Special Tax has ceased and that the lien imposed by the Notice of Special Tax Lien is extinguished. The Notice of Cessation of Special Tax, in addition, will identify the book and page of the Book of Maps of Assessment and Community Facilities Districts where the map of the boundaries of the CFD is recorded.

4. ASSIGNMENT OF MAXIMUM ANNUAL SPECIAL TAX

A. Classification of Parcels. By June 30 of each Fiscal Year, using the Definitions in **Section 2**, above, the parcel records of the Assessor's Secured Tax Roll as of January 1, and other City development approval records, the Administrator shall cause these:

   1. Each Parcel to be classified as a Developed Parcel or Tax-Exempt Parcel.
   2. Each Developed Parcel to be assigned a number of Dwelling Units.
   3. Each Dwelling Unit to be further classified as Market Rate, Low-Income Affordable, Very Low-Income Affordable, or Extremely Low-Income Affordable.

B. Assignment of Maximum Annual Special Tax. **Attachment 1** shows the Base Year Maximum Annual Special Tax Rates per Unit. Each Fiscal Year following the Base Year, the Maximum Annual Special Tax Rate per Unit may be increased in accordance with the Tax Escalation Factor.

The Maximum Annual Special Tax is then assigned to Taxable Parcels using the steps below:

1. **Developed Parcels**. Dwelling Units are assigned by the Administrator by Tax Category (as shown in **Attachment 1**) to Developed Parcels. The Maximum Annual Special Tax for each Developed Parcel is the sum of the Maximum Annual Special Tax Rates per Unit (as increased by the Tax Escalation Factor each Fiscal Year after the Base Year) for each Dwelling Unit (and Tax Category assigned thereto).
2. **Undeveloped Parcels**. Undeveloped Parcels are Tax-Exempt Parcels until developed as one of the residential uses discussed above.

C. Conversion of a Tax-Exempt Parcel to a Taxable Parcel. If a Tax-Exempt Parcel is not needed for public use and is converted to a taxable use or transferred to a private owner, it shall become subject to the Special Tax. The Maximum Annual Special Tax for such a Parcel will be assigned according to the **Section 4.A** and **Section 4.B** above. Conversely, if a privately owned parcel is converted to a public use, it shall become tax-exempt.

5. CALCULATING ANNUAL SPECIAL TAXES

The Administrator will compute the Annual Costs and determine the Maximum Annual Special Tax for each Taxable Parcel based on the assignment of the Special Tax in **Section 4**. The Administrator will then determine the tax levy for each Taxable Parcel using the following process:

A. Compute the Annual Costs using the definition of Annual Costs in **Section 2**.

B. Calculate the Special Tex levy for each Developed Parcel by the following steps:

Step 1 Compute 100 percent of the Maximum Annual Special Tax Revenue for all Developed Parcels.

Step 2: Compare the Annual Costs with the Maximum Annual Special Tax revenue calculated in the previous step.

Step 3: If the Annual Costs are lower than the Maximum Annual Special Tax Revenue, decrease proportionately the Special Tax levy for each Developed Parcel until the revenue from the Special Tax levy equals the Annual Costs.

C. Levy on each Taxable Parcel the amount calculated above.

D. Prepare the Tax Collection Schedule and, unless an alternative method of collection has been selected pursuant to **Section 9**, send it to the County Auditor requesting that it be placed on the general, secured property tax roll for the Fiscal Year. The Tax Collection Schedule will not be sent later than the date required by the Auditor for such inclusion.

The Administrator will make every effort to correctly calculate the Special Tax for each Parcel. It will be the burden of the taxpayer to correct any errors in the determination of the Parcels subject to the tax and their Special Tax assignments.

6. RECORDS MAINTAINED FOR THE CFD

As development and subdivision occurs in the CFD, the Administrator will maintain a file containing records of the following information for each Parcel:

- The current County Assessor's Number.
- Number of Dwelling Units assigned by the Administrator to Developed Parcels.
- The Tax Category for each Dwelling Unit assigned to a Developed Parcel.

The file containing the information listed above will be available for public inspection.

7. INTERPRETATION, APPLICATION AND APPEAL OF SPECIAL TAX FORMULA AND PROCEDURES

Any taxpayer who feels that the amount of the Special Tax assigned to a Parcel is in error may file a notice with the Administrator appealing the levy of the Special Tax. The Administrator will then promptly review the appeal, and if necessary, meet with the applicant. If the Administrator verifies that the tax should be modified or changed, the Special Tax levy will be corrected and, if applicable in any case, a refund will be granted.

Interpretations may be made by Resolution of the Council for purposes of clarifying any vagueness or ambiguity as it relates to the Special Tax rate, the method of apportionment, the classification of properties, or any definition applicable to the CFD.

Without Council approval, the Administrator may make minor, non-substantive administrative and technical changes to the provisions of this Exhibit that do not materially affect the rate, method of apportionment, and manner of collection of the

Special tax for purposes of the administrative efficiency or convenience or to comply with new applicable federal, state or local law.

8. PREPAYMENT OF THE SPECIAL TAX OBLIGATION

The Maximum Annual Special Tax for a Taxable Parcel may not be prepaid. The Special Tax is collected to fund Authorized Services in perpetuity, or until the Council determines that the Special Tax should no longer be collected.

9. MANNER OF COLLECTION

The Special Tax will be collected in the same manner and at the same time as ad valorem property taxes, provided, however, that the Administrator or its designee may directly bill the Special Tax and may collect the Special Tax at a different time, such as on a monthly or other periodic basis, or in a different manner, if necessary, to meet the City's financial obligations.

Attachment 1
City of Milpitas
CFD No. 2008-1 (Public Services)
Maximum Annual Special Tax Rates Per Unit Base Year 2009-2010

Dwelling Unit Tax Category	Maximum Annual Special Tax Rate Per Unit
	[1]
Market Rate	$510
Low-Income Residential [2]	$408
Very Low-income Residential [3]	$255
Extremely Low-Income Residential	$0

"att_1"

[1] May be increased by the Tax Escalation Factor in each Fiscal Year after the Base Year 2009-2010.

[2] Initially set at 80% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

[3] Initially set at 50% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

[4] Initially set at 0% of the Market-Rate Maximum Annual Special Tax Rate per Unit. When such Parcel is no longer subject to Affordable Housing status, it will be assigned to the Market Rate Tax Category.

Economic & Planning Systems

Public Finance
Real Estate Economics
Regional Economics
Land Use Policy

EXHIBIT B

DESCRIPTION OF SERVICES

EXHIBIT B

DESCRIPTION OF SERVICES

The community facilities district is established to finance any one or more of the following types of services within the District:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Maintenance and lighting of parks, parkways, streets, roads, street landscaping, and open space.

(d) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems.

(e) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment.