



## **ATTACHMENT 5**

### **Rate and Method of Apportionment of Special Tax for CFD No. 2011-01**

**FIRST AMENDED AND RESTATED  
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

**COMMUNITY FACILITIES DISTRICT NO. 2011-01  
(CONGESTION MANAGEMENT)  
OF THE CITY OF SAN MARCOS**

A Special Tax shall be levied in Community Facilities District No. 2011-01 (Congestion Management) of the City of San Marcos ("CFD No. 2011-01") each Fiscal Year, in an amount determined by the Council through the application of the procedures described below. All of the real property and interests in real property such as leasehold interests and possessory interests within CFD No. 2011-01, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means actual or estimated costs related to the administration of CFD No. 2011-01 including, but not limited to, the following: the costs of computing the Special Taxes; the costs of collecting the Special Taxes including the costs of monitoring and tracking delinquent Special Taxes; the costs of remitting the Special Taxes to the City and/or Trustee; the costs of a Trustee (including its legal counsel) in the discharge of the duties required of it under any Indenture; the costs to compute rebatable arbitrage and/or to respond to audit requests by the Internal Revenue Service of any Bonds; the costs of the City, CFD No. 2011-01, or designee in complying with disclosure requirements of applicable federal and state securities laws and of the Act; the costs associated with responding to public inquiries regarding CFD No. 2011-01; the costs of the City, CFD No. 2011-01, or designee related to an appeal of the Special Tax; and an allocable share of the salaries of the City staff relating to the foregoing. Administrative Expenses shall also include amounts estimated or advanced by the City for any other administrative purpose of CFD No. 2011-01, including but not limited to, attorney's fees and consultant and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes or any other legal matters related to CFD No. 2011-01.

**"Apartment"** means a Dwelling Unit in a Multiple Dwelling Building and which is not a Condominium.

**"Assessor's Parcel"** means a lot or parcel shown in 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 designating parcels by Assessor's Parcel Number.

**"Attached Residential Property"** means Taxable Property on which attached Dwelling Units have been or may be constructed as shown on the applicable approved tentative map, tentative parcel map, multi-family site development plan, Final Subdivision, conditional use permit, building permit, or other discretionary land use entitlement, whichever is legally applicable to such property.

**"Authorized Facilities"** means facilities necessary or convenient for the implementation of Parking and/or Transportation Demand Management strategies and measures which facilities may include (i) intra City public transportation facilities and facilities for other local transit serving initiatives, (ii) the initial purchase of intra City public transportation equipment and equipment for other local transit serving initiatives, including rolling stock, necessary or convenient to the implementation or expansion of intra City public transportation service or service provided pursuant to another local transit serving initiative, and (iii) facilities necessary or convenient to the implementation or expansion of other Parking and/or Transportation Demand Management measures, and (iv) the initial purchase of equipment necessary or convenient to the implementation or expansion of other Parking and/or Transportation Demand Management measures.

**"Authorized Services"** means, whether provided directly by the City or by a third party contracting with the City or CFD No. 2011-01 parking and/or transportation demand management which may include measures and strategies for controlling parking, reducing traffic congestion, and vehicle miles traveled as well as providing alternative modes of travel and access ("Parking and/or Transportation Demand Management"). These measures may include, but are not limited to, (i) park once strategies, i.e., the creation of an environment that encourages visitors and/or residents to park their vehicle once upon arrival in the City and then walk (or use some other form of public transit, trolley system, or bicycle) to access various parts of the City, (ii) intra City public transportation services and/or other local transit serving initiatives such as maintenance of interconnecting bicycle and pedestrian paths, provision of public transit passes, and instituting a ridesharing and/or car-sharing program, (iii) the replacement of intra City public transportation equipment and equipment for other local transit serving initiatives and/or Parking and/or Transportation Demand Management measures, including rolling stock, (iv) the maintenance, operation and management of intra City public transportation facilities and equipment and facilities and equipment for other local transit serving initiatives and/or Parking and/or Transportation Demand Management measures, (v) the purchase and/or replacement of public parking and Parking and/or Transportation Demand Management equipment, (vi) maintenance, lighting and/or operation of

public parking lots and parking facilities, and (vii) enforcement of local parking regulations.

**"Bond Reserve Fund"** means a bond reserve fund established under an Indenture for any Bonds.

**"Bonds"** means any bonds, lease, or other indebtedness (as defined in the Act), whether in one or more series, secured all or in part by the Special Tax.

**"BSF"** means building square footage as determined from the applicable building permit or conditional use permit.

**"CFD Administrator"** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for and/or administering the levy and collection of Special Taxes.

**"City"** means the City of San Marcos.

**"Commercial"** means all non-residential uses which are not classified as Hospital, Industrial, or Institutional.

**"Condominium"** means a separate interest or unit meeting the statutory definition of a condominium contained in the California Civil Code Section 1351, and for which a condominium plan has been recorded pursuant to California Civil Code, Section 1352.

**"Council"** means the City Council of the City, acting as the legislative body of CFD No. 2011-01.

**"County"** means the County of San Diego.

**"Detached Residential Property"** means Taxable Property on which detached Dwelling Units have been or may be constructed as shown on the applicable approved tentative map, tentative parcel map, multi-family site development plan, Final Subdivision, conditional use permit, building permit or other discretionary land use entitlement, whichever is legally applicable to such property.

**"Dwelling Unit ("DU")"** means one or more rooms used for occupancy by one family.

**"Facilities Reserve Fund"** means a sinking fund or funds established for the acquisition and/or replacement of Authorized Facilities and funded as needed from year to year with proceeds from the Special Tax.

**"Final Subdivision"** means a subdivision of property by recordation of (i) a final map or parcel map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.), (ii) a lot line adjustment approved by the City, or (iii) a condominium plan pursuant to California Civil Code 1352, that creates an individual lot(s) for which a building permit(s) may be issued without further subdivision.

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

**"Hospital"** means a medical treatment facility having an organized medical staff which provides 24- hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A Hospital shall not include separate buildings which are used exclusively to house personnel or provide activities not related to hospital patients.

**"Indenture"** means an indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, and any instrument amending, modifying, replacing or supplementing the same from time to time.

**"Industrial"** means assembling, disassembling, fabricating, finishing, manufacturing, packaging, repairing, processing, and/or warehousing uses and wholesale goods, materials, or produce distribution uses.

**"Institutional"** means private educational uses or religious worship and/or educational uses.

**"Maximum Special Tax"** means the maximum Special Tax determined in accordance with Section C below, which can be levied in any Fiscal Year on each Assessor's Parcel of Taxable Property.

**"Multiple Dwelling Building"** means a building containing two or more Dwelling Units.

**"Non-Residential Property"** means all Taxable Property not classified as Attached Residential Property or Detached Residential Property.

**"One-Family Dwelling"** shall have the meaning given such term in Section 20.16.490 of the San Marcos Municipal Code, as such section may be amended from time to time.

**"Public Property"** means any property within CFD No. 2011-01 that is owned by the City, federal government, the State of California, the County, or any other public agency as of January 1 of the Fiscal Year preceding the Fiscal Year for which the Special Tax is being levied. Leasehold and possessory interests in any such property

held by a private entity (i.e., a non-public or non-governmental entity) shall not be classified as Public Property and shall be subject to the Special Tax.

**"Residential Condominium"** means a Dwelling Unit that is a Condominium. Residential Condominiums may include townhomes, rowhomes or any other configuration thereof.

**"Services Reserve Fund"** means a fund established as a reserve for funding the provision of the Authorized Services, including the establishment of a sinking fund or funds for equipment replacement, and funded as needed from year to year with proceeds from the Special Tax.

**"Special Tax"** means the special tax authorized to be levied on each Assessor's Parcel of Taxable Property pursuant to Section D below.

**"Special Tax Requirement"** means that amount determined by the Council or its designee required in any Fiscal Year: (1) to pay Administrative Expenses, (2) to pay for Authorized Services, (3) to pay for Authorized Facilities, (4) to establish, maintain, and replenish the Facilities Reserve Fund and the Services Reserve Fund; (5) to pay debt service on outstanding Bonds, (6) to replenish and/or establish any Bond Reserve Fund, (7) to pay the costs of remarketing, credit enhancement and liquidity facility fees (including such fees for instruments that serve as the basis of a Bond Reserve Fund in lieu of cash related to any Bonds) and other periodic costs on the Bonds, and (8) to establish a contingency for any delinquent Special Taxes or reasonably anticipated delinquent Special Taxes.

**"Taxable Property"** means all property located within CFD No. 2011-01 (i) for which a building permit or conditional use permit has been issued as of the March 1 preceding the Fiscal Year for which the Special Tax is being levied and (ii) which is not exempt from the Special Tax.

**"Trustee"** means any trustee or fiscal agent designated under an Indenture.

**"Two-Family Dwelling"** shall have the meaning given such term in Section 20.16.500 of the San Marcos Municipal Code, as such section may be amended from time to time.

## **B. CLASSIFICATION OF PROPERTY**

Each Fiscal Year, all Taxable Property shall be classified as either Attached Residential Property, Detached Residential Property, or Non-Residential Property. Dwelling Units and buildings located thereon shall be further classified in accordance with their use (i.e., Residential Condominium, Apartment, Commercial, Hospital, Industrial, and Institutional). The actual use of any particular building or structure will be determined by the CFD Administrator from the use and occupancy

classification as shown on the applicable building permit or conditional use permit. The preceding classifications shall be made as of the March 1 preceding the Fiscal Year for which the Special Tax is being levied.

### **C. MAXIMUM SPECIAL TAX**

The Maximum Special Tax rates, commencing with July 1, 2011, are specified in the Table on the following page.

| <b>TABLE 1</b><br><br><b>FISCAL YEAR 2011-12</b><br><br><b>MAXIMUM SPECIAL TAX RATES</b>                                                                                                                                                                                                 |                                            |                         |                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------|------------------------------------------------|
| <b>SPECIAL TAX CLASSIFICATION</b>                                                                                                                                                                                                                                                        | <b>PROPERTY CLASSIFICATION</b>             | <b>USE</b>              | <b>FISCAL YEAR 2011-12 MAXIMUM SPECIAL TAX</b> |
| 1                                                                                                                                                                                                                                                                                        | Detached Residential Property <sup>1</sup> | Residential Condominium | \$295 per Dwelling Unit                        |
| 2                                                                                                                                                                                                                                                                                        | Attached Residential Property <sup>1</sup> | Residential Condominium | \$295 per Dwelling Unit                        |
| 3                                                                                                                                                                                                                                                                                        | Attached Residential Property <sup>1</sup> | Apartment               | \$221 per Dwelling Unit                        |
| 4                                                                                                                                                                                                                                                                                        | Non-Residential Property                   | Commercial              | \$0.31 per BSF                                 |
| 5                                                                                                                                                                                                                                                                                        | Non-Residential Property                   | Hospital                | \$0.17 per BSF                                 |
| 6                                                                                                                                                                                                                                                                                        | Non-Residential Property                   | Industrial              | \$0.07 per BSF                                 |
| 7                                                                                                                                                                                                                                                                                        | Non-Residential Property                   | Institutional           | \$0.06 per BSF                                 |
| <sup>1</sup> Pursuant to Section G herein, any Dwelling Unit which can be classified as a One-Family Dwelling and any Dwelling Unit that is not located within a mixed use specific plan area and which can be classified as a Two-Family Dwelling shall be exempt from the Special Tax. |                                            |                         |                                                |

A Special Tax may only be levied on that portion of an Assessor's Parcel for which a building permit, unexpired conditional use permit, or other discretionary land use entitlement has been approved, granted or issued, as applicable, as of the March 1 preceding the Fiscal Year for which the Special Tax is being levied. However, if such building permit, unexpired conditional use permit, or other discretionary land use entitlement was approved, granted or issued, as applicable, before May 10, 2011, a Special Tax may only be levied on an Assessor's Parcel if the owner of the Assessor's Parcel or portion of the Assessor's Parcel chose to mitigate traffic impacts

of the development of such Assessor's Parcel for which the building permit, unexpired conditional use permit, or other discretionary land use entitlement, as applicable, by annexing to CFD No. 2011-01.

**1. Annual Increase**

The Maximum Special Tax rates in Table 1 shall be applicable for Fiscal Year 2011-2012 and shall increase commencing on July 1, 2012, and on each July 1 thereafter, by an amount equal to the positive annual percentage change, if any, in the annual Consumer Price Index for All Urban Consumers for the San Diego Metropolitan Area ending in the calendar year preceding the Fiscal Year for which the Special Tax is being levied published by the United States Department of Labor. If the Consumer Price Index for the San Diego Metropolitan Area ceases to be published, the CFD Administrator shall substitute the Consumer Price Index for the Los Angeles - Riverside - Orange County Metropolitan Area or other appropriate index. Notwithstanding the preceding sentence, the Maximum Special Tax rates that may be levied against Detached Residential Property and Attached Residential Property to pay for Authorized Facilities cannot exceed the applicable FY 2011-12 Maximum Special Tax Rates set forth in Table 1 escalated by two percent (2.00%) per year.

**2. Multiple Use Buildings and Assessor's Parcels**

If the building permit(s) or conditional use permit(s) for a building or structure indicate more than one use, the BSF for each such use shall be classified separately and the Maximum Special Tax applicable to the building or structure shall be the sum of the Maximum Special Taxes for each such use. Similarly, the Maximum Special Tax for an Assessor's Parcel on which a building or buildings comprised of multiple uses have been constructed shall be the sum of the Maximum Special Taxes for all the uses on such Assessor's Parcel.

**D. LEVY OF SPECIAL TAX**

Commencing with Fiscal Year 2011-2012 and for each following Fiscal Year, the CFD Administrator shall levy the Special Tax on all Taxable Property up to 100% of the applicable Maximum Special Tax until the amount of Special Taxes equals the Special Tax Requirement. In the case of any Special Tax to pay for Authorized Facilities and to be levied against any Assessor's Parcel used for private residential purposes, under no circumstances will the Special Tax levied in any Fiscal Year against any Assessor's Parcel subject to this sentence be increased as a consequence of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 2011-01 by more than ten percent (10.00%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. For purposes of this paragraph, an Assessor's Parcel



shall be considered "used for private residential purposes" not later than the date on which an occupancy permit for private residential use is issued.

**E. MANNER OF COLLECTION**

The Special Tax shall constitute a continuing lien on the property subject thereto which shall have a priority co-equal to the lien of general ad valorem property taxes. The Special Tax will be billed and collected by the County in the same manner and at the same time as general ad valorem property taxes and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes; provided, however, the Council may, by resolution, establish and adopt an alternative or supplemental collection procedure, including direct billing. The Special Taxes when levied shall be secured by the lien imposed pursuant to Section 3115.5 of the Streets and Highways Code. This lien shall be a continuing lien and shall secure each levy of Special Taxes. The lien of the Special Taxes shall continue in force and effect until the Special Tax ceases to be levied in the manner provided by Section 53330.5 of the Government Code.

**F. TERM OF SPECIAL TAX**

The Special Tax may be levied for Authorized Services so long as the Council, acting in its capacity as the legislative body of CFD No. 2011-01, determines that such Special Taxes are necessary to provide such Authorized Services. The Special Tax may be levied against each Assessor's Parcel of Attached Residential Property and Detached Residential Property to fund Authorized Facilities for a period not to exceed 100 Fiscal Years . The Special Tax may be levied against Non-Residential Property for Authorized Facilities so long as the Council, acting in its capacity as the legislative body of CFD No. 2011-01, determines that such Special Taxes are necessary to provide such Authorized Facilities.

**G. EXEMPTIONS**

Public Property and One-Family Dwellings shall be exempt from the Special Tax. Two-Family Dwellings which are not located within a mixed use specific plan area shall be exempt from the Special Tax.

**H. PREPAYMENT**

The Maximum Special Tax for an Assessor's Parcel within CFD No. 2011-01 may be prepaid and permanently satisfied, as described herein, provided that a prepayment may only be made if (i) at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel and all other Assessor's Parcels which are under the same ownership and located within CFD No. 2011-01 and (ii) the amount of Maximum Special Taxes that may be levied within CFD No. 2011-01 after the proposed prepayment, exclusive of any Maximum Special Taxes contingent upon

a conditional use permit, is at least the sum of (a) the estimated Administrative Expenses and (b) one hundred ten percent (110%) of the maximum annual debt service for the Bonds, taking into account the Bonds to remain outstanding after such prepayment. An owner of an Assessor's Parcel intending to prepay the Maximum Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 60 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel and the date through which any such prepayment shall be valid.

If there are outstanding Bonds at the time of prepayment, the prepayment amount shall be the greater of (i) the Present Valued Maximum Special Taxes or (ii) Bond Principal minus the Reserve Fund Credit and plus (iii) the sum, as applicable, of Unpaid Special Taxes, Bond Defeasance, Bond Premium, and Prepayment Fees. If there are no outstanding Bonds at the time of prepayment, the prepayment amount shall be equal to the sum of the Present Valued Maximum Special Taxes, Unpaid Special Taxes, and Prepayment Fees. The preceding capitalized terms have the meanings set forth below in Section H.1, H.2, and H.3.

The prepayment amount shall be paid to CFD No. 2011-01. If there are outstanding Bonds at the time of prepayment, the Bond Principal, Bond Premium, and Bond Defeasance amounts shall be used to pay and redeem Bonds in accordance with the Indenture. The remainder shall be retained by CFD No. 2011-01 for the payment of the Prepayment Fees and the provision of Authorized Services. Upon receipt of the prepayment amount by CFD No. 2011-01, the obligation to pay the Maximum Special Tax for the applicable Assessor's Parcel shall be deemed to be permanently satisfied, the Maximum Special Tax shall not be levied thereafter on such Assessor's Parcel, and the CFD Administrator shall cause a notice of cancellation of the Maximum Special Tax for such Assessor's Parcel to be recorded within 30 working days of such receipt.

#### **1. Present Value Calculation**

The term Present Valued Maximum Special Taxes is defined as follows:

**"Present Valued Maximum Special Taxes"** means the present value of the Maximum Special Tax for the next seventy-five (75) years escalated annually at the greater of (i) the positive average annual increase, if any, in the CPI for the five year period ending in the calendar year preceding the Fiscal Year in which the calculation is made or (ii) two percent (2.00%). The discount rate used for calculating the Present Valued Maximum Special tax shall be the average annual rate of return earned on the City's general fund investment portfolio for the five year period ending in the calendar year preceding the Fiscal Year in which the calculation is made. The present value calculation will assume a 360 day year and shall discount the Maximum Special Tax from July 1 of each Fiscal Year.

## **2. Bond Principal Calculation**

The terms Principal and Reserve Fund Credit are defined as follows:

**"Bond Principal"** means the principal amount of Bonds allocable to an Assessor's Parcel and equals the quotient derived by dividing (a) the applicable Maximum Special Tax for the Assessor's Parcel by (b) the aggregate Maximum Special Taxes for CFD No. 2011-01 for the Fiscal Year in which the Maximum Special Tax will be prepaid as determined by the CFD Administrator (and excluding from (b) any Maximum Special Taxes which have been prepaid), and multiplying the quotient by the principal amount of Bonds outstanding.

**"Reserve Fund Credit"** shall only apply if the reserve fund(s) for the Bonds is fully funded and in such case shall equal the lesser of (i) the expected reduction in the applicable reserve fund requirement (as defined in the Indenture), if any, following the redemption of Bonds from proceeds of the prepayment or (ii) the amount derived by subtracting the new reserve fund requirement in effect after the redemption of Bonds from the balance in the reserve fund (as such term is defined in the Indenture) on the prepayment date, but in no event shall such amount be less than zero.

## **3. Bond Defeasance and Prepayment Fees**

The terms Unpaid Special Taxes, Bond Premium, Bond Defeasance, and Prepayment Fees are defined as follows:

**"Unpaid Special Taxes"** means all unpaid current and prior Fiscal Year Special Taxes for such Assessor's Parcel, including penalties and interest.

**"Bond Premium"** means an amount equal to Principal multiplied by the applicable redemption premium, if any, for Bonds redeemed with the proceeds of any prepayment.

**"Bond Defeasance"** means the amount needed to pay interest on the Principal to be redeemed until the earliest redemption date for the outstanding Bonds as determined by the CFD Administrator. Credit shall be given for that portion of the Special Tax heretofore paid and which is to be applied toward interest due on the redemption date.

**"Prepayment Fees"** means the fees and expenses of CFD No. 2011-01 pertaining to the prepayment of the Maximum Special Tax, including, but not limited to, the costs of calculating the prepayment amount, the costs of

obtaining an independent consultant to verify that the amount of Maximum Special Taxes, exclusive of any Maximum Special Taxes contingent upon a conditional use permit, that may be levied within CFD No. 2011-01 after the proposed prepayment is at least the sum of (i) the estimated Administrative Expenses and (ii) one hundred ten percent (110%) of the maximum annual debt service for the Bonds, taking into account the Bonds to remain outstanding after such prepayment, the costs of removing any Special Taxes from the County tax rolls, the costs of recording any notices to evidence the prepayment, and the costs associated with the early redemption of Bonds, if applicable.