City of FRESNO

REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	
COUNCIL MEETING	February 10, 2009
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

February 10, 2009

FROM: PATRICK N. WIEMILLER, Director of Public Works
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer/Assistant Director
Public Works Department, Engineering Division

HILARY KIMBER, Parks Supervisor II
Public Works Department, Engineering Division

SUBJECT: RESOLUTION OF INTENTION TO ANNEX FINAL TRACT 5498 ANNEXATION NO. 37 TO CITY OF FRESNO COMMUNITY FACILITIES DISTRICT NO. 11 (LOCATED IN DISTRICT 5)

KEY RESULT AREA

Customer Satisfaction

RECOMMENDATION

Adopt Resolution of Intention to annex Final Tract 5498 to City of Fresno Community Facilities District No. 11.

EXECUTIVE SUMMARY

The developer of Final Tract 5498 (see attached maps) has requested annexation into Community Facilities District No. 11 (CFD No. 11) to finance ($674.00/lot annually) the maintenance of landscaping and irrigation systems, landscape easements, local street concrete curbs, gutters, valley gutters, sidewalks, entry treatments, median islands, trail, street lights and street signs which are associated with the subdivision. The Resolution of Intention begins the process, sets the required public hearing for March 3, 2009, and defines the steps required to complete the annexation.

KEY OBJECTIVE BALANCE

The annexation balances the three key objectives of Customer and Employee Satisfaction, and Financial Management. The annexation addresses Customer Satisfaction by allowing for maintenance of features associated with the proposed development. By collecting the special tax, additional services are financed that would otherwise not be provided, which results in good Financial Management.

BACKGROUND

On November 15, 2005, the City Council adopted Resolution No. 2005-490 forming Community Facilities District No. 11 (CFD No. 11) to fund public maintenance of landscaping, open spaces, local streets, local street lights and street furniture, curbs, gutters, sidewalks, street trees and other public facilities and services as defined by the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3 of the Fresno Municipal Code (City Law).

The developer of Final Tract 5498 (see attached maps) has petitioned the City to be annexed into a CFD No. 11 to finance the maintenance of landscaping and irrigation systems, local concrete curbs, gutters, valley gutters, stamped concrete and sidewalks, fencing, street lights and street signs within street right-of-ways and landscape easements of the subdivision.

The attached resolution initiates the annexation process, sets the public hearing on this matter for March 3, 2009 at 10:00 a.m., sets the Maximum Special Tax at $674.00 annually per residential lot for FY08-09 and sets the annual adjustment of the special tax at +3% plus the increase, if any, in the construction cost index for the San Francisco Region.

Annexations to existing community facilities districts are permitted under City Law. The legislative body must follow certain prescribed procedures as outlined below:

- adoption of a Resolution of Intention to annex to the District
- required 7-day minimum notice of public hearing
- public hearing on District formation
- special election on the proposed special tax
- formal adoption of special tax levy (if election passes)

The attached Resolution has been approved as to form by the City Attorney's Office.

FISCAL IMPACT

No City funds will be involved. All costs for services will be borne by the property owners within the Tract.

PNW/SLM/HK/hk

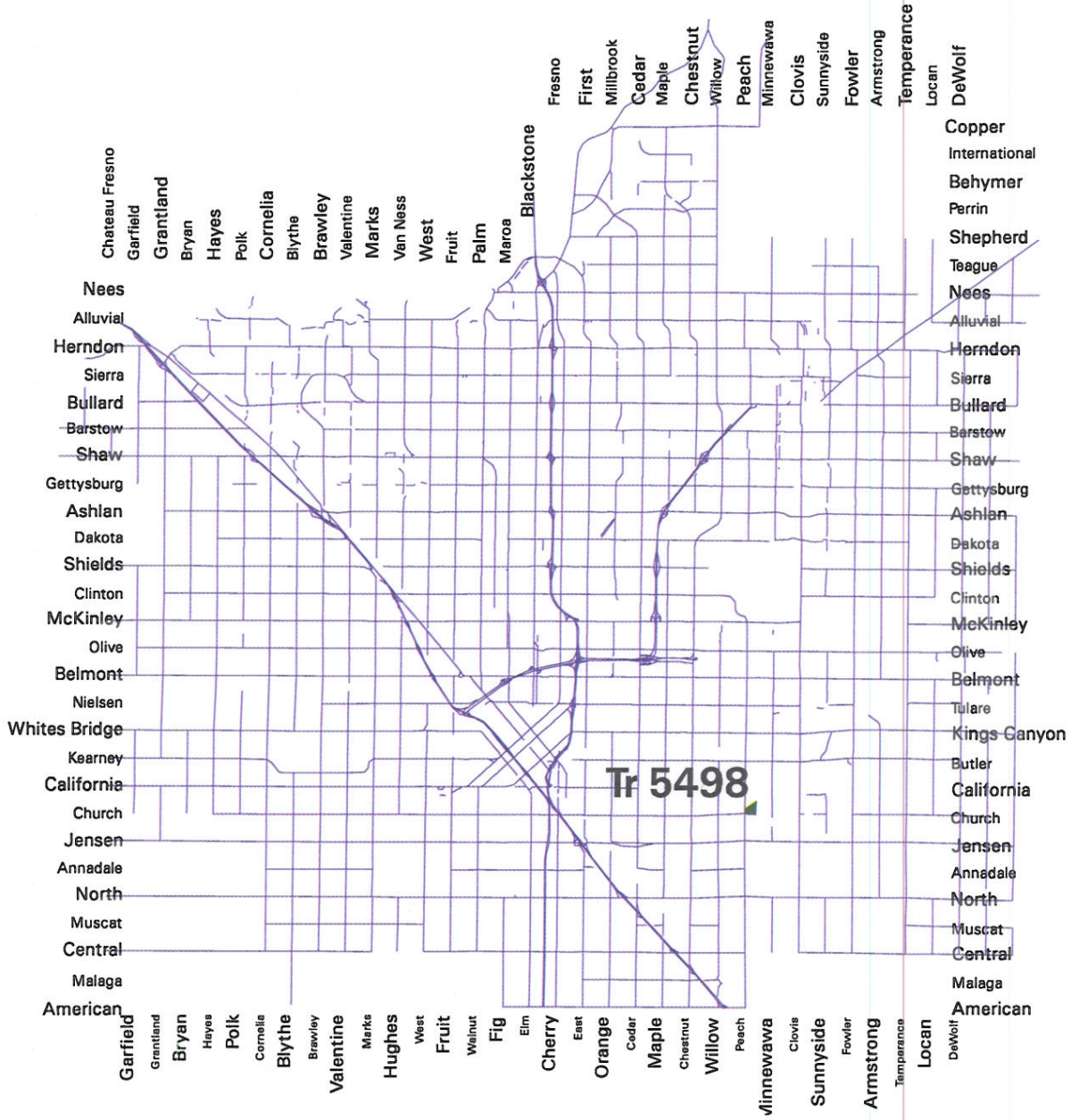
Attachments: Location Map
Feature Map
Resolution

LOCATION MAP
Annexation No. 37
COMMUNITY FACILITIES DISTRICT NO. 11

N

1" = 3.14 MILES

February 02, 2009
City of Fresno Public Works



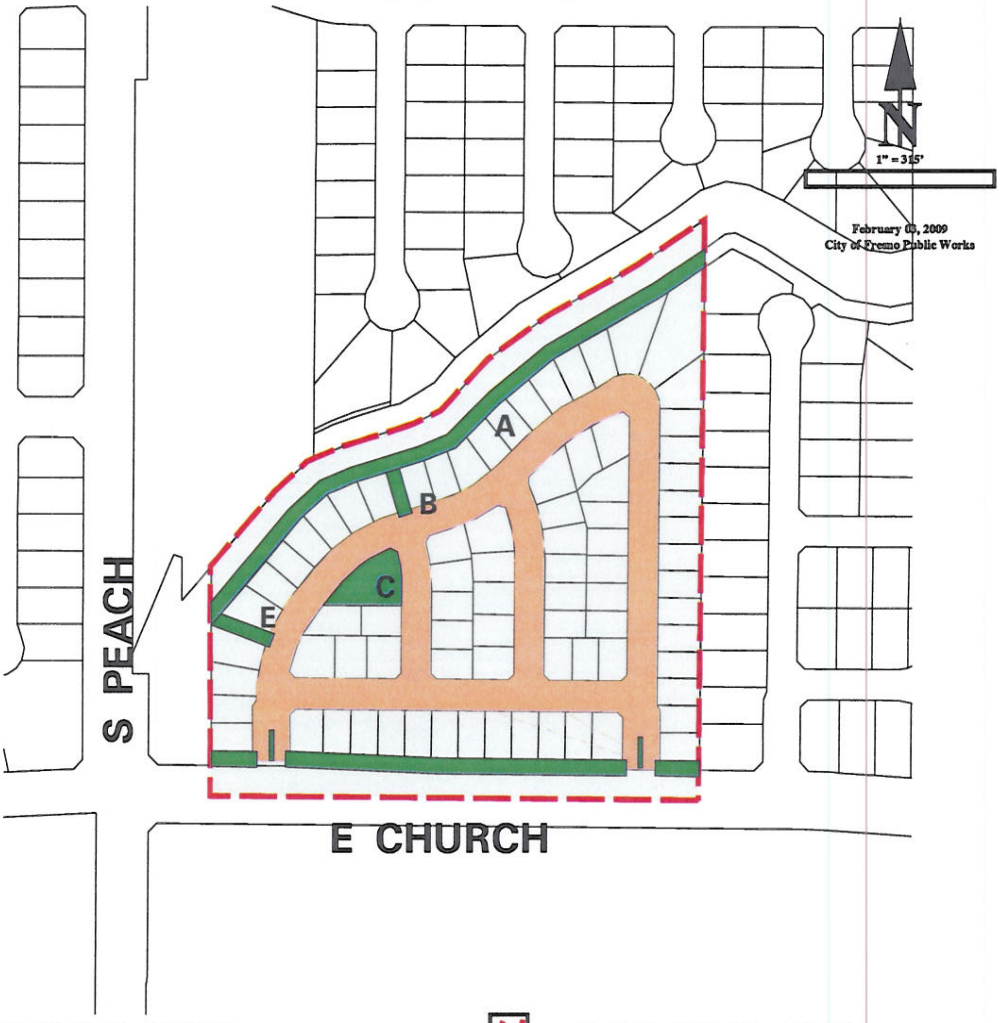
City of FRESNO

PUBLIC WORKS DEPARTMENT / Technical Services

J. Paff File: /cfd11/loc/loc.aml

FEATURES TO BE ADDED BY ANNEXATION NO. 37 AND MAINTAINED BY

COMMUNITY FACILITIES DISTRICT NO. 11



DISTRICT MAINTAINED LANDSCAPING

TRACT BOUNDARY LINE

DISTRICT MAINTAINED FEATURES: CURBS, GUTTERS, VALLER GUTTERS, SIDEWALKS, STREET LIGHTS AND STREET SIGNAGE

No Phases

TRACT 5498

City of FRESNO

PUBLIC WORKS DEPT. / Technical Services

J. PAFF FILE: ../CFD11/TR/T5498/TR.AML

RESOLUTION NO. 2009-

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO OF INTENTION TO ANNEX TRACT 5498 AS ANNEXATION NO. 37 TO THE CITY OF FRESNO COMMUNITY FACILITIES DISTRICT NO. 11 AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES

WHEREAS, the City is a charter city and municipal corporation duly created and existing under the Constitution and laws of the State of California; and

WHEREAS, under the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3, of the Fresno Municipal Code (City Law), this Council, as the legislative body for the community facilities district and any annexation thereto, has the authority to establish a community facilities district and annex property to the district; and

WHEREAS, November 15, 2005 the Council of the City of Fresno ("Council") adopted a resolution establishing the City of Fresno Community Facilities District No. 11 (CFD No. 11); and

WHEREAS, the boundaries of CFD No. 11 are shown on the Boundary Map of City of Fresno Community Facilities District No. 11, recorded November 8, 2005, at Book 41, Page 61 of Assessment and Community Facilities Districts in the Office of the Recorder, County of Fresno, California, a copy of which is on file in the Office of the City Clerk; and

WHEREAS, the landowners of Tract 5498 have formally petitioned the City to annex Tract No. 5498 to the CFD No. 11, and the area proposed for annexation to CFD No. 11 is shown on Exhibit "A", attached and incorporated herein by reference; and

WHEREAS, the types of public services provided in the existing CFD No. 11 (the "Services") are specified on page B-2 of attached exhibit "B", which is incorporated herein by reference; and

WHEREAS, the types of public services to be provided to Annexation No. 37 (Tract No. 5498) are specified on Page B-1 of Exhibit "B"; and

WHEREAS, CFD No. 11 and Annexation No. 37 will share costs proportionately for Services provided by the City,

NOW, THEREFORE, BE IT RESOLVED, BY THE COUNCIL OF THE CITY OF FRESNO AS FOLLOWS:

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

2. **Proposed Annexation No. 37 Boundaries.** The proposed boundaries of Annexation No. 37 are as shown on the map (copy attached as Exhibit A) on file with the City Clerk. The boundaries, shown in Annexation Map No. 37, for the territory proposed to be annexed, are preliminarily approved. The Clerk is directed to record Annexation Map No. 37, or cause it to be recorded, in the Office of the Recorder, Fresno County, California within ten days after the adoption date of this Resolution.

3. **Services.** The Services proposed to be financed in Annexation No. 37 (Tract 5498) are listed in Exhibit "B", Page B-1, attached hereto.

4. **Special Taxes.** Except to the extent that funds are otherwise available to the CFD No. 11 to pay for the Services in Annexation No. 37 (Tract 5498), a special tax (Special Tax) sufficient to pay the costs thereof, secured by recording a continuing lien against all nonexempt real property in Annexation No. 37, will be levied annually within Annexation No. 37, and collected in the same manner as ordinary ad valorem property taxes, or in any other manner as this Council or its designee shall determine, including direct billing of the effected property owners. The proposed rate and method of apportionment of the Special Tax among the real property parcels within Annexation No. 37, in sufficient detail for each landowner within Annexation No. 37 to estimate the maximum amount each owner will have to pay, are described in attached Exhibit "C", which is by the reference incorporated herein.

5. **District Annexation Report.** The Director of Public Works Department, as the officer having charge and control of the Services in and for CFD No. 11, or his designee, is directed to study the proposed Services and to make, or cause to be made, and filed with the Clerk a report (District Report, CFD NO. 11, Annexation No. 37), in writing presenting the following:

a. A description of the Services by type required to adequately meet the needs of CFD No. 11, Annexation No. 37.

b. An estimate of the fair and reasonable cost of the Services including the cost of acquiring land, rights-of-way and easements, costs of any physical services required in conjunction therewith, and incidental expenses in connection therewith.

c. Describe any plan for services that will be provided in common with the existing district and/or any territory that may be annexed.

d. If the Special Tax levied within the territory proposed to be annexed is higher or lower than the existing CFD No. 11, identify the extent and reasons why the costs to provide Services in that territory are higher or lower than those provided in the existing CFD No. 11. Specify any alteration in the special tax rate levied within the existing community facilities district because of the proposed annexation.

e. The CFD No. 11, Annexation No. 37 Report shall be made a part of the record of the public hearing specified below.

6. **Single Ballot.** The propositions to set the appropriations limit and to approve the levy of the special tax shall be combined into a single ballot and submitted to the voters pursuant to City Law.

7. **Formation Hearing**. Tuesday, March 3, 2009 at 10:00 a.m., is fixed as the date and time, in the City Council Chambers, 2600 Fresno Street, Fresno, California, this Council, that this legislative body for CFD No. 11, will conduct a public hearing on the annexation of Tract 5498 and will consider and finally determine whether the public interest, convenience and necessity require the annexation and the levy of the Special Tax.

8. **Public Notice.** The City Clerk is directed to cause notice of the public hearing to be given by publication once in a newspaper of general circulation published in the area of CFD No. 11. The publication shall be complete at least seven days before the hearing date set herein. The notice shall be in the form specified by City Law.

Attachments:

Exhibit A: Annexation Map No. 37
Exhibit B: Description of Services
Exhibit C: Rate and Method of Apportionment of Special Tax

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the _____ day of _____, 2009.

AYES:

NOES:

ABSTAIN:

ABSENT:

REBECCA E. KLISCH
City Clerk

BY: _____

APPROVED AS TO FORM:
City Attorney's Office

BY: R 1-27-09
Robert R. Coyle
Senior Deputy City Attorney

EXHIBIT "B"

CITY OF FRESNO

Community Facilities District No. 11
Annexation No. 37

Description of Services to be Financed by Community Facilities District No. 11 for Annexation No. 37 (Tract 5498)

The Services that are to be financed for Annexation No. 37 (Final Tract No. 5498) by Community Facilities District No. 11 ("CFD No. 11") will include all costs attributable to maintaining, servicing, cleaning, repairing and/or replacing landscaped areas (may include reserves for replacement) in public street right-of-ways, public landscaping, public open spaces and other similar landscaped areas officially dedicated for public use.

General maintenance will include, without limitation, repairing and replacing irrigation systems as necessary; staking, pruning, replacing and spraying of trees and shrubs; removing litter, debris, and garbage.

Services shall include all costs attributable to cleaning, maintaining, servicing, repairing and/or replacing certain facilities (may include reserves for replacement) within public street rights-of-way, and open spaces. Such facilities include, without limitation, local street concrete curbs, gutters, valley gutters, sidewalks, street signage, entry treatments, median islands, trail and street lighting associated with the subdivision.

Services shall include all costs attributable to local street lighting services.

Maintenance costs will include a proportionate share of all other expenses that the City may incur in administering the CFD No. 11.

All Services shall be provided by the City of Fresno, with its own forces or by contract with third parties, or any combination thereof, to be determined entirely by the City of Fresno.

Nothing in this Exhibit or any other exhibit or provision of the Resolution shall be construed as committing the City or CFD No. 11 to provide all of the authorized Services or to provide for the payment of or reimbursement for all of the authorized incidental expenses. The provision of Services and/or payment or reimbursement of incidental expenses shall be subject to the successful formation of CFD No. 11 and the availability of sufficient proceeds of special taxes within the district.

EXHIBIT "B"

CITY OF FRESNO

Community Facilities District No. 11
Formation

Description of Services currently financed by Community Facilities District No. 11

The services (the "Services") that are to be financed by Community Facilities District No. 11 ("CFD No. 11") are any and all Services defined by City of Fresno Special Tax Financing Law (Chapter 22 of the Fresno Municipal Code) and the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 commencing with Section 53311, of Part 1, Division 2, Title 5 of the California Government Code.)

I. Services may include all costs attributable to maintaining, servicing, cleaning, repairing and/or replacing all facilities, including hardscaping, in landscaped areas (may include reserves for replacement) in public street rights-of-way, public landscape easements, public trail areas, parkways, and other similar landscaped areas officially dedicated for public use.

   General maintenance will include, without limitation, mowing, edging, fertilizing, seeding, aerating, and watering grass areas; repairing and replacing irrigation systems as necessary; staking, pruning, replacing and spraying of trees and shrubs; repairing and replacing paths, walkways and trails; removing litter, debris, and garbage.

II. Services may include all costs attributable to cleaning, maintaining, servicing, repairing and/or replacing all local ground level street infrastructure (may include reserves for replacement) within local street rights-of-way. Such facilities may include, without limitation, street paving, curbs and gutters, sidewalks, street lighting, hydrants, inlets, street trees and street furniture.

III. Services may include costs attributable to police, fire, traffic control, street lighting and recreational services.

Maintenance costs will also include a proportionate share of all other expenses that the City may incur in administering the CFD No. 11.

All Services shall be provided by the City of Fresno, with its own forces or by contract with third parties, or any combination thereof, to be determined entirely by the City of Fresno.

Nothing in this Exhibit B or any other exhibit or provision of this Resolution shall be construed as committing the City or CFD No. 11 to provide all of the authorized Services or to provide for the payment of or reimbursement for all of the authorized incidental expenses. The provision of Services and/or payment or reimbursement of incidental expenses shall be subject to the successful formation of CFD No. 11 and the availability of sufficient proceeds of special taxes within the District.

EXHIBIT "C"

CITY OF FRESNO

Community Facilities District No. 11
Annexation No. 37

Rate and Method of Apportionment of Special Tax

Cost Estimate

The estimate breaks down the costs of providing 1 year's service for FY 08-09

ITEM	DESCRIPTION	ESTIMATED COST
1	Landscape Maintenance	$48,641.60
2	Feature Maintenance	$4,078.40
3	Annual Administrative Costs	
	a. Engineering	$1,080.00
	b. Legal	$120.00
	Total	$53,920.00

Subdivision Appropriation Limit

TRACT	MAX. TAX PER EDU	NUMBER OF LOTS	APPROPRIATION LIMIT	SUBDIVIDER
5498	$674.00	80	$500,000.00	GMK Properties LLC

EXHIBIT "C"

City of Fresno

Community Facilities District No. 11
Annexation No. 37

Rate and Method of Apportionment of Special Tax

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 11 (herein "CFD No. 11" shall be levied and collected according to the tax liability determined by the City Council of the City of Fresno, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 11, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 11 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Assessor's Parcel" or **"Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor of the County of Fresno designating parcels by Assessor's Parcel Number.

"City" means the City of Fresno.

"City Law" means the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3, of the Fresno Municipal Code.

"Council" means the City Council of the City of Fresno, acting as the legislative body of CFD No. 11.

"Developable Lot" means, within any Final Map approved in the CFD, a lot that is anticipated development of residential or non-residential uses, and which is not an outlot, remainder parcel or other parcel which is not intended to be developed or which must be further subdivided before being developed.

"Excluded Parcels" means those Assessor's Parcels identified as ineligible for inclusion in the CFD as shown in "Attachment 1" of this Rate and Method of Apportionment of Special Tax.

"Final Map" means a final map, or portion thereof, approved by the Council pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates individual Developable Lots for which building permits may be issued. The term "Final Map" shall not include any Assessor's Parcel Map or subdivision map or portion thereof, that does not create individual Developable Lots for which a building permit may be issued, including Assessor's Parcels that are designated as remainder parcels.

EXHIBIT "C"

"Fiscal Year" means the period starting April 1 and ending on the following March 31.

"Maximum Special Tax" means the maximum Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

"Proportionately" means, in any Fiscal Year, that the ratio of the actual Special Tax to the Maximum Special Tax is equal for all Assessor's Parcels in the CFD.

"Public Property" means any property within the boundaries of the CFD No. 11 that is owned by the federal government, State of California or other local governments or public agencies.

"Residential Unit" means a residential dwelling unit and shall include single family homes, condominiums, town homes, duplex, triplex and fourplex units, and individual apartment units in a multi-family building. For purposes of the levy of Special Taxes pursuant to Section C below, "Residential Units" shall include dwelling units already built on Taxable Property in the CFD, as well as dwelling units planned, but not yet built, when the Special Tax is levied each Fiscal Year.

"Shared Services" means the costs of services are paid equally by the property owners of two or more subdivision.

"Special Tax" means any special tax to be levied each Fiscal Year on Assessor's Parcels of Taxable Property to fund the Special Tax Requirement as defined below.

"Special Tax Requirement" means the amount necessary in any Fiscal Year to (i) pay authorized maintenance and improvement expenses, (ii) pay administrative expenses of CFD No. 11, and (iii) cure any delinquencies in the payment of Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

"Taxable Property" means all of the Assessor's Parcels within the boundaries of CFD No. 11 which are not exempt from the Special Tax pursuant to law or Section E below.

"Tract" means an area of land within a subdivision identified by a particular tract number on a Final Map approved for the subdivision.

B. CALCULATION OF RESIDENTIAL UNITS

On April 1 of each Fiscal Year, the City or its designee shall determine how many Residential Units are built, or allowed to be built, on Assessor's Parcels within the CFD. For Parcels of undeveloped property zoned for development of single family attached or multi-family units, the number of Residential Units shall be determined by referencing the condominium plan, apartment plan, site plan or other development plan, or by assigning the maximum allowable units permitted based on the underlying zoning for the Parcel. Once a single family attached or multi-family building or buildings have been built on an Assessor's Parcel, the City or its designee shall determine the actual number of Residential Units contained within the building or buildings, and the Special Tax levied against the Parcel in the next Fiscal Year shall be calculated by multiplying the actual number of Residential Units by the Maximum Special Tax per Residential Unit identified for the Tract in Section C, Table 1 below.

EXHIBIT "C"

C. MAXIMUM SPECIAL TAX

The Maximum Special Tax applicable to each Assessor's Parcel in CFD No. 11 shall be specific to each tract within the CFD. When additional property is annexed into CFD No. 11, the rate and method adopted for the annexed property shall reflect the Maximum Special Tax for the Tract or Tracts then annexed. The Maximum Special Tax for Fiscal Year 2008-2009 for a Residential Unit within Tract 5498 is identified in Table 1 below:

Table 1Maximum Special Tax(Fiscal Year 2008-2009)*	
Tract Number*	***Maximum Special Tax***
5498	$ 674.00 per Residential Unit

* Beginning in January 2010 the Maximum Special tax shall be adjusted upward annually by 3 percent plus any increase in the construction cost index for the San Francisco Region for the prior 12-month period as published in the Engineering News Record, or published in a comparable index if the Engineering News Record is discontinued or otherwise not available. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.
** A Special Tax shall be levied on all parcels within an identified Tract except Excluded parcels as identified in Attachment 1.

D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

Commencing with Fiscal Year 2008-2009, the Special Tax shall be levied on all Parcels of Taxable Property as follows:

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

Step 2: Calculate the total Special Tax revenues that could be collected from Taxable Property within the CFD based on applying the Maximum Special Tax rates determined pursuant to Section C above to the number of Residential Units on each Parcel of Taxable Property in the CFD;

If the amount determined in Step 1 is greater than or equal to the amount calculated in Step 2, levy the Maximum Special Tax set forth in Table 1 above on all Parcels of Taxable Property in the CFD.

If the amount determined in Step 1 is less than the amount calculated in Step 2, levy the Special Tax proportionately against all parcels of Taxable Property up to 100% of the Maximum Special Tax for each Tract as identified in Table 1, until the amount of the Special Tax levy equals the Special Tax Requirement for that Fiscal Year.

EXHIBIT "C"

The Special Tax for CFD No. 11 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 11 may (under the authority of the City Law), in any particular case, bill the taxes directly to the property owner off the County tax roll, and the Special Taxes will be equally subject to penalties and foreclosure if delinquent.

E. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on parcels that have been conveyed to a Public Agency, except as otherwise provided in City Law. In addition, no Special Tax shall be levied on Excluded Parcels or Parcels that are determined not to be Developable Lots.

EXHIBIT "C"

ATTACHMENT "1"

City of Fresno

Community Facilities District No. 11
Annexation 37

Excluded Parcels within Each Tract

THERE ARE NO EXCLUDED PARCELS IN FINAL TRACT MAP NO. 5498