




Office of the City Manager

ACTION CALENDAR
July 22, 2008

To:  Honorable Mayor and Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Christine Daniel, Deputy City Manager

Subject: Establishment of a Sustainable Energy Financing District

RECOMMENDATION:

Adopt: (1) Resolution setting forth the City Council's intention to establish a Sustainable Energy Financing District;

(2) Resolution setting forth the City Council's intention to incur bonded indebtedness; and

(3) Resolution approving Amended and Restated Local Goals and Policies for Community Facilities Districts and Special Tax Districts. Set a public hearing on the establishment of the special tax district and the incurrence of bonded indebtedness for September 16, 2008.

BACKGROUND:

On November 6, 2007 the City Council approved the concept of the "Sustainable Energy Financing District" by which the City would help property owners to finance solar installations and energy efficiency improvements by creating a voluntary assessment that is paid through their individual property tax bills. With the availability of state and federal subsidies, installation of solar electric and solar thermal systems are now cost effective for many residential and commercial property owners. However, disincentives to installation remain, particularly the high upfront cost and other financial hurdles. The "Sustainable Energy Financing District" has been developed to address those disincentives.

On May 6, 2008 the City Council approved an amendment to the Berkeley Municipal Code (BMC) and created the Special Tax Financing Law (new BMC Chapter 7.98). The Special Tax Financing Law was created under the City's Charter authority and incorporates by reference the provisions of the Mello-Roos Act. It includes the legal authority to finance solar and energy efficiency improvements for private property, which is not currently allowed under the Mello-Roos Act. The Special Tax Financing Law is the implementing legislation that allows for the creation of the Sustainable Energy Financing District.

The Sustainable Energy Financing District is proposed to be a city-wide district. However, no property owner would be taxed unless that property owner voluntarily chooses to “opt-in” in order to use it as a financing mechanism for installation of the authorized energy systems. The District would enable property owners to install solar systems and make energy efficiency improvements to their buildings and to pay for the improvements over 20 years through a special tax levy on their property tax bills. No property owner would have a levy against their property unless they chose to opt-in to the tax district and to use the funding available through the tax district to have work done on their property. Those property owners who opt-in to the district would pay only for the cost of their own project and their share of the fees associated with the administration of the program.

The financing mechanism is based on similar special tax financing authorized under the Mello-Roos Community Facilities Act of 1982 and, functionally, is no different than the assessment districts previously formed by the City to finance utility undergrounding. The special tax districts created under the Mello-Roos Act are called Community Facilities Districts and work as follows:

- Property owners vote to create a Community Facilities District comprised of their properties and to impose a special tax on their property.
- The city within which the Community Facilities District is created issues bonds based on the agreement by the property owners to have an annual special tax levy to repay the bonds. (General Funds are not pledged as security for these bonds.)
- The bond proceeds are used to build public facilities such as streets, traffic signals, storm drains, sewers, landscaping, school buildings, etc.
- The special taxes paid by the property owners are used to pay the debt service on the bonds.
- If a property owner defaults on the payment of special taxes such that the bondholders do not receive their payment, the city is obligated to foreclose on the property to cure that default. The city is not obligated to make up any shortfalls in debt service due to special tax delinquencies or defaults.

Community Facilities Districts are used state-wide to build a host of necessary public improvements and have become an important component of local government finance. The Sustainable Energy Finance District proposed here is a new approach to that type of financing and essentially allows private property owners to use their property tax bills as a financing tool in order to install energy efficient improvements on their own property.

CURRENT SITUATION AND ITS EFFECTS

Resolution of Intention to Establish Special Tax District: The next step in creating the Sustainable Energy Financing District is for the Council to adopt a Resolution of Intention to Establish the special tax district and to set a public hearing on that formation which is no less than 30 days and no more than 60 days after the Resolution of Intention is approved. Staff recommends that the Resolution be adopted and that the public hearing be scheduled for September 16, 2008. The Resolution of Intention describes the facilities to be financed by the special taxes and proposes a method for apportioning the special tax (the "Method of Apportionment") further described below. Finally, the Resolution directs the preparation of a Special Tax District Report to be filed with the Council at or before the time of the public hearing on the establishment of the special tax district. The report contains a brief description of the facilities to be funded by the tax district and the estimated cost of providing those facilities, including an estimate of the administrative costs for the district.

Resolution of Intention to Incur Bonded Indebtedness: At the same time as the Council adopts the Resolution of Intention to Form the District, the Council must also adopt a Resolution of Intention to Incur Bonded Indebtedness. This resolution sets forth the maximum amount of bonded debt to be incurred for the special tax district and calls for a public hearing that will be held at the same time as the public hearing on the formation of the district (proposed for September 16, 2008). These bonds are not a debt of the City, but rather a debt of the tax district. Since we do not yet know how many property owners will participate in this program (and therefore how much funding will be needed for their projects), the proposed maximum bonded debt is based on a generous estimate of how much debt could be issued, rather than how much will likely be issued. Thus, staff proposes to establish a cap of \$80 million for the bonded indebtedness. This is based on a preliminary estimate by UC Berkeley's Renewable and Appropriate Energy Laboratory that there are 4,000 homes in Berkeley that could benefit from having solar photovoltaics installed on their rooftops. If each project cost \$20,000, the District could incur up to \$80 million in debt to fund those projects. While staff does not expect that all 4,000 homeowners will take advantage of this program, staff did think it was a rational basis to establish a cap for the bonded indebtedness.

Boundary Map: Within fifteen days following the adoption of the Resolution of Intention to Form the District, the City will record a boundary map for the district. The boundaries of the district will be city-wide, however, no property owner will be taxed unless and until that property owner consents to impose the special tax on their property.

Method of Apportionment of the Tax: The Method of Apportionment of the special tax establishes the general rules for how the tax will be imposed on participating properties. The specific rate each property owner will pay will be set at the time the property owner chooses to opt-in to the district. The proposed Method of Apportionment is included as Exhibit B to Attachment 1 of this report. Essentially, the Maximum Special Tax for any parcel will not exceed the cost of the energy efficiency improvements installed on the property, plus costs for administering the special tax assessment, plus interest over a twenty year period. The actual rate of interest a participating property owner will pay will be set at the time they choose to opt-in to the program. Based on staff's discussions with various financial partners, it is likely that the rate will be set based on an index such as the 20-year Treasury bill. At the time that a participant opts-in to the tax district they will receive a copy of the Method of Apportionment as well as a Rate Supplement that will specifically identify the interest rate applicable to their special taxes.

Rate Supplement: A form for the Rate Supplement is included as an attachment to this report. The Rate Supplement will set forth the twenty annual tax payments the property owner (or subsequent owners of the property) will be required to pay. The Method of Apportionment and the Rate Supplement will be recorded against the property so that all subsequent property owners have notice of the continuing special tax obligation.

A hypothetical financing structure for a \$15,000 solar photovoltaic system is set forth below. The Projected Annual Special Tax is the information that will appear in the Rate Supplement as the Total Maximum Special Tax. As staff continues to work with potential financial partners, this structure will be further refined.

Hypothetical Financing for \$15,000 Solar PV System

Project Financing Amount:	\$15,000	
Estimated Financing Rate:	6%	<i>Depending on Credit</i>
Program Costs to be Amortized: <i>Fees</i>	\$1,000	<i>Bank and Administration</i>
Term of Repayment:	20 years	<i>Paid Through Annual Special Tax</i>
Annual Special Tax Charges:	4% of Special Tax	<i>County and Program Administration</i>
Projected Annual Special Tax:	\$1,453/Year	<i>Equates to \$121/month</i>

The Financing District should solve many of the financial hurdles facing property owners. First, there would be relatively little upfront cost to the property owner. Second, the cost of the solar system and energy improvements will be repaid through a voluntary special tax on the property over time. Third, the total cost to finance the solar system and energy improvements through the Financing District is intended to be comparable to or better than the cost to finance the improvements through a traditional equity line or mortgage refinancing because a well-secured bond should provide lower interest rates than are commercially available (though it should be noted that the bonds will *not* be tax-exempt, since the solar and energy efficiency improvements will be privately owned). Fourth, the special tax assessment is transferable between owners; if

an owner sells his or her property prior to the end of the 20-year repayment period, the next owner takes over the special tax levy as part of his or her property tax bill.

Local Goals and Policies: The final item addressed in this report is the proposed amendment to the City's existing Policies and Procedures for the Use of Mello-Roos Community Facilities Districts, which are submitted in the form of a document entitled "Amended and Restated Local Goals and Policies for Community Facilities Districts and Special Tax Districts." The Mello-Roos Act requires that a city adopt local goals and policies before initiating proceedings to form a CFD. The City previously adopted Local Goals and Policies for the Community Facilities District resulting from the approval by the voters of Measure Q in 2000. In addition, as of January 2008 the Mello-Roos Act was amended to require that all local goals and policies include a statement of the priority that various kinds of public facilities and services will have. The Amended and Restated Local Goals and Policies includes language that satisfies this requirement, as well as other changes intended to incorporate current practices and standards into the Goals and Policies. The Amended and Restated Local Goals and Policies will apply equally to Community Facilities Districts created under the Mello-Roos Act and Special Tax Districts created under BMC Chapter 7.98. The local goals and policies also require, for example, a 3:1 value to lien ratio for a participating property. This means that in order to be accepted for participation, the underlying value of the participating property must be at least three times greater than the total tax liens against the property. This requirement is intended to assess whether the addition of a special tax lien for the costs of the solar project will cause the tax burden on the property to be so great as to cause the property owner to be unable to pay his or her annual property taxes and cause them to go into default. This should not present a problem for most properties in Berkeley due to their value. Staff recommends that the Council adopt a resolution approving the Amended and Restated Local Goals and Policies for Community Facilities Districts and Special Tax Districts.

Next Steps:

Legislative: As noted above, the Special Tax Financing Law was adopted on May 6, 2008. The next legislative steps are to form the Sustainable Energy Financing District, set the rate and method of apportionment of the special tax and authorize the issuance of bonds. The following legislative steps are required:

- *First reading of ordinance adding Chapter 7.98 to the BMC, Special Tax Financing Law-COMplete*
- *Second reading of Special Tax Financing Law ordinance-COMplete*
- *30 day referendum period before next action-COMplete*
- **Adopt of Resolution of Intention to form Sustainable Energy Financing District – THIS ITEM**
- **Adopt of Resolution of Intention to incur bonded indebtedness-THIS ITEM**
- **Adopt Amended and Restated Local Goals and Policies for Community Facilities Districts and Special Tax Districts-THIS ITEM**
- Minimum 30 day waiting period before next action

- Noticed Public Hearing on formation of Sustainable Energy Financing District and issuance of bonds **September 16, 2008**
- Adoption of Resolution of Necessity to incur bond indebtedness **September 16, 2008**
- Adoption of Resolution of Formation of Sustainable Energy Financing District **September 16, 2008**
- First reading of Ordinance to levy special taxes **September 16, 2008**
- Legislative authorization of bond issuance **September 16, 2008**
- Second reading of Ordinance to levy special taxes **September 23, 2008**
- 30 day referendum period
- Subject to obtaining a financing source, the program clear to begin **October 24, 2008**

Administrative: Once the program has received all of its legislative approvals and financing has been arranged, the next step is to implement a pilot program that will provide financing for as many properties as the funding source can commit to fund. For example, if the funding source is able to commit to providing \$1 million and the average project costs \$20,000, the pilot program could fund the installation of solar photovoltaics on as many as 50 properties. After the pilot program properties are complete, staff and the project team will evaluate the program and determine whether it needs any modifications prior to bringing it to the community on a larger scale. In order to move into this pilot project as expeditiously as possible, staff will be working over the next several weeks on various issues such as what the application process consists of, what qualifications are required in order to participate, how the funds are drawn down, and when the installer gets paid.

Financing: Staff and the City's consultants continue to meet with banks and investment groups that have expressed interest in the program. One of the challenges has been to create a financing structure that yields sufficient revenue to fund the installations as well as the program's administrative costs, while at the same time remaining competitive in terms of overall interest rates with other available funding mechanisms for solar installation. As of the date of this report, staff is still working with several institutions to try to reach acceptable terms that meet all of these interests. Staff remains confident that we will identify and reach tentative agreement with a lender (subject to the approval of the City Council), especially because the special tax lien that is created by the Sustainable Energy Financing District -- like the lien of the 1% ad valorem property tax - is superior to private liens on property, including mortgages; in other words, it is a "super-lien" that should be extremely attractive to most investors.

The schedule set forth above assumes that a financial partner will be in place prior to October 24, 2008. Should the City be unable to reach agreeable terms with a lender prior to that date, and all legislative steps have been completed successfully, the special tax district will have been created, but will not yet be able to fund projects. Staff would then continue to seek out financing and would return to the Council for approval of terms once a lender had been identified.

FISCAL IMPACTS:

Staff and Consultant Costs: The City has received two grants that will support development and administration of this program: a federal EPA grant for \$115,000 over two years, and a grant from the Bay Area Air Quality Management District for \$75,000. These funds will pay for consultant costs as well as a one-half time, temporary staff position to manage program implementation.

Tax District Costs: With respect to the tax district itself, the costs of administering the levy of the special tax will be built into the costs of the bonds or other financing mechanism. However, similar to the utility undergrounding districts mentioned above, staff has included in the Special Tax Financing Law legal authority for the City to use "available surplus funds" during each fiscal year to pay delinquent special taxes. The City would cover these delinquent special tax payments during the period (5 years) before which the County would foreclose on a property in default for failure to pay property taxes. After the County's foreclosure, the City would be repaid any amounts it distributed to cover that debt service. This provision avoids the requirement that the City foreclose on a property simply to collect the relatively modest special tax amount due for the solar financing and, for that reason, staff recommends the City adopt this approach.

CONTACT PERSON: Christine Daniel, Deputy City Manager, 981-7000

ATTACHMENTS:

- 1 Resolution of Intention to Establish the Sustainable Energy Financing District
- 2 Resolution of Intention to Incur Bonded Indebtedness
- 3 Resolution adopting Amended and Restated Local Goals and Policies for Community Facilities Districts and Special Tax Districts
- 4 Proposed Rate Supplement to the Method of Apportionment

RESOLUTION NO. _____

RESOLUTION OF INTENTION TO ESTABLISH
SPECIAL TAX DISTRICT

CITY OF BERKELEY
Special Tax District No. 2008-1
(Sustainable Energy Financing District)

RESOLVED, by the City Council (the “Council”) of the City of Berkeley (the “City”), State of California that:

WHEREAS, under Chapter 7.98 of the Berkeley Municipal Code (the “Code”), which Code incorporates by reference the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”), this Council is authorized to establish a special tax district and to act as the legislative body for a special tax district; and

WHEREAS, this Council, pursuant to the written request of at least two members of the Council, now desires to proceed with the establishment of a City-wide special tax district in order to finance and refinance the acquisition, installation and improvement of energy efficiency and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned; and

WHEREAS, this Council wishes to undertake the proceedings to form the special tax district under the alternate procedures established by Section 7.98.160 of the Code, pursuant to which a special tax district may initially consist solely of territory proposed for annexation to the special tax district in the future, with the condition that a parcel or parcels within that territory may be annexed to the special tax district and subjected to the special tax only with the unanimous approval of the owner or owners of such parcel or parcels at the time that such parcel or those parcels are annexed; and

WHEREAS, this Council wishes to undertake the proceedings to authorize the issuance of bonded indebtedness for the special tax district under the alternate procedure established by Section 7.98.170 of the Code, pursuant to which the proposition to authorize bonded indebtedness may be approved by the owner or owners of a parcel or parcels of property at the time that the parcel or parcels are annexed to the special tax district pursuant to the unanimous approval described in 7.98.160 of the Code, and pursuant to which no additional hearings or procedures are required, and each such unanimous approval shall be deemed to constitute a unanimous vote in favor of such proposition.

NOW THEREFORE, IT IS ORDERED as follows:

- 1. Authority.** This Council proposes to conduct proceedings to establish a special tax district pursuant to the alternate procedures established in Section 7.98.160 of the Code.
- 2. Name of Special Tax District.** The name proposed for the special tax district is City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District) (the "Special Tax District").
- 3. Boundaries Described.** The proposed boundaries of the Special Tax District are as shown on the map of it on file with the City Clerk, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The Special Tax District shall initially consist solely of territory proposed for annexation to the Special Tax District in the future, with the condition that a parcel or parcels within that territory may be annexed to the Special Tax District and subjected to a special tax only with the unanimous approval of the owner or owners of such parcel or parcels at the time that such parcel or those parcels are annexed.

The City Clerk is hereby directed to record, or cause to be recorded, the map of the boundaries of the Special Tax District in the office of the Recorder of the County of Alameda within 15 days of the date of adoption of this Resolution.

- 4. Facilities.** The type of facilities proposed to be financed by the Special Tax District and pursuant to the Code shall consist of those listed as facilities on Exhibit A hereto and hereby incorporated herein (the "Facilities").
- 5. Special Tax.** Except to the extent that funds are otherwise available, the City will levy a special tax (the "Special Tax") to pay directly for the Facilities, to pay the principal and interest on bonds of the City issued to finance the Facilities and/or to make lease payments on any lease used to finance the Facilities.

The Special Tax will be secured by recordation of a continuing lien against all non-exempt real property in the Special Tax District, will be levied annually within the Special Tax District, and collected in the same manner as ordinary ad valorem property taxes, or in such other manner as this Council or its designee shall determine, including direct billing of the affected property owners.

The proposed method of apportionment of the Special Tax among the parcels of real property within the Special Tax is described in Exhibit B attached hereto and hereby incorporated herein (the "Method of Apportionment"). Pursuant to Section 7.98.160(a)(i), the rate or rates of the Special Tax applicable to a parcel or parcels in the Special Tax District shall be specified in the unanimous approval described in Section 6 below relating to such parcel or parcels.

This Council hereby finds that the provisions of Section 53313.6, 53313.7 and 53313.9 of the Act (relating to adjustments to *ad valorem* property taxes and schools financed by a special tax district) are inapplicable to the proposed Special Tax District.

6. Unanimous Approval. The Special Tax shall be levied on a parcel or parcels in the Special Tax District only with the written unanimous approval of the owner or owners of the parcel or parcels to their annexation to the Special Tax District, without any requirement for further public hearings or additional proceedings. The unanimous approval shall be in substantially the form and substance of the Unanimous Approval attached hereto as Exhibit C, or such other form authorized by the City Manager.

7. Special Tax Bonds. It is the intention of this Council, acting as the legislative body for the Special Tax District, to cause bonds of the City to be issued for the Special Tax District pursuant to the Code to finance and refinance in whole or in part the construction and/or acquisition of the Facilities. The bonds shall be in the aggregate principal amount of not to exceed \$80,000,000, shall be issued in such series and bear interest payable semi-annually or in such other manner as this Council shall determine, at a rate not to exceed the maximum rate of interest as may be authorized by applicable law at the time of sale of such bonds, and shall mature not to exceed 40 years from the date of the issuance thereof.

8. Special Tax District Report. The City Manager, or the designee of such officer, is hereby directed to study said proposed Facilities and to make, or cause to be made, and file with the City Clerk a report in writing, (the "Special Tax District Report") presenting the following:

(a) A description of the Facilities by type which will be financed by the Special Tax District.

(b) An estimate of the fair and reasonable cost of the Facilities, including the costs of the proposed bond financing and all other related costs as provided in Section 53345.3 of the Act.

The Special Tax District Report shall be made a part of the record of the public hearing specified below.

9. Public Hearing. Tuesday, September 16, 2008 at 7:00 p.m. or as soon as possible thereafter, in the Council Chambers, 2134 Martin Luther King, Jr. Way, Berkeley, California 94704, be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the Special Tax District, will conduct a public hearing on the establishment of the Special Tax District and consider and finally determine whether the public interest, convenience and necessity require the formation of the Special Tax District and the levy of the Special Tax.

10. Notice of Hearing. The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper published in the area

of the Special Tax District. The publication shall be completed at least seven days before the date of the public hearing specified above. The notice shall be substantially in the form specified in Section 53322 of the Act.

11. Approval of Special Tax Consultant. The firm of Goodwin Consulting is hereby designated as Special Tax Consultant to the City for the Special Tax District. The City Manager, or a designee thereof, is hereby authorized and directed to execute an agreement with said firm for its services in connection with the Special Tax District.

12. Approval of Bond Counsel. The firm of Jones Hall, A Professional Law Corporation is hereby designated as Bond Counsel to the City for the Special Tax District. The City Manager, or a designee thereof, is hereby authorized and directed to execute an agreement with said firm for its services in connection with the Special Tax District, in the form on file with the City Clerk.

13. Approval of Financial Advisor. The firm of Northcross Hill & Ach, Inc. is hereby designated as Financial Advisor to the City for the Special Tax District. The City Manager, or a designee thereof, is hereby authorized and directed to execute an agreement with said firm for its services in connection with the Special Tax District, in the form on file with the City Clerk.

14. Approval of Trustee or Fiscal Agent. The City Manager, or a designee thereof, is hereby authorized and directed to select a trustee or fiscal agent for any bonds issued for the Special Tax District on such terms as are acceptable to an Authorized Representative.

15. Further Action. The City Manager, designees of the City Manager, the City Clerk and all other officers and agents of the City are hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution.

16. No Obligation. This Resolution shall in no way obligate the City Council of the City to form the Special Tax District. The formation of the Special Tax District shall be subject to the approval of this Council by resolution following the holding of the public hearing referred to above.

ADOPTED by the City Council this _____ day of _____, 2008.

By: _____
Mayor

Attest:

City Clerk

EXHIBIT A

CITY OF BERKELEY Special Tax District No. 2008-1 (Sustainable Energy Financing District)

DESCRIPTION OF FACILITIES TO BE FINANCED BY THE SPECIAL TAX DISTRICT

The Facilities shown below are proposed to be financed and refinanced by the City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District) (the "Special Tax District").

FACILITIES

It is intended that the Special Tax District will be authorized to finance and refinance all or a portion of the costs of any of the following types of facilities:

Energy efficiency and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned.

OTHER

The Special Tax District may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the Special Tax District and the bonds.
3. Any other costs or fees authorized by the Code.

EXHIBIT B

CITY OF BERKELEY SPECIAL TAX DISTRICT No. 2008-1 (SUSTAINABLE ENERGY FINANCING DISTRICT)

METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in the City of Berkeley Special Tax District No. 2008-1 (Solar and Renewable Energy Financing Program) shall be levied and collected according to the tax liability determined by the City or its designee, through the application of the appropriate amount or rate for Taxable Property, as described below. All property annexed into the Special Tax District, unless exempted by law or by the provisions of Section F below, 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, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

“Administrative Expenses” means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the STD and the Bonds, including, but not limited to, the levy and collection of the Special Tax, the fees and expenses of its legal counsel, costs related to annexing property into the STD, charges levied by the County in connection with the levy and collection of Special Taxes, letter of credit fees and expenses, bond remarketing expenses, costs related to property owner inquiries regarding the Special Tax, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Tax, and all other costs and expenses of the City and County in any way related to the establishment or administration of the STD.

“Administrator” shall mean the Finance Director of the City of Berkeley or a person or firm designated by the Finance Director to administer the Special Tax according to this Method of Apportionment.

“Assessor's Parcel” or “Parcel” means a lot or parcel shown on a County Assessor's Parcel Map with an assigned County Assessor's Parcel number.

“Authorized Facilities” means the facilities authorized to be financed, in whole or in part, by Special Tax proceeds.

“Bonds” means bonds or other debt (as defined in the Code), whether in one or more series, issued, insured or assumed by the Special Tax District related to funding Authorized Facilities.

“City” means the City of Berkeley.

“City Council” means the council of the City of Berkeley, acting as the legislative body of the Special Tax District.

“Code” means Chapter 7.98 of the Berkeley Municipal Code, which incorporates the Act.

“County” means the County of Alameda.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Maximum Special Tax” means the greatest amount of Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as set forth in the Rate Supplement for the Parcel.

“Public Property” means any property within the boundaries of the STD that is owned by or irrevocably offered for dedication to the federal government, State of California, County, City, or other local governments or public agencies.

“Rate and Method” means, collectively for any Parcel within the Special Tax District, this Method of Apportionment and the Rate Supplement for such Parcel.

“Rate Supplement” means, for any Parcel within the Special Tax District, the Rate Supplement to this Method of Apportionment which was included as Appendix 3 of the Unanimous Approval Form when the Parcel was annexed into the Special Tax District.

“Special Tax” means a special tax levied in any Fiscal Year to pay the Special Tax Requirement.

“Special Tax District” or “STD” means the City of Berkeley Special Tax District No. 2008-1 (Solar and Renewable Energy Financing Program).

“Special Tax District Formation” means the date on which the Resolution of Formation relating to the Special Tax District was adopted by the City Council.

“Special Tax Requirement” means the amount that must be levied against a Parcel of Taxable Property in any Fiscal Year (i) to pay principal and interest on Bonds which are

due in the calendar year which begins in such Fiscal Year; (ii) to create or replenish reserve funds; (iii) to make lease payments on any lease used to finance Authorized Facilities; (iv) to reimburse the City for monies advanced to pay formation and/or administration costs of the Special Tax District, Authorized Facilities costs, debt service on Bonds, and any other costs related to the Special Tax District; (v) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in any prior Fiscal Year 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; (vi) to pay Administrative Expenses; and (vii) to pay the costs of Authorized Facilities to be funded directly from Special Tax proceeds. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) proceeds from the collection of penalties associated with delinquent Special Taxes collected from the Parcel, and (ii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of the Special Tax District which are not exempt from the Special Tax pursuant to law or Section F below.

“Unanimous Approval Form” means that form approved by the record owner of fee title to a Parcel annexed into the Special Tax District and recorded against the Parcel as an exhibit to the Notice of Special Tax Lien that constitutes the property owner’s approval and unanimous vote in favor of annexing into the Special Tax District and having the Special Tax levied against his/her Parcel pursuant to the Rate and Method.

B. DATA FOR ADMINISTRATION OF SPECIAL TAX

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property within the STD and determine the Special Tax Requirement for each Parcel of Taxable Property for the Fiscal Year. The Administrator shall maintain a file that includes a copy of the Rate Supplement for each Parcel of Taxable Property, which shall be used to determine each Parcel’s Special Tax Requirement and Maximum Special Tax for the Fiscal Year.

If it is determined in any Fiscal Year that a Parcel to which a Maximum Special Tax had been assigned in a Unanimous Approval Form has been subdivided, the Administrator shall assign the Maximum Special Tax to the newly-created Parcel on which the residential or non-residential structure for which Authorized Facilities were funded by the Bonds is located. If multiple Parcels have been created and the original structure no longer exists, the Administrator shall allocate the Special Tax on a per-acre basis to each of the new Parcels unless the City, in its sole discretion, determines that the Special Tax should be allocated in an alternate manner to the new Parcels.

C. MAXIMUM SPECIAL TAX

In any Fiscal Year, the Maximum Special Tax for a Parcel of Taxable Property within the Special Tax District shall be the amount identified in the Rate Supplement for the Parcel for that Fiscal Year. For example, the Maximum Special Tax could be calculated to be the amount to amortize the costs of Authorized Facilities over a 20-year period plus Administrative Expenses.

D. METHOD OF LEVY OF THE SPECIAL TAX

Each Fiscal Year, the Administrator shall determine the Special Tax Requirement for each Parcel of Taxable Property and levy the Special Tax in the amount needed to pay the Special Tax Requirement, which amount shall never exceed the Maximum Special Tax for the Parcel in that Fiscal Year.

E. MANNER OF COLLECTION OF SPECIAL TAX

The Special Tax shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section G below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Special Taxes through foreclosure or other available methods.

The Special Tax for a Parcel of Taxable Property shall be levied and collected until the Bonds are paid in full or such longer period of time provided in the Unanimous Approval Form for the Parcel, except that a Special Tax that was lawfully levied in or before the final tax year identified in the Unanimous Approval Form and that remains delinquent may be collected in subsequent years.

F. EXEMPTIONS

Notwithstanding any other provision of this Method of Apportionment, no Special Tax shall be levied on Public Property, except as otherwise provided in the Code.

G. PREPAYMENT OF SPECIAL TAX

The Special Tax obligation applicable to an Assessor's Parcel in the Special Tax District may be prepaid and the obligation of the Parcel to pay the Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. A Parcel owner who intends to prepay the Special Tax obligation shall provide the City or the Administrator with written notice of intent to prepay. Within 7 days of receipt of such written notice, the Administrator shall confirm to such owner the prepayment amount for the Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes.

The Prepayment Amount for any Parcel shall be the sum of the Maximum Special Taxes identified in the Rate Supplement in all Fiscal Years for which a Special Tax has not yet been levied. If a Special Tax has been levied on, but not yet collected from, the Parcel at the time of prepayment, the outstanding Special Tax payment must be paid as part of the secured property tax bill unless the amount is stripped for the tax roll as part of a foreclosure proceeding by the City.

Once a prepayment has been received, a Notice of Cancellation of Special Tax Lien shall be recorded against the Parcel. However, such Notice shall not be recorded until all Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected.

H. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this Method of Apportionment to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not materially affect the levy and collection of the Special Taxes and any security for any Bonds. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Method of Apportionment.

EXHIBIT C

**CITY OF BERKELEY
Special Tax District No. 2008-1
(Sustainable Energy Financing District)**

FORM OF UNANIMOUS APPROVAL

UNANIMOUS APPROVAL

**CITY OF BERKELEY
SPECIAL TAX DISTRICT NO. 2008-1
(SUSTAINABLE ENERGY FINANCING DISTRICT)**

_____, 20__

To the Honorable City Council
City of Berkeley
2180 Milvia Street,
Berkeley, CA 94704

Members of the City Council:

The City Council of the City of Berkeley (the "City") has added Chapter 7.98 to the City of Berkeley Municipal Code entitled the "Special Tax Financing Law" (the "Code") and, for the purpose of financing and refinancing the acquisition, installation and improvement of energy efficiency and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned, formed the "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "Special Tax District").

The Property Owner hereby states and certifies, under penalty of perjury, as follows:

- 1. Property Owner.** This Unanimous Approval is submitted by the record owner(s) (the "Property Owner") of the fee title to the real property identified below (the "Property"). The Property Owner has supplied to the City current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute this Unanimous Approval.
- 2. Unanimous Approval.** This Unanimous Approval constitutes the approval and unanimous vote of the Property Owner in favor of the following matters for the purposes of Sections 7.98.160 and 7.98.170 of the Code and Article XIII A of the California Constitution:

a. Annexation: The annexation of the Property to the Special Tax District for the purpose of financing the installation on the Property of the energy efficiency and/or renewable energy improvements described in Appendix 1 hereto and made a part hereof (the "Improvements").

b. Special Tax: The levy of special taxes (the "Special Taxes") on the Property to finance the Improvements, according to (A) the Method of Apportionment of Special Taxes, attached as Appendix 2 and (B) the Rate Supplement to Method of Apportionment of Special Taxes, attached as Appendix 3 (collectively, the "Rate and Method").

c. Bonds and Appropriations Limit: The issuance of bonded indebtedness for the Special Tax District in an aggregate principal amount not to exceed \$_____ and an appropriations limit for the Special Tax District of \$_____.

3. Waivers and Acknowledgment. The Property Owner hereby waives its right to repeal the Special Tax by initiative or any other action and any necessity, requirement or right to further public hearings or election with respect to the annexation of the Property to the Special Tax District or the levy of the Special Taxes on the Property.

The Property Owner hereby acknowledges that the City has formed the Special Tax District solely for the purpose of assisting the owners of property in the City with the financing of renewable energy and energy efficiency improvements, and that the City has no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Improvements. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation, financing, refinancing and maintenance of the Improvements. The Property Owner hereby acknowledges that the Property will be responsible for payment of the Special Tax according to the Rate and Method regardless of whether the Improvements are properly installed or operate as expected.

4. Recordation of Notice of Special Tax Lien. The Property Owner hereby authorizes and directs the City Clerk to execute and cause to be recorded in the office of the County Recorder of the County of Alameda a Notice of Special Tax Lien as required by Section 7.98.160(a)(iv) of the Code. The Notice of Special Tax Lien shall include the Rate and Method and this Unanimous Approval as exhibits thereto.

5. Notice. To the extent required by applicable law, the Property Owner hereby agrees to provide written notice to any subsequent purchaser of the Property of the annexation of the Property to the Special Tax District and of the authority of the City to levy the Special Taxes on the Property pursuant to the Rate and Method.

6. The Property. The Property subject to this Unanimous Approval and to be annexed to the Special Tax District consists of the following:

Property Address:

*Alameda County Assessors
Parcel(s) Number(s):*

The foregoing Unanimous Approval is hereby executed this _____ day of _____, 20__ in _____, California.

Property Owner

Name: _____

By: _____

Its: _____

APPENDIX 1

**CITY OF BERKELEY
SUSTAINABLE ENERGY FINANCING DISTRICT**

DESCRIPTION OF IMPROVEMENTS

The Improvements are described in the attached invoice.

APPENDIX 2

**CITY OF BERKELEY
SUSTAINABLE ENERGY FINANCING DISTRICT**

METHOD OF APPORTIONMENT OF SPECIAL TAX

APPENDIX 3

**CITY OF BERKELEY
SUSTAINABLE ENERGY FINANCING DISTRICT**

**RATE SUPPLEMENT TO
METHOD OF APPORTIONMENT OF SPECIAL TAX**

RESOLUTION NO. _____

**RESOLUTION OF INTENTION
TO INCUR BONDED INDEBTEDNESS**

**CITY OF BERKELEY
Special Tax District No. 2008-1
(Sustainable Energy Financing District)**

RESOLVED, by the City Council (the "Council") of the City of Berkeley (the "City"), State of California, that:

WHEREAS, this Council has this date adopted its "Resolution of Intention to Establish Special Tax District" (the "Resolution of Intention"), stating its intention to form the "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "Special Tax District") pursuant to Chapter 7.98 of the Berkeley Municipal Code (the "Code"), which Code incorporates the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), for the purpose of financing and refinancing the acquisition, installation and improvement of energy efficiency and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned (the "Facilities"), as further provided in that Resolution; and

WHEREAS, in the Resolution of Intention, this Council stated its intention to undertake the proceedings to form the Special Tax District under the alternate procedures established by Section 7.98.160 of the Code, pursuant to which a special tax district may initially consist solely of territory proposed for annexation to the special tax district in the future, with the condition that a parcel or parcels within that territory may be annexed to the special tax district and subjected to the special tax only with the unanimous approval of the owner or owners of such parcel or parcels at the time that such parcel or those parcels are annexed; and

WHEREAS, this Council wishes to undertake the proceedings to authorize the issuance of bonded indebtedness for the Special Tax District under the alternate procedure established by Section 7.98.170 of the Code, pursuant to which the proposition to authorize bonded indebtedness may be approved by the owner or owners of a parcel or parcels of property at the time that the parcel or parcels are annexed to the Special Tax District pursuant to the unanimous approval described in 7.98.160 of the Code, and pursuant to which no additional hearings or procedures are required, and such unanimous approval shall be deemed to constitute a unanimous vote in favor of such proposition; and

WHEREAS, this Council estimates the amount required for the financing of the costs of the Facilities to be the sum of not to exceed \$75,000,000; and

WHEREAS, in order to finance the costs of the Facilities it is necessary to incur bonded indebtedness in the amount of not to exceed \$80,000,000 on behalf of the Special Tax District.

NOW, THEREFORE, IT IS ORDERED as follows:

- 1. Bonded Debt.** It is necessary to incur bonded indebtedness within the boundaries of the proposed Special Tax District in the amount of up to \$80,000,000 to finance the costs of the Facilities.
- 2. Purposes of Bonded Debt.** The bonded indebtedness is proposed to be incurred for the purpose of financing the costs of the Facilities, including acquisition and improvement costs and all costs incidental to or connected with the accomplishment of said purposes and of the financing thereof, as permitted by Section 53345.3 of the Act.
- 3. Terms of Bonds.** This Council, acting as legislative body for the Special Tax District intends to authorize the issuance and sale of bonds in one or more series in the maximum aggregate principal amount of not to exceed \$80,000,000 bearing interest payable semi-annually or in such other manner as this Council shall determine, at a rate not to exceed the maximum rate of interest as may be authorized by applicable law at the time of sale of such bonds, and maturing not to exceed 40 years from the date of the issuance of the bonds.
- 4. Public Hearing.** Tuesday, September 16, 2008 at 7:00 p.m. or as soon as possible thereafter, in the Council Chambers, 2134 Martin Luther King, Jr. Way, Berkeley, California 94704, be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the Special Tax District, will conduct a public hearing on the proposed issuance of indebtedness and consider and finally determine whether the public interest, convenience and necessity require the issuance of bonds of the City on behalf of the Special Tax District.
- 5. Notice of Public Hearing.** The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper of general circulation circulated within the Special Tax District. The publication of the notice shall be completed at least seven days before the date specified above for the public hearing. The notice shall be substantially in the form specified in Section 53346 of the Act.
- 6. Unanimous Approval.** Pursuant to Section 7.98.170 of the Code, in lieu of the procedure set forth elsewhere in the Code and in Sections 53353.5, 53354 and 53355 of the Act, the proposition to authorize issuance of the Bonds for the Special Tax District shall be approved by the owner or owners of a parcel or parcels of property at the time

that the parcel or parcels are annexed to the Special Tax District pursuant to the unanimous approval described in 7.98.160 of the Code. No additional hearings or procedures are required, and such unanimous approval shall be deemed to constitute a unanimous vote in favor of such proposition.

7. No Obligation. This Resolution shall in no way obligate the City Council of the City to form the Special Tax District or to issue bonds for the Special Tax District. Issuance of the bonds shall be subject to the approval of this City Council by resolution following the holding of the public hearing referred to above.

ADOPTED by the City Council this _____ day of _____, 2008.

By: _____
Mayor

Attest:

City Clerk

ATTACHMENT 3

RESOLUTION NO.

ADOPTING AMENDED AND RESTATED LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS AND SPECIAL TAX DISTRICTS AND AMENDING RESOLUTION 60,616–N.S.

WHEREAS, on June 13, 2000 the City Council adopted Resolution No. 60,616-N.S. adopting Policies and Procedures for the Use of the Mello-Roos Community Facilities Act of 1982 (“Policies”) as required by Government Code Section 53312.7(a); and

WHEREAS on May 6, 2008 the City Council adopted Chapter 7.98 of the Berkeley Municipal Code creating the Special Tax Financing Law authorizing the creation of Special Tax Districts pursuant to Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 115 of the Charter of the City; and

WHEREAS the Mello-Roos Community Facilities Act of 1982 (the “Act”) was amended as of January 1, 2008, to require that all local goals and policies (such as the Policies) include certain new provisions; and

WHEREAS the Act requires adoption of goals and policies consistent with its requirements before initiation of proceedings to form a community facilities district; and

WHEREAS the City Council intends to initiate proceedings to create a Special Tax District pursuant to the Special Tax Financing Law, and thus must amend and restate the Policies originally adopted in order to conform the Policies to the recent amendments to the Act, and to incorporate certain changes necessary to make the Policies consistent with the Special Tax Financing Law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Amended and Restated Local Goals and Policies for Community Facilities Districts and Special Tax Districts, which are attached hereto as Exhibit A, are hereby adopted and thus amend and restate the previous policies entitled “City of Berkeley Policies and Procedures for the Use of Mello-Roos Community Facilities Districts,” and Resolution No. 60,616-N.S. is hereby amended accordingly.

The foregoing Resolution was adopted by the Berkeley City Council on July 22, 2008 by the following vote:

Ayes:

Noes:

Absent:

CITY OF BERKELEY

**AMENDED AND RESTATED
LOCAL GOALS AND POLICIES FOR
COMMUNITY FACILITIES DISTRICTS
AND SPECIAL TAX DISTRICTS**

I. GENERAL.

Section 53312.7(a) of the California Government Act requires that the City of Berkeley (the "City") consider and adopt local goals and policies concerning the use of the Mello-Roos Community Facilities Act of 1982 (the "Act") prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district under the Act. Under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 115 of the Charter of the City (the "Charter"), the City has adopted a Special Tax Financing Code (the "Code"), which authorizes the formation of special tax districts and incorporates the Act where not inconsistent with the Code, including Section 53312.7(a).

These Amended and Restated Local Goals and Policies for Community Facilities Districts and Special Tax Districts amend and restate the existing policies entitled "City of Berkeley Policies and Procedures for the Use of Mello-Roos Community Facilities Districts" (as amended, these "Policies").

These Policies provide guidance and conditions for the conduct by the City of proceedings for, and the issuance of bonds secured by special taxes levied in, a special tax district (a "Special Tax District") or a community facilities district (collectively with Special Tax Districts, a "CFD") established under the Code or the Act. These Policies are intended to be general in nature; specific details will depend on the nature of each particular financing. These Policies are applicable to financings under the Code or the Act and are intended to comply with Section 53312.7 (a) of the Act. These Policies shall not apply to any assessment financing or any certificate of participation or similar financings involving leases of or security in public property. These Policies are subject to amendment by the City Council at any time.

II. FINANCING PRIORITIES.

Eligible Public Facilities. Except as provided below, the public improvements eligible to be financed by a CFD must be owned by a public agency or public utility and must have a useful life of at least five years, except that up to five percent of the proceeds of an issue may be used for facilities owned and operated by a privately-owned public utility. The development proposed within a CFD must be consistent with the City's general plan and must have received any required legislative approvals such as zoning or specific

plan approvals. A CFD shall not vest any rights to future land use on any properties, including those which are responsible for paying special taxes.

The list of eligible public facilities include, but are not limited to, the following:

- Streets
- Street lighting
- Traffic signals and safety lighting
- Landscaping on public property or in public easements
- Sanitary sewer facilities
- Storm drain facilities
- Flood control facilities
- Potable and reclaimed water facilities
- Utility relocations
- Elementary and secondary school sites and facilities
- Libraries
- Parks and recreational facilities
- Public utilities
- Cultural facilities
- Police and fire protection facilities
- Governmental facilities

It is acknowledged that the Act permits the financing of fee obligations imposed by governmental agencies the proceeds of which fees are to be used to fund public capital improvements of the nature listed above. The City will consider an application to finance fee obligations on a case-by-case basis. The City will prioritize financing fees to be paid to the City because of the administrative burden associated with financing fees payable to other local agencies.

The funding of public facilities to be owned and operated by public agencies other than the City shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority in order to finance these facilities.

A CFD may also be formed for the purpose of refinancing any fixed special assessment or other governmental lien on property, to the extent permitted under the Act, as applicable.

Priority Facilities. Priority for CFD financing of public facilities shall be given to public facilities which: (a) are necessary for development to proceed in an orderly fashion, or (b) are otherwise coordinated to correspond to the phasing of the related private development project. If appropriate, the City shall prepare a public facilities financing plan as a part of the specific plan or other land use document that identifies the public facilities required to serve a project, and the type of financing to be utilized for each facility. The City will attempt to schedule construction of CFD-financed facilities in a manner such that private development will not occur ahead of the installation of public infrastructure necessary to support that development.

Eligible Services; Priority Services. The services eligible to be financed by a CFD (the “Services”) are those identified in the Code and the Act. Subject to the conditions set forth in the Code or the Act, if applicable, priority for public services to be financed by a CFD shall be given to services which are (a) necessary for the public health, safety and welfare and (b) would otherwise be paid from the City’s general fund. If appropriate, the City shall prepare a public services financing plan as a part of the specific plan or other land use document that identifies the public services required to serve a project and the source of funding for each such service.

Eligible Private Facilities. Financed improvements may be privately owned in the specific circumstances, and subject to the Conditions, set forth in the Code or the Act.

III. BOND FINANCINGS; CREDIT QUALITY.

Value-to-Public Lien Ratio. All CFD bond issues should have at least a three to one property value to public lien ratio after calculating the value of the financed public improvements to be installed, unless otherwise specifically approved by the City Council as provided in Section 53345.8(b) or (c) of the Act. Property value may be based on either an appraisal (as described in VI below) or on assessed values as indicated on the county assessor's tax roll. The public lien amount shall include the bond issue currently being sold plus any public indebtedness secured by a lien on the properties to be taxed.

Entitlement Status. The City will require all major land use approvals and governmental permits necessary for development of land in the CFD to be substantially in place before bonds may be issued.

Reserve Fund. In most cases, a reserve fund equal to the lesser of (i) ten percent of the original proceeds of the bond issue, (ii) the maximum annual debt service on the bonds, or (iii) one hundred twenty-five percent of the average annual debt service on the bonds will be required for all bond issues where less than fifty percent of the buildable acreage has been developed. A smaller reserve fund may be required by the City for bond issues where development thresholds identified by the City have been met (for example, more than 50% of the buildable acreage has been developed).

Failure to Meet Credit Criteria. Less than a three to one property value to public lien ratio, excessive tax delinquencies, or projects of uncertain economic viability may cause the City to disallow the sale of bonds or require credit enhancement prior to bond sale. The City may consider exceptions to the above policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, and/or which otherwise provide extraordinary public benefits, to the extent permitted by and subject to any applicable requirements of the Act.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in a form and upon terms and conditions satisfactory to the City. Any security required to be provided by the applicant may be discharged by the City upon satisfaction of the applicable credit criteria specified by the City.

As an alternative to providing other security, and subject to federal tax law, the applicant may request that a portion of the bond proceeds be placed in escrow with a trustee or fiscal agent in an amount sufficient to assure the financing will meet the applicable credit criteria, including, but not limited to, meeting a value-to-lien ratio of at least three to one on the outstanding proceeds. The escrowed proceeds shall be released at such times and in such amounts as may be necessary to assure the applicable credit criteria has been met.

The City will require that bond financings be structured so that bonds are purchased and owned by suitable investors. For example, the City may require placement of bonds with a limited number of sophisticated investors, large bond denominations and/or transfer restrictions in situations where there is an insufficient value-to-lien ratio, where a substantial amount of the property within a CFD is undeveloped, where tax delinquencies are present in parcels within the CFD, and in any other situation identified by the City.

IV. DISCLOSURES

Purchasers of Property. As a minimum, any disclosures mandated by applicable state law to inform prospective purchasers of their obligations under the CFD shall apply to each CFD. In addition, there may be additional requirements mandated by the City for particular kinds of financings on a case-by-case basis. The City may prescribe specific forms to be used to disclose the existence and extent of obligations imposed by CFD.

Disclosure Requirements for the Resale of Lots. The City shall provide a notice of special taxes to sellers of property (other than developers) which will enable them to comply with their notice requirements under Section 1102.6 of the Civil Act. This notice shall be provided by the City within five working days of receiving a written request for the notice. A reasonable fee may be charged for providing the notice, not to exceed any maximum fee specified in the Act.

Continuing Bond Disclosure. Landowners in a CFD that are responsible for ten percent (10%) or more of the annual special taxes must agree to provide: (i) initial disclosure at the time of issuance of any bonds; and (ii) annual disclosure as required under Rule 15c2-12 of the Securities Exchange Commission until the special tax obligation of the property owned by such owner drops below 10%.

V. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES

Minimum Special Tax Levels. Special tax formulas shall provide for minimum special tax levels which satisfy the following payment obligations of a CFD: (a) 110 percent gross debt service coverage for all CFD bonded indebtedness (*other than* bonded indebtedness within a Special Tax District, wherein the minimum special tax levels must equal 100 percent of gross debt service coverage), (b) the administrative expenses of the CFD, and (c) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on related bonds of the CFD.

In addition, the special tax formula may provide for the following to be included in the special tax levels: (a) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD, (b) the accumulation of funds reasonably required for future debt service, (c) amounts equal to projected delinquencies of special tax payments, (d) the costs of remarketing, credit enhancement and liquidity facility fees, (e) the cost of

acquisition, construction, furnishing or equipping of authorized Facilities, (f) lease payments for existing or future facilities, (g) costs associated with the release of funds from an escrow account, (h) the costs of Services, and (i) any other costs or payments permitted by law.

Equity of Special Tax Allocation Formula. The special tax formula shall be reasonable in allocating the CFD's payment obligations to parcels within the CFD. Exemptions from the special tax may be given to parcels which are publicly-owned, held by a property owners' association, used for a public purpose such as open space or wetlands, affected by public utility easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness.

Aggregate Tax Burden. The total projected non-residential property tax levels for any CFD (including ad valorem taxes, any maintenance, landscaping or other impositions on the land in the CFD and other similar annual government charges levied on parcels in the CFD, but excluding property owners' association annual levies and as to any special tax levies, based on the expected special tax rates and not any "back-up" special taxes) must be reasonable, and will be considered by the City Council on a case-by-case basis.

The total projected residential property tax levels (including ad valorem taxes, any maintenance, landscaping or other impositions on the land in the CFD and other similar annual government charges levied on parcels in the CFD, but excluding homeowners' association annual levies, and as to any special tax levies, based on the expected special tax rates and not any "back-up" special taxes) for any CFD (or, if a CFD has multiple improvement areas, for each improvement area and not the entire CFD) shall not exceed the lesser of (i) 2.0% of the average assessed value of existing homes or the estimated sales prices of the respective homes to be constructed in the CFD (with such prices to be determined by reference to an absorption study or appraisal prepared for the CFD or such other information as the City shall determine), or (ii) any maximum specified in the Act. The annual increase, if any, in the maximum special tax for any parcel shall not exceed any maximum specified in the Act. The increase in the special tax levied on any residential parcel as a consequence of delinquency or default by the owner of any other parcel shall not exceed any maximum specified in the Act.

Levy on Entire Parcels. Special taxes will only be levied on an entire county assessor's parcel, and any allocation of special tax liability of a county assessor's parcel to leasehold or possessory interest in the fee ownership of such county assessor's parcel shall be the responsibility of the fee owner of such parcel and the City shall have no responsibility therefor and has no interest therein. Failure of the owner of any county assessor's parcel to pay or cause to be paid any special taxes in full when due, shall subject the entire parcel to foreclosure in accordance with the Act.

Feasibility Analysis. The City may retain a special tax consultant to prepare a report which: (a) recommends a special tax for the proposed CFD, and (b) evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, privately-owned improvements, City administrative costs, Services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

VI. APPRAISALS

The definitions, standards and assumptions to be used for appraisals shall be determined by City staff on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California (including, but not limited to, the California Debt Investment and Advisory Commission). The appraiser shall be selected by or otherwise acceptable to the City, and the appraisal shall be coordinated by and under the direction of, or otherwise as acceptable to, the City.

The appraisal must be dated within 90 days of the date the bonds are priced, unless the City Council determines a longer time is appropriate.

All costs associated with the preparation of the appraisal report shall be paid by the entity requesting the establishment of the CFD, if applicable, through the advance deposit mechanism described below.

VII. CITY PROCEEDINGS.

Petition. For new development projects, a petition meeting the requirements of the applicable authorizing law will be required. The applicant is urged to obtain unanimous waivers of the election waiting period. In applying to the City for formation of a CFD, the applicant must specify any reasonably expected impediments to obtaining petitions, including from co-owners and/or lenders of record (where required). Waiver of the petition shall be made only upon showing of extraordinary hardship. For existing development, petitions are preferred, but may be waived, depending on the nature of the project and degree of public importance.

Deposits and Reimbursements. All City staff and consultant costs incurred in the evaluation of CFD applications and the establishment of the CFD will be paid by the entity, if any, requesting the establishment of the CFD by advance deposit increments. The City shall not incur any expenses for processing and administering a CFD that are not paid by the applicant or from CFD bond proceeds. In general, expenses not chargeable to the CFD shall be directly borne by the proponents of the CFD.

Any petition for formation of a CFD shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with CFD review and implementation. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The City shall not accrue or pay any interest on any portion of the deposit refunded to any applicant or the costs and expenses reimbursed to an applicant. Neither the City nor the CFD shall be required to reimburse any applicant or property owner from any funds other than the proceeds of bonds issued by the CFD or special taxes levied in the CFD.

Representatives. The City and the applicant shall each designate a representative for each financing district proceeding. The representatives shall be responsible for coordinating the activities of their respective interests and shall be the spokespersons for each such interest. The purpose of this requirement is to avoid duplication of effort and misunderstandings from failure to communicate effectively. In the case of the City, it allows the City's consultants to report to a single official who will, in turn, communicate with other staff members.

Time Schedule. The final schedule of events for any proceeding shall be determined by the City, in consultation with its financing team and the applicant. Any changes will require approval by the appropriate City official. Time schedules will (unless specific exceptions are allowed) observe established City Council meeting schedules and agenda deadlines. To the extent possible, financings will be scheduled to allow debt service to be placed on the tax rolls with a minimum of capitalized interest.

VIII. FINANCING TERMS

All terms and conditions of any CFD bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or credit rating of the City through the special taxes, credit enhancements, foreclosure covenant, and reserve funds.

All statements and material related to the sale of bonds shall emphasize and state that neither the faith, credit nor the taxing power of the City is pledged to security or repayment of the Bonds. The sole source of pledged revenues to repay CFD bonds are special taxes, bond proceeds and reserve funds held under the bond document, and the proceeds of foreclosure proceedings and additional security instruments provided at the time of bond issuance.

The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, disclosure

counsel, financial advisors, appraiser, market absorption/pricing consultant and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

IX. EXCEPTIONS TO THESE POLICIES

The City may find in limited and exceptional instances that a waiver to any of the above stated policies is reasonable given identified special benefits to be derived from such waiver. Such waivers only will be granted by action of the City Council.

Attachment 4

City of Berkeley
 Special Tax District No. 2008-1
 (Solar and Renewable Energy Financing Program)

Rate Supplement to the Method of Apportionment

Property Address: _____ _____			
Property's Assessor's Parcel Number: _____			
Fiscal Year	Bond Payment	Administrative Expenses	Total Maximum Special Tax
2008-09 2009-10 2010-11 2011-12 2012-13 2013-14 2014-15 2015-16 2016-17 2017-18 2018-19 2019-20 2020-21 2021-22 2022-23 2023-24 2024-25 2025-26 2026-27 2027-28 2028-29			

