RESOLUTION NO. 2016-183

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AMENDING ANNEXATION NO. 70 OF COMMUNITY FACILITIES DISTRICT NO. 11 TO AUTHORIZE THE CHANGE IN THE TYPES OF SERVICES AND THE RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX AND THE LEVY OF A NEW MAXIMUM SPECIAL TAX

WHEREAS, on August 25, 2016, the Council of the City of Fresno ("Council") adopted Resolution No. 2016-151 with the intent and consideration to amend Annexation No. 70, Final Tract Map No. 6067, of the City of Fresno Community Facilities District No. 11 ("CFD No. 11"), to change the types of Services and the rate and method of apportionment the special ax, and to establish a new Maximum Special Tax, pursuant to the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3, of the Fresno Municipal Code ("City Law") and the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 Part 1 of Division 2 of Title 5, commencing with Section 53311 of the California Government Code ("Mello-Roos"); and

WHEREAS, Resolution No. 2016-151, incorporating a revised description of Services (as hereafter defined) to be provided, a revised estimated maximum annual cost of providing such Services, a revised rate and method of apportionment for the new Maximum Special Tax to be levied for Annexation No. 70 of CFD No. 11, is on file with the City Clerk of the City of Fresno ("City Clerk") and the provisions thereof are incorporated herein by this reference as if fully set forth herein; and

Date Adopted: 09/22/2016
Date Approved: 10/03/2016
Effective Date: See Section 11

WHEREAS, on this date, this Council held a noticed public hearing, as required by City Law, Mello-Roos and Resolution No. 2016-151, concerning the amendment of Annexation No. 70 of CFD No. 11; and

WHEREAS, at the hearing all interested persons desiring to be heard on all matters pertaining to the change in the types of Services and the rate and method of apportionment of the special tax and the levy of a new Maximum Special Tax for Annexation No. 70 of CFD No. 11 were heard; and

WHEREAS, at the hearing evidence was presented to this Council on said matters before it, including an amended report by the Public Works Director ("Amended District Report") as to the amendment of Annexation No. 70 of CFD No. 11, and a copy of the Amended District Report is on file with the City Clerk; and

WHEREAS, the City Clerk or designee did not receive written protests with respect to the amendment of Annexation No. 70, the changed types of Services and rate and method of apportionment of the special taxes therein, or the new Maximum Special Tax therein, from at least 50 percent (50%) of the registered voters residing within the territory of Annexation No. 70, or from property owners not exempt from the special tax and owning at least one-half (½) of the area of land within Annexation No. 70; and

WHEREAS, the amendment of Annexation No. 70, the changed types of Services and rate and method of apportionment of the special taxes therein, or the new Maximum Special Tax proposed to be levied upon the territory within Annexation No. 70 to pay for the proposed Services (set forth in page A-1 of Exhibit A hereto), has not been eliminated through protest of at least fifty percent (50%) or more of the registered voters residing within Annexation No. 70, or through protests of landowners not exempt

from the special tax and owning at least one-half (½) of the area of land within Annexation No. 70.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

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

2. No Majority Protest. The proposed amendment to Annexation No. 70 has not been precluded by majority protest pursuant to Mello-Roos, Sections 53337 and 53339.6.

3. Prior Proceedings. The Council duly considered all prior proceedings for the proposed amendment to Annexation No. 70 and the levy of the new Maximum Special Tax therein, and finds and determines that the proceedings are valid and conform to the requirements of City Law and Mello-Roos. This Council finds and determines that the proposed amendment to Annexation No. 70 conforms to the goals and policies that this Council adopted respecting the formation of CFD No. 11.

4. Boundaries Described. The boundaries of Annexation No. 70, approved with Resolution No. 2016-47, recorded in the Fresno County Recorder's Office in Book 44 at Page 59 of Maps of Assessment and Community Facilities Districts, incorporated herein by reference, and shall remain the boundaries of Annexation No. 70 of CFD No. 11.

5. Services. The changes in the types of Services proposed to be financed by Annexation No. 70 of CFD No. 11 and pursuant to City Law are those listed as Services on page A-1 of Exhibit A in the Amended District Report on file with the City Clerk (the "Services"). A copy attached hereto as Exhibit A and incorporated herein by this reference.

6. Special Taxes. Except to the extent that funds are otherwise available to CFD No. 11 to pay for the Services, the new Maximum Special Tax sufficient to pay the costs thereof, secured by a continuing lien against all nonexempt real property in CFD No. 11 will be levied annually within CFD No. 11, 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 affected property owners. The changed rate and method of apportioning of the special tax among the real property parcels within the territory of Annexation No. 70, in sufficient detail to allow each landowner within the territory of Annexation No. 70 to estimate the probable maximum amount such owner must pay, are described in the Amended District Report on file with the City Clerk and hereto attached as Exhibit B and incorporated herein by this reference.

7. Tax Collection Authority. The Public Works Director of the City of Fresno or his designee, 2600 Fresno Street, Fresno, California 93721 telephone number (559) 621-8650 is the officer who will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and which will be responsible for estimating future special tax levies pursuant to City Law.

8. Tax Lien. Upon recordation of a notice of special tax lien, pursuant to Section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in Annexation No. 70. This lien shall continue in force and effect until the special tax obligation ceases and the lien is canceled in accordance with law or until collection of the tax by the City ceases.

9. Appropriations Limit. In accordance with City Law, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of

the California Constitution, of the proposed annexation, is hereby preliminarily established at $500,000.00 and said appropriations limit shall be submitted to the voters of the proposed annexation as hereafter provided. The proposition establishing said annual appropriations limit shall become effective if approved by the qualified electors voting thereon and shall be adjusted in accordance with the applicable provisions of City Law.

10. Election. Pursuant to the provisions of Mello-Roos, the proposition amending Annexation No. 70 to change the types of Services and the rate and method of apportionment for the special tax and to levy a new Maximum Special Tax shall be submitted to the qualified electors of Annexation No. 70 at an election the time, place and conditions of which election shall be as specified by a separate resolution of this Council.

11. Effective Date. This Resolution shall take effect upon its adoption.

* * * * * * * * * * * * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 22nd day of September, 2016.

AYES: Brand, Brandau, Olivier, Quintero, Caprioglio
NOES: None
ABSENT: Baines, Soria
ABSTAIN: None

Mayor Approval: N/A, 2016
Mayor Approval/No Return: October 3rd, 2016
Mayor Veto: N/A, 2016
Council Override Vote: N/A, 2016

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: 10.7.16
Raj Singh Badhesha Date
Deputy

Attachments:
Exhibit A - Revised Description of Services
Exhibit B - Revised Rate and Method of Apportioning Special Tax

EXHIBIT A

REVISED

CITY OF FRESNO

Community Facilities District No. 11
Annexation No. 70

Description of Services to be Financed by Community Facilities District No. 11 for Annexation No. 70 (Final Tract Map No. 6067)

The services and operations that are to be financed ("Services") by Community Facilities District No. 11 ("CFD No. 11") for Final Tract Map No. 6067 ("T6067"), Annexation No. 70 are generally as described below.

The Services will include all costs (including reserves for replacement) attributable to maintaining, servicing, cleaning, repairing and/or replacing landscaped areas and trees in public street rights-of-way, public landscape easements, and Outlot A.

General maintenance will include, without limitation, mowing, edging, fertilizing, aerating and watering grass areas, 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 (including reserves for replacement) within public easements and open spaces. Such facilities include, without limitation, concrete curbs and gutters, valley gutters, block wall within Outlot A, curb ramps and sidewalks, street name signage, street lighting and local street paving associated with the subdivision. Such facilities also include, without limitation, all hardscaping, decorative walls and pilasters, arbors, decorative signage and park amenities associated with the subdivision and approved by the Public Works Department.

Services shall include all costs attributable to street lighting services.

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

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

Nothing in this exhibit 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 annexation of Annexation 70 to CFD No. 11 and the availability of sufficient proceeds of Special Taxes within CFD No. 11.

EXHIBIT A

CITY OF FRESNO

Community Facilities District No. 11
Formation

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

The services that are to be financed ("Services") by Community Facilities District No. 11 ("CFD No. 11") are any and all Services defined by City of Fresno Special Tax Financing Law (Chapter 8, Division 1, Article 3 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 <u>all</u> 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.

II. 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 <u>all</u> 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 of Fresno ("City") may incur in administering the CFD No. 11.

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

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 continued existence of CFD No. 11 and the availability of sufficient proceeds of special taxes within the CFD No. 11.

EXHIBIT B

CITY OF FRESNO

Community Facilities District No. 11
Annexation No. 70

REVISED

Rate and Method of Apportionment of Special Tax

Cost Estimate

The estimate breaks down the costs of providing 1 year's service for FY 2016-2017

ITEM	DESCRIPTION		ESTIMATED COST
1	Landscape Operational Costs		$25,751.00
2	Other Operational Costs		$1,459.00
3	Reserve for Replacement		$23,749.00
4	Incidental Expenses		$1,515.00
		Total	$52,474.00

Subdivision Appropriation Limit

Final Tract Map No.	Max. Special Tax per Residential Unit	Total Taxable Units	Appropriation Limit	Subdivider
6067	$519.55	101	$500,000.00	BN COPP LP

EXHIBIT B

City of Fresno

Community Facilities District No. 11
Annexation No. 70

Rate and Method of Apportionment of Special Tax

A Special Tax applicable to each assessor's parcel in Community Facilities District No. 11 ("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 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 CFD No. 11 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 of the City of Fresno 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.

"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, which can be levied in any Fiscal Year.

EXHIBIT B

"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 CFD No. 11.

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

"Reserve for Replacement" means a reasonable reserve pursuant to Fresno Municipal Code 8-1-303(e) (4), as a service cost or expense and not as payment for public facilities under Government Code Section 53321(d).

"Residential Unit" means a residential dwelling unit and shall include single-family unattached 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 CFD No. 11, 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 subdivisions.

"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.

"Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, or financing whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in Section 1351 of the Civil Code, a community apartment project, as defined in Section 1351 of the Civil Code.

"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.

B. CALCULATION OF RESIDENTIAL UNITS

On April 1 of each fiscal year, the City of Fresno ("City") or its designee shall determine how many residential units are built, or allowed to be built, on assessor's parcels within CFD No. 11. For parcels of undeveloped property zoned for development of single-family units attached, 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 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 dividing the Special Tax

Requirement by the actual number of residential units not to exceed the Maximum Special Tax per residential unit identified for the final map in Section C, Table 1 below.

C. MAXIMUM SPECIAL TAX

The Maximum Special Tax (MST) applicable to each assessor's parcel in CFD No. 11 shall be specific to each final map within CFD No. 11. When additional property is annexed to CFD No. 11, the rate and method adopted for the annexed property shall reflect the MST for the final map or final maps then annexed. The Maximum Special Tax for Fiscal Year 2016-2017 for a residential unit within Final Tract Map No. 6067 is identified in Table 1 below:

Table 1
Maximum Special Tax
(Fiscal Year 2016-2017)*

Final Tract Map Number*	***Maximum Special Tax***
6067	$519.55 per Residential Unit

*Beginning in January of each year, the MST shall be adjusted upward annually by 3% plus the rise, if any, in the Construction Cost Index (CCI) for the San Francisco Region for the prior 12-month period (December through December) 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 MST shall become effective on the subsequent July 1.

** A Special Tax shall be levied on all parcels within an identified final map except excluded parcels as identified in Attachment 1.

D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

Commencing with Fiscal Year 2016-2017, the Special Tax shall be levied on all taxable parcels 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 CFD No. 11 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 CFD No. 11;

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 CFD No. 11;

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 subdivision as identified in

Table 1, until the amount of the Special Tax levy equals the Special Tax Requirement for that fiscal year.

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 Government Code 53340), in any particular case, bill the taxes directly to the property owner off of the County of Fresno 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 B

ATTACHMENT 1

City of Fresno

Community Facilities District No. 11
Annexation 70

Excluded Parcels

THERE ARE NO EXCLUDED PARCELS IN FINAL TRACT MAP NO. 6067

September 23, 2016

RECEIVED

Council Adoption: 9/22/2016
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC
City Clerk

2016 OCT 4 AM 8 11

CITY CLERK, FRESNO, CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 9/22/16, Council adopted the attached Resolution No. 2016-183, entitled, **RESOLUTION – Authorizing the Amendment of Annexation No. 70 of Community Facilities District No. 11 and the Levy of a New Maximum Special Tax.** Item No. 10:05 A.M #1, ID#16-1059, by the following vote:

Ayes	:	Brand, Brandau, Caprioglio, Olivier, Quintero
Noes	:	None
Absent	:	Baines, Soria
Recused	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before October 3, 2016. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

****

APPROVED/NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____ Date: _____
Ashley Swearengin, Mayor

COUNCIL OVERRIDE ACTION: Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	