



Memorandum

To: Tiffany Allen
From: Shane Spicer
Date: June 9, 2020

RE: CFD 18M – HomeFed Special Tax Appeal

On June 4, 2020 the City received a written notice of appeal (the “Appeal”) from Development Planning & Financing Group, Inc (DPFG) on behalf of HomeFed Corporation, the property owner of Assessor’s Parcel Numbers 644-061-08-00 and 644-061-09-00 (the “Affected Lots”), regarding CFD 18M Special Taxes levied for FY 2019-20. The Appeal was filed with the City Council in accordance of Section G of the Rate and Method of Apportionment (the “RMA”) for CFD 18M. The appeals process for CFD 18M under the RMA requires that any landowner that pays special taxes within CFD 18M consult with the CFD Administrator which is an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes within 36-months of having paid the first installment of the Special Tax being disputed. The first installment due date of the CFD 18M special taxes for FY 2019-20 was December 10, 2019 and the second installment due date of the CFD 18M special taxes for FY 2019-20 was April 10, 2020. HomeFed has paid both installments of the FY 2019-20 special taxes for the Affected Lots. HomeFed contacted the City on March 9, 2020 regarding the special taxes levied on the Affected Lots and subsequently had a consultation with the City regarding the interpretation of the RMA prior to filing the Appeal.

HomeFed has indicated there are inconsistencies in the RMA and information included in the Community Facilities District Report (CFD Report) approved at the time of formation, see attached. The Affected Lots have mixed use developments including both non-residential property (first floor) and multi-family property (second floor). HomeFed claims the non-residential portion of the mixed-use development should not be taxed in CFD 18M. The language included in Section B of the RMA does not specifically exclude non-residential development within the Affected Lots from the annual special tax calculation. However, the preliminary budget included in the CFD Report only includes Office Space properties and Industrial properties in the non-residential property taxable acreage amount, see Exhibit C of the CFD Report. The mixed-use development only includes the multi-family property in the Special Tax calculation used to establish the Maximum Special Tax rates.

The Special Tax calculation for FY 2019-20 is summarized below:

The Affected Lots were included in the maintenance tax calculation. They include a total of 272 total multi-family units with 10 acres of commercial retail. The levy for the Affected Lots was calculated by combining the special tax

for both the multi-family property and non-residential property Land Use Classes. The special tax rate for multi-family property is \$129.97 per unit and the non-residential property rate is \$6,499.79 per acre. Parcel 644-061-08-00 includes 33 apartment units and is 1.81 acres. The total tax for the multi-family property is \$4,289.12 and \$11,764.63 for non-residential property for a total parcel tax of \$16,053.75. Parcel 644-061-09-00 includes 239 multi-family units and is 8.19 acres. The total tax for the multi-family property is \$31,063.64 and \$53,233.31 for non-residential property for a total parcel tax of \$84,296.95. The total tax for the Affected Lots is \$100,350.70 for FY 2019-20.

Given the omission of the non-residential acreage from the preliminary budget included in the CFD Report it is reasonable to conclude that there is ambiguity in the RMA and the special tax was not intended to apply to non-residential property in the Affected Lots. It is reasonable to not levy the special tax on non-residential property within the Affected Lots in the FY 2019-20 special tax levy and going forward. Additionally, the other properties within CFD 18M will not be harmed by removing the non-residential property within the Affected Lots from the annual special tax calculation.

Based on the information available in the CFD Report and the RMA for CFD 18M we recommend the following:

- ◆ Obtain approval by the City Council of a resolution clarifying the exclusion of the non-residential portion of the Affected Lots from the Special Tax calculation for CFD 18M for FY 2019-20 and future years.
- ◆ After adoption of the resolution refund or credit to future CFD 18M levies of HomeFed properties the FY 2019-20 overpaid special tax amount of **\$64,997.94** from the City's CFD 18M fund.
- ◆ Only include the special tax levy for the multi-family property within the Affected Lots for future fiscal years.

Please feel free to contact us if you have any questions or require additional information.



Shane Spicer
Managing Director
Spicer Consulting Group

CC: Kimberly Elliott, City of Chula Vista
Nora O'Brien, BBK
Warren Diven, BBK
Melissa Bellitire, SCG



CITY OF
Chula Vista

CFD Report

**Community Facilities District
No. 18M (Otay Ranch Village 3)**

October 2016

Prepared by:



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I. Introduction

WHEREAS, the City Council of the City of Chula Vista (hereinafter referred to as the “City Council”), in the State of California, did, pursuant to the terms and provisions of Chapter 2.5 of Part 1, of Division 2, of Title 5 of the Government Code of the State of California, as amended (the “Act”), adopted a Resolution of Intention for the proposed formation of City of Chula Vista Community Facilities District No. 18M (Otay Ranch Village 3) (“CFD No. 16-I”).

WHEREAS, this Community Facilities District Report (“Report”) is being provided to the City Council and generally contains the following:

1. A brief description of Community Facilities District No. 18M (Otay Ranch Village 3) of the City of Chula Vista (“CFD NO. 18M”);
2. A brief description of the public services (the “Services”) which are required to adequately to meet the needs of CFD No. 18M.
3. A brief description of the Boundaries of CFD 18M; and
4. An estimate of the cost providing such Services, as defined below, including all costs associated with formation of the District, determination of the amount of any special taxes, collection of any special taxes, or costs otherwise incurred in order to carry out the authorized purposes of the City with respect to the District, and any other incidental expenses to be paid through the proposed financing.

For particulars, reference is made to the Resolution of Intention, Resolution No. 2016-199 as previously approved. All capitalized terms not defined herein are defined in the Rate and Method of Apportionment of Special Tax section (Exhibit D) of this report.

NOW THEREFORE Willdan Financial Services, the appointed responsible firm directed to prepare the Report, pursuant to the provisions of the Code, does hereby submit the following:

II. General Description & Boundaries of CFD No. 18M

The proposed boundaries of CFD 18M encompass parcels located within Otay Ranch in the City of Chula Vista, San Diego. Otay Ranch Village 3 is approximately four hundred and twenty-three (423) acres located just south and east of the Otay Landfill and Village Two, west of the existing light industrial uses in the City of Chula Vista and north of the Otay River Valley. The project is proposed for approximately 702 single-family units and 563 multi-family units, 7.9 acres of office use, and 16.8 acres of industrial use.

A description of the exterior boundaries of the territory proposed for inclusion in CFD No. 18M, including properties and parcels of land proposed to be subject to the levy of a Special Tax by CFD No. 18M, is shown on the boundary map designated as "PROPOSED BOUNDARIES OF COMMUNITY FACILITIES DISTRICT NO. 18M (OTAY RANCH VILLAGE 3)", which is on file in the office of the Clerk of the City Council of the City of Chula Vista, and which was recorded with the County Recorder of the County of San Diego on October 11, 2016 in Book 46 of Maps of Assessment and Community Facilities Districts at Page 5, as Instrument Number 2016-7000436. A copy of the map is attached hereto as Exhibit A and hereby incorporated by reference.

The Boundary Map also depicts an area designated as the Future Excluded Area which is intended to be excluded from CFD 18M upon recordation of final parcel maps for the area. This area is currently included within the boundaries of CFD 18M because the Future Excluded Area does not currently exist as a separate legal parcel, but is a part of the legal parcel identified on the Boundary Map as Assessor's Parcel No. 644-060-27-00. When this area becomes a separate legal parcel, action will be taken to remove it from the CFD.

III. Future Annexation Area

On October 4, 2016 the Resolution of Intention of the City Council of the City of Chula Vista to allow for future annexation of territory to City of Chula Vista Community Facilities District No. 18M (Otay Ranch Village 3) was adopted. Resolution No. 2016-199 gave the City the ability and option to annex future development projects into CFD No. 18M, and to do so in an expedited manner.

The Future Annexation Area was established so that property adjacent to CFD 18M, that may be developed at some point in the future, and which may include maintenance and service requirements substantially similar to those in the existing CFD 18M, could be annexed to CFD 18M. This would occur if it is determined that the existing tax rate structure for CFD 18M can be fairly and equitably applied to this area, and that it will generate sufficient revenue to fund the required maintenance and services for this area.

A description of the exterior boundaries of the future annexation area is as shown on the boundary map designated as "FUTURE ANNEXATION AREA OF COMMUNITY FACILITIES DISTRICT NO. 18M (OTAY RANCH VILLAGE 3)", which is on file in the office of the Clerk of the City Council of the City of Chula Vista, and was recorded with the County Recorder of the County of San Diego on October 11, 2016 in Book 46 of Maps of Assessment and Community Facilities Districts at page 6, as Instrument Number 2016-7000437. A copy of the map is attached hereto as Exhibit B and hereby incorporated by reference.

Future developments may be annexed into CFD No. 18M upon the petition by, and the approval of, the owner or owners of any such parcel(s) at the time annexation is requested. A public hearing is required to count the votes and annex the parcel(s) into the pre-established district.

IV. Description of Services

The district will fund the maintenance and replacement of (a) landscaping, including, but not limited to, trees, slopes, parkways and medians; (b) facilities that are directly related to storm water quality control; (c) walls and fencing; and (d) trails.

V. Cost Estimates

The estimated annual budget for CFD 18M is approximately \$1,591,750 which is shown in Exhibit C. This includes \$1,284,555 for: landscape maintenance, including irrigation; inspection, operation and maintenance of storm water quality facilities; maintenance of walls, fencing, and trails, including graffiti abatement; and \$269,676 that is set aside for the replacement of the amenities and facilities as they reach the end of their useful life.

In addition, the budget includes \$37,519.60 for CFD administration (preparing reports, levying and collecting taxes, public assistance, etc.) by City Staff, or their designee.

VI. Rate and Method of Apportionment of Special Tax

A. Overview

All property located within CFD No. 18M, unless exempted by law or specifically by the Rate and Method of Apportionment (RMA), a copy of which is attached hereto as Exhibit D and hereby incorporated by reference, shall be taxed for the purpose of providing necessary services to property within CFD No. 18M. Pursuant to Section 53325.3 of the Act, the tax imposed is a special tax and not a special assessment. Therefore, there is no requirement that the tax be apportioned on the basis of special benefit to any property. The special tax “may be based on a benefit received by parcels of real property, the cost of making facilities or authorized services available to each parcel, or some other reasonable basis as determined by the legislative body”. The special tax may not be apportioned on an ad valorem basis pursuant to Article XIII A of the California Constitution.

B. General Explanation of Special Tax Apportionment

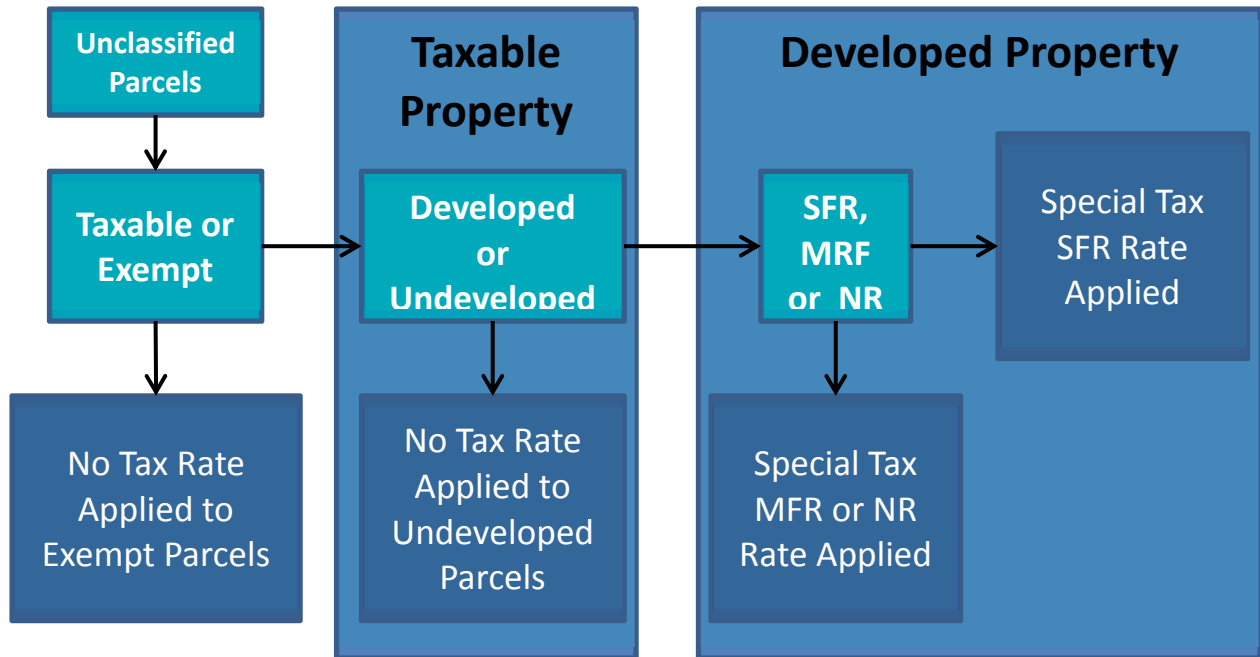
When a community facilities district is formed, a special tax may be levied on each parcel of taxable property within the CFD to pay for authorized services or to repay bonded indebtedness or other related expenses incurred by the CFD. When more than one type of land use is present within a community facilities district, various criteria may be considered when apportioning a special tax. Generally, criteria based on building square footage, lot size, density, service population, and/or land use are selected to establish categories to differentiate between parcels of property. These categories are a direct result of the landowner/developer's projected product mix, and are reflective of the proposed land use types within that community facilities district.

The major assumption inherent in the Special Tax rates set forth in the RMA is that the level of benefit received from the proposed public services is a function of land use and/or size of building.

C. Structure of the Rate and Method of Apportionment

The RMA for CFD No. 18M is made up of a definitions section, a description of the tax rates, and the outline of the procedural steps required for calculating and apportioning the special tax.

In general, the first step is to classify each parcel as either Taxable or Exempt. The second step is to then determine the applicable tax rate to be applied to each parcel determined to be Taxable, based on its development status and land use type. The third step is to apply the applicable Special Tax rates to developed properties until the Special Tax Requirement is satisfied. The following diagram illustrates the general process of determining the applicable rate to be applied to each parcel within CFD No. 18M:



All Developed Single Family Residential (SFR) properties, Multi-Family Residential (MFR) properties, and Non-Residential properties within the boundaries of CFD No. 18M are subject to the Special Tax as described in Exhibit D - Rate and Method of Apportionment of Special Tax.

The Special Tax levied to pay for services will not exceed the Maximum Special Tax identified in Exhibit D - Rate and Method of Apportionment, and as summarized below in the Maximum Special Tax Rates section.

D. Maximum Special Tax Rates

The Maximum Special Tax Rates that may be levied on any parcel within the boundaries of CFD 18M, beginning with the Fiscal Year 2017-2018 are shown below:

Developed Special Tax Rates

The following rates are shown as a per unit basis, and are subject to an annual escalation as described in the RMA.

Land Use Class	Maximum Special Tax Basis for Labor	Maximum Special Tax Basis for Water	Maximum Special Tax Basis for Asset Replacement	Maximum Special Tax Basis
Single Family Detached Property	\$ 912.16	\$341.42	255.70	1,509.28
Single Family Attached Property	729.73	\$273.14	204.56	1,207.43
Multi-Family Property	72.97	\$27.31	20.46	120.74
Non-Residential Property	3,648.64	\$1,365.68	1,022.82	6,037.13

Undeveloped Special Tax Rates

No tax will be levied on undeveloped property.

The Rate and Method of Apportionment (RMA) for CFD 18M provides sufficient information to allow a property owner within CFD 18M to estimate the Maximum Special Tax for his or her property. It also includes method of prepayment in full or prepayment in part and the procedure for prepayments.

For particulars on the rate and method of apportionment, reference is made to Exhibit D of this report.

EXHIBIT A

Boundary Map

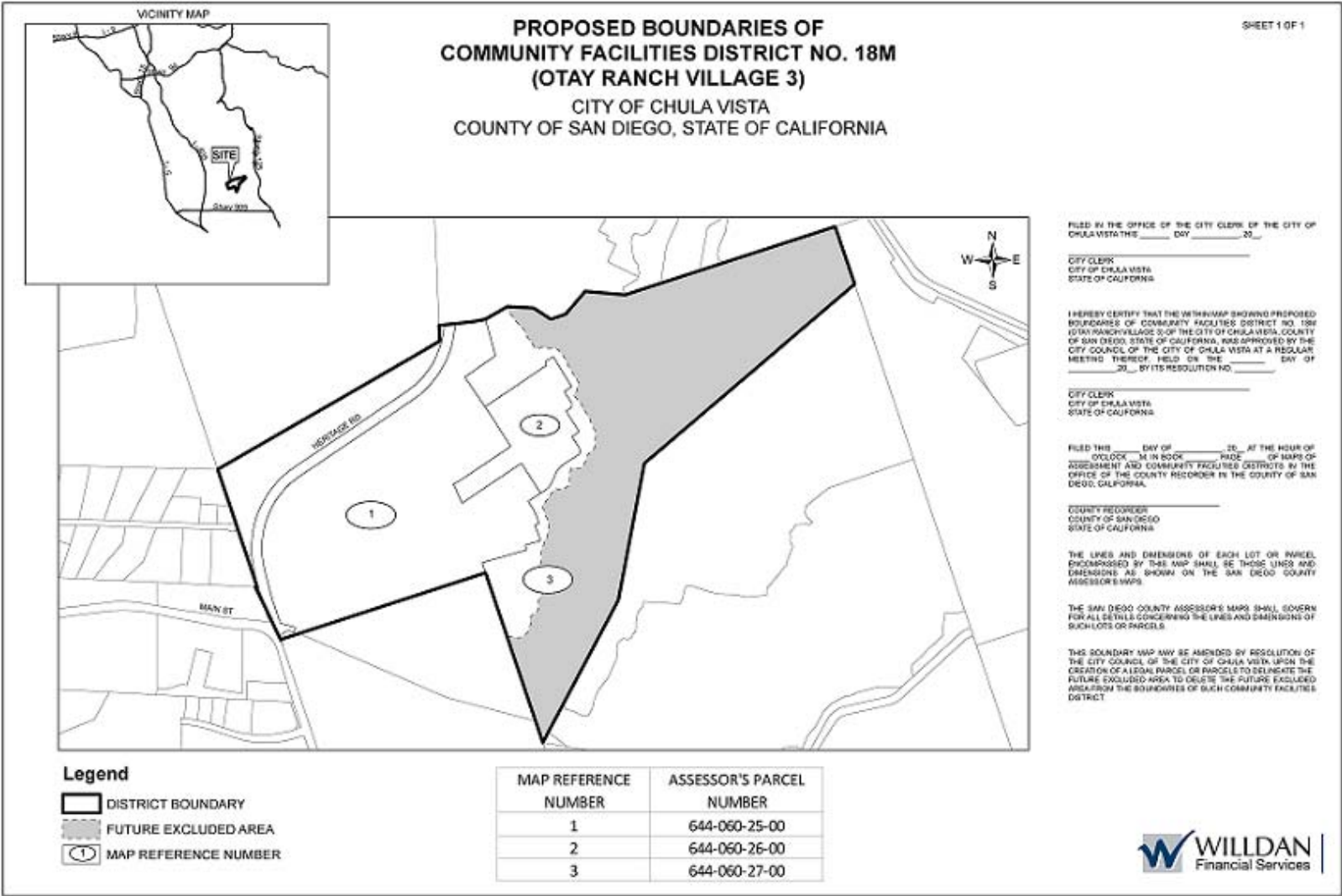


EXHIBIT B

Future Annexation Area



**FUTURE ANNEXATION AREA
COMMUNITY FACILITIES DISTRICT NO. 18M
(OTAY RANCH VILLAGE 3)
CITY OF CHULA VISTA
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA**

SHEET 1 OF 1



FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF CHULA VISTA THIS _____ DAY _____ 20__

CITY CLERK
CITY OF CHULA VISTA
STATE OF CALIFORNIA

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING PROPOSED BOUNDARIES OF THE FUTURE ANNEXATION AREA, COMMUNITY FACILITIES DISTRICT NO. 18M (OTAY RANCH VILLAGE 3) OF THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF CHULA VISTA AT A REGULAR MEETING THEREOF, HELD ON THE _____ DAY OF _____ 20__ BY ITS RESOLUTION NO. _____

CITY CLERK
CITY OF CHULA VISTA
STATE OF CALIFORNIA

FILED THIS _____ DAY OF _____ 20__ AT THE HOUR OF _____ O'CLOCK _____ IN BOOK _____ PAGE _____ OF MAPS OF ASSIGNMENT AND COMMUNITY FACILITIES DISTRICTS IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF SAN DIEGO, CALIFORNIA.

COUNTY RECORDER
COUNTY OF SAN DIEGO
STATE OF CALIFORNIA

THE LINES AND DIMENSIONS OF EACH LOT OR PARCEL ENCOMPASSED BY THIS MAP SHALL BE THOSE LINES AND DIMENSIONS AS SHOWN ON THE SAN DIEGO COUNTY ASSESSOR'S MAPS.

THE SAN DIEGO COUNTY ASSESSOR'S MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF EACH LOT OR PARCEL.

- Legend**
- DISTRICT BOUNDARY
 - FUTURE ANNEXATION AREA

MAP REFERENCE NUMBER	ASSESSOR'S PARCEL NUMBER
1	644-060-13-00



EXHIBIT C

Preliminary CFD Budget

OTAY LAND - VILLAGE 3
CITY OF CHULA VISTA
DERIVATION OF ESTIMATED MAINTENANCE SPECIAL TAX BASED ON EDU'S FOR ENTIRE VILLAGE
September 22, 2016

Draft

LAND USE INFORMATION							Maintenance Special Tax Analysis					Annual Special Tax per Unit or Acre	
Product Type	Total Units	Net Acres	Product Type	Estimated Unit Size	Residential Square Feet	EDU Factor	Total EDUs	Total Annual Special Tax (Total)	Total Annual Special Tax (Labor)	Total Annual Special Tax (Water)	Total Annual Special Tax (Repakement Costs)		
Residential													
A	AlleyRow TH w/ Patio	107		TH	1,450	155,150	0.80	86	\$ 129,195	\$ 78,081	\$ 29,226	\$ 21,888	\$ 1,207
B	Triplex	72		TH	1,550	111,600	0.80	58	86,935	52,540	19,666	14,729	1,207
C	Motorcourt 6 pac	111		TH	1,950	216,450	0.80	89	134,024	81,000	30,318	22,707	1,207
D	34 x 79 Alley	122		SFD	1,950	237,900	1.00	122	184,133	111,283	41,653	31,196	1,509
E	44 x 62	162		SFD	2,050	332,100	1.00	162	244,504	147,770	55,310	41,424	1,509
F	48 x 65	130		SFD	2,400	312,000	1.00	130	196,207	118,581	44,385	33,242	1,509
G	48 x 75	135		SFD	2,650	357,750	1.00	135	203,753	123,141	46,092	34,520	1,509
H	50 x 90	77		SFD	2,950	227,150	1.00	77	116,215	70,236	26,289	19,689	1,509
I	55 x 90 (3 car tandem)	76		SFD	3,150	239,400	1.00	76	114,706	69,324	25,948	19,434	1,509
	MU residential / Apts.	273		Apt.	933	254,709	0.08	22	32,963	19,922	7,457	5,585	121
	Office		7.90	Office			4.00	32	47,693	28,824	10,789	8,080	6,037
Industrial													
	Industrial		16.8	Industrial			4.00	67	101,424	61,297	22,943	17,183	
	Total	<u>1,265</u>	<u>24.7</u>			<u>2,444,209</u>		<u>1,055</u>	<u>\$ 1,591,750.18</u>	<u>\$ 961,999.56</u>	<u>\$ 360,074.93</u>	<u>\$ 269,675.68</u>	
Total Maintenance Budget (as of August 1st, 2016 Budget)								<u>\$ 1,591,750.18</u>	<u>\$ 961,999.56</u>	<u>\$ 360,074.93</u>	<u>\$ 269,675.68</u>		
Total EDUs								<u>1,054.64</u>	<u>1,054.64</u>	<u>1,054.64</u>	<u>1,054.64</u>		
Cost Per EDU								<u>\$ 1,509.28</u>	<u>\$ 912.16</u>	<u>\$ 341.42</u>	<u>\$ 255.70</u>		
EDU Factor (1.0)									<u>\$ 912.16</u>	<u>\$ 341.42</u>	<u>\$ 255.70</u>		
EDU Factor (.80)									<u>\$ 729.73</u>	<u>\$ 273.14</u>	<u>\$ 204.56</u>		
EDU Factor (.08)									<u>\$ 72.97</u>	<u>\$ 27.31</u>	<u>\$ 20.46</u>		
EDU Factor (4.0)									<u>\$ 3,648.64</u>	<u>\$ 1,365.68</u>	<u>\$ 1,022.82</u>		

EXHIBIT D

Rate and Method of Apportionment

Rate and Method of Apportionment of Special Tax

City of Chula Vista Community Facilities District No. 18M (Otay Ranch Village 3)

A Special Tax as hereinafter defined shall be levied on all Assessor's Parcels of Taxable Property within the boundaries of Community Facilities District No. 18M (Otay Ranch Village 3) of the City of Chula Vista and collected each Fiscal Year commencing with Fiscal Year 2017-18 in an amount determined by the CFD Administrator through the application of the procedures described below. All of the real property within CFD No. 18M, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Subdivision Map, other final map, other parcel map, other condominium plan, or functionally equivalent map or instrument recorded in the Office of the County Recorder. The square footage of an Assessor's Parcel is equal to the Acreage multiplied by 43,560.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means the actual or estimated costs incurred by the City, acting for and on behalf of the CFD as the administrator thereof, to determine, levy and collect the Special Taxes, including salaries of City employees and a proportionate amount of the City's general administrative overhead related thereto, and the fees of consultants and legal counsel providing services related to the administration of the CFD; the costs of collecting installments of the Special Taxes; and any other costs required to administer the CFD as determined by the City.

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

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by assessor's parcel number.

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

“CFD No. 18M” or **“CFD”** means Community Facilities District No. 18M (Otay Ranch Village 3) of the City of Chula Vista.

“City” means the City of Chula Vista.

“Community Purpose Facility Property” or **“CPF Property”** means all Assessor’s Parcels which are classified as community purpose facilities and meet the requirements of City Ordinance No. 2883.

“Construction Cost Index” means, for any Fiscal Year, the applicable Construction Cost Index for the City of Los Angeles as set forth in the Engineering News Record for July of such Fiscal Year. In the event that this rate is no longer published or provided, the CFD Administrator shall choose a comparable rate to use in its place.

“Consumer Price Index for Urban Wage Earners and Clerical Workers” or **“CPI-W”** means the applicable CPI-W as set forth by the United States Department of Labor, Bureau of Labor Statistics for July of such Fiscal Year. In the event that this rate is no longer published or provided, the CFD Administrator shall choose a comparable rate to use in its place.

“Council” means the City Council of the City, acting as the legislative body of the CFD.

“County” means the County of San Diego, California.

“Developed Property” means all Taxable Property for which a building permit was issued prior to the March 1st preceding the Fiscal Year in which the Special Tax is being levied.

“Dwelling Unit” or **“DU”** means each separate residential dwelling unit that comprises an independent facility capable of conveyance or rental separate from adjacent residential dwelling units.

“Exempt Property” means all Assessor’s Parcels within CFD No. 18M that are exempt from the Special Taxes pursuant to law or Section F herein.

“Final Subdivision Map” means a subdivision of property creating residential or non-residential buildable lots by recordation of a final subdivision map or parcel map pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.), or recordation of a condominium plan pursuant to California Civil Code 1352, that creates individual lots for which building permits may be issued without further subdivision and is recorded prior to March 1 preceding the Fiscal Year in which the Special Tax is being levied.

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

“Land Use Class” means any of the classes listed in Table 1.

“Maximum Special Tax Basis” means the amount determined in accordance with Section C below that represents the actual costs associated with providing the Services funded by CFD No. 18M.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C below that may be levied in any Fiscal Year on any Assessor’s Parcel of Taxable Property.

“Multi-Family Property” means all Assessor’s Parcels of Residential Property consisting of two or more for-rent Dwelling Units that share common walls, including, but not limited to, apartments and townhomes that are not for sale to an end user and are under common management.

“Non-Residential Property” means all Assessor’s Parcels of Developed Property for which a building permit(s) has been issued for a structure or structures for non-residential use.

“Otay Water District Commodity Rate” means the maximum rate charged by the Otay Water District for recycled water on July 1st of any Fiscal Year. In the event that this rate is no longer published or provided, the CFD Administrator shall choose a comparable rate to use in its place.

“Property Owner Association Property” means any property within the boundaries of the CFD that is owned by, or irrevocably dedicated as indicated in an instrument recorded with the County Recorder to, a property owner association, including any master or sub-association.

“Public Property” means any property within the boundaries of the CFD that is, at the time of the CFD formation, expected to be used for any public purpose and is owned by or dedicated to the federal government, the State, the County, the City or any other public agency.

“Reserve Fund” means a fund that shall be maintained for the CFD each Fiscal Year to provide necessary cash flow for the first six months of each Fiscal Year, working capital to cover monitoring, maintenance and repair cost overruns and delinquencies in the payment of Special Taxes and a reasonable buffer to prevent large variations in annual Special Tax levies.

“Residential Property” means all Assessor’s Parcels of Developed Property for which a building permit(s) has been issued for purposes of constructing one or more residential dwelling unit(s).

“Services” means those authorized services that may be funded by CFD No. 18M pursuant to the Act, as amended, including, without limitation, those services authorized to be funded by CFD No. 18M as set forth in the documents adopted by the City Council at the time CFD No. 18M was formed.

“Single Family Attached Property” means all Assessor’s Parcels of for-sale Residential Property consisting of one or more Dwelling Unit(s) that share common walls with one or more other Dwelling Unit(s), including, but not limited to, duplexes, triplexes, townhomes, and condominiums.

“Single Family Detached Property” means all Assessor’s Parcels of Residential Property consisting of a single Dwelling Unit.

“Special Tax” means the Special Tax levied pursuant to the provisions of sections C and D below in each Fiscal Year on each Assessor’s Parcel of Developed Property and Undeveloped Property in CFD No. 18M to fund the Special Tax Requirement.

“Special Tax Requirement” means the amount, as determined by the CFD Administrator, for any Fiscal Year to: (i) pay the costs of providing the Services during such Fiscal Year, (ii) pay

Administrative Expenses associated with the Special Tax, (iii) establish or replenish the Reserve Fund, (iv) pay incidental expenses related to the Services as authorized pursuant to the Act, (v) fund an amount equal to a reasonable estimate of delinquencies expected to occur in the Fiscal Year in which the Special Tax will be levied (“Estimated Special Tax Delinquency Amount”) and (vi) fund the shortfall, if any, in the Special Tax revenues collected in the preceding Fiscal Year necessary to fund the Special Tax Requirement for Services for such Fiscal Year where such shortfall resulted from delinquencies in the payment of Special Taxes in such Fiscal Year that exceeded the Estimated Special Tax Delinquency Amount included in the Special Tax Requirement for Services for such Fiscal Year, less (vii) any funds available in the Reserve Fund or other funds associated with CFD No. 18M.

“**State**” means the State of California.

“**Taxable Property**” means all of the Assessor’s Parcels within the boundaries of CFD No. 18M of the CFD that are not exempt from the Special Tax pursuant to law or as defined below.

“**Undeveloped Property**” means, for each Fiscal Year, all Taxable Property not classified as Developed Property.

B. ASSIGNMENT TO CATEGORIES OF SPECIAL TAX

Each Fiscal Year, beginning with Fiscal Year 2017-18, using the definitions above, each Assessor’s Parcel within CFD No. 18M shall be classified by the CFD Administrator as Taxable Property or Exempt Property. In addition, each such Fiscal Year, each Assessor’s Parcel of Taxable Property shall be further classified by the CFD Administrator as Developed Property or Undeveloped Property.

Developed Property shall be further assigned to a Land Use Class as specified in Table 1. The Land Use Class of each Assessor’s Parcel of Residential Property or Non-Residential Property shall be determined based on the records of the County Assessor or other such information provided by the City. Commencing with Fiscal Year 2017-18 and for each subsequent Fiscal Year, Developed Property shall be subject to the levy of Special Taxes pursuant to Section C below.

In some instances, an Assessor’s Parcel of Developed Property may contain more than one Land Use Class. The Maximum Special Tax levied on such Assessor’s Parcel shall be the sum of the Maximum Special Taxes for all Land Use Classes located on that Assessor’s Parcel.

C. MAXIMUM SPECIAL TAX RATE

1. Developed Property

The Maximum Special Tax for any Assessor’s Parcel classified as Developed Property shall be determined by reference to Table 1 and the paragraphs that follow Table 1.

TABLE 1
Maximum Special Tax Basis for Developed Property
Community Facilities District No. 18M
(Fiscal Year 2016-17)

Land Use Class	Maximum Special Tax Basis for Labor	Maximum Special Tax Basis for Water	Maximum Special Tax Basis for Asset Replacement	Maximum Special Tax Basis
Single Family Detached Property	\$ 912.16	\$341.42	255.70	1,509.28
Single Family Attached Property	729.73	\$273.14	204.56	1,207.43
Multi-Family Property	72.97	\$27.31	20.46	120.74
Non-Residential Property	3,648.64	\$1,365.68	1,022.82	6,037.13

The Maximum Special Tax Basis shall be equal to the sum of Maximum Special Tax Basis for Labor, Maximum Special Tax Basis for Water and Maximum Special Tax Basis for Asset Replacement as shown in Table 1 above.

In determining the Maximum Special Tax Basis, the components of the Maximum Special Tax Basis for each Land Use Description shall be increased in the 2017-18 Fiscal Year, and each Fiscal Year thereafter, as follows:

- i. the annual percentage change of the Maximum Special Tax Basis for Labor shall be equal to the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W); and
- ii. the annual percentage change of the Maximum Special Tax Basis for Water shall be equal to the annual percentage change in the Otay Water District Commodity Rate; and
- iii. the annual percentage change of the Maximum Special Tax Basis for Asset Replacement shall be equal to the annual percentage change in the Engineering News Record Construction Cost Index for the Los Angeles Area.

The Fiscal Year 2016-17 Maximum Special Tax shall be equal to the Fiscal Year 2016-17 Maximum Special Tax Basis. In each subsequent Fiscal Year, the Maximum Special Tax shall be increased by an amount not less than two percent (2%) and not greater than six percent (6%) that results in a minimal absolute difference from the Maximum Special Tax Basis for that Fiscal Year.

2. Other Property Types

No Special Tax shall be levied on Undeveloped Property or Exempt Property.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2017-18, and for each subsequent Fiscal Year, the CFD Administrator shall levy the Special Tax on all Taxable Property of CFD No. 18M until the total amount of Special Tax levied equals the Special Tax Requirement. The Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property within CFD No. 18M up to 100% of the applicable Maximum Special Tax to satisfy the Special Tax Requirement. Notwithstanding the above, under no circumstances will the Special Tax levied against any Assessor's Parcel of Residential Property for which an occupancy permit for private residential use has been issued be increased as a consequence of delinquency or default by the owner of any other Assessor's Parcel within the CFD by more than ten percent (10%) above what such Special Tax would have been in the absence of delinquencies.

E. PREPAYMENT OF THE SPECIAL TAX

The Special Tax shall be levied in perpetuity for the purpose of financing ongoing authorized Services and therefore may not be prepaid.

F. EXEMPTIONS

The City Council shall classify as Exempt Property: (i) Public Property, (ii) Property Owner Association Property, (iii) CPF Property, (iv) Assessor's Parcels with public or utility easements making impractical their utilization for other than the purposes set forth in the easement, including but not limited to property designated for open space, trails, pathways, parks or park and recreation related facilities, and (v) property reasonably designated by the City or CFD Administrator as Exempt Property due to deed restrictions, conservation easement, or similar factors.

G. APPEALS

Any landowner who pays the Special Tax and claims the amount of the Special Tax levied on his or her Assessor's Parcel is in error shall first consult with the CFD Administrator regarding such error not later than thirty-six (36) months after first having paid the first installment of the Special Tax that is disputed. If following such consultation, the CFD Administrator determines that an error has occurred, then the CFD Administrator shall take any of the following actions, in order of priority, in order to correct the error:

- (i) Amend the Special Tax levy on the landowner's Assessor's Parcel(s) for the current Fiscal Year prior to the payment date,

- (ii) Require the CFD to reimburse the landowner for the amount of the overpayment to the extent of available CFD funds, or
- (iii) Grant a credit against, eliminate or reduce the future Special Taxes on the landowner's Assessor's Parcel(s) in the amount of the overpayment.

If following such consultation and action by the CFD Administrator the landowner believes such error still exists, such person may file a written notice of appeal with the City Council. Upon the receipt of such notice, the City Council or designee may establish such procedures as deemed necessary to undertake the review of any such appeal. If the City Council or designee determines an error still exists, the CFD Administrator shall take any of the actions described as (i), (ii) and (iii) above, in order of priority, in order to correct the error.

The City Council or designee thereof shall interpret this Rate and Method of Apportionment of Special Tax for purposes of clarifying any ambiguities and make determinations relative to the administration of the Special Tax and any landowner appeals. The decision of the City Council or designee shall be final.

H. MANNER OF COLLECTION

Special Taxes levied pursuant to Section D above shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes, provided that the CFD Administrator may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet the financial obligations of the CFD or as otherwise determined appropriate by the CFD Administrator.

I. TERM OF SPECIAL TAX

Taxable Property in the CFD shall remain subject to the Special Tax in perpetuity.