




Office of the City Manager

ACTION CALENDAR
September 16, 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 Sustainable Energy Financing District and Introduction of Ordinance Levying Special Taxes

RECOMMENDATION:

Conduct a public hearing to consider protests against the establishment of the Sustainable Energy Financing District and upon conclusion:

1. Adopt: a Resolution forming the Sustainable Energy Financing District
2. Adopt a Resolution establishing the maximum bonded indebtedness for the District.
3. Introduce an ordinance, pursuant to Berkeley Municipal Code Section 7.98.160, Ordering the Levy of Special Taxes on parcels will that annex to the District, at rates to be approved by unanimous approval of the owners of said parcels and for apportionment and collection of the special taxes in the manner specified in the resolution forming the District.

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 finance solar installations and energy efficiency improvements by creating a special tax that is paid through their individual property tax bills. Only property owners who choose to use this method of financing for such improvements would pay the special tax.

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.

On July 22, 2008 the Council adopted a Resolution of Intention to Establish the Sustainable Energy Financing District and a Resolution of Intention to Incur Bonded Indebtedness for the District. The two Resolutions of Intention set public hearings for September 16, 2008 on the issues of the establishment of the special tax district and the issuance of bonds. Notice of the September 16th public hearing was published on September 5, 2008 and that hearing is before the Council at this meeting. As required by the Resolution of Intention, a boundary map for the district was recorded with the Alameda County Recorder on July 31, 2008 at 2:53 p.m. in Book 17 at Page 19, as Document 2008232381 of Maps of Assessment and Community Facilities Districts. Additionally, the Resolution of Intention directed that a Special Tax District Report be prepared and filed with the Council prior to the public hearing. That report was filed with the City Clerk's Office and it is also included as an attachment to this report.

The Sustainable Energy Financing District is a city-wide special tax district (the "District") (as set forth in the Boundary Map recorded with the County). 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 the property owner chose to opt-in to the District and to use the funding available through the 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. 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

Public Hearing; Protests. The first item before the Council at this meeting is a public hearing on protests to the establishment of the Sustainable Energy Financing District. Pursuant to Berkeley Municipal Code Section 7.98.160(a)(iii), if 50 percent or more of the registered voters residing within the area proposed to be annexed into the special tax district (i.e. within the boundary of the City), or if the owners of one-half or more of the area of land proposed to be annexed in the future (again the boundary of the City), file written protests against the establishment of the District, and protests are not withdrawn so as to reduce them to less than a majority, no further proceedings may be undertaken to form the District for a period of one year from this date. The Council may

continue the formation hearing, but should conclude the hearing within 30 days from this date. At the conclusion of the hearing, if protests at the levels described above are not received, staff recommends that the Council adopt the necessary resolutions to form the district and establish the amount of bonded indebtedness, as set forth below.

Resolution of Formation of the Special Tax District: Adoption of this resolution forms the Sustainable Energy Financing District, establishes the scope of the facilities to be built and adopts the Method of Apportionment of the special taxes (see below for further discussion of Method of Apportionment).

Resolution of Necessity to Incur Bonded Indebtedness: Adoption of this resolution establishes the maximum amount of bonded debt to be incurred for the District. These bonds are not a debt of the City, but rather a debt of the 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 photo voltaic installed on their roof-tops. 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 does think it is a rational basis to establish a cap for the bonded indebtedness. Because the bonds will finance improvements to private residences, the interest on the bonds will not be exempt from federal income taxation.

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 an attachment to the Resolution of Formation and is entitled "City of Berkeley Special Tax District No. 2008-1 (Solar and Renewable Energy Financing Program) Method of Apportionment of Special Tax." 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 the property owner chooses to opt-in to the program. At the time participants opt-in to the 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 the Resolution of Formation. 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.

City staff has estimated that the average photovoltaic system in Berkeley cost \$28,077 with an average California Solar Initiative rebate of \$6,108. A hypothetical financing structure for an average system (\$28,077-\$6,108) 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 noted above, the actual interest rate a property owner will pay will be determined at the time the property owner opts in to the special tax district.

Hypothetical Financing for \$28,077 Solar System

Project Financing Amount:	\$22,569	
Estimated Financing Rate:	6.75%	
Program Costs to be Amortized:	\$600	<i>Bank and Administration Fees</i>
Term of Repayment:	20 years	<i>Paid Through Annual Special Tax</i>
Annual Special Tax Charges:	4.5% of Special Tax	<i>County and Program Administration</i>
Projected Annual Special Tax:	\$2,089/Year	<i>Equates to \$182/month</i>

Next Steps; Legislative and Financial:

Legislative: The legislative steps required to form the Sustainable Energy Financing District, set the rate and method of apportionment of the special tax and authorize the issuance of bonds are set forth below, along with a description of the status of those steps:

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

- *Minimum 30 day waiting period before next action-DONE*
- Noticed Public Hearing on formation of Sustainable Energy Financing District and issuance of bonds **THIS ITEM**
- Adoption of Resolution of Necessity to incur bond indebtedness **THIS ITEM**
- Adoption of Resolution of Formation of Sustainable Energy Financing District **THIS ITEM**
- First reading of Ordinance to levy special taxes **THIS ITEM**
- Legislative authorization of bond issuance
- Second reading of Ordinance to levy special taxes **September 23, 2008**
- 30 day referendum period
- Program clear to begin **October 24, 2008**

Financing: Since the concept for this program was approved by the Council in November 2007, staff and the City's outside consultants have met with a variety of possible financial partners who could provide funding for the program. The project team has met with commercial banks, community banks and several private investment firms, all of whom expressed interest in the program. As of the date of the writing of this report, staff is continuing to work through various issues related primarily to the costs of financing for the program, but is confident that an arrangement with a financial partner will be reached soon.

FISCAL IMPACTS:

Staff and Consultant Costs: The City has received two grants that 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 portion of a staff position to manage program implementation during its first year.

Tax District Costs: With respect to the tax district itself, the costs of administering the levy of the special tax will be built into special tax structure. 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, assuming the property can be sold for an amount at least equal to the public liens on the property, the City would be repaid any amounts it distributed to cover that debt service. This provision avoids the typical bond-market requirement that the City foreclose on a property simply to collect the relatively modest special tax amount due for the solar financing.

CONCLUSION: The Financing District should solve many of the financial hurdles facing property owners. First, there would be relatively little up-front 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. 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.

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

ATTACHMENTS:

1. Resolution of Formation of the Sustainable Energy Financing District
2. Resolution of Necessity to Incur Bonded Indebtedness
3. Ordinance Ordering Levy of Special Taxes
4. Special Tax District Report
5. Public Hearing Notice

Attachment 1**RESOLUTION NO. _____****RESOLUTION OF FORMATION OF SPECIAL TAX DISTRICT****CITY OF BERKELEY
Special Tax District No. 2008-1
(Sustainable Energy Financing District)**

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

WHEREAS, on July 22, 2008, this City Council adopted a resolution entitled "Resolution of Intention to Establish Special Tax District" (the "Resolution of Intention"), 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"); and

WHEREAS, the Resolution of Intention, incorporating a map of the proposed boundaries of the Special Tax District, stated the intention of this City Council to establish a City-wide special tax district, to be called "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "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 described the method of apportionment of the special tax to be levied within the Special Tax District; and

WHEREAS, the Resolution of Intention stated the intention of the City Council 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, on this date, this City Council held a noticed public hearing as required by the Code and the Resolution of Intention relating to the proposed formation of the Special Tax District; and

WHEREAS, at the hearing all interested persons desiring to be heard on all matters pertaining to the formation of the Special Tax District, the facilities to be financed by the Special Tax District and the levy of a special tax on property annexed to the Special Tax District were heard and a full and fair hearing was held; and

WHEREAS, at the hearing evidence was presented to this City Council on the matters before it, including a report caused to be prepared by the City Manager (the 'Report') as to the facilities to be provided through the Special Tax District and the costs thereof, a copy of which is on file with the City Clerk, and this City Council at the conclusion of said hearing is fully advised in the premises; and

WHEREAS, written protests with respect to the formation of the Special Tax District, the furnishing of specified types of facilities and the method of apportionment of the special taxes have not been filed with the City Clerk by 50% or more of the registered voters residing within the territory proposed to be annexed to the Special Tax District in the future, or by the owners of one-half or more of the area of land proposed to be annexed in the future.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. **Recitals Correct.** The foregoing recitals are true and correct.
2. **No Majority Protest.** Neither the proposed establishment of the Special Tax District, the extent of the Special Tax District nor the furnishing of the specified Facilities has been precluded by majority protest pursuant to Section 7.98.160 of the Code.
3. **Prior Proceedings Valid.** All prior proceedings taken by this City Council in connection with the establishment of the Special Tax District and the levy of a special tax therein have been duly considered and are hereby found and determined to be valid and in conformity with the Code.
4. **Name of Special Tax District.** The Special Tax District, to be designated "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)," is hereby established pursuant to the Code.
5. **Boundaries of Special Tax District.** The boundaries of the Special Tax District, as set forth in the map of the Special Tax District recorded in the Alameda County Recorder's Office on July 31, 2008 at 2:53 p.m. in Book 17 at Page 19, as Document 2008232381 of Maps of Assessment and Community Facilities Districts, are hereby approved, are incorporated herein by reference and shall be the boundaries of the Special Tax District. 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.
6. **Description of Facilities.** The type of facilities proposed to be financed by the Special Tax District and pursuant to the Code shall consist of those items listed in Exhibit A hereto and by this reference incorporated herein (the "Facilities").

7. **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 real property in the Special Tax District that annexes to the Special Tax District, will be levied annually within the Special Tax District, and will be 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 the following paragraph relating to such parcel or parcels.

The Special Tax shall be levied on a parcel or parcels in the Special Tax District only with the written unanimous approval (each, a "Unanimous Approval") of the owner or owners of each 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.

The Special Tax on any parcel or parcels shall not be levied in the Special Tax District after the fiscal year set forth in the Unanimous Approval for such parcel or parcels, except that a Special Tax that was lawfully levied in or before the final tax year and that remains delinquent may be collected in subsequent years. Under no circumstances shall the Special Tax levied against any parcel in the Special Tax District to be used for private residential purposes be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within the Special Tax District by more than 10%.

8. **Responsible Official.** The Finance Director of the City of Berkeley, 2180 Milvia Street, Berkeley, CA 94704, (510) 981-7200, is the officer of the City who will be responsible for preparing annually a current roll of Special Tax levy obligations by assessor's parcel number and who will be responsible for estimating future Special Tax levies pursuant to the Code.

9. **Tax Lien.** Upon recordation of a notice of Special Tax lien pursuant to Section 3114.5 of the Streets and Highways Code of California, a continuing lien to secure each levy of the Special Tax shall attach to all nonexempt real property in the Special Tax District and this lien shall continue in force and effect until the Special Tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City ceases.

Pursuant to Section 7.98.160(a)(iv) of the Code, a notice of special tax lien shall not be recorded against any parcel or parcels in the Special Tax District until such time as the owner or owners of such parcel or parcels have given their unanimous approval of such parcel or parcels' annexation to the Special Tax District, at which time the notice of special tax lien shall be recorded against such parcel or parcels as set forth in Section 53328.3 of the Act.

10. **Appropriations Limit.** In accordance with the Code, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the Special Tax District is hereby preliminarily established at \$80,000,000. Pursuant to Section 7.98.160(a)(ii) of the Code, the appropriations limit for the Special Tax District shall be specified and approved by the Unanimous Approval of the owner or owners of each parcel or parcels at the time that such parcel or parcels are annexed to the Special Tax District. No additional hearings or procedures are required, and such Unanimous Approval shall be deemed to constitute a unanimous vote in favor of the appropriations limit. The proposition shall be adjusted in accordance with the applicable provisions of the Code.

11. **Election.** Pursuant to Section 7.98.160(a)(ii) of the Code, in lieu of approval pursuant to an election held in accordance with the procedures set forth elsewhere in the Code and in Sections 53326, 53327, 53327.5 and 53328 of the Act, the appropriations limit for the Special Tax District, the applicable rate, method of apportionment and manner of collection of the Special Tax and the authorization to incur bonded indebtedness for the Special Tax District shall be specified and approved by the Unanimous Approval of the owner or owners of each parcel or parcels at the time that such parcel or parcels are annexed to the Special Tax District. No additional hearings or procedures are required, and such Unanimous Approval shall be deemed to constitute a unanimous vote in favor of the appropriations limit for the Special Tax District, the authorization to levy the Special Tax on such parcel or parcels and the authorization to incur bonded indebtedness for the Special Tax District.

12. **Effective Date.** This resolution shall take effect upon its adoption.

* * * * *

The foregoing Resolution was adopted by the Berkeley City Council on September 16, 2008 by the following vote:

Ayes:

Noes:

Absent:

Tom Bates, Mayor

Attest: _____
Deanna Despain, Acting 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 \$80,000,000 and an appropriations limit for the Special Tax District of \$80,000,000.

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:

<i>Property Address:</i>	_____ _____ _____
<i>Alameda County Assessors Parcel(s) Number(s):</i>	_____ _____

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

Attachment 2

RESOLUTION NO. _____

RESOLUTION DETERMINING NECESSITY TO INCUR BONDED INDEBTEDNESS

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

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

WHEREAS, on July 22, 2008, this City Council adopted a resolution entitled "Resolution of Intention to Establish Special Tax District" (the "Resolution of Intention") stating its intention to form "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "Special Tax District"), pursuant to Section 7.98 of the Berkeley Municipal Code (the "Code"), which Code incorporates the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (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"); 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, on July 22, 2008, this City Council also adopted a resolution entitled "Resolution of Intention to Incur Bonded Indebtedness" (the "Resolution of Intention to Incur Indebtedness") stating its intention to incur bonded indebtedness within the boundaries of the Special Tax District for the purpose of financing the Facilities; and

WHEREAS, in the Resolution of Intention to Incur Indebtedness, this Council stated its intention 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 City Council held a noticed public hearing as required by the Code about the determination to proceed with the formation of the Special Tax District, the provision of the Facilities by the Special Tax District and the method of apportionment of the special tax to be levied within the Special Tax District; and

WHEREAS, subsequent to the public hearing, this City Council adopted a resolution entitled "Resolution of Formation of Special Tax District" (the "Resolution of Formation");

WHEREAS, this City Council also held a noticed public hearing as required by the Code related to the questions set forth in the Resolution of Intention to Incur Indebtedness; and

WHEREAS, no written protests related to the questions set forth in the Resolution of Intention to Incur Indebtedness have been filed with the City Clerk.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. **Recitals.** The foregoing recitals are true and correct.
2. **Necessity.** This City Council deems it necessary to incur bonded indebtedness in the maximum aggregate principal amount of \$80,000,000 within the boundaries of the Special Tax District for the purpose of financing the costs of the Facilities, including, but not limited to, the costs of issuing and selling bonds to finance all or a portion of the Facilities and the costs of the City in establishing and administering the Special Tax District.
3. **Entire Special Tax District Liable.** The whole of the Special Tax District shall pay for the bonded indebtedness through the levy of the special tax. 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 (each, a "Unanimous Approval") of the owner or owners of such parcel or parcels at the time that such parcel or those parcels are annexed.

The tax is to be apportioned in accordance with the Method of Apportionment of Special Tax set forth in Exhibit 'B' to the Resolution of Formation. 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 relating to such parcel or parcels.

4. **Bonds.** Bonds in the maximum amount of \$80,000,000 are hereby authorized, subject to approval as described in Section 5 below. The bonds may be issued in one or more series and mature and bear interest at such rate or rates, payable semiannually or

in such other manner, all as this City Council or its designee shall determine, at the time or times of sale of such bonds; provided, however, that the interest rate or rates shall not to exceed the maximum interest rate permitted by applicable law at the time of sale of the bonds and the bonds or any series thereof shall have a maximum term of not to exceed 40 years.

5. **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. No additional hearings or procedures are required, and such unanimous approval shall be deemed to constitute a unanimous vote in favor of such proposition.

6. **Effective Date.** This Resolution shall take effect upon its adoption.

* * * * *

The foregoing Resolution was adopted by the Berkeley City Council on September 16, 2008 by the following vote:

Ayes:

Noes:

Absent:

Tom Bates, Mayor

Attest: _____
Deanna Despain, Acting City
Clerk

Attachment 3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY LEVYING SPECIAL TAXES WITHIN CITY OF BERKELEY SPECIAL TAX DISTRICT NO. 2008-1 (SUSTAINABLE ENERGY FINANCING DISTRICT)

WHEREAS, on July 22, 2008, this City Council (the "City Council") of the City of Berkeley (the "City"), adopted a resolution entitled "Resolution of Intention to Establish Special Tax District" (the "Resolution of Intention") stating its intention to establish 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, sections 53311, *et. seq.*, of the California Government Code (the "Act"), 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, the Resolution of Intention stated the intention of the City Council 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, notice was published as required by the Code relative to the intention of this City Council to form the Special Tax District, to provide for certain facilities and to incur bonded indebtedness for the Special Tax District in an amount not to exceed \$80,000,000; and

WHEREAS, this City Council held noticed public hearings as required by the Code relative to (i) the determination to proceed with the formation of the Special Tax District and the method of apportionment of the special tax to be levied within the Special Tax District to finance a portion of the costs of the facilities and (ii) the issuance of not to exceed \$80,000,000 of bonded indebtedness for the Special Tax District; and

WHEREAS, at the public hearings, all persons desiring to be heard on all matters pertaining to the formation of the Special Tax District and the levy of special taxes were heard, substantial evidence was presented and considered by this City Council and a full and fair hearing was held; and

WHEREAS, subsequent to the hearings, this City Council adopted resolutions entitled 'Resolution of Formation of Special Tax District' (the "Resolution of Formation") and 'Resolution Determining the Necessity to Incur Bonded Indebtedness' (the "Resolution of Necessity"), which resolutions defined the public facilities to be financed by the Special Tax District (the "Facilities"), established the Special Tax District, authorized the levy of a special tax with the Special Tax District and determined the necessity to incur bonded indebtedness in the Special Tax District, respectively; and

WHEREAS, Section 7.98.160(b) of the Code provides that, notwithstanding the provisions of Section 53340 of the Act, after adoption of the resolution of formation for a special tax district pursuant to Section 7.98.160(a), the City Council may, by ordinance, provide for the levy of the special taxes on parcels that will annex to the special tax district at the rate or rates to be approved by unanimous approval of the owner or owners of each parcel or parcels to be annexed to the special tax district and for apportionment and collection of the special taxes in the manner specified in the resolution of formation, and that no further ordinance shall be required even though no parcels may then have annexed to the special tax district.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, as follows:

Section 1. By the passage of this Ordinance, this City Council hereby authorizes and levies special taxes within the Special Tax District pursuant to the Code, at the rate or rates to be approved by unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels to be annexed to the Special Tax District, and in accordance with the method of apportionment (the "Method of Apportionment") set forth in the Resolution of Formation, which Unanimous Approvals, Method of Apportionment and Resolution of Formation are by this reference incorporated herein. The special taxes are hereby levied commencing in the first fiscal year in which a parcel or parcels annexes by Unanimous Approval to the Special Tax District and in each fiscal year thereafter until payment in full of any bonds issued by the City for the Special Tax District (the "Bonds"), as contemplated by the Resolution of Formation and the Resolution of Necessity, and all costs of administering the Special Tax District, or such longer period provided for in the Unanimous Approvals.

Section 2. The Finance Director of the City is hereby authorized and directed each fiscal year to determine the specific special tax rate and amount to be levied for the next ensuing fiscal year for each parcel of real property within the Special Tax District, in the manner and as provided in the Resolution of Formation.

Section 3. The Special Tax District initially consists solely of territory proposed for annexation to the Special Tax District in the future. A parcel or parcels within the territory of the Special Tax District 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. In no event shall the special taxes be levied on any parcel within the Special Tax District in

excess of the maximum tax specified in the Unanimous Approval applicable to such parcel.

Section 4. All of the collections of the special tax shall be used as provided for in the Code, in the Resolution of Formation and the applicable Unanimous Approval, including, but not limited to, the payment of principal and interest on the Bonds, to make lease payments on any lease used to finance the Facilities, the replenishment of a debt service reserve fund for the Bonds, the payment of the costs of the Facilities, the payment of the costs of the City in administering the Special Tax District, and the costs of collecting and administering the special tax.

Section 5. The special taxes shall be collected in the same manner as ordinary ad valorem taxes are collected and shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that this City Council may provide for other appropriate methods of collection by resolutions of this City Council. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments. The Finance Director of the City is hereby authorized and directed to provide all necessary information to the auditor/tax collector of the County of Alameda in order to effect proper billing and collection of the special tax, so that the special tax shall be included on the secured property tax roll of the County of Alameda for the first fiscal year in which a parcel or parcels annexes by Unanimous Approval to the Special Tax District and for each fiscal year thereafter until the Bonds are paid in full or such longer period of time provided in the Unanimous Approvals.

Section 6. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Special Tax District, in each case by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Special Tax District shall not be affected.

Section 7. The Mayor shall sign this Ordinance and the City Clerk shall cause the same to be published within 15 days after its passage at least once in a newspaper of general circulation published and circulated in the City.

Section 8. This Ordinance shall take effect 30 days from the date of final passage.

* * * * *

The foregoing Ordinance was introduced on September 16, 2008 and adopted by the Berkeley City Council on September 23, 2008 by the following vote:

Ayes:

Noes:

Absent:

Tom Bates, Mayor

Attest: _____
Deanna Despain, Acting City
Clerk

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

CONTENTS

- Introduction
- A. Description of Facilities
- B. Proposed Boundaries of the Special Tax District
- C. Cost Estimate

- EXHIBIT A - Description of the Proposed Facilities
- EXHIBIT B - Cost Estimate

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

INTRODUCTION

The City Council (the "City Council") of the City of Berkeley (the "City") did, pursuant to the provisions of 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"), on July 22, 2008, adopt a resolution entitled "Resolution of Intention to Establish Special Tax District" (the "Resolution of Intention"). In the Resolution of Intention, the City Council expressly ordered the preparation of a written Special Tax District Report (the "Report") for the proposed "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "Special Tax District").

The Resolution of Intention ordering the Report directed that the Report generally contain the following:

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

(b) An estimate of the fair and reasonable cost of the Facilities including the cost of acquisition of lands, rights-of-way and easements, any physical facilities required in conjunction therewith and incidental expenses in connection therewith, including the costs of the proposed bond financing and all other related costs as provided in Section 53345.3 of the Act.

For particulars, reference is made to the Resolution of Intention for the Special Tax District, as previously approved and adopted by the City Council.

NOW, THEREFORE, I, the City Manager of the City, do hereby submit the following data:

A. DESCRIPTION OF FACILITIES. A general description of the proposed Facilities is as shown in Exhibit "A" attached hereto and hereby made a part hereof.

B. PROPOSED BOUNDARIES OF THE SPECIAL TAX DISTRICT. The proposed boundaries of the Special Tax District indicates those properties and parcels in which special taxes may be levied to pay for the costs and expenses of the Facilities. The proposed boundaries of the Special Tax District are as shown on the map of it on file with the City Clerk, which map is incorporated herein. 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.

C. **COST ESTIMATE.** The cost estimate for the Facilities is set forth in Exhibit "B" attached hereto and hereby made a part hereof.

Dated as of September 1, 2008

By: _____
City Manager

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)**

The estimated cost of acquisition and construction of the Facilities will be determined on a parcel-by-parcel basis. In addition to the acquisition and construction costs of the Facilities, the Special Tax levied in the Special Tax District may finance:

- (i) Bond issuance costs, funding of capitalized interest, funding of a debt service reserve fund and other costs associated with the sale of bonds, which costs shall be determined on a financing-by-financing basis, and
- (ii) annual administration costs of the Special Tax District, which are currently expected not to exceed 5% of improvement costs per parcel.

NOTICE OF PUBLIC HEARING
To Incur Bonded Indebtedness

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

On July 22, 2008, the City Council (the "City Council") of the City of Berkeley (the "City"), County of Alameda, State of California adopted its "Resolution of Intention To Incur Bonded Indebtedness" (the "Resolution") for the "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "Special Tax District") under Chapter 7.98 of the Berkeley Municipal Code (the "Code"), which Code incorporates the Mello-Roos Community Facilities Act of 1982 (the "Act"). Under the Code and the Resolution, the City Council gives notice as follows:

1. Reference is hereby made to the entire text of the above Resolution, a complete copy of which is on file with the City Clerk of the City. The text of the Resolution is summarized as follows:

a. The City Council has adopted its Resolution of Intention to Establish Special Tax District, stating its intention to form the Special Tax District 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 of Intention.

b. The City Council estimates the amount required to finance the costs of the Facilities to be not more than \$75,000,000 and, in order to finance such costs, it is necessary to incur bonded indebtedness in the amount of not more than \$80,000,000.

c. The proposed bonded indebtedness is to finance the Facilities, including acquisition and improvement costs and all costs incidental to or connected with the accomplishment of such purposes and of the financing thereof, as permitted by the Code.

d. The City Council intends to authorize the issuance and sale of bonds or other forms of debt authorized by the Code (collectively, the "Bonds") in the aggregate principal amount of not more than \$80,000,000 in such series and bearing interest payable semi-annually or in such other manner as the City 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 the Bonds, and maturing not to exceed 40 years from the date of the issuance of the Bonds.

2. On **Tuesday, September 16, 2008, at 7:00 p.m.** or as soon as possible thereafter, in the City Council Chambers, 2134 Martin Luther King, Jr. Way, Berkeley, California, the City Council will hold a **public hearing** on the necessity of incurring the above amount of bonded indebtedness for the Special Tax District.

3. At the public hearing, the testimony of all interested persons, including voters and/or persons owning property in the area of the proposed Special Tax District, for and against the proposed bonded debt, will be heard. Interested persons may submit written protests or comment to the City.