

RESOLUTION NO. 2023-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, DECLARING INTENTION TO ANNEX TERRITORY IN THE FUTURE TO COMMUNITY FACILITIES DISTRICT NO. 2023-1 (PUBLIC SAFETY) OF THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

WHEREAS, the City Council (the "City Council") of the City of Indian Wells (the "City") desires to provide the authorization to annex territory in the future to a community facilities district pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California (the "Act"), and specifically Article 3.5 thereof. The community facilities district has been designated as Community Facilities District No. 2023-01 (Public Safety) of the City of Indian Wells, County of Riverside, State of California (the "CFD"); and

WHEREAS, it is determined to be within the public interest and convenience to establish a procedure to allow and provide for future annexations to the CFD and further to specify the amount of special tax that would be levied and set forth the terms and conditions for certification of any annexation in the future; and

WHEREAS, the territory proposed to be annexed in the future shall be known and designated as Future Annexation Area Community Facilities District No. 2023-01 (the "Future Annexation Area"), and a map designated as "Future Annexation Area to Community Facilities District No. 2023-01 (Public Safety), City of Indian Wells, County of Riverside, State of California" showing the territory proposed to be annexed in the future is on file in the Office of the City Clerk and shall be kept with the transcript of these proceedings and attached hereto as Exhibit "C" and incorporated by this reference.

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

Section 1. Recitals. The above recitals are all true and correct and incorporated herein by this reference.

Section 2. Authorization. These proceedings for future annexations are authorized and initiated by this legislative body pursuant to the authorization of the Act and specifically Section 53339.2 of the Government Code of the State of California.

Section 3. Public Convenience and Necessity. This City Council hereby determines that the public convenience and necessity requires a procedure to allow and authorize territory to be annexed in the future to the CFD in order to finance the costs and expenses for the authorized services.

Section 4. Boundaries of the CFD and Territory Proposed to be Annexed in the Future. A general description of the territory included in the CFD is hereinafter described as follows:

All that property and territory as previously included within the CFD, as said property was shown on a map designated as "Map of

Proposed Boundaries of Community Facilities District No. 2023-01 (Public Safety), City of Indian Wells, County of Riverside, State of California," a copy of which is on file in the Office of the City Clerk and shall remain open for public inspection.

A description of the boundaries and territory proposed to be annexed in the future is as follows:

All that property and territory proposed to be annexed in the future to the CFD, as said property is shown on the map designated as "Future Annexation Area to Community Facilities District No. 2023-01 (Public Safety), City of Indian Wells, County of Riverside, State of California," a copy of which is on file in the Office of the City Clerk and shall remain open for public inspection.

Future annexation proceedings may only be completed with the unanimous consent of the owner or owners of any parcel proposed for annexation.

Section 5. Name of the CFD and Future Annexation Area. The name of the CFD is "Community Facilities District No. 2023-01 (Public Safety) of the City of Indian Wells, County of Riverside, State of California" and the designation for the Future Annexation Area shall be Future Annexation Area, Community Facilities District No. 2023-01 (Public Safety).

Section 6. Authorized Services. The types of services to be financed from the levy of the special tax in the CFD, including the Future Annexation Area, are those described in Exhibit "A" attached hereto which is incorporated herein by this reference ("Authorized Services").

The Authorized Services to be financed by the levy of special taxes to be levied on specific territory within the Future Annexation Area to be annexed to the CFD may include some or all of such Authorized Services or may include alternatives to the Authorized Services.

The Authorized Services shall to the maximum extent practicable, taking into account budgetary and operational demands of the City, be provided in common within the CFD and the Future Annexation Area.

The City Council finds that the Authorized Services described in this Section 6 hereof are necessary to meet increased demands placed upon the City as a result of new development occurring within the boundaries of the CFD and the Future Annexation Area.

Section 7. Special Tax. It is hereby further proposed that, except where funds are otherwise available, a special tax sufficient to finance the Authorized Services (the "Special Tax") to be provided in the territory of the Future Annexation Area upon the annexation of such territory to the CFD and related incidental expenses authorized by the Act, secured by recordation of a continuing lien against all non-exempt real property in the Future Annexation Area that annexes to the CFD, will be levied annually within the boundaries of the territory within the Future Annexation Area upon the annexation of such territory to the CFD. For further particulars as to the rates and method of apportionment of the proposed Special Tax, reference is made to the

attached and incorporated Exhibit "B" (the "Rate and Method"), which sets forth in sufficient detail the rate and method of apportionment of the Special Tax to allow each landowner or resident within the territory in proposed Future Annexation Area to clearly estimate the maximum amount of the Special Tax that such person will have to pay for the Authorized Services upon the annexation of such territory to the CFD. The Special Tax may not be prepaid.

Notwithstanding the foregoing, if the actual cost of providing Authorized Services to territory within any territory within the proposed Future Annexation Area is higher or lower than the cost of providing such services within the existing CFD, a higher or lower special tax may be levied within such territory subject to the unanimous approval and election of the owner or owners of such territory. In any such circumstance, the Rate and Method may be revised to reflect the higher or lower special tax, as applicable.

The Special Tax herein authorized, to the extent possible, shall be collected in the same manner as ad valorem property taxes or in such other manner as this City Council or its designee shall determine, including direct billing of the affected property owners. Such Special Tax shall be subject to the same penalties, procedure, sale and lien priority in any case of delinquency as applicable for ad valorem taxes. Any Special Tax that may not be collected on the County tax roll shall be collected through a direct billing procedure by the City.

Pursuant to Government Code Section 53340 and except as provided in Government Code Section 53317.3, properties of entities of the state, federal, and local governments shall be exempt from the levy of the Special Tax.

Section 8. Effective Date of Future Annexation. Annexation of territory in the future shall be effective upon the unanimous approval and election of the owner or owners of any such parcel authorizing the levy of the Special Tax upon such parcel following the annexation of such parcel to the CFD, and no further public hearings or additional proceedings will be required to accomplish such annexation.

Section 9. Public Hearing. NOTICE IS GIVEN THAT ON JUNE 1, 2023 at 1:30 PM, IN THE REGULAR MEETING PLACE OF THE CITY COUNCIL BEING 44950 ELDORADO DRIVE, INDIAN WELLS, CALIFORNIA 92210 OR VIA TELECONFERENCE AS MAY BE DIRECTED BY THE CITY DUE TO COVID-19 SOCIAL DISTANCING GUIDELINES, A PUBLIC HEARING WILL BE HELD WHERE THIS CITY COUNCIL WILL CONSIDER THE ANNEXATION OF CERTAIN TERRITORY IN THE FUTURE TO THE CFD, THE PROPOSED RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX TO BE LEVIED WITHIN SAID PROPOSED FUTURE ANNEXATION AREA AND ALL OTHER MATTERS AS SET FORTH IN THIS RESOLUTION OF INTENTION. ANY INTERESTED PERSONS MAY APPEAR AND BE HEARD, AND WRITTEN PROTESTS SHALL BE FILED ON OR BEFORE THE TIME FIXED FOR THE PUBLIC HEARING.

Section 10. Notice. Notice of the time and place of the public hearing shall be given by the City Clerk by causing the publication of a Notice of Public Hearing in the legally designated newspaper of general circulation, such publication pursuant to Section 6061 of the Government Code, with such publication to be completed at least seven (7) days prior to the date set for the public hearing.

Section 11. Effective Date. This resolution shall become effective upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on this 6th day of April, 2023.

**DONNA GRIFFITH
MAYOR**

CERTIFICATION FOR RESOLUTION NO. 2023-10

I, Angelica Avila, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that the whole number of the members of the City Council is five (5); that the above and foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the City Council of the City of Indian Wells on the 6th day of April, 2023, by the following vote:

AYES:
NOES:

ATTEST:

APPROVED AS TO FORM:

**ANGELICA AVILA
CITY CLERK**

**TODD LEISHMAN
CITY ATTORNEY**

EXHIBIT "A"

CITY OF INDIAN WELLS COMMUNITY FACILITIES DISTRICT NO. 2032-1 (PUBLIC SAFETY)

Authorized Services

The City of Indian Wells (the "City") is establishing Community Facilities District No. 2032-1 (Public Safety) (the "CFD") to finance, in whole or in part, the following services ("services" shall have the meaning given to that term in the Mello-Roos Community Facilities Act of 1982 (the "Act")) which include administration expenses and collection for reserves. All services to be funded by the CFD are to be in addition to those provided before the CFD was created, and may not supplant services already available when the CFD was created.

Authorized Services:

The types of City services to be financed by the CFD ("Services") shall include, but are not limited to, police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance of streets and roadways, maintenance and operation of street lights, parks, parkways and open space, and maintenance of public facilities, including any incidental expenses authorized by the Act, and any other miscellaneous or incidental services identified by the City necessary to provide the described Services herein.

Administrative Expenses:

In addition, the following costs will also be funded by the special taxes levied within the CFD.

1. Administrative Expenses including costs incurred to determine, levy and collect the special taxes, including compensation of City employees for administrative work performed in relation to the CFD and a proportionate amount of the City's general administrative overhead related thereto, the fees of consultants and legal counsel, the costs of collecting installments of the special taxes upon the general tax rolls, preparation of required reports, and any other costs incurred for the administration of the CFD by the City;
2. Any amounts needed for operating reserves and capital replacement reserves; and
3. Any amounts needed to cure actual or estimated delinquencies in special taxes for the current or previous fiscal years.

EXHIBIT "B"

CITY OF INDIAN WELLS COMMUNITY FACILITIES DISTRICT NO. 2023-1 (PUBLIC SAFETY)

Rate and Method of Apportionment of Special Taxes

RATE AND METHOD OF

APPORTIONMENT OF SPECIAL TAX

For the City of Indian Wells Community Facilities District No. 2023-1 (Public Safety), County of Riverside, State of California

The Special Tax as hereinafter defined shall be levied on all Assessor's Parcels within the City of Indian Wells Community Facilities District No. 2023-1 (Public Safety), ("CFD 2023-1"), other than Assessor's Parcels classified as Exempt Property as defined herein and collected each Fiscal Year commencing in Fiscal Year 2023-24, in an amount determined by the CFD Administrator through the application of the procedures described below. All the real property within CFD 2023-1, 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:

"Act" means the Mello-Roos Communities 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 following actual or reasonably estimated expenses related to the administration of CFD 2023-1: the costs of determining the amount of the levy of the Special Tax, the collection of Special Taxes, including the expenses of collecting delinquencies and pursuing foreclosures, the payment of a proportional share of salaries and benefits of any City employee and City overhead whose duties are directly related to the administration of CFD 2023-1, fees and expenses for counsel, audits, costs associated with responding to public inquiries regarding CFD 2023-1, and any and all other costs incurred in connection with the administration of CFD 2023-1.

"Annual Escalation Factor" means the annual percentage increase of the All Urban Consumers Consumer Price Index ("CPI") or three percent (3%), whichever is greater. The annual CPI used shall be for the area of Los Angeles-Long Beach-Anaheim, CA as determined by the Bureau of Labor Statistics for the twelve (12) months ending the preceding December 31, or such other replacement index as may be determined by the City.

"Assessor's 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.

“Base Year” means Fiscal Year beginning July 1, 2023 and ending June 30, 2024.

“Building Permit” means a permit issued for new construction of a residential dwelling or non-residential structure. For purposes of this definition, “Building Permit” shall not include permits for construction or installation of retaining walls, grading, utility improvements, or other such improvements not intended for human habitation or commercial activities.

“Building Square Footage” or **“Building Square Foot”** means for Residential Property, all the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area; and for Non-Residential Property, all the square footage within the perimeter of the non-residential structure, measured from outside wall to outside wall, not including space devoted to stairwells, basement storage, required corridors, public restrooms, elevator shafts, light courts, vehicle parking areas incidental thereto, mechanical equipment incidental to the operation of such building, and covered pedestrian circulation areas, including atriiums, lobbies, plazas, patios, decks, arcades and similar areas, except such public circulation areas or portions thereof that are used solely for business purposes. The determination of Building Square Footage shall be based on the Building Permit(s) issued for such structure and/or by reference to appropriate records kept by the City.

“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 Tax for CFD 2023-1.

“CFD 2023-1” means City of Indian Wells Community Facilities District No. 2023-1 (Public Safety) established by the City Council under the Act.

“City” means the City of Indian Wells.

“City Council” means the Council of the City of Indian Wells, acting as the legislative body of CFD 2023-1.

“County” means the County of Riverside.

“Developed Property” means an Assessor’s Parcel of Taxable Property for which a Building Permit was issued on or before June 1 preceding the Fiscal Year for which the Special Tax is being levied.

“Exempt Property” means all Assessor’s Parcels within CFD 2023-1 that are exempt from the Special Tax pursuant to the Act or Section F herein.

“Fiscal Year” means the period commencing on July 1 of any year and ending the following June 30.

“Hotel Property” means all Assessor’s Parcels of Developed Property within CFD 2023-1 for which a Building Permit has been issued for purposes of constructing one or more non-residential buildings intended to provide accommodations, meals and other services for travelers and tourists.

“Land Use Type” means any of the land use types listed in Table 1 below.

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

“Multi-Family Residential Property” means all Assessor’s Parcels of Residential Property for which a Building Permit has been issued for the purpose of constructing a building or buildings comprised of attached Residential Units available for rental by the general public, not for sale to an end user, and under common management.

“Municipal Services” means those authorized services that may be funded by CFD 2023-1 pursuant to the Act, as amended including but not limited to fire protection and suppression services; ambulance and paramedic services; police protection services; maintenance of streets and roadways; maintenance and operation of street lights; maintenance of parks, parkways and open space; and maintenance of public facilities.

“Non-Residential Property” means any Assessor’s Parcel classified as Developed Property, which is not classified as any, Residential Property, Public Property and Property Owner Association Property.

“Permanent Residential Property” means all Assessor’s Parcels of Residential Property not classified as Short-Term Rental Property.

“Property Owner Association Property” means for each Fiscal Year any property within the boundaries of CFD 2023-1 that was 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, as of June 1.

“Proportionately” means in a manner such that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels within each Land Use Class.

“Public Property” means any property that is owned by, dedicated or irrevocably dedicated to a city, the federal government, the State of California, the County, or any other public agency (each, a “Public Entity”); provided, however, that any such property is leased by such a Public Entity to a private entity and is thereby subject to taxation pursuant to Section 53340.1 of the Act, such leasehold estate shall be classified and taxed according to the use thereof.

“Residential Property” means Assessor’s Parcels of Developed Property within CFD 2023-1 for which a Building Permit has been issued for purposes of constructing one or more Residential Unit(s).

“Residential Unit” means any residence in which a person or persons may live, which is not considered to be used for non-residential purposes.

“Short-Term Rental Property” means Assessor’s Parcels of Residential Property intended for rental to the general public on a short-term basis.

“Special Tax” means the special tax authorized to be levied within CFD 2023-1 pursuant to the Act, 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 Municipal Services during such Fiscal Year, (ii) pay Administrative Expenses associated with the Special Tax, (iii) establish or replenish any operational reserve fund established for Municipal Services, (iv) pay incidental expenses related to the Municipal 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 such Fiscal Year where such shortfall resulted from delinquencies in the payment of the Special Tax in such Fiscal Year that exceeded the Estimated Special Tax Delinquency Amount included in the Special Tax Requirement for such Fiscal Year.

“Taxable Property” means all Assessor’s Parcels that are not exempt from the Special Tax pursuant to the Act or Section F.

“Undeveloped Property” means an Assessor’s Parcel of Taxable Property which is not classified as Developed Property.

B. CLASSIFICATION OF ASSESSOR’S PARCELS

Each Fiscal Year, beginning with Fiscal Year 2023-24, using the definitions above, each Assessor’s Parcel within CFD 2023-1 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. Commencing with Fiscal Year 2023-24 and for each subsequent Fiscal Year, all Taxable Property shall be assigned a Land Use Type and subject to the levy of the Special Tax pursuant to Section C below.

C. SPECIAL TAX RATES

1. Developed Property

Each Fiscal Year commencing in Fiscal Year 2023-24, each Assessor’s Parcel of Developed Property shall be subject to the Special Tax.

The Maximum Special Tax for Developed Property for Fiscal Year 2023-24 is shown below in Table 1.

TABLE 1

Land Use Type	Maximum Special Tax
Permanent Residential Property	\$388 per Residential Unit
Short-Term Rental Property	\$291 per Residential Unit

Hotel Property	\$277 per Hotel Room
Retail Property	\$0.67 per Building Square Foot
Other Non-Residential Property	\$0.34 per Building Square Foot

For each subsequent Fiscal Year following the Base Year, the Maximum Special Tax rates shall be increased from the Maximum Special Tax rate in effect for the prior Fiscal Year by the Annual Escalation Factor.

2. Undeveloped Property

Each Fiscal Year commencing in Fiscal Year 2023-24, each Assessor’s Parcel classified as Undeveloped Property shall be exempt from the levy of the Special Tax.

3. Exempt Property

No Special Tax shall be levied on Exempt Property as defined in Section F.

For each Fiscal Year, if the use or ownership of an Assessor’s Parcel or Exempt Property changes so that such Assessor’s Parcel is no longer classified as one of the uses set forth in Section F, therefore making such Assessor’s Parcel no longer eligible to be classified as Exempt Property, such Assessor’s Parcel shall be deemed to be Taxable Property and shall be taxed pursuant to the provisions of Section C.

D. METHOD OF APPORTIONMENT OF SPECIAL TAX

Commencing in Fiscal Year 2023-24 and for each subsequent Fiscal Year, the CFD Administrator shall levy the Special Tax on all Taxable Property of CFD 2023-1 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 2023-1 up to 100% of the Maximum Special Tax to satisfy the Special Tax Requirement.

Notwithstanding any provision of this Section D to the contrary, under no circumstances will the Special Tax levied against any Assessor’s Parcel of Developed Property that is classified as Residential Property be increased by more than ten percent (10%) per Fiscal Year as a consequence of delinquency or default in the payment of the Special Tax by the owner of any other Assessor’s Parcel.

E. PREPAYMENT OF 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) 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 (iv) property reasonably

designated by the City or CFD Administrator as Exempt Property due to deed restrictions, conservation easement, or similar factors.

G. APPEALS

Any property owner claiming that the amounts or application of the Special Tax is not correct may file a written notice of appeal with the CFD Administrator not later than twelve months after having paid the first installment of the Special Tax. The CFD Administrator shall promptly review the appeal, and if necessary, meet with the property owner, consider written and oral evidence regarding the amount of the Special Tax, and rule on the appeal. If the decision of the CFD Administrator requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the property owner, a cash refund shall not be made but an adjustment shall be made to the Special Tax on that Assessor's Parcel in the subsequent Fiscal Year(s) to compensate for the overpayment of the Special Tax.

H. MANNER OF COLLECTION

The Special Tax shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that the Special Tax may be billed and collected at a different time or in a different manner if necessary to meet the financial obligations of CFD 2023-1.

I. DURATION OF TAX

The Special Tax shall be levied in perpetuity to fund the Special Tax Requirement unless such tax is no longer required as determined by the City Council.

J. INTERPRETATION

The City may interpret, clarify, and revise this Rate and Method to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Tax.

EXHIBIT "C"

**CITY OF INDIAN WELLS
COMMUNITY FACILITIES DISTRICT NO. 2023-1
(PUBLIC SAFETY)**

Proposed Future Annexation Boundary Map