



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: Erin Roseman
Director of Finance

SUBJECT: Issuance and Sale of Special Tax
Bonds for Brooklyn Community
Facilities District

DATE: June 10, 2024

City Administrator Approval


Jestin Johnson (Jun 27, 2024 21:16 PDT)

Date: Jun 27, 2024

RECOMMENDATION

Staff Recommends That The City Council Adopt: A Resolution Authorizing The Issuance And Sale of Special Tax Bonds In A Principal Amount Not To Exceed \$6,000,000 For City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services) For The Purpose Of Financing Authorized Facilities, And Approving And Authorizing Related Documents And Actions; And Adopting Appropriate Findings Under the California Environmental Quality Act.

EXECUTIVE SUMMARY

The City of Oakland (City) has approved a development now known as Brooklyn Basin (and formerly known as the Oak-to-Ninth Avenue Mixed-Use Development) on approximately 64.2 acres of land area (and 7.95 acres of water surface area) along the Oakland Estuary (Brooklyn Basin Project).

The City and Zarsion-OHP I, LLC, a California limited liability agreement (Developer), as successor by assignment from Oakland Harbor Partners, LLC, are parties to a Development Agreement, dated August 24, 2006, related to the development of the Brooklyn Basin Project (as amended and assigned, the "Development Agreement"). The most recent amendment of the Development Agreement is a Third Amendment to the Development Agreement, which was approved by Ordinance No. [13739 C.M.S.](#) on May 16, 2023.

The City Council previously conducted proceedings under the Mello-Roos Community Facilities Act of 1982 (Act) to form the City of Oakland Community Facilities District (CFD) No. 2023-1 (Brooklyn Basin Facilities and Services) (CFD No. 2023-1) for the purpose of authorizing the levy of special taxes upon the land within the CFD No. 2023-1 and issuing bonds secured by certain special taxes for financing certain public improvements related to the Brooklyn Basin Project (Facilities) in the aggregate principal amount of \$50,000,000. The special taxes levied in CFD No. 2023-1 include a Services Special Tax to fund operation and maintenance costs of public facilities serving the Brooklyn Basin Project and a Facilities Special Tax to provide funds for the acquisition by the City of public facilities serving the Brooklyn Basin Project.

Finance and Management Committee
July 9, 2024

In connection with the formation of the CFD No. 2023-1, the City and the Developer executed an Acquisition Agreement Relating to: the City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services), dated as of February 1, 2024, pursuant to which the City may use proceeds of bonds issued by the City for CFD No. 2023-1 and Facilities Special Taxes to pay the purchase price for the Facilities constructed by the Developer. The City's acquisition of the Facilities with proceeds of bonds and Facilities Special Taxes results in a reimbursement to the Developer of the costs of constructing the Facilities.

The Developer has requested the City to issue bonds for CFD No. 2023-1 to finance the acquisition of Facilities (as described in the draft preliminary official statement under the Financing Plan – Authorized Facilities) constructed by the Developer. The financing team including City staff has prepared the legal documents and disclosure documents required for the issuance and sale of such bonds.

The proposed resolution would approve the issuance and sale of the bonds in an amount not-to exceed \$6,000,000 of one or more series, which may be taxable or tax exempt and have one or more maturities and approve and authorize related documents and actions.

BACKGROUND / LEGISLATIVE HISTORY

Brooklyn Basin Project and the Related Development Agreement

In 2006, the City approved a development known as the Oak-to-Ninth Avenue Mixed Use Development on approximately 64.2 acres of land area (and 7.95 acres of water surface area) along the Oakland Estuary, which included up to 3,100 residential units, up to 200,000 square feet of commercial space, a minimum of 3,534 parking spaces, approximately 31 acres of open space, two renovated marinas, as well as shoreline improvements, new roads, and other infrastructure and improvements (Original Brooklyn Basin Project).

The City, as an original party and as successor to the Redevelopment Agency of the City of Oakland, and the Developer, as successor by assignment from Oakland Harbor Partners, LLC, are parties to the Development Agreement, dated August 24, 2006, approved by Ordinance No. [12760 C.M.S.](#) adopted on July 18, 2006, related to the development of the Original Brooklyn Basin Project. The most recent amendment of the Development Agreement is a Third Amendment to the Development Agreement, which was approved by Ordinance No. [13739 C.M.S.](#) on May 16, 2023, together with related entitlements authorized by the City Council pursuant to Resolution No. [89707 C.M.S.](#), Resolution No. [89708 C.M.S.](#), Resolution No. [89709 C.M.S.](#) each adopted on May 2, 2023, and Ordinance No. [13738 C.M.S.](#) adopted on May 16, 2023.

The Original Brooklyn Basin Project, as updated by the Third Amendment to the Development Agreement and related entitlements, is referred to herein as the Brooklyn Basin Project.

The Brooklyn Basin Project is divided into four (4) phases and twelve (12) parcels, as summarized below.

Summary of Brooklyn Basin Project

Parcels By Phase	Market Rate Units	Affordable Units	Total Units	Development Status
<u>Phase I</u>				
Parcel A		254	254	130 units completed/occupied; and 124 units completed and under lease up
Parcel B	241		241	Completed and occupied
Parcel C	241		241	Completed and occupied
Parcel F		211	211	Completed and occupied
Parcel G	371		371	Completed and under lease up
Subtotal	853	465	1,318	
<u>Phase II</u>				
Parcel D	243		243	Construction anticipated to start in 2025
Parcel E	191		191	Construction anticipated to start in 2025
Parcel H	382		382	Construction anticipated to start in 2025
Parcel J	378		378	Completed and under lease up
Subtotal	1,194		1,194	
<u>Phase III</u>				
Parcel K	400		400	Construction to start approx. 2027
Parcel L	250		220	Construction to start approx. 2027
Subtotal	650		620	
<u>Phase IV</u>				
Parcel M	538		568 ¹	Construction to start approx. 2025
<u>Total</u>	3,235	465	3,700	

At this time, Phase I streets are open to the public (except for certain construction staging areas), and Phase 1 of Township Commons Park (formerly known as Shoreline Park) is constructed and open to the public. Phase 2 street and utility improvements are substantially complete.

Formation of Community Facilities Districts

The Development Agreement provides for the formation of a community facilities district to fund certain public services and permits the Developer to request the City to use any public financing method for public facilities.

Consistent with Section 4.4.4.4 of the Development Agreement, in September 2017, the City Council established CFD No. 2017-1 to authorize the levy of special taxes upon the land within CFD No. 2017-1 to pay for the operation and maintenance of certain public infrastructure

¹ Developer is considering a proposed 85-unit residential development on Parcel M.

serving the Brooklyn Basin Project. Parcels A, B, C and F, referenced in the summary table above, are subject to special taxes levied in CFD No. 2017-1, although Parcels A and F are currently exempt from the CFD No. 2017-1 special tax because they are developed with affordable housing.

In 2023, the City established CFD No. 2023-1 to fund the operation and maintenance costs of public facilities serving the Brooklyn Basin Project (through the levy of the Services Special Tax) and to provide funds for the acquisition by the City of public facilities serving the Brooklyn Basin Project (through the levy of the Facilities Special Tax). The City is authorized to sell bonds for CFD No. 2023-1 that would be payable from the CFD No. 2023-1 Facilities Special Tax. The parcels referenced in the summary table above other than Parcels A, B, C and F are subject to special taxes levied in CFD No. 2023-1.

ANALYSIS AND POLICY ALTERNATIVES

Analysis

The Developer has asked the City to issue bonds for CFD No. 2023-1 (2024 Bonds) to finance the acquisition of Facilities in accordance with the Acquisition Agreement.

Pursuant to the resolution, the true interest cost of the 2024 Bonds cannot exceed 6.50%. Based upon current market conditions as of May 22, 2024, the 2024 Bonds are estimated to be issued in the approximate principal amount of \$5,000,000 and carry a true interest cost of approximately 5.20%.

Based on the draft appraisal completed by Integra Realty Resources, the value of the property in CFD No. 2023-1 has been determined to be not less than \$279.53 million. The appraisal will be finalized prior to the bond sale. The City's "Amended and Restated Local Goals and Policies and Appraisal Standards for Community Facilities Districts" adopted by the City Council on June 17, 2015, by Resolution No. [85664 C.M.S.](#) (Goals and Policies) require a minimum value to lien ratio for special tax financings of 3:1 (the value-to-lien calculation compares the market value of the property to the estimated principal amount of the Bonds proposed to be issued and overlapping tax and assessment debt). Issuance of the 2024 Bonds in the approximate principal amount of \$5 million would result in a value to lien ratio of approximately 26:1.

The Development Agreement provides for the formation of a community facilities district to fund certain public services in the Brooklyn Basin Project and permits the Developer to request the City to use any public financing method for public facilities serving the Brooklyn Basin Project. The Brooklyn Basin Project, with financing assistance from CFD No. 2017-1 and CFD No. 2023-1, advances a number of City priorities: (1) development of much needed housing in the City, including affordable housing, consistent with the goals of the newly adopted General Plan Update Housing Element, (2) support for local hire and training programs and (3) development and funding of vibrant, sustainable infrastructure.

The initial financing is expected to close in September 2024. Debt service on the 2024 Bonds is payable only from Facilities Special Taxes levied annually on taxable properties within CFD No. 2023-1 in the manner set forth in the Rate and Method of Apportionment of Special Tax (RMA) approved by the Council in connection with the formation of CFD No. 2023-1. Only properties that

have a Certificate of Occupancy, which are defined as “Developed Property” under the RMA, will be taxed to pay debt service on the Bonds. The 2024 Bonds will not have any impact on the City’s General Purpose Fund.

In order to complete the financing, the City Council is being asked to approve each of the following:

- Resolution of the City Council authorizing the issuance and sale of bonds for CFD No. 2023-1 and approving related documents and actions.
- Preliminary Official Statement (**Attachment A**). The Official Statement is the primary disclosure document for investors in the 2024 Bonds. A Preliminary Official Statement will be circulated to potential investors prior to the pricing of the 2024 Bonds. After the 2024 Bonds have been priced, a Final Official Statement will be circulated to investors; the Final Official Statement should be identical to the Preliminary Official Statement except for the addition of pricing information (principal amount, interest rates, redemption terms).

The Preliminary Official Statement describes the Facilities Special Taxes to be levied in CFD No. 2023-1 and the development plans and status for the property within CFD No. 2023-1, and information on the Developer, multifamily housing builders for CFD No. 2023-1 (Vertical Builders) and, more specifically, the owners of the two parcels that currently constitute Developed Property under the Rate and Method: 260 BB Way Development LLC (Parcel G) and CV OW Parcel J Owner LLC (Parcel J). The Preliminary Official Statement will also include the appraisal of the taxable parcels in CFD No. 2023-1.

The Preliminary Official Statement is prepared by Jones Hall, serving the City as disclosure counsel for this transaction, with the assistance of the financing team, including City staff, the Developer, the Vertical Builders, the City’s municipal advisor, the underwriter of the 2024 Bonds, and the City’s special tax consultant.

The Preliminary Official Statement has been reviewed and approved for transmittal to the City Council by the City’s financing team. The distribution of the Preliminary Official Statement by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the 2024 Bonds. Material information is information that there is a substantial likelihood of having actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the bonds. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the 2024 Bonds, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been “deemed final.”

The Securities and Exchange Commission (SEC), the agency with regulatory authority over the City’s compliance with the federal securities laws, has issued guidance as to the duties of the City Council with respect to its approval of the Preliminary Official Statement. In its “Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors” (Release No. 36761 / January 24, 1996) (Release), the SEC stated that, if a member of the City Council has knowledge of any facts or circumstances that an investor would want to know about prior to investing

in the 2024 Bonds, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC stated that the steps that a member of the City Council could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

The key sections of the Preliminary Official Statement are summarized below:

- “THE 2024 BONDS”: This section summarizes the key terms of the 2024 Bonds, including payment dates and redemption provisions.
 - “SECURITY FOR THE 2024 BONDS”: This section summarizes key security terms, including the City’s pledge of Facilities Special Tax revenues, its covenant to levy Facilities Special Taxes according to the RMA and its covenant to foreclose on parcels that are delinquent in the payment of Facilities Special Taxes. The 2024 Bonds are a limited obligation of the City, payable only from Facilities Special Taxes levied in CFD No. 2023-1 and moneys in the funds and accounts established under the Fiscal Agent Agreement described below.
 - “THE DISTRICT”: This section summarizes certain features of CFD No. 2023-1, including the appraised value of taxable property, overlapping taxes, assessments and debt and anticipated debt service coverage provided by maximum Facilities Special Taxes that may be levied under the RMA.
 - “THE DEVELOPMENT” and “THE DEVELOPERS AND FINANCING PLANS”: These sections include information provided by the Developer and the Vertical Builders, and describes the proposed development in CFD No. 2023-1 and its current status.
 - “BOND OWNERS’ RISKS”: This section highlights the primary risks associated with the 2024 Bonds, including failure to complete the proposed development, natural disasters and failure of property owners to pay their Facilities Special Taxes.
 - “TAX MATTERS”: This section describes the tax-exempt nature of interest on the 2024 Bonds.
- Continuing Disclosure Certificate (included in **Attachment A**). Under SEC Rule 15c2-12, the underwriter of the 2024 Bonds may only purchase the 2024 Bonds if it has determined that the City is obligated to provide continuing disclosure, including annual updates of the financial and operating data included in the Official Statement and notices of certain specified events. Included in Attachment 2 is the City’s continuing disclosure undertaking.

The owners of the two parcels of Developed Property -- 260 BB Way Development LLC (Parcel G) and CV OW Parcel J Owner, LLC (Parcel J) -- each will also provide continuing disclosure on a semi-annual basis until the property they each own in CFD No. 2023-1 reaches a stabilized occupancy. The property owner continuing disclosure undertakings are not attached.

- Fiscal Agent Agreement (**Attachment B**). This document governs the 2024 Bonds and the use of the Facilities Special Taxes to pay debt service on the 2024 Bonds. The fiscal agent is Wilmington Trust, N.A. The Facilities Special Taxes will be levied on the regular

County tax roll and collected by the County from each taxable parcel in CFD No. 2023-1. The County will remit these special taxes to the City. The City will remit them to the fiscal agent as provided for in the Fiscal Agent Agreement. The Fiscal Agent will use the Facilities Special Tax revenues to (1) pay administrative costs of CFD No. 2023-1, and (2) pay principal of and interest on the 2024 Bonds to the bond owners and (3) finance the purchase of Facilities.

- Bond Purchase Agreement (Attachment C). At the time the 2024 Bonds are sold, the City will enter into a Bond Purchase Agreement with Stifel Nicolaus and Company, Incorporated (Stifel), who will agree to underwrite the 2024 Bonds subject to satisfaction of the conditions described in the Bond Purchase Agreement. The resolution provides the Underwriter's discount on the purchase of the 2024 Bonds shall not exceed 2.00% of the par amount of the 2024 Bonds.

FISCAL IMPACT

There is no impact on the General Purpose Fund or fiscal impact on the City. The 2024 Bonds will be payable only from Facilities Special Taxes levied in CFD No. 2023-1.

Administrative Costs. CFD No. 2023-1 will be administered by the Oakland Public Works Department, with assistance from other City service areas as necessary and appropriate, including the Finance Department, Treasury, and Budget Bureau, among others.

The RMA for CFD No. 2023-1 provides for the levy of Facilities Special Taxes to pay for the City's costs of administering CFD No. 2023-1.

The payment of underwriting compensation, and the issuance-related fees and expenses of the fiscal agent, the municipal advisor, the bond/disclosure counsel and the special tax consultant will be paid from proceeds of the 2024 Bonds. The fees of the appraiser will be paid with a deposit from the Developer, and may be reimbursed to the Developer with proceeds of the 2024 Bonds.

PUBLIC OUTREACH / INTEREST

A notice of the proposed action was provided in accordance with City practices and the Ralph M. Brown Act to ensure that persons interested in the issuance of the 2024 Bonds would have an opportunity to be heard by the City Council.

COORDINATION

This report was prepared by the Finance Department in coordination with the Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: Issuance of the 2024 Bonds will facilitate the long-term economic development of the Brooklyn Basin Project, which includes 3,700 new residential units and 200,000 square feet of new ground floor commercial space, which will generate tax revenue for the City of Oakland.

Environmental: Issuance of the 2024 Bonds will result in the construction of high quality public infrastructure in the Brooklyn Basin Project. Together, CFD No. 2017-1 and CFD No. 2023-1 will ensure adequate operation and maintenance of public infrastructure for the Brooklyn Basin Project, including quality open space for Oakland residents.

Race & Equity: CFD No. 2023-1 is located in District 2 and will add additional open space and other public amenities into an ethnically diverse community in Oakland, one that has traditionally been underserved by public amenities.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Brooklyn Basin Project was analyzed under the certified 2009 Brooklyn Basin Environmental Impact Report (2009 EIR), which is comprised of the following documents: Oak to Ninth Avenue Project Draft EIR, August 2005; Oak to Ninth Avenue Project, 2006 Addendum #1 to the Certified Environmental Impact Report, June 7, 2006; Oak to Ninth Avenue Project Final EIR, August 2006; Revisions to the Analysis in the Oak to Ninth Project EIR (SCH. No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order Case No. RG06-280345 and Case No. RG06-280471, November 2008; Oak to Ninth Avenue Project Response to Comments on the Revisions, December 2008; and Resolution No. [81769 C.M.S.](#), approved January 20, 2009.

In accordance with Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15163, the City examined whether the additional 600 units approved in the Third Amendment to the Development Agreement would result in “substantial changes” that would trigger the need for a major modification to the previously certified 2009 EIR due to a new significant impact or a substantial increase in the severity of previously identified significant impacts. As the Lead Agency, the City, determined that a Supplemental Environmental Impact Report (SEIR) for the updated Brooklyn Basin Project would be required.

As further set forth in the City’s Resolution No. [89707 C.M.S.](#), adopted on May 2, 2023, certifying the SEIR, the updated Brooklyn Basin Project did not result in any new or more severe potentially significant or significant and unavoidable impacts than analyzed in the previous 2009 EIR for the Original Brooklyn Basin Project.

Staff recommends that the City Council find and determine that the issuance of the 2024 Bonds is subject to the 2009 EIR for the Original Brooklyn Basin Project and the SEIR for the updated Brooklyn Basin Project and, because the issuance of the 2024 Bonds for CFD No. 2023-1 is not a substantive change to the Updated Brooklyn Basin Project, that no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Sections 15162 or 15163 have occurred.

In addition, staff recommends that the City Council find and determine that the issuance of the 2024 Bonds for CFD No. 2023-1 is otherwise exempt from CEQA review under the following CEQA Guidelines sections: 15183 (projects consistent with a community plan, general plan or zoning), 15301 (existing facilities), and 15308 (actions by regulatory agencies for the protection of the environment), which individually and collectively form a basis for CEQA exemption.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt: A Resolution Authorizing The Issuance And Sale of Special Tax Bonds In A Principal Amount Not To Exceed \$6,000,000 For City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services) For The Purpose Of Financing Authorized Facilities, And Approving And Authorizing Related Documents And Actions; And Adopting Appropriate Findings Under the California Environmental Quality Act.

For questions regarding this report, please contact Erin Roseman, Director of Finance at 510-238-2026.

Respectfully submitted,



Erin Roseman (Jun 26, 2024 14:10 PDT)

ERIN ROSEMAN
Finance Director, Department of Finance

Reviewed by:
David Jones, Treasury Administrator

Prepared by:
Andrew Magee, Principal Financial Analyst

Attachments (3):

- A Preliminary Official Statement (including City's Continuing Disclosure Certificate)
- B Fiscal Agent Agreement
- C Bond Purchase Agreement