



# AGENDA REPORT

**TO:** Jestin D. Johnson  
City Administrator

**FROM:** Fred Kelley,  
Director, Oakland  
Department of  
Transportation

**SUBJECT:** Amend Subdivision Improvement  
Agreement And Issuance of A  
Certificate Of Completion for Brooklyn  
Basin Phase One Public  
Improvements

**DATE:** December 7, 2023

City Administrator Approval

  
Jestin Johnson (Dec 7, 2023 23:58 PST)

Date: Dec 7, 2023

## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:**

- 1. A Resolution Authorizing Amendment Of The Subdivision Improvement Agreement Between The City Of Oakland And Zarsion OHP-1, LLC For Deferred Construction Of Public Infrastructure Improvements At 845 Embarcadero And Making California Environmental Quality Act Findings.**
- 2. A Resolution Accepting Public Infrastructure Improvements, Directing The Filing Of An Unconditional Certificate Of Completion For The Brooklyn Basin Phase One Improvements Per The Agreement For Deferred Construction Of Public Infrastructure Improvements, And Making California Environmental Quality Act Findings.**

## **EXECUTIVE SUMMARY**

The majority of Phase One (Phase 1) improvements for the Brooklyn Basin project as required in the Subdivision Improvement Agreement (Agreement) between the City of Oakland (City) and Zarsion OHP-1, LLC (Developer) have been completed, inspected, and determined to meet City Standards. The Developer has executed separate agreements for Private Construction of Public Infrastructure for the remainder of the improvements and petitioned the City to amend the previously executed SIA for the work that has been completed and issue a Unconditional Certificate of Completion (UCC) for the completed work.

Approval of the proposed resolutions—amending the SIA and issuing a UCC—authorizes the City Engineer to accept the completed public improvements in the right-of-way, issue a UCC in accordance with the requirements provided in the amended Agreement, and file the UCC with the Alameda County Recorder's Office. At the Developer's expense, a maintenance bond, or

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approved securities, are required by the Agreement. The two (2) year maintenance period will begin on the permit final date of approximately January 16, 2024.

## **BACKGROUND / LEGISLATIVE HISTORY**

The Brooklyn Basin project site is comprised of approximately 64 acres of waterfront property bounded by Embarcadero Road, Fallon Street, Tenth Avenue and the Estuary. The project includes up to 3,100 residential units, 465 affordable housing units, and up to 200,000 square feet of ground-floor commercial space. The completed project will have approximately 31 acres of parks and public open space, two renovated marinas, shoreline improvements, new roads, and other infrastructure improvements, and an existing wetlands restoration area.

On April 21, 2015, the City Council adopted Resolution No. [85538 C.M.S](#) conditionally approving a Final Map for Tract Number [7621](#) for the Brooklyn Basin Phase 1, a seven lot subdivision located at 845 Embarcadero, and adopted Resolution No. 85539 C.M.S. authorizing the City Administrator to enter into a subdivision improvement agreement for deferred construction of public infrastructure improvements, including streets, street lights, sanitary sewer, storm drains, curbs, gutters, and sidewalks.

On May 15, 2015, the Developer and the City, entered into a Subdivision Improvement Agreement for Deferred Construction of Public Infrastructure Improvements recorded in the Official Records of Alameda County as Series No. 2016113104 (Agreement) for Brooklyn Basin Embarcadero Phase One related to Tract Map No. 7621, filed June 2, 2015 in Book 331 of Maps, page 81 through 86, inclusive, Alameda County Records.

On May 18, 2015, and in accordance with the Agreement, the Developer obtained Public Infrastructure Permit [PX1400059](#) for the construction of the Phase 1 improvements and provided surety in the form of a Performance Bond in the amount of \$4,311,018.00 and Labor and Materials Bond in the amount of \$2,155,509.00. The Developer has completed the majority of the public improvements and has transferred the responsibility for construction of certain of the public improvements to facilitate the construction of buildings located on portions of the Project commonly known as Parcel A and Parcel G.

The transferred improvements related to Parcel G are subject to an Agreement – Private Construction of Publicly Maintained Improvements, by and between the City and 260 BB Way Development, LLC (Parcel G Developer), designated PX Permit No. PX2100011, dated May 2, 2022 and recorded in the Official Records as Series No. 2022116287 (Parcel G P-Job Agreement). The transferred improvements related to Parcel A are the subject of that certain Agreement – Private Construction of Publicly Maintained Improvements, by and between the City and Brooklyn Basin Associates IV, L.P. (Parcel A Developer), designated PX Permit No. PX2200016, dated January 24, 2023 and recorded in the Official Records as Series No. 2023076357 (Parcel A P-Job Agreement). The Parcel G Developer and the Parcel A Developer have submitted Performance Bonds and Labor and Material Bonds for the Parcel G P-Job Agreement and the Parcel A P-Job Agreement respectively.

The Developer has petitioned the City to amend the Agreement substantially in the form attached hereto as **Attachment A** (First Amendment) to remove the transferred public improvements subject to the Parcel G P-Job Agreement and the Parcel A P-Job Agreement (collectively, the Transferred Improvements) and to acknowledge that the Transferred Improvements will be accepted in accordance with the Parcel G P-Job Agreement and the Parcel A P-Job Agreement, as applicable.

### **ANALYSIS AND POLICY ALTERNATIVES**

Adoption of these proposed resolutions furthers the Citywide priorities of Housing, Economic, and Cultural Security, because the acceptance of infrastructure will free up funds needed to continue the overall Brooklyn Basin Project. Upon completion, the project will add up to 3,700 residential units and up to 200,000 square feet of retail space. Brooklyn Basin Phase One has also contributed to the City of Oakland Public Works sanitary sewer fund for sewer maintenance and rehabilitation, and has constructed new sanitary sewer, and storm drain infrastructure to be adopted by the City, which contributes to the city-wide goal for vibrant, sustainable infrastructure.

Upon adoption of these proposed resolutions and in accordance with the requirements stated in the Agreement, the City Engineer will issue the UCC to the Developer after receiving the required maintenance bond, or approved securities, and record the UCC with the Alameda County Clerk-Recorder Office. In accordance with the Agreement, as amended, upon filing of the UCC, the previously submitted Performance, Labor, and Material Sureties will be released. This course of action is recommended because staff has determined the Developer has completed the majority of the work and the remaining work is guaranteed under separate PJOB Agreements for Parcels A and G.

Declining to adopt these proposed resolutions will require the Developer to continue to post duplicate bonds for the remainder of the required improvements, will tie up funds that will otherwise be used for Brooklyn Basin Phase 2, and result in added delays and costs for the overall development.

### **FISCAL IMPACT**

Staff cost for processing the First Amendment and UCC are covered by fees set by the Master Fee Schedule and have been paid by the Developer.

### **PUBLIC OUTREACH / INTEREST**

Adjoining property owners were notified of the project at the time when the Tentative Subdivision Map was approved and later during the construction of public improvements.

### **COORDINATION**

This report was coordinated with the Department of Planning and Building, Budget Bureau, and the Office of the City Attorney.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The Brooklyn Basin project, previously the Oak to Ninth project, was approved by the City Council on July 18, 2006. The entire project site includes up to 3,100 residential units including 465 affordable units, commercial space, and approximately 31 acres of parks, public open space and two renovated marinas. The improvements provide economic vitality and opportunity along the Oakland waterfront.

***Environmental:*** Land use approval and construction permits for public infrastructures and private improvements comply with City ordinances and best management practices for noise, fugitive dust, construction debris and disposal, and storm water pollutant prevention.

***Race & Equity:*** Adoption of the proposed resolution will have no direct impacts or opportunities related to race and equity.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

This action is exempt from the California Environmental Quality Act (CEQA) and the CEQA Guidelines because the City's acceptance of the completed improvements is a ministerial action that is exempt from the requirements of CEQA pursuant to Public Resources Code section 21080(b)(1) and CEQA Guidelines section 15268. In addition, this action complies with CEQA because the improvements in question were approved as part of the entitlements for the Brooklyn Basin Project, which was analyzed under the 2009 Brooklyn Basin (formerly "Oak to Ninth Avenue Project") Environmental Impact Report (2009 EIR) and this action implements the previously approved entitlements that were analyzed under the 2009 EIR.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:

1. A Resolution Authorizing Amendment Of The Subdivision Improvement Agreement Between The City Of Oakland And Zarsion OHP-1, LLC For Deferred Construction Of Public Infrastructure Improvements At 845 Embarcadero, And Making California Environmental Quality Act Findings.
2. A Resolution Accepting Public Infrastructure Improvements, Directing The Filing Of An Unconditional Certificate Of Completion For The Brooklyn Basin Phase One Improvements Per The Agreement For Deferred Construction Of Public Infrastructure Improvements, And Making California Environmental Quality Act Findings.

For questions regarding this report, please contact Joseph Palacio at (510) 238-7256.

Respectfully submitted,

*Fred Kelley*

Fred Kelley (Dec 7, 2023 12:12 PST)

Fred Kelley  
Director, Oakland Department of Transportation

Reviewed by:

Jamie Parks, Assistant Director, Department of Transportation

Emily Ehlers, Division Manager, Department of Transportation

Ishrat Jahan, Supervising Civil Engineer,  
Department of Transportation

Prepared by:

Joseph Palacio, Engineering Assistant II,  
Department of Transportation

**Attachments (#):1**

Attachment A: First Amendment to Subdivision Improvement Agreement

**NO FEE DOCUMENT**  
**Government Code Section 27383**

**RECORDING REQUESTED BY**  
**AND WHEN RECORDED MAIL TO:**

City of Oakland  
Planning and Building Department  
250 Frank Ogawa Plaza – 2nd Floor  
Oakland, California 94612  
Attn: City Engineer

ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT**  
**TO**  
**SUBDIVISION IMPROVEMENT AGREEMENT**

**Deferred Construction of Public Infrastructure Improvements**  
**845 Embarcadero**  
**Final Map No. 7621 (Phase 1)**

THIS FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT (“**First Amendment**”) is entered into by and between the City of Oakland, a California municipal corporation (the “**City**”), and Zarsion-OHP I, LLC, a California limited liability company (the “**Subdivider**”), effective as of \_\_\_\_\_, 2023 (the “**First Amendment Date**”).

**RECITALS**

This First Amendment is entered into upon the basis of the following facts, understandings and intentions of the City and the Subdivider:

A. The City and the Subdivider have previously entered into that certain Subdivision Improvement Agreement, dated May 15, 2015, and recorded in the Official Records of Alameda County as Series No. 2016113104 (as extended, the “**Original Agreement**”), related to the construction of certain public improvements related to Tract Map No. 7621, filed June 2, 2015 in Book 331 of Maps, page 81 through 86, inclusive, Alameda County Records (the “**Phase 1 Final Map**”).

B. The City has previously extended the deadline for the completion of the Public Infrastructure Improvements in the Original Agreement pursuant to letters dated January 27, 2017, September 20, 2019, November 23, 2021, August 30, 2022, and September 21, 2023. The current deadline for the completion of the Public Infrastructure Improvements is October 1, 2024.

C. The City has previously reduced the amounts of the required Faithful Performance Bond and Labor and Materials Bond by eighty percent (80%) pursuant to a letter dated November 19, 2019.

D. The original plans and specifications for the Public Infrastructure Improvements were the Phase 1 On-Site Improvements Plans, prepared by BKF Engineers and dated March 27, 2015 and approved by the City on April 20, 2015. The City subsequently approved an updated set of plans and specifications for the Public Infrastructure Improvements entitled Brooklyn Basin On-Site Improvements Plans Tract Map No. 7621, prepared by BKF Engineers and dated September 27, 2018 (the “**Phase 1 Improvement Plans**”). A copy of the cover page to the Phase 1 Improvement Plans is attached hereto as Exhibit A.

E. As between the Subdivider and the applicable third party developer, the Subdivider has transferred the responsibility for the construction of certain of the Public Infrastructure Improvements to facilitate the construction of the buildings located on the portions of the Project commonly referred to as Parcel A and Parcel G and the developers of Parcel A and Parcel G have entered into separate agreements with the City and provided separate security for their applicable portions of the Public Infrastructure Improvements.

F. The transferred improvements related to Parcel A (the “**Parcel A Improvements**”) are more particularly described on the plans and specifications referenced in Exhibit B on file with the City, and are the subject of that certain Agreement – Private Construction of Publicly Maintained Improvements, by and between the City and Brooklyn Basin Associates IV, L.P., designated PX Permit No. PX 2200016, dated January 24, 2023 and recorded in the Official Records as Series No. 2023076357 (the “**Parcel A P-Job Agreement**”).

G. The transferred improvements related to Parcel G (the “**Parcel G Improvements**”) are more particularly described on the plans and specifications referenced in Exhibit C on file with the City, and are the subject of that certain Agreement – Private Construction of Publicly Maintained Improvements, by and between the City and 260 BB Way Development, LLC, designated PX Permit No. PX 2100011, dated May 2, 2022 and recorded in the Official Records as Series No. 2022116287 (the “**Parcel G P-Job Agreement**”). The Parcel A Improvements and the Parcel G Improvements are collectively referred to herein as the “**Transferred Public Infrastructure Improvements**”.

H. The Subdivider has requested an amendment of the Original Agreement to amend the scope of the Public Infrastructure Improvements to exclude the Transferred Public Improvements.

I. The City and the Subdivider have entered into this First Amendment to amend the scope of the Public Infrastructure Improvements on the terms and conditions hereinafter set forth.

J. The Original Agreement, as amended by this First Amendment shall hereinafter collectively be referred to as the “**Agreement**”.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the Subdivider agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Original Agreement, except that the term “**Public Infrastructure Improvements**” is hereby amended to mean all of the improvements required by the Phase 1 Improvement Plans except the Transferred Public Infrastructure Improvements.

2. Amended Section 5 (Acceptance of Dedications and Ownership of Public Infrastructure Improvements).

a. The first sentence of Section 5 is hereby deleted in its entirety and replaced with the following:

Upon the unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public-rights-of-way and public easements related to such completed Public Infrastructure Improvements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY.

b. The following is hereby added to the end of Section 5:

The parties acknowledge that the Transferred Public Infrastructure Improvements shall be accepted in accordance with the Parcel A P-Job Agreement and the Parcel G P-Job Agreement, as applicable.

3. New Maintenance Bond. Prior to the First Amendment Effective Date, the Subdivider provided, and the City accepted, a new two (2) year maintenance bond in the face amount of One Million Seventy-Seven Thousand Seven Hundred Seventy-Five Dollars (\$1,077,775) (the “**New Maintenance Bond**”), which will remain in effect for not less than two (2) years after the date of the unconditional issuance of the Certificate of Completion for the completed Public Infrastructure Improvements. The New Maintenance Bond will replace the Maintenance Bond previously provided by the Subdivider to the City in error.

4. Extended Warranty/Maintenance Periods for the Deferred Improvements. The City and the Subdivider acknowledge that the Parcel A P-JOB Agreement and the Parcel G P-JOB Agreement each provide for one (1) year maintenance/warranty periods for the respective Transferred Public Infrastructure Improvements. Therefore, the Subdivider agrees to provide the second year of maintenance/warranty for the Transferred Improvements as required by Sections 7 and 8 of the Original Agreement. Such second year of maintenance/warranty shall commence separately for each subset of the Transferred Public Infrastructure Improvements upon the expiration of the applicable one (1) year period required by the applicable Parcel A P-JOB Agreement or Parcel G P-Job Agreement and will expire one (1) year thereafter (each, an “**Extended Maintenance/Warranty Period**”). The City shall provide the Subdivider with written notice of the commencement of each Extended Maintenance/Warranty Period and the Subdivider shall provide the required maintenance bonds for the applicable Transferred Public Infrastructure



Improvements within ten (10) business days after receipt of such notice (in the amount of Sixteen Thousand One Hundred Ninety-Two and 50/100 Dollars (\$16,192.50) for the Parcel A Improvements and Seventy-One Thousand Six Hundred Twenty-Three Dollars (\$71,623) for the Parcel G Improvements).

5. Authority. The persons signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

6. Effectiveness and Ratification of Agreement. The Original Agreement, as modified by this First Amendment, remains in full force and effect and the Parties hereby ratify the same.

7. Counterparts. This First Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

*[Remainder of Page Intentionally Left Blank; Signature Pages Follow]*

**IN WITNESS WHEREOF**, the City and the Subdivider have each caused this First Amendment to be duly executed on its behalf as of the First Amendment Date.

**CITY:**

CITY OF OAKLAND,  
a municipal corporation

By: \_\_\_\_\_  
Jestin D. Johnson  
City Administrator

Approved as to form and legality:

By: \_\_\_\_\_  
Brian P. Mulry  
Deputy City Attorney

*[Signatures Continue on Following Page]*

[Type here]

**DEVELOPER:**

ZARSION-OHP I, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Michael Ghielmetti  
Authorized Individual





**Exhibit A**  
**Cover Page of Phase 1 Improvement Plans**

[See attached.]

Note: A more legible copy is available for viewing at the Office of the City Engineer, City of Oakland, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, California.

**Exhibit B**  
**Parcel A Improvements Plans and Specifications**

1. Those certain plans entitled “Brooklyn Basin Parcel A2 Offsite Improvements”, prepared by BKF Engineers and sealed and stamped on July 28, 2022.
2. Those certain specifications prepared by BKF Engineers and dated May 12, 2022.

**Exhibit C**  
**Parcel G Improvements Plans and Specifications**

1. Those certain plans entitled “Parcel G Off-site Improvements”, prepared by BKF Engineers and sealed and stamped on April 14, 2022.
2. Those certain specifications prepared by BKF Engineers and dated April 14, 2022.