



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE BOOKLYN BASIN (FORMERLY THE OAK-TO-NINTH AVENUE MIXED USE DEVELOPMENT) PROJECT BETWEEN THE CITY OF OAKLAND AND ZARSION-OHP I, LLC; AND MAKNG APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, in order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Government Code Sections 65864 et seq. (the “Development Agreement Legislation”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property; and

WHEREAS, pursuant to the Development Agreement Legislation, the City of Oakland (“City”) has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Oakland Planning Code (“OPC”) Chapter 17.138 (the “City Development Agreement Regulations”); and

WHEREAS, the City previously approved a development now known as the Brooklyn Basin (and formerly known as the Oak-to-Ninth Avenue Mixed Use Development) Project 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 approximately 200,000 square feet of commercial space, a minimum of 3,534 parking spaces, approximately 31 acres of open space, two renovated marinas entailing dredging activities of approximately 20,000 cubic yards of material and up to 60 boat slips, as well as shoreline improvements, new roads, and other infrastructure and improvements (the “Approved Project”); and

WHEREAS, the City, the Redevelopment Agency of the City of Oakland (“Redevelopment Agency”), and Oakland Harbor Partners, LLC (“OHP”) entered into that certain Development Agreement, dated August 24, 2006, approved by Ordinance No. 12760 C.M.S.

adopted on July 18, 2006, related to the Approved Project (the “Original Development Agreement”); and

WHEREAS, pursuant to Assembly Bill X1 26, effective February 1, 2012, all redevelopment agencies in California, including the Redevelopment Agency, were dissolved; and

WHEREAS, after the dissolution of the Redevelopment Agency, the City obtained the assets, responsibilities and functions that the Redevelopment Agency had in the Original Development Agreement, which were housing assets and obligations; and

WHEREAS, in April 2013, OHP assigned all of its rights, title, and interest in the Brooklyn Basin Project property, including its rights and obligations under the Original Development Agreement, to Zarsion-OHP I, LLC (“Developer”) pursuant to that certain Assignment and Assumption of Project Materials (Oak to Ninth-Brooklyn Basin) (the “Assignment”); and

WHEREAS, the City and Developer entered into that certain First Administrative Amendment to Development Agreement (Oak to Ninth/Brooklyn Basin) dated August 28, 2014 (the “First Amendment”) and that certain Second Administrative Amendment to Development Agreement (Oak to Ninth/Brooklyn Basin) dated as of June 28, 2017 (the “Second Amendment”); and

WHEREAS, the Developer has submitted entitlement applications to modify the Approved Project (the “Project Modifications”), as set forth in the January 11, 2023 Planning Commission Staff Report, incorporated by this reference, which included an application requesting the approval of an amendment to the Development Agreement (the “Third Amendment”) filed in accordance with the Development Agreement Legislation and the City Development Agreement Regulations; and

WHEREAS, the Original Development Agreement, as assigned by the Assignment, and as amended by the First Amendment, the Second Amendment, and the Third Amendment is collectively referred to as the “Development Agreement”; and

WHEREAS, the Developer subsequently elected to pursue revised amendments to the Approved Project (the “Revised Project Modifications”), as set forth in the January 11, 2023 Planning Commission Staff Report, which continued to include the Third Amendment filed in accordance with the Development Agreement Legislation and the City Development Agreement Regulations (the Approved Project as modified by the Revised Project Modifications is collectively referred to as the “Brooklyn Basin Project”); and

WHEREAS, the Third Amendment would, among other things, provide for a vested entitlement period for the Brooklyn Basin Project; allow 600 additional units; extend the original term of the Development Agreement from May 19, 2031 to May 19, 2038 for the final Phases III and IV; provide \$9,000,000 for affordable housing (“Affordable Housing Funds”) towards the preservation and acquisition of affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio; require a new 20% local hire goal for the additional 600 units and

proportionately increase the local hiring requirement already provided in the Original Development Agreement for the additional units; provide an additional \$350,000 to be paid to the West Oakland Jobs Resource Center to provide job training to residents in the Eastlake/Chinatown, Fruitvale, and Lower San Antonio neighborhoods; and modify Sections of the Development Agreement pertaining to the formation of a Community Facilities District and a Community Services District to maintain and construct the parks, open space, landscaping, and other public improvements, as more particularly described in the form of the Third Amendment attached to the Agenda Report for this Ordinance; and

WHEREAS, as more fully set forth in the related resolution certifying the Supplemental Environmental Impact Report for the modifications to the Approved Project (the “SEIR”), incorporated by this reference, the Revised Project Modifications, including the Third Amendment, were analyzed in compliance with the California Environmental Quality Act (“CEQA”); and

WHEREAS, on January 11, 2023, pursuant to OPC Section 17.138.060, the City Planning Commission considered the findings made in Exhibit A attached hereto, the adequacy of plans for the Revised Project Modifications; the need to retain flexibility for the continued construction of the Brooklyn Basin Project; the traffic, parking, public service, visual, and other impacts of the Revised Project Modifications on abutting properties and the surrounding area; and the type and magnitude of the Brooklyn Basin Project’s economic benefits to the City, and its contribution toward meeting housing needs, and determined that the Third Amendment accomplishes City goals, including meeting housing needs, with less than significant impacts on abutting properties and the surrounding area, as more fully set forth in the related resolution certifying the SEIR for the Revised Project Modifications; and

WHEREAS, on January 11, 2023, the City Planning Commission, after conducting a duly noticed public hearing, hearing all qualified and interested persons, and receiving and considering all relevant evidence, recommended that the City Council certify the SEIR and approve the Revised Project Modifications and adopt the findings, including those findings in Exhibit A attached hereto, including the Third Amendment; and

WHEREAS, this Ordinance came before the City Council at a duly noticed meeting; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals set forth above are true and correct and are an integral part of this Ordinance.

SECTION 2. The City Council has considered the adequacy of plans for the Revised Project Modifications; the need to retain flexibility for the continued construction of the Brooklyn Basin Project; the traffic, parking, public service, visual, and other impacts of the Revised Project Modifications on abutting properties and the surrounding area; and the type and magnitude of the Brooklyn Basin Project’s economic benefits to the City, and its contribution toward meeting housing needs, and determined that the Third Amendment accomplishes City goals, including

meeting housing needs, with less than significant impacts on abutting properties and the surrounding area, as more fully set forth in the related resolution certifying the SEIR for the Revised Project Modifications as recommended by the Planning Commission. The City Council hereby adopts the findings at **Exhibit A** attached hereto.

SECTION 3. The City Council authorizes the City Administrator to: (a) execute the Third Amendment substantially in the form attached to the Agenda Report for this Ordinance, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney's Office prior to execution thereof; (b) to negotiate and execute such other documents as necessary or appropriate in consultation with the City Attorney's Office, to implement the Third Amendment as a part of the Development Agreement, including without limitation, the implementation of the Affordable Housing Term Sheet, attached to the Agenda Report for this Ordinance, for the use of the Affordable Housing Funds, or to otherwise effectuate the purpose of this Ordinance and its basic purposes; and (c) to perform all acts to be performed by the City in the administration of the Third Amendment as part of the Development Agreement and its authorizing ordinances and resolutions.

SECTION 4. The City Council finds and determines that if the Affordable Housing Funds are directed to the City, such funds will be deposited in Fund 1870 – Affordable Housing Trust Fund Organization 89929 – Housing Development, Project Code TBD.

SECTION 5. California Environmental Quality Act Findings. In accordance with Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, the City examined whether the proposed Third Amendment would result in “substantial changes” that 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. An Initial Study was not prepared for the Project, as authorized under Section 15060(d) of the CEQA Guidelines. The City, as the Lead Agency, determined that SEIR for the Project would be required. Staff published a Notice of Preparation (“NOP”) of an EIR on September 21, 2018.

As further set forth in the City's “Resolution certifying the Brooklyn Basin Marina Expansion Project Supplemental Environmental Impact Report (SEIR) and Making Certain Findings Concerning Environmental Impacts, Mitigation Measures, and Alternatives, and Adopting a Mitigation Monitoring and Reporting Program (“MMRP”), All In Accordance with the California Environmental Quality Act,” the SEIR did not identify any new or more severe potentially significant or significant and unavoidable impacts than analyzed in the previous Oak-to-Ninth Street Project EIR. None of the additional information provided in the Third Amendment or the Draft SEIR could result in changes to the environmental analysis in the Draft SEIR under CEQA. The City decided to include additional information in the Response to Comments document for informational purposes for the public and decision-makers for the project. Certain updates included in the Final SEIR address topics raised by the public that are comprehensively addressed in Chapter IV, Consolidated Responses, of the Final SEIR document. None of the new information is considered “significant new information” defined in State CEQA Guidelines Section 15088.5, and therefore recirculation of any part of the SEIR is not required.

SECTION 6. This Ordinance, and the Third Amendment, is based, in part, on the City Council’s certification of the SEIR for the Revised Project Modifications, as well as the City Council’s adoption of the other resolutions and ordinances related to the Revised Project Modifications, each incorporated by this reference.

SECTION 7. This Ordinance shall not be codified in the Oakland Municipal Code.

SECTION 8. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 9. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE BOOKLYN BASIN (FORMERLY THE OAK-TO-NINTH AVENUE MIXED USE DEVELOPMENT) PROJECT BETWEEN THE CITY OF OAKLAND AND ZARSION-OHP I, LLC; AND MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

An Ordinance authorizing the City Administrator to execute a Third Amendment to the Development Agreement for the Brooklyn Basin Project (formerly the Oak to Ninth Avenue Mixed Use Development Project) between the City of Oakland and Zarsion-OHP I, LLC, which would, among other things, allow 600 additional units, extend the original term of the Development Agreement for the final phases of the project, provide \$9,000,000 towards the preservation and acquisition of affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio, and requires a new 20% local hire goal for the additional 600 units and will proportionately increase the local hiring requirement already provided in the original Development Agreement for the additional units.

EXHIBIT A

Third Amendment Findings Pursuant to Planning Code Section 17.138.050

The capitalized terms used herein shall have the same meanings as ascribed to them in the Ordinance to which this Exhibit A is attached.

The Third Amendment would, among other things, provide for a vested entitlement period for the Brooklyn Basin Project; allow 600 additional units; extend the original term of the Development Agreement from May 19, 2031 to May 19, 2038 for the final Phases III and IV; provide \$9,000,000 for affordable housing (“Affordable Housing Funds”) towards the preservation and acquisition of affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio; require a new 20% local hire goal for the additional 600 units and proportionately increase the local hiring requirement already provided in the Original Development Agreement for the additional units; provide an additional \$350,000 to be paid to the West Oakland Jobs Resource Center to provide job training to residents in the Eastlake/Chinatown, Fruitvale, and Lower San Antonio neighborhoods; and modify Sections of the Development Agreement pertaining to the formation of a Community Facilities District and a Community Services District to maintain and construct the parks, open space, landscaping, and other public improvements.

A development agreement may be approved (or amended) if it is found that the development agreement is consistent with the Oakland General Plan and with any applicable district plan or development control map which has been adopted by the City Council. The Third Amendment is consistent with the City’s General Plan, including the Estuary Policy Plan as amended, in accordance with the findings set forth above.

In reviewing and approving the Third Amendment, the City has considered the factors contained in Oakland Planning Code Section 17.138.060. More specifically, the City has determined that: (a) the Revised Project Modifications will provide 600 new housing opportunities (in addition to the 3,100 already approved) to help meet the local and regional housing needs and provide more desperately needed housing during an acknowledged housing crisis; (b) the Revised Project Modifications, by increasing the multi-modal transit options (e.g., watercraft launch supporting existing taxi-service) and reducing the parking requirements within the Brooklyn Basin Planned Development Permit (PDP), would create a more sustainable community that promotes public health and protects the natural environment as they would reduce dependence on single-occupancy vehicles, and in turn reduce pollution and greenhouse gas emissions as well as reduce impacts to the transportation network otherwise attributable to the Revised Project Modifications; (c) plans for development of the Revised Project Modifications as reflected in the comprehensive elements of the amended PDP are adequate; and (d) traffic, parking, public service, visual, and other impacts of the Revised Project Modifications on abutting properties and the surrounding area have been adequately reviewed in the SEIR for the Revised Project Modifications and mitigated as necessary through the Mitigation Monitoring and Reporting Program and the Conditions of Approval.