


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION CALLING A SPECIAL ELECTION FOR CITY OF OAKLAND COMMUNITY FACILITIES DISTRICT NO. 2023-1 (BROOKLYN BASIN FACILITIES AND SERVICES); AND ADOPTING APPROPRIATE FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of Oakland (the “City”) 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, 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 improvement (the “Original Brooklyn Basin Project”); and

WHEREAS, the City, as an original party and as successor to the Redevelopment Agency of the City of Oakland, and Zarsion-OHP I, LLC, a California limited liability company (“Developer”), as successor by assignment from Oakland Harbor Partners, LLC, are parties to that certain Development Agreement, dated August 24, 2006, approved by Ordinance No. 12760 C.M.S. adopted on July 18, 2006, related to development of the Original Brooklyn Basin Project (as amended and assigned, the “Development Agreement”); and

WHEREAS, the Development Agreement required the formation of a community facilities district for the Original Brooklyn Basin Project; and

WHEREAS, under the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Section 53311 et seq.) (the “Act”), the City Council is authorized to establish a community facilities district and to act as the legislative body for a community facilities district; and

WHEREAS, on May 16, 2023, the City Council adopted Ordinance No. 13789 C.M.S., which approved a Third Amendment to the Development Agreement, which together with the related additional entitlements approved by the City Council, permits the development of an

additional six hundred (600) residential units within the Original Brooklyn Basin Project (the “Updated Brooklyn Basin Project”); and

WHEREAS, the Original 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 Responses to Comments on the Revisions, December 2008; and City of Oakland Resolution No. 81769 C.M.S., approved January 20, 2009; and

WHEREAS, 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 proposed in the Updated Brooklyn Basin Project 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. An Initial Study was not prepared for the Updated Brooklyn Basin Project, as authorized under Section 15060(d) of the CEQA Guidelines. The City, as the Lead Agency, determined that a Supplemental Environmental Impact Report (SEIR) for the Updated Brooklyn Basin Project would be required; and

WHEREAS, 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 identify 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; and

WHEREAS, in accordance with CEQA Guidelines sections 15162 and 15163, the City hereby finds that, based on substantial evidence in the record, this action does not represent a substantive change to the Updated Brooklyn Basin Project and thus none of the circumstances necessitating preparation of a subsequent or supplemental Environmental Impact Report are present. In addition, each as a separate and independent basis, this action is otherwise exempt from CEQA review under CEQA Guidelines section 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); and

WHEREAS, on the date hereof, after holding noticed public hearings, the City Council adopted: (i) a resolution entitled “Resolution Authorizing the Formation of the City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services) to Finance Public Improvements and Public Services for the Brooklyn Basin Project and Related Documents and Actions; and Adopting Appropriate Findings under the California Environmental Quality Act” (the “Resolution of Formation”); and (ii) a resolution entitled “Resolution Determining the Necessity to Incur Bonded and Other Indebtedness for the City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services); and Adopting Appropriate Findings under the California Environmental Quality Act” (the “Resolution Determining Necessity”); and

WHEREAS, pursuant to the Resolution of Formation and the Act, the City Council established the “City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services)”, for the purpose of financing certain public improvements (“Facilities”) and public services (“Services”) described in the Resolution of Formation; and

WHEREAS, pursuant to the Resolution of Formation and the Act, the City Council further authorized the levy of special taxes (“Special Taxes”) on property within CFD No. 2023-1 according to the rate and method of apportionment (“Rate and Method”) shown in Exhibit B to the Resolution of Formation; and

WHEREAS, pursuant to the Resolution of Formation and the Act, the City Council further preliminarily established an appropriations limit for CFD No. 2023-1; and

WHEREAS, in the Resolution Determining Necessity, the City Council determined the necessity to incur bonded indebtedness in the maximum aggregate principal amount of \$50,000,000 for CFD No. 2023-1 upon the security of the Special Taxes to be levied within CFD No. 2023-1 pursuant to the Act; and

WHEREAS, in the Resolution Determining Necessity, the City Council also determined the necessity to incur other debt as defined in the Act; and

WHEREAS, under the Resolution of Formation and the Resolution Determining Necessity, the propositions of the levy of the Special Taxes according to the Rate and Method, the establishment of the appropriations limit for CFD No. 2023-1, and the incurring of the bonded indebtedness and other debt shall be submitted to the qualified electors of CFD No. 2023-1 as required by the provisions of the Act; now, therefore be it

RESOLVED, That, pursuant to Sections 53326, 53351 and 53325.7 of the Act, the issues of the levy of the Special Taxes, the incurring of bonded indebtedness and other debt, and the establishment of the appropriations limit shall be submitted to the qualified electors (as defined below) of CFD No. 2023-1 at an election called therefor as provided below; and be it

FURTHER RESOLVED, That the City Council hereby finds that fewer than 12 persons have been registered to vote within the territory of CFD No. 2023-1 for each of the 90 days preceding the close of the public hearings heretofore conducted and concluded by the City Council for the purposes of these proceedings. Accordingly, pursuant to Section 53326 of the Act, the City Council finds that, for these proceedings, the qualified electors are the landowners (as defined in the Act) within CFD No. 2023-1, and that the vote shall be by such landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in CFD No. 2023-1; and be it

FURTHER RESOLVED, That the City Council hereby calls a special election in CFD No. 2023-1 to consider the measures described in section 1 above, which election shall be held on the date hereof, and the results thereof canvassed at the meeting of the City Council immediately thereafter. The City Clerk is hereby designated as the official to conduct the elections and to

receive all ballots until 4:00 p.m. on the election date. It is hereby acknowledged that the City Clerk has on file the Resolution of Formation, the Resolution Determining Necessity, a certified map of the boundaries of CFD No. 2023-1, and a sufficient description to allow the City Clerk to determine the qualified electors of CFD No. 2023-1. Pursuant to Sections 53326(d) and 53327 of the Act, the election shall be conducted by messenger or mail-delivered ballot pursuant to Section 4000 et seq. of the California Elections Code, except that Sections 53326 and 53327 of the Act shall govern for purposes of determining the date of election. The City Council hereby finds and determines that the City Clerk has concurred in the holding of the election less than 125 days following adoption of this Resolution; and be it

FURTHER RESOLVED, That as authorized by Section 53353.5 of the Act, the three propositions described above shall be combined into a single ballot measure, the form of which is attached hereto as Exhibit “A” and by this reference incorporated herein and the form of ballot is hereby approved. The City Clerk is hereby authorized and directed to cause a ballot, in substantially the form of Exhibit “A,” to be delivered to each of the qualified electors of CFD No. 2023-1. Each ballot shall indicate the number of votes to be voted by the respective landowner to which the ballot pertains. Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The envelope to be used to return the ballot shall be enclosed with the ballot, with the return postage prepaid, and shall contain the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board of the election; and be it

FURTHER RESOLVED, That the City Council hereby further finds that the provisions of Section 53326 of the Act requiring a minimum of 90 days following the adoption of the Resolution of Formation to elapse before the special elections are for the protection of the qualified electors of CFD No. 2023-1. There is on file with the City Clerk a written waiver executed by each of the qualified electors of CFD No. 2023-1 allowing for a shortening of the time for the special election to expedite the process of formation of CFD No. 2023-1 and waiving any requirement for notice, analysis and arguments in connection with the election. Accordingly, the City Council finds and determines that the qualified electors have been fully apprised of and have agreed to the shortened time for the elections and waiver of notice, analysis and arguments, and have thereby been fully protected in these proceedings. The City Council also finds and determines that the City Clerk has concurred in the shortened time for the elections. Analysis and arguments with respect to the ballot measures are hereby waived, as provided in Section 53327 of the Act; and be it

FURTHER RESOLVED, That the City Council hereby finds that the proposed issuance of bonds and other debt constitutes a “local bond measure” within the meaning of Sections 53410, et seq. of the California Government Code. As a result, the ballot measure shall include the propositions set forth above and the following: (a) the specific purpose of the bonds and other debt shall be as set forth in the propositions; (b) any proceeds received from the sale of any bonds or other debt shall be applied only to the purposes set forth in the propositions; (c) the proceeds of

any bonds or other debt shall be deposited into special accounts to be created therefor as part of the issuance of the bonds or other debt; and (d) the City shall cause a report to be prepared annually under Section 53411 of the Government Code; and be it

FURTHER RESOLVED, That under Section 50075.1 of the Government Code, the following accountability provisions shall apply to the Special Taxes: (a) the provision and/or acquisition of the Facilities and the Services, the payment of debt service on the bonds and other debt and the payment of the incidental costs thereof, all as defined in the Resolution of Formation, shall constitute the specific single purpose; (b) the proceeds shall be applied only to the specific purposes identified in (a) above; (c) there shall be created special account(s) or funds(s) into which the proceeds shall be deposited; and (d) there shall be caused to be prepared an annual audit and report of CFD No. 2023-1; and be it

FURTHER RESOLVED, That the City Council independently finds and determines that CFD No. 2023-1 is subject to the 2009 EIR for the Original Brooklyn Basin Project and the SEIR for the Updated Brooklyn Basin Project and, because the formation of 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, with each serving as a separate and independent basis, this action creating CFD No. 2023-1 is otherwise exempt from CEQA review under CEQA Guidelines section 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); and be it

FURTHER RESOLVED, That the Environmental Review Officer is directed to file, or cause to be filed, a Notice of Determination/Exemption with the appropriate agencies; and be it

FURTHER RESOLVED, That the City Administrator is hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution; and be it

FURTHER RESOLVED, That this Resolution shall take effect immediately upon its passage.

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

EXHIBIT A

**City of Oakland
Community Facilities District No. 2023-1
(Brooklyn Basin Facilities and Services)**

**OFFICIAL BALLOT
SPECIAL TAX ELECTION**

This ballot is for a special, landowner election. You must return this ballot in the enclosed postage paid envelope to the office of the City Clerk of the City of Oakland no later than the hour of 4:00 p.m. on September 19, 2023, either by mail or in person. This ballot may be returned by certified or registered mail. The City Clerk's office is located at City Hall, 1 Frank H Ogawa Plaza, Oakland, California 94612.

To vote, mark a cross (X) on the voting line after the word "YES" or after the word "NO". All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of Oakland and obtain another.

BALLOT MEASURE: Shall the following measure be adopted: authorizing the City of Oakland to (i) levy a Facilities Special Tax solely on lands within the City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services) ("CFD") in accordance with the rate and method ("Rate and Method") contained in the resolution of the City Council establishing CFD No. 2023-1 ("Formation Resolution"), commencing in the City's fiscal year 2024-25 (with annual escalation thereafter), to pay for the public facilities specified in the Formation Resolution, to pay debt service on bonds and other debt of CFD No. 2023-1, and to pay the costs of the City in administering CFD No. 2023-1, which Facilities Special Tax, if levied at the maximum rate and assuming full build-out of the properties in CFD No. 2023-1 at the time of formation, is anticipated to raise \$2,563,900 in fiscal year 2024-25 (with annual escalation thereafter); (ii) levy a Services Special Tax solely on lands within CFD No. 2023-1 in accordance with the Rate and Method, commencing in the City's fiscal year 2024-25 (with annual escalation thereafter), to pay for the public services specified in the Formation Resolution, and to pay the costs of the City in administering CFD No. 2023-1, which Services Special Tax, if levied at the maximum rate and assuming full build-out of the properties in CFD No. 2023-1 at the time of formation, is anticipated

to raise \$2,767,503 in fiscal year 2024-25 (with annual escalation thereafter); (iii) establish an annual appropriations limit for CFD No. 2023-1 in the amount of \$50,000,000 (subject to increase in accordance with law); and (iv) issue bonds for CFD No. 2023-1 in one or more series in the maximum aggregate principal amount of not to exceed \$50,000,000 and other debt for CFD No. 2023-1, with interest at a rate or rates not to exceed the maximum interest rate permitted by law at the time of sale of such bonds or issuance of such bonds and other debt, the proceeds of which bonds and other debt will be used to acquire and/or construct certain facilities, reimburse certain costs of the facilities paid prior to the date of issuance of the bonds, and pay for the costs of issuing the bonds and related expenses?

YES: _____

NO: _____

By execution in the space provided below, you also indicate your waiver of (i) the time limit pertaining to the conduct of the election, (ii) any requirement for notice, analysis and arguments with respect to the ballot measure, and (iii) any requirement pertaining to the conduct of the election.

[PROPERTY OWNER NAME]

By: _____

Name: _____

Title: Authorized Representative

Assessor Parcel No(s):

Acreage:

Number of votes: