


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION OF THE CITY COUNCIL CORRECTING INCONSISTENCIES RELATED TO THE DESCRIPTION OF THE GEOGRAPHIC SCOPE OF THE AUTHORIZED SERVICES IN THE PROCEEDINGS FOR CITY OF OAKLAND COMMUNITY FACILITIES DISTRICT NO. 2017-1 (BROOKLYN BASIN PUBLIC SERVICES), AND DIRECTING RECORDATION OF AN AMENDED AND RESTATED BOUNDARY MAP AND AN AMENDED AND RESTATED NOTICE OF SPECIAL TAX LIEN

WHEREAS, the City previously approved a development, formerly known as the Oak-to-Ninth Avenue Mixed Use Development, and now known as the Brooklyn Basin Project (the “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 (the “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 Brooklyn Basin Project (as amended and assigned, the “Development Agreement”); and

WHEREAS, both the Development Agreement and Condition of Approval No. 38 for the Brooklyn Basin Project (included as Attachment A to the Agenda Report dated September 19, 2017, related to the Resolution of Intention (defined below), which together with the Development Agreement is referred to for purposes herein as collectively, the “Project Approvals”) required, among other things, the formation of a community facilities district for the operation and maintenance of all parks, opens space, shoreline trails, and piers and landscaping; street lighting, street furniture, and sidewalks located in public rights-of-way; and storm drainage treatment improvements within the Brooklyn Basin Project (collectively, “Maintained Improvements”); and

WHEREAS, the City Council previously conducted proceedings under, and pursuant to, the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq.) (the “Act”), to form “City of Oakland Community Facilities District No. 2017-1 (Brooklyn Basin Public Services)” (“CFD No. 2017-1”), to authorize the levy of a special tax (the “CFD No. 2017-

1 Special Tax”) upon the land within CFD 2017-1 to pay for certain public services (the “Services”); and

WHEREAS, the City Council declared its intention to form CFD No. 2017-1 pursuant to Resolution No. 86921 C.M.S., adopted on October 3, 2017 (the “Resolution of Intention”); and

WHEREAS, the Agenda Report dated October 25, 2017, related to the Resolution of Formation (as defined below), included the Formation Hearing Report for CFD No. 2017-1 as Exhibit A thereto; and

WHEREAS, the City Council established CFD No. 2017-1 pursuant to Resolution No. 86960 C.M.S. adopted on November 7, 2017 (the “Resolution of Formation”); and

WHEREAS, pursuant to Resolution No. 86961 C.M.S., adopted on November 7, 2017, a mail ballot election was held of the three qualified landowner electors in CFD No. 2017-1, who were affiliated entities: (1) the Developer, who owned approximately 16.45 acres of taxable property in CFD No. 2017-1 and was entitled to seventeen (17) votes (approximately 80% of the total votes), (2) 250 Ninth Avenue Partners, LLC, a California Limited liability company, who owned approximately 1.54 acres of taxable property in CFD No. 2017-1 and was entitled to two (2) votes (approximately 10% of the total votes), and (3) Zarsion BBC, LLC, a California limited liability company, who owned approximately 1.44 acres of taxable property in CFD No. 2017-1 and was entitled to two (2) votes (approximately 10% of the total votes); and

WHEREAS, following completion of the mail ballot election, the City Council determined in Resolution No. 86962 C.M.S., adopted on November 7, 2017, that more than two-thirds of all the votes cast at the election were in favor of the levy of the CFD No. 2017-1 Special Tax to finance the Services; and

WHEREAS, the City Council levied the CFD No. 2017-1 Special Tax on taxable properties in CFD No. 2017-1 pursuant to Ordinance No. 13463 C.M.S., adopted on November 28, 2017; and

WHEREAS, on December 13, 2017, the City Clerk caused to be recorded as Document No. 2017274055 in the official records of the County of Alameda, California (the “Official Records”) a Notice of Special Tax Lien (the “Original Notice of Special Tax Lien”) pursuant to which notice was given that a lien to secure the payment of the CFD No. 2017-1 Special Tax was imposed on taxable property in CFD No. 2017-1; and

WHEREAS, the Original Notice of Special Tax Lien referenced the boundary map of the District recorded at Book 18 of Maps of Assessment and Community Facilities Districts at Page 85 in the Official Records, which map was then the final boundary map of the District (the “Original Boundary Map”); and

WHEREAS, the Developer and City staff have informed the City Council that the CFD No. 2017-1 proceedings contain inconsistencies in the description of the location of the Services to be financed by CFD No. 2017-1, including failing to consistently describe the geographic scope

of the Services as extending outside the boundaries of CFD No. 2017-1 (particularly, operation and maintenance of a major portion of the Maintained Improvements such as the parks, opens space, shoreline trails, and piers); and

WHEREAS, the City Council has received petitions from the owners of all of the taxable properties in CFD No. 2017-1 asking the City Council to resolve such inconsistencies as set forth in this Resolution; and

WHEREAS, the City Council has had an opportunity to review the Project Approvals related to the formation of CFD No. 2017-1, the CFD No. 2017-1 formation proceedings, and the Agenda Report related to this Resolution, and has determined that it was not the intent of such Project Approvals or the CFD No. 2017-1 proceedings to limit the geographic scope of the Services for the Maintained Improvements to within the boundaries of CFD No. 2017-1; and

WHEREAS, the City Clerk has caused a notice of public hearing with respect to the matters addressed in this Resolution to be published one time in a newspaper published in the area of CFD No. 2017-1, and such publication was completed at least seven (7) days before the date hereof; and

WHEREAS, on the date hereof, the City Council held a public hearing on the matters addressed in this Resolution and all interested persons desiring to be heard on such matters were heard; and

WHEREAS, in order to carry out the requirements of the Project Approvals and the purposes of the Act and the CFD No. 2017-1 proceedings, it is necessary for the City Council to resolve the inconsistencies in the CFD No. 2017-1 proceedings, as set forth in this Resolution; now, therefore, be it

RESOLVED: That the City Council finds and determines that the foregoing recitals are true and correct and are an integral part of the Council's decision; and be it

FURTHER RESOLVED: That to effectuate the City Council determination that it was not the intent of the Project Approvals or the CFD No. 2017-1 proceedings to limit the geographic scope of the Services to the boundaries of CFD No. 2017-1 and to establish a clear record of the geographic scope of the Services, the City hereby directs that (a) the City Clerk shall cause to be recorded in the Official Records an amendment and restatement of the Original Boundary Map for CFD No. 2017-1 in substantially the form attached to the Agenda Report for this item (the "Amended and Restated Boundary Map") to supersede and replace the Original Boundary Map in the Official Records for the purpose of avoiding confusion by eliminating from the map any information that is not required to be presented on the map by the Act, including the erroneous depiction of the geographic scope of the Services, provided that such Amended and Restated Boundary Map shall not make any changes to the boundaries of CFD No. 2017-1, and (b) the City Clerk shall cause to be recorded in the Official Records an amendment and restatement of the Original Notice of Special Tax Lien for CFD No. 2017-1 in substantially the form attached to the Agenda Report for this item for the purpose of correcting any erroneous language stating that the geographic scope of Services is limited to the area "within the District", "within the Brooklyn

Basin project area”, or similar language and by attaching to the description of the public services to be financed by the District in Exhibit A of the Original Notice of Special Tax Lien a map of the geographical scope of the public services to be financed by the District that is consistent with the Project Approvals and the intent of the CFD No. 2017 formation proceedings; and be it

FURTHER RESOLVED: That in making the findings and determinations and directing the City Clerk to take the actions set forth herein, the City Council intends to correct the inconsistencies in the description of the geographic scope of the Services in all of the CFD No. 2017-1 proceedings, and in the event of any inconsistency between this Resolution and the CFD No. 2017-1 proceedings, the provisions of this Resolution shall apply to the extent of the inconsistency; and be it

FURTHER RESOLVED: That in making the findings and determinations and directing the City Clerk to take the actions set forth herein, the City Council has determined that it is correcting an error in the CFD No. 2017-1 proceedings and is not authorizing the financing of any services that were not specified in the CFD No. 2017-1 proceedings, including, but not limited to, the Resolution of Formation, and that the City Council is proceeding in accordance with the Act; and be it

FURTHER RESOLVED, That the City Council hereby finds and determines that this Resolution is valid and in conformity with the Act; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized and directed, for, and in the name of, and on behalf of, the City, to do any and all things and take any and all actions, including execution and delivery of any and all documents, which they may deem necessary or advisable in order to accomplish the intent of this Resolution; and be it

FURTHER RESOLVED: That this Resolution shall become effective immediately upon passage.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -
NOES –
ABSENT –
ABSTENTION –

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