



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION OF THE CITY COUNCIL DECLARING THE INTENTION TO INCUR BONDED AND OTHER INDEBTEDNESS 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 (“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, on May 16, 2023 the City Council adopted Ordinance No. 13739 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 area of the Original Brooklyn Basin Project (the “Updated Brooklyn Basin Project”); and

WHEREAS, Section 4.13 of the Development Agreement permits the Developer to request the City to use any public financing method available for the Updated Brooklyn Basin Project; and

WHEREAS, pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Section 53311 et seq.) (“Act”), for the purpose of financing certain public improvements and public services related to the Updated Brooklyn Basin Project, the City Council

has, on this date, adopted "A Resolution of the City Council Declaring the Intention to Establish City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services) and Levy Special Taxes to Finance Public Improvements and Public Services for the Updated Brooklyn Basin Project; Approving a Proposed Boundary Map for Community Facilities District No. 2023-1; And Adopting Appropriate Findings Under The California Environmental Quality Act" ("Resolution of Intention to Establish"), stating its intention to form the "City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services)" ("CFD No. 2023-1"), as further provided in that Resolution of Intention to Establish; and

WHEREAS, the City Council estimates the amount required for the financing of the costs of the Facilities (as defined below) to be the sum of approximately \$50,000,000; and

WHEREAS, in order to finance the costs of the facilities described in **Exhibit A** to the Resolution of Intention to Establish ("Facilities"), it is necessary to incur on behalf of CFD No. 2023-1 bonded indebtedness in one or more series in the aggregate amount of \$50,000,000; and

WHEREAS, in order to finance the costs of the Facilities, it is further necessary to incur debt (as defined in the Act), although any such debt shall not be subject to the limitations on bonded indebtedness set forth above; and

WHEREAS, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

WHEREAS, it is in the public interest and for the public benefit that the City declares its official intent to reimburse the expenditures referenced herein; 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, that 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 (“EIR”) are present and 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, now, therefore be it

RESOLVED, That it is necessary to incur, and the City Council hereby declares its intent to incur, bonded indebtedness for CFD No. 2023-1 in the maximum amount of \$50,000,000 to finance the costs of the Facilities; and be it

FURTHER RESOLVED, That it is further necessary to incur, and the City Council hereby declares its intent to incur, debt (as defined in the Act), in one or more series, for CFD No. 2023-1, although any such debt shall not be subject to the limitations on bonded indebtedness set forth above; and be it

FURTHER RESOLVED, That the bonded indebtedness and other debt are proposed to be incurred for the purpose of financing the costs of the Facilities, including acquisition and construction costs and all costs incidental to or connected with the accomplishment of said purposes and of the financing thereof, as permitted by Section 53345.3 of the Act; and be it

FURTHER RESOLVED, That the City hereby declares that it reasonably expects (a) to pay certain costs of the Facilities prior to the date of issuance of the bonded indebtedness and other debt and (b) to use a portion of the proceeds of the bonded indebtedness and debt for reimbursement of expenditures for the Facilities that are paid before the date of issuance of the bonded indebtedness; and be it

FURTHER RESOLVED, That it is the intention of the City Council, acting as the legislative body for CFD No. 2023-1, to cause bonds and other debt of the City to be issued for CFD No. 2023-1 to finance in whole or in part the construction and/or acquisition of the Facilities. The bonds and other debt shall be issued in one or more series and bear interest payable semi-annually or in such other manner as the City Council shall determine, at a rate not to exceed the maximum rate of interest as may be authorized by applicable law at the time of sale of such bonds and other debt, and the bonds shall mature not to exceed 40 years from the date of the issuance thereof; and be it

FURTHER RESOLVED, That on September 19, 2023 at 4:30 p.m. or as soon as possible thereafter, in the Council Chambers, 1 Frank H Ogawa Plaza, Oakland, California (or via teleconference as may be mandated by State or County emergency health orders), be, and the same are hereby appointed and fixed as the time and place when and where the City Council, as legislative body for CFD No. 2023-1, will conduct a public hearing on the proposed debt issue and consider and finally determine whether the public interest, convenience and necessity require the issuance of bonds and other debt of the City on behalf of CFD No. 2023-1; and be it

FURTHER RESOLVED, That the City Council may hold the public hearing on September 19, 2023, notwithstanding Section 53321 of the Act, which provides for the public hearing to be scheduled for not less than 30 days or more than 60 days after the adoption of this Resolution, because (a) the City Council has scheduled only one meeting in July 2023, no meetings in August 2023 and one meeting in September 2023, the latter of which is more than 60 days after the date on which this Resolution is adopted, (b) the City, as a charter city, has the power to regulate municipal affairs under Article XI, Section 5 of the California Constitution and Section 106 of the City Charter, and may determine in the exercise of such power that it is in the public interest to hold a public hearing more than 60 days after adoption of this Resolution, (c) in Section 53315 of the Act, the Legislature provided that the Act shall be liberally construed in order to effectuate its purposes, (d) in Section 53312.5 of the Act, the Legislature provided that the City may take any actions or make any determinations which it determines are necessary or convenient to carry out the purposes of the Act and which are not otherwise prohibited by law, and (e) the City Council has received written waivers and consents from all of the property owners and qualified electors in CFD No. 2023-1 in which such property owners and qualified electors have consented to the public hearings for CFD No. 2023-1 being held on September 19, 2023 or such other date determined by the City Council, and agreed that, notwithstanding Section 53321(e) of the Act, any such date that is more than 60 days after the City Council adopts a resolution of intention to establish CFD No. 2023-1 does not directly affect the jurisdiction of the City Council to order the installation of the Facilities or the provision of the Services, and shall not void or invalidate the proceedings related to CFD No. 2023-1, any levy of Special Taxes for the costs of the Facilities or Services or any bonds or debt issued for CFD 2023-1; and be it

FURTHER RESOLVED, That the City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper of general circulation circulated within CFD No. 2023-1. The publication of the notice shall be completed at least seven days before the date specified above for the public hearing. The notices shall be substantially in the form specified in Section 53346 of the Act; 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 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, The City Council independently finds and determines each as a separate and independent basis that CFD No. 2023-1 is exempt from CEQA pursuant to CEQA Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning), Section 15301 (Existing Facilities), and Section 15308 (Actions by Regulatory Agencies for 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 in no way obligate the City Council of the City to form CFD No. 2023-1 or to issue bonds or other debt for CFD No. 2023-1. Issuance of the bonds or other debt shall be subject to the approval of this City Council by resolution following the holding of the public hearing referred to above; 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