

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 2022-

RESOLUTION OF FORMATION ESTABLISHING THE CITY OF SAN LEANDRO COMMUNITY FACILITIES DISTRICT NO. 2022-1 (MONARCH BAY SHORELINE FACILITIES & SERVICES), AND PROVIDING FOR THE LEVY OF A SPECIAL TAX IN THE COMMUNITY FACILITIES DISTRICT TO FINANCE THE ACQUISITION AND CONSTRUCTION OF PUBLIC FACILITIES AND THE PROVISION OF PUBLIC SERVICES

WHEREAS, on Wednesday, July 18, 2022, the City Council duly adopted Resolution No. 2022-127 (the “**Resolution of Intention**”), thereby declaring its intention to (1) establish a community facilities district under the Mello-Roos Community Facilities Act of 1982, set forth at Government Code sections 53311 through 53368.3 (the “**Act**”), to be known and designated as the “City of San Leandro Community Facilities District No. 2022-1 (Monarch Bay Shoreline Facilities & Services)” (the “**CFD**”); and (2) levy a special tax within the CFD to finance the provision of certain public services (the “**Services**”) and the acquisition and construction of certain public facilities, including through the financing of governmentally imposed development impact fees used to finance public facilities (the “**Facilities**”), all as set out in the Resolution of Intention; and

WHEREAS, in the Resolution of Intention, the City Council fixed Tuesday, September 6, 2022, at 6:30 p.m., in the City Council Chambers in the San Leandro City Hall, 835 East 14th Street, San Leandro, California 94577, with electronic and telephonic access provided as set forth in the agenda for the meeting, as the time and place for a public hearing (the “**Public Hearing**”) to be held by the City Council to consider the establishment of the CFD; the proposed rate, method of apportionment, and manner of collection of the special tax within the CFD; the provision of the Services; the acquisition and construction of the Facilities; the establishment of an appropriations limit for the CFD; and all other matters set forth in the Resolution of Intention; and

WHEREAS, in accordance with the Resolution of Intention, the Economic Development Manager arranged for the submission of a report (the “**Hearing Report**”) to the City Council on the need for, and the estimated cost of, the Services and the Facilities proposed to be financed, and certain other matters. The City Council has reviewed the Hearing Report, attached as Exhibit E hereto and made a part of the record of the Public Hearing; and

WHEREAS, as required by Streets and Highways Code section 3110, in the Resolution of Intention the City Council approved the boundary map for the CFD in the form set forth as Exhibit A to the Resolution of Intention; and

WHEREAS, on the date hereof, at or shortly after the time set for the Public Hearing, the City Council opened the Public Hearing to consider the establishment of the CFD; the proposed rate, method of apportionment, and manner of collection of the special tax for the CFD; the provision of the Services, the acquisition and construction of the Facilities; the establishment of

an appropriations limit for the CFD; and all other matters set forth in the Resolution of Intention; and

WHEREAS, at the Public Hearing, any persons interested, including all taxpayers, property owners, and registered voters within the CFD, were given an opportunity to appear and be heard, and the City Council heard and considered the testimony of all interested persons for or against the establishment of the CFD; the extent of the CFD; the levy of the special tax within the CFD (the “**Special Tax**”) to pay directly for the Services and the Facilities and to pay the principal and interest on bonds and other debt (as defined in the Act) of the City issued for the CFD to finance the Facilities; the establishment of the appropriations limit for the CFD; and any other matters set forth in the Resolution of Intention; and

WHEREAS, all owners of land within the boundaries of the proposed CFD and all registered voters residing within the boundaries of the proposed CFD (if any) that would not be exempt from the proposed levy of the Special Tax were allowed to submit written protests to any aspect of the proposals contained in the Resolution of Intention and were permitted to withdraw their protests before the close of the Public Hearing; and

WHEREAS, there are on file with the City Clerk a proof of publication of the Notice of Public Hearing in the *East Bay Daily Review*, required by the Act and the Resolution of Intention.

NOW, THEREFORE, the City Council of the City of San Leandro does **RESOLVE** as follows:

SECTION 1. The City Council finds that the statements in the Background are true.

SECTION 2. Except to the extent modified by this resolution, the Resolution of Intention is reaffirmed, and its provisions and findings are, to that same extent, incorporated herein by this reference.

SECTION 3. The City Council accepts the proof of publication of the Notice of Public Hearing and finds, based thereon, that proper notice of the Public Hearing has been given in accordance with the Act and that the Public Hearing was conducted with proper and legal notice in all respects.

SECTION 4. The City Council finds and declares that the boundaries of the CFD shall be as more particularly described and shown on the map titled “Proposed Boundaries of City of San Leandro Community Facilities District No. 2022-1 (Monarch Bay Shoreline Facilities & Services), City of San Leandro, County of San Leandro, State of California,” which is now on file in the office of the City Clerk (the “**Clerk**”), and which was recorded on August 26, 2022, in Book 19 at Page 40 of the Book of Maps of Assessment and Community Facilities Districts maintained by the Alameda County Auditor-Controller/Clerk-Recorder. A reduced copy of the Boundary Map is attached as Exhibit A to this resolution.

SECTION 5. The City Council finds and determines that at the close of the Public Hearing written protests, if any, to the establishment of the CFD; the extent of the CFD; the levy

of the Special Tax within the CFD; the provision of the Services; the acquisition and construction of the Facilities; the establishment of the appropriations limit for the CFD; or any other matters contained in the Resolution of Intention were submitted by less than 50% of the registered voters residing within CFD or by less than six of the registered voters residing within the CFD, whichever is more. The City Council also finds that, at the close of the Public Hearing, written protests, if any, were submitted by the owners of less than one-half of the area of land in the territory proposed to be included in the CFD and not exempt from the Special Tax. Thus, finding that it is not precluded by the Act from proceeding further in this matter, the City Council hereby orders and determines that it has considered, and that it overrules, all protests to the foregoing matters and hereby establishes the CFD.

SECTION 6. The Facilities authorized to be financed by and through the CFD are those shown on Exhibit B attached to this resolution. The City Council finds that the Facilities do not in any way exceed the description of the authorized facilities proposed in the Resolution of Intention. All of the Facilities have an estimated useful life of five years or longer. They are public facilities that—

(a) the City or other governmental agencies are authorized by law to construct, own, or operate, or to which they may contribute revenue; and

(b) are necessary to meet increased demands on the City or other governmental agencies as the result of development occurring or expected to occur within the CFD.

SECTION 7. The Services authorized to be financed by and through the CFD are those shown on Exhibit C attached to this resolution. The City Council finds that the Services do not in any way exceed the description of the authorized services proposed in the Resolution of Intention. All of the Services—

(a) are necessary to meet increased demands on the City or other governmental agencies as the result of development occurring or expected to occur within the CFD; and

(b) are in addition to those provided in the territory of the CFD as of the date hereof and will not supplant services already available within the territory of the CFD as of the date hereof.

SECTION 8. The rate and method of apportionment of the Special Tax among the parcels of real property within the CFD is attached as Exhibit D to this resolution (the “RMA”). The RMA is in sufficient detail to allow each landowner or resident within the CFD to estimate the maximum amount the landowner or resident will have to pay. The RMA, included as Exhibit D, provides that the Special Tax may not be prepaid. The City Council finds that the RMA does not in any way exceed the proposed rate and method of apportionment of the Special Tax described in the Resolution of Intention. As required by the Act, with respect to the portion of the Special Tax used for Facilities that is levied against any parcel used for private residential purposes (which use begins no later than the date on which an occupancy permit for private residential use is issued)

(a) the maximum Special Tax will be specified as a dollar amount that (1) will

be calculated and thereby established no later than the date on which the parcel is first subject to the Special Tax because of its use for private residential purposes and (2) will not increase by more than two percent each year;

(b) the Special Tax will not be levied against such property for Facilities beyond 100 years from the initial levy of the Special Tax (but the Special Tax lawfully levied in or before that year and that remains delinquent may be collected in subsequent years); and

(c) under no circumstances will the Special Tax levied against such property in any fiscal year be increased, because of delinquency or default by the owner of any other parcel or parcels within the CFD, by more than ten percent above the amount that would have been levied in that fiscal year had no delinquencies or defaults occurred.

SECTION 9. If the election referred to in Section 14 results in the approval of the authorizations of this resolution, then upon recordation of a Notice of Special Tax Lien for the CFD as required by Streets and Highways Code section 3114.5, a continuing lien to secure each levy of the Special Tax will attach to all nonexempt real property in the CFD, until the Special-Tax obligation is permanently satisfied and the lien cancelled in accordance with law or until collection of the applicable special tax ceases and a Notice of Cessation of Special Tax is recorded in accordance with section 53330.5 of the Act.

SECTION 10. Except where funds are otherwise available, and subject to the limits described in the RMA, as may be amended, the Special Tax will be levied annually within the CFD in an amount sufficient to pay for the following: the acquisition and construction of the Facilities, including but not limited to the payment of interest on and principal of or other payments on bonds or other debt (as defined in the Act) (“**Debt**”) issued for the CFD to finance the acquisition and construction of the Facilities or to finance the making of lease payments for Facilities (whether in conjunction with the issuance of certificates of participation or not); the provision of the Services; and the repayment of funds advanced by the City for the CFD, including repayment under any agreement (which will not constitute a debt or liability of the City) of advances of funds or reimbursement for the lesser of the value or cost of work in-kind provided by any person for the CFD and any administrative costs paid by the City related to the CFD. The Special Tax will be secured by recordation of a continuing lien against all non-exempt real property in CFD. The non-exempt real property subject to the Special Tax consists of both fee title interests and leasehold or possessory interests in land currently owned by the City.

SECTION 11. The Special Tax will be collected through the regular County of Alameda secured property-tax bills and will be subject to the same enforcement mechanism, and the same penalties and interest for late payment, as regular ad valorem property taxes. But the City Council reserves the right to use any other lawful means of billing, collecting, and enforcing the Special Tax, including direct billing, supplemental billing, and, when lawfully available, judicial foreclosure of the special-tax lien, including accelerated foreclosure remedies set forth in the Act.

SECTION 12. Under Government Code section 53340.1, the Special Tax will be levied on leasehold or possessory interests in property owned by a public agency, to be payable by the owner of the leasehold or possessory interests.

SECTION 13. Under Government Code section 53325.7, and subject to the voter approval requirement in that section, the appropriations limit, as defined by subdivision (h) of section 8 of article XIII B of the California Constitution, for Fiscal Year 2022-23 is established for the CFD in the amount of \$91 million and subject to escalation in accordance with applicable law.

SECTION 14. The City Council will submit the authorizations of this resolution to the qualified electors of the CFD in a special mailed-ballot election. Based on findings to be formally made by the City Council in a resolution to be adopted this date calling the special mailed-ballot election, to which reference is made for further particulars, the qualified electors of the CFD are the landowners owning property in the CFD, including property for which leasehold or possessory interests are subject to the Special Tax, in accordance with sections 53317(f), 53326(b) and 53340.1 of the Act.

In accordance with Government Code section 53317(f), the City hereby states that land owned by the City in the CFD that is not exempt from the Special Tax under the RMA either (1) shall be subject to the Special Tax pursuant to Government Code section 53340.1 or (2) is intended to be transferred to private ownership and that its land will be subject to the Special Tax on the same basis as private property within the CFD and hereby waives any defense based on the fact of public ownership, to any action to foreclose on the property in the event of nonpayment of the Special Tax.

SECTION 15. In the opinion of the City Council, the public interest will not be served by allowing property owners in the CFD to enter into a contract under Government Code section 53329.5(a) to do the work to be financed under the Act. Notwithstanding the foregoing, the City Council, on behalf of the CFD, may enter into one or more contracts directly with any property owners with respect to the construction or acquisition of all or any portion of the Facilities.

SECTION 16. The City Council reserves to itself the right and authority to allow bond tenders from any interested landowner within the CFD to be accepted under Government Code sections 53344.1 and 53356.8 in full or part payment of any installment of the Special Tax or the interest or penalties thereon, as applicable.

SECTION 17. The Finance Director of the City, 835 East 14th Street, San Leandro, California 94577, telephone (510) 577-3330, will be responsible for annually preparing, or causing to be prepared, the roll of Special Tax levies on the parcels within the CFD and will be responsible for estimating future Special Tax levies as required by Government Code section 53340.2.

SECTION 18. The City Council finds and determines that all proceedings conducted and approved by the City Council with respect to the establishment of the CFD, up to and including the adoption of this resolution and the other resolutions adopted this date in connection with the formation proceedings for the CFD, are valid and in conformity with the requirements of the Act. This determination is final and conclusive for all purposes and is binding upon all persons. Accordingly, the City Council finds, determines, and orders that the CFD is hereby established with all of the authorities described in this resolution, the exercise of which is subject only to the election for the CFD described herein, is hereby established with all the authorities described in this resolution.

SECTION 19. This resolution takes effect when adopted.

Introduced by _____ and passed and adopted this 6th day of September 2022, by the following vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST: _____
Kelly B. Clancy, Acting City Clerk

Attachments:

Exhibit A – Boundary Map

Exhibit B – List of Authorized Facilities

Exhibit C – List of Authorized Services

Exhibit D – Rate and Method of Apportionment of Special Tax

Exhibit E – Hearing Report

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