

CITY OF OAKLAND

AGENDA REPORT

2011 TO: IN 30 Office of the City Administrator

ATTN: P. Lamont Ewell, Interim City Administrator

FROM: Community and Economic Development Agency

DATE: July 12, 2011

RE: Resolution Authorizing The City Administrator To Consent To Execution Of An Assignment Of Payments Agreement Between The Temescal Telegraph Avenue Community Association Of Oakland ("Borrower") And A Still To Be Determined Lender ("Lender") To Make Payments To Lender From Temescal / Telegraph Avenue Property Business Improvement District Of 2005 ("PBID") Special Assessment Funds Held On Behalf Of The PBID In Support Of The Telegraph Avenue Pedestrian Lighting Project

SUMMARY

A resolution has been prepared to authorize the City Administrator to consent to the execution of an Assignment of Payments Agreement between the Temescal Telegraph Avenue Community Association of Oakland (Borrower) and a still-to-be determined private lender (Lender), pending Borrower's compliance with all City terms and conditions, to make payments to Lender from Temescal/Telegraph Avenue PBID funds for a loan of up to \$150,000. The City's consent is needed because, under conditions of default, the City would be obligated to make payments directly to the Lender on behalf of the Borrower, using funds from the PBID trust account administered by the City.

The Assignment Agreement will contain a provision that indemnifies the City's general fund from any financial obligation related to the proposed loan.

PBID representatives have requested adoption of the attached resolution stating that written evidence of the City's consent to use of PBID funds as loan collateral would strengthen the PBID's negotiating position with regard to potential Lenders.

Therefore, adoption of the attached resolution would support the PBID's efforts to secure a private loan to pay for installation of special benefit pedestrian-scale security lighting within the district with no impact to the City general fund.

FISCAL IMPACTS

There is no fiscal impact anticipated to the City general fund with the passage of the attached resolution. Should the City Council adopt the proposed resolution it would authorize the City Administrator to consent to the execution of an Assignment of Payments Agreement between the Borrower and a still-to-be determined private lender (Lender) to make payments to the Lender

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from Temescal/Telegraph Avenue PBID funds for a loan of up to \$150,000. Under normal conditions, the Borrower would service the loan using PBID funds received from the City. Under conditions of default, the City would service the loan on behalf of the Borrower using PBID funds held in trust by the City. The Assignment Agreement will include a clause indemnifying the City's general fund from any obligation related to the proposed loan. Therefore, should the loan default the City would only be obligated to assume servicing of the loan using the PBID's own special assessment funds held by the City in the following trust account: Miscellaneous Trusts Fund (7999)/Treasury Operations Unit Organization (08721)/Pass Thru Assessments Account (24224)/Undetermined Project (0000000)/Temescal BID Program (TBID).

The above special assessment funds are annually collected by the County of Alameda as a line item to the annual property tax bill of each affected property owner. The County then remits the amount collected less the County's collection fee (approximately 1.7% of total assessment) to the City. The City, in turn, disburses the funds to the District (or would, in the event of loan default, disburse funds to the designated Lender) pursuant to a written agreement, as amended, between the City and the Temescal Telegraph Avenue Community Association of Oakland, the PBID's non-profit management corporation.

BACKGROUND

Pursuant to the City of Oakland Business Improvement Management District Ordinance (Ord. 12190 C.M.S., 1999) the Temescal/Telegraph Avenue Property Business Improvement District of 2005 was established on July 20, 2004 (Resolution No. 78730 C.M.S.)

The subject PBID encompasses approximately 260 parcels and currently projects an annual budget of approximately \$250,614 of which \$245,700 represents assessments to be collected for FY 2011/12. The district includes all parcels along Telegraph from 40th Street to the Berkeley border, Shattuck Avenue to the Highway 24 overpass, Claremont one block up from Telegraph, and 51st Street up to and including Children's Hospital to one block east of Telegraph Avenue. Properties within the district includes a mix of office, retail, entertainment, government, hotel, residential and parking uses and by law are assessed in proportion to the anticipated benefit received by each property. Assessments are based on lot size, building size and linear frontage of affected properties.

The District Management Plan (Plan), drafted and approved by affected property owners, outlines special benefits to be provided by the PBID. Among the services and goals described in the Plan and subsequent City-approved annual reports submitted by the PBID's Advisory Board is enhanced security. PBID representatives have stated that in 2006, based on numerous requests from affected property owners and merchants, the PBID commissioned a security study by a private firm which concluded that the most practical and effective method of enhancing district-wide security was to install additional lighting. Subsequently, the Office of the City Attorney

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also determined that installation of special benefit pedestrian-scale security lighting could be considered an eligible use of PBID funds under the Security component of the Plan.

Accordingly, PBID representatives set about drafting an implementation plan for installation of the pedestrian scale lighting.

KEY ISSUES AND IMPACTS

Because the PBID has not yet secured a Lender, it does not yet have information for a number of key variables related to the proposed project (e.g. loan terms, total project costs based on a contractor's bid, verification of the PBID's debt service capacity, identification of supplemental gap financing sources, etc.). Therefore, the following conditions precedent are recommended for inclusion in the attached resolution:

1. That prior to the beginning of construction of the proposed lighting project, PBID representatives clarify, in writing, with the City's Public Works Agency the roles and responsibilities of each party with regard to on-going maintenance (including utility costs) of the proposed lighting fixtures, including in the event the PBID is not reauthorized upon expiration in 2014.
2. That prior to the City Administrator's consent to the proposed arrangement PBID representatives present evidence to the City of debt service capacity sufficient to service the proposed loan.
3. That prior to the City Administrator's consent to the proposed arrangement, at the City's sole discretion, the PBID enter into a new written agreement with the City, or an amended Disbursement Agreement which shall contain:
 - a. Clarifying language which permits the City to disburse funds directly to the Lender on behalf of the PBID in the event of loan default by the Borrower;
 - b. Provisions to indemnify the City from any liability associated with the proposed lighting construction project; and
 - c. Provisions committing the PBID to perform the work in conformance with the City of Oakland's standards and with approval of the City's Public Works Agency in conformance with all applicable local, state, and federal statutes, regulations, and building and housing codes.
4. That, at the City's sole discretion, the Assignment Agreement include an exclusion clause reserving and protecting PBID funds necessary to continue, without interruption, other non-lighting related services and activities described in the Management Plan for the PBID.

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PROGRAM DESCRIPTION

Borrower, which serves as the non-profit management corporation charged by the City to administer the Temescal/Telegraph Avenue PBID wishes to use the PBID's funds to secure and service a private bank loan of up to \$150,000 to partially pay for installation of pedestrian scale lighting along designated portions of the district.

Potential lenders with whom the Borrower have spoken have indicated a desire to receive the City's consent to such an arrangement. The City's concurrence with the proposal is needed because the City serves as custodian of the PBID's funds prior to disbursement of the monies to the PBID and would, in the event of loan default, be required to settle the loan directly with the Lender on behalf of the PBID.

Proceeds from the proposed loan would be used to partially pay for special benefit pedestrian scale lighting to be installed by the PBID according to a three phase plan as follows:

- Phase 1 of the project would cover installation of lighting within the public right of way along Telegraph Avenue from 40th to 42nd Streets. Per a grant agreement between the Oakland Redevelopment Agency and the Temescal Telegraph Community Association, dated March 1, 2011, the estimated cost to complete Phase 1 is \$156,170.50. Funding sources include \$48,068.44 of PBID funds supplemented by two City of Oakland Neighborhood Project Initiative (NPI) grants of \$33,102.06 and \$75,000 awarded in 2008 and 2010, respectively (Resolutions No. 2008-0089 and 2010-0007 C.M.S.) PBID representatives have stated that Phase 1 construction is currently underway. The above grant agreement indicates that related construction must be completed by March 1, 2012, unless extended by mutual agreement between parties to the agreement.
- Phase 2 of the project would cover Telegraph Avenue from 42nd to 52nd Streets. Per the PBID-authored "Telegraph Avenue Pedestrian Oriented Lighting Finance Plan" dated, January 25, 2011, the estimated cost to complete Phase 2 of the project is \$503,354. Current proposed funding sources include \$200,000 from PBID reserves (approved by Temescal Telegraph Community Association board resolution on 2/23/2011), \$150,000 from the proposed private bank loan, and \$12,285 from a proposed 5% increase to the fiscal year 2011/12 special assessment. PBID representatives are currently seeking other funding sources to fill the approximate \$141,069 remaining finance gap. The proposed implementation schedule for Phase 2 of the project includes private bank loan closing in or around September, 2011, securing required construction permits by December 2011 and completing construction (after the rainy season) by June 30, 2012
- Phase 3 of the project would cover Telegraph Avenue from North Street to the Berkeley border. Completion of this Phase is proposed to occur after 2014 should the PBID be reauthorized for a second 10-year term.

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SUSTAINABLE OPPORTUNITIES

Economic: Enabling the on-going activities of the PBID will support on-going economic revitalization of the district with a possible corresponding increase in business tax revenues as well as increased job opportunities and further economic development of the affected neighborhood commercial district.

Environmental: Installation of attractive pedestrian-scale security lighting fixtures will enhance the District's image, improve public perception of safety along the corresponding commercial corridor and support the affected business improvement district in its effort to strengthen, beautify and revitalize the existing neighborhood commercial area.

Social Equity: PBIDs incorporate all members of a business community into a productive and proactive entity representing the interests of that community. Completion of significant projects such as the installation of the proposed pedestrian security lighting using funds generated by the district itself contributes to local merchant and property owner self-empowerment.

DISABILITY AND SENIOR ACCESS

Passage of the proposed resolution has no direct implication for disability and senior access; however, improved public safety and security provided by the special benefit pedestrian lighting could serve to make the area safer and more accessible to all visitors, including senior citizens and disabled persons.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the City Council adopt the attached resolution authorizing the City Administrator to consent to assignment of Temescal/Telegraph Avenue PBID funds as a repayment source for a private bank loan of up to \$150,000 to fund installation of pedestrian-scale security lighting within the district.

Use of revenues generated by the PBID to install the proposed pedestrian oriented lighting will enable asseesees to secure special benefit services beyond the baseline services currently provided by the City. Such actions by business improvement districts represent a proactive effort on the part of neighborhood business and property owners to improve the conditions and image of their area and to assist in the economic revitalization and physical maintenance of their respective commercial corridors.

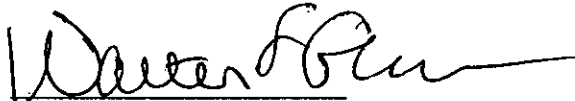
Contingent upon inclusion of the special provisions recommended in the above Key Issues and Impacts section of this report and of Borrower's compliance with all City terms and conditions, staff recommends that the City Council adopt the resolution authorizing the City Administrator to consent to execution of an Assignment of Payments Agreement between Borrower and Lender

committing PBID funds held in trust by the City as security for a private bank loan of up to \$150,000 in support of the Telegraph Avenue Pedestrian Lighting Project.

ACTION REQUESTED OF THE CITY COUNCIL

The action requested of the City Council is to adopt the resolution authorizing the City Administrator to consent to the execution of an Assignment of Payments Agreement between the Temescal Telegraph Avenue Community Association of Oakland and a still to be determined Lender to make payments to Lender from Temescal/Telegraph Avenue PBID special assessment funds held in trust on behalf of the PBID in support of the Telegraph Avenue Pedestrian Lighting Project.

Respectfully submitted,



Walter S. Cohen, Director

Community and Economic Development Agency

Reviewed by:

Gregory D. Hunter, Deputy Director

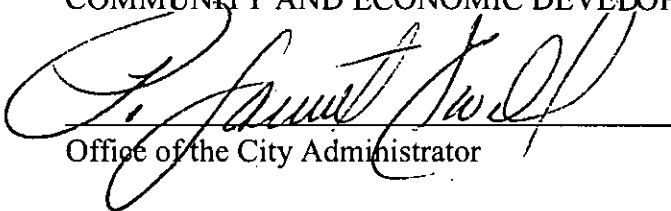
Community and Economic Development Agency

Prepared by:

Maria Rocha, Urban Economic Analyst

Economic Development/Program Unit

**APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:**




Office of the City Administrator

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Approved as to form and legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO CONSENT TO EXECUTION OF AN ASSIGNMENT OF PAYMENTS AGREEMENT BETWEEN THE TEMESCAL TELEGRAPH AVENUE COMMUNITY ASSOCIATION OF OAKLAND ("BORROWER") AND A STILL TO BE DETERMINED LENDER ("LENDER") TO MAKE PAYMENTS TO LENDER FROM TEMESCAL / TELEGRAPH AVENUE PROPERTY BUSINESS IMPROVEMENT DISTRICT OF 2005 ("PBID") SPECIAL ASSESSMENT FUNDS HELD ON BEHALF OF THE PBID IN SUPPORT OF THE TELEGRAPH AVENUE PEDESTRIAN LIGHTING PROJECT

WHEREAS, the City of Oakland Business Improvement Management District Ordinance allows for the formation of business improvement management districts (Chapter 4.48, Ordinance 12190. 1999); and

WHEREAS, affected property owners petitioned to form the Temescal/Telegraph Avenue Property Business Improvement District of 2005 ("PBID") under said legislation to implement the Management Plan for the PBID which is on file with the City Clerk ("Management Plan"); and

WHEREAS, the Management Plan provides for enhanced services such as new security, crime prevention, beautification, parking resolution, sidewalk sweeping, economic development, lighting, and marketing activities with the intent of creating a positive atmosphere in the PBID area; and

WHEREAS, pursuant to the requirements of the law the PBID was established on July 20, 2004 pursuant to Resolution No. 78730 C.M.S.; and

WHEREAS, Borrower, a non-profit corporation comprised of property owners from the PBID, has been designated by the City to serve as the PBID's management corporation; and

WHEREAS, pursuant to a disbursement agreement, as amended, between Borrower and the City's Community and Economic Development Agency ("Disbursement Agreement"), the City collects the assessments on behalf of the PBID, and disburses said assessments to the Borrower annually for ten years, terminating on December 15, 2014, and in the approximate amount of \$230,000 for the FY2009-2010, and no less than that in subsequent years; and

WHEREAS, until disbursement, the City holds the assessments in a special trust fund established by the Finance and Management Agency on behalf of the PBID in Miscellaneous Trusts Fund (7999)/Treasury Operations Unit Organization (08721)/Pass Thru Assessments Account (24224)/Undetermined Project (0000000)/Temescal BID Program (TBID); and

WHEREAS, the PBID wishes to make certain lighting improvements determined by the Office of the City Attorney to be within the scope of the Management Plan and wishes to enter into a loan agreement with a still to be determined private bank ("Lender") in the amount of up to \$150,000 ("Loan") for the purpose of financing, in part, the PBID's capital project called the Telegraph Avenue Pedestrian Oriented Lighting Project; and

WHEREAS, the Borrower and the Lender would like the Loan to be repaid through the payments to be received by the Borrower on behalf of the PBID under the Disbursement Agreement; and

WHEREAS, the proposed Assignment of Payments Agreement ("Assignment Agreement") will assign to the Lender a portion of those sums payable to the Borrower by the City under the Disbursement Agreement in order to repay the Loan; and

WHEREAS, the proposed Assignment Agreement will not obligate the City to make any payments from funds received, owned or controlled by the City except from PBID funds to repay the Loan; and

WHEREAS, the proposed Assignment Agreement will not obligate the City to make any payment to the Lender in excess of those assessments collected on behalf of the PBID pursuant to the Disbursement Agreement; now therefore be it

RESOLVED, that the City Administrator is hereby authorized to consent to the execution of an Assignment Agreement among the Borrower, the Lender, and the City of Oakland to assign to the Lender a portion of those assessments owed to the Borrower under the Disbursement Agreement for the purpose of repayment of the Loan; and be it

FURTHER RESOLVED, that the Assignment Agreement will impose no obligation on the City to make any payments to the Lender in excess of those assessments collected on behalf of the PBID pursuant to the Disbursement Agreement; and be it

FURTHER RESOLVED, that the Assignment Agreement will impose no obligation on the City general fund or any other funds owned, controlled or administered by the City except for the above-referenced PBID funds; and be it

FURTHER RESOLVED, that prior to construction of the lighting project to be financed by the Loan, Borrower shall clarify in writing with the City's Public Works Agency the roles and responsibilities of Borrower and City as regards ongoing maintenance, including payment of related utility costs, of the proposed lighting fixtures, including in the event the PBID is not reauthorized upon expiration in 2014; and be it

FURTHER RESOLVED, that prior to the City Administrator's consent to execution of the Assignment Agreement Borrower shall present to the City evidence of the PBID's financial and debt service capacity to adequately service the Loan; and be it

FURTHER RESOLVED, that prior to the City Administrator's consent to execution of the Assignment Agreement at the City's sole discretion Borrower shall present for City review and approval a total financing plan for the Telegraph Avenue Pedestrian Oriented Lighting Project; and be it

FURTHER RESOLVED, that as a condition to the City Administrator's consent to execution of the Assignment Agreement and at the City's sole discretion Borrower shall present evidence to the City of Borrower's and PBID's financial capacity after servicing debt on the Loan to continue providing without interruption non-lighting related services and activities within the PBID as required by the Management Plan; and be it

FURTHER RESOLVED, that as a condition to the City Administrator's consent to execution of the Assignment Agreement Borrower shall at the City's sole discretion be required to enter into an amended Disbursement Agreement with the City which shall clarify the City's ability to release PBID funds directly to the Lender in the event of Loan default and which shall indemnify the City from any liability associated with construction of the proposed lighting project and which shall commit Borrower to perform the work in conformance with the City's standards and with approval of the City's Public Works Agency in conformance with all applicable local, state and federal statutes, regulations, and building and housing codes; and be it

FURTHER RESOLVED, that as a condition to the City Administrator's consent to execution of the Assignment Agreement, Borrower and PBID shall comply with all other City terms and conditions to be stipulated; and be it

FURTHER RESOLVED, that the Assignment Agreement is subject to City Attorney approval for form and legality and shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and
PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California