

OAKLAND CITY COUNCIL

RESOLUTION NO. 83485 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, JUL 19 2011, 2011

PASSED BY THE FOLLOWING VOTE:

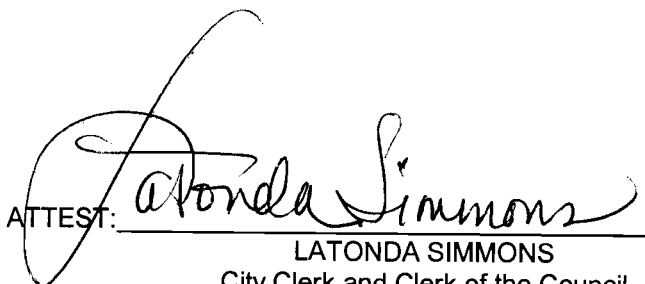
AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California