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OFFICE OF THE CITY CLERK
OAKLAND

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OAKLAND CITY COUNCIL

RESOLUTION No. 85922 C.M.S.

Approved as to form and legality


Oakland City Attorney's Office

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO CONSENT TO EXECUTION OF AN ASSIGNMENT OF ASSESSMENTS LOAN COLLATERAL AGREEMENT BETWEEN THE TEMESCAL TELEGRAPH AVENUE COMMUNITY ASSOCIATION OF OAKLAND (“BORROWER”) AND COMMUNITY BANK OF THE BAY (“LENDER”) TO DISBURSE TO LENDER FROM TEMESCAL / TELEGRAPH AVENUE BUSINESS IMPROVEMENT DISTRICT OF 2015 (“TTBID 2015”) SPECIAL ASSESSMENT FUNDS HELD ON BEHALF OF THE TTBID 2015 IN SUPPORT OF THE TEMESCAL TELEGRAPH 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 Business Improvement District of 2015 (“TTBID 2015”) under said legislation to implement the Management Plan for the TTBID 2015 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 TTBID 2015 area; and

WHEREAS, pursuant to the requirements of the law the TTBID 2015 was established on July 29, 2014 pursuant to Resolution No. 85148 C.M.S.; and

WHEREAS, Borrower, a non-profit corporation comprised of property owners from the TTBID 2015, has been designated by the City to serve as the TTBID 2015’s management corporation; and

WHEREAS, pursuant to a disbursement agreement, as amended, between Borrower and the City (“Disbursement Agreement”), the City receives the assessments on behalf of the TTBID 2015, and disburses said assessments to the Borrower annually, terminating on December 31, 2015 in the approximate amount of \$482,616 for the FY 2015-2016; and

WHEREAS, it is the City's intent to amend the above Disbursement Agreement to extend the term to December 31, 2024 contingent upon the City approval of annual reports to be submitted to the City by a duly appointed Temescal BID Advisory Board; 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 TTBID 2015 in Miscellaneous Trusts Fund (7999)/Treasury Operations Unit Organization (08721)/Pass Thru Assessments Account (24224)/Undetermined Project (0000000)/Temescal BID Program (TBID) (hereinafter the "TTBID Trust Fund"; and

WHEREAS, the TTBID 2015 wishes to make certain lighting improvements determined to be within the scope of the Management Plan and wishes to enter into a loan agreement with Community Bank of the Bay ("Lender") in the amount of up to \$880,000 ("Loan") for the purpose of financing, in part, the TTBID 2015 capital project called the Temescal Telegraph Pedestrian Lighting Project; and

WHEREAS, the Borrower and the Lender would like the Loan to be secured by the anticipated assessment revenues to be received by the Borrower on behalf of the TTBID 2015 under the Disbursement Agreement which are deposited into the TTBID Trust Fund; and

WHEREAS, the proposed Assignment of Assessments Agreement ("Assignment Agreement") will assign to the Lender as loan collateral, those sums payable to the Borrower from the City under the Disbursement Agreement which are deposited into the TTBID Trust Fund in order to secure the Loan; and

WHEREAS, the proposed Assignment Agreement will not obligate the City to disburse any assessments to Lender from funds received, owned or controlled by the City except from TTBID Trust Fund; and

WHEREAS, the proposed Assignment Agreement will not obligate the City to disburse any assessments to the Lender in excess of those assessments received by the City on behalf of the TTBID 2015, pursuant to the Disbursement Agreement which are deposited into the TTBID Trust Fund, now therefore be it

RESOLVED, that the City Administrator is hereby authorized to execute an amendment to the Disbursement Agreement, which will serve as City's consent to the Borrower's execution of an Assignment Agreement between the Borrower and the Lender, to assign to the Lender those assessments payable to the Borrower (TTBID2015) under the Disbursement Agreement which are deposited into the TTBID Trust Fund for the purpose of securing the Loan; and be it

FURTHER RESOLVED, that the authority granted by this resolution is made on the condition that the Loan will not exceed \$880,000; and be it

FURTHER RESOLVED, that the Assignment Agreement will expressly state that the City is under no obligation to disburse any assessments to the Lender in excess of those

assessments received on behalf of the TTBD 2015 pursuant to the Disbursement Agreement which are deposited into the TTBD Trust Fund, subject to the City's superior right to deduct its administrative fees; and be it

FURTHER RESOLVED, that the Assignment Agreement shall expressly state that the City's general fund or any other funds owned, controlled or administered by the City except for the above-referenced TTBD Trust Fund, are under no obligation to make payments to the Lender; and be it

FURTHER RESOLVED, that prior to construction of the lighting project to be financed by the Loan, Borrower shall confirm 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 TTBD 2015 is not reauthorized upon expiration in 2024; 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 TTBD 2015's income 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 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 Borrower shall present evidence to the City of Borrower's and TTBD 2015's financial capacity after servicing debt on the Loan to continue providing without interruption non-lighting related services and activities within the TTBD 2015 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, perform the following:

- be required to enter into an amended Disbursement Agreement with the City which shall confirm the City's ability to release the TTBD 2015 assessment revenue funds directly to the Lender in the event of Loan default, and the Borrower's duty to indemnify the City from any liability associated with construction of the proposed lighting project or any claims or suits by Lender to seek funds from the City which are beyond the amounts on deposit in the TTBD Trust Fund;
- 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,
- shall confirm that the City has a superior right to deduct its administrative fee from any assessment revenues before forwarding any remaining funds to Lender ; and be it

FURTHER RESOLVED, that the TT BID 2015's assessment funds held in the TT BID 2015 Trust Fund may be released directly to the Lender in the event of Loan default only according to the schedule set forth in Section 5.3.1 of the Disbursement Agreement; and be it

FURTHER RESOLVED, that as a condition to the City Administrator's consent to execution of the Assignment Agreement, Borrower and TT BID 2015 shall comply with all other City terms and conditions to be stipulated; and be it

FURTHER RESOLVED, that the Assignment Agreement shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC - 8 2015, 2015
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN,
REID, and PRESIDENT GIBSON McELHANEY - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: *L. Simmons for*
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California