


  
Deputy City Attorney

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

## OAKLAND CITY COUNCIL

2016 JUN -7 PM 2: 33

RESOLUTION No. 86128 C.M.S.

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO A LOAN AGREEMENT AND PROMISSORY NOTE BETWEEN THE CITY OF OAKLAND AND BRUSH STREET GROUP, LLC FOR BROWNFIELD CLEANUP AT 785 SEVENTH STREET, OAKLAND CA 94607; ACTION TAKEN IN RELIANCE ON PREVIOUSLY CERTIFIED ENVIRONMENTAL IMPACT REPORT FOR THE WEST OAKLAND SPECIFIC PLAN CERTIFIED ON JULY 29, 2014 (CEQA GUIDELINES 15162 AND AS A SEPARATE AND INDEPENDENT BASIS, SECTION 15183)**

**WHEREAS**, the City of Oakland ("City") was the recipient of a grant from the U.S. Environmental Protection Agency ("U.S. EPA") to be used for creating a Brownfield Cleanup Revolving Loan Fund ("BCRLF") for environmental remediation and the City is authorized to make loans from these funds ("Loan Funds"); and

**WHEREAS**, the Loan Funds were to be used to undertake cleanup of brownfields sites by making low interest loans and grants to parties willing to undertake cleanup of these sites; and

**WHEREAS**, the Brush Street Group, LLC ("Borrower") is the owner of certain real property located in West Oakland at 785 Seventh Street (the "Property"), which Property is more particularly described in Attachment A, attached hereto; and

**WHEREAS**, the City loaned a portion of the Loan Funds to the Borrower in the amount of One Hundred Fifty Thousand Dollars (\$150,000) (the "Loan") to undertake cleanup of the Property; and

**WHEREAS**, in 2012, the U.S. EPA authorized the transition of full Brownfield Loan Fund authority to the City; and

**WHEREAS**, for the past eight years, the Borrower has undertaken ongoing environmental assessment and monitoring, with limited remediation activities; and

**WHEREAS**, the Borrower estimates that completion of site remediation is estimated to require an additional \$1,000,000 over the next few years to fully assess, remediate, and prepare the Property for development; and

**WHEREAS**, without the additional moneys for site remediation, the Property cannot be developed or sold either of which action would generate sufficient proceeds to the Borrower to repay the Loan to the City; and

**WHEREAS**, due to lack of moneys to repay the City on February 4, 2015, the Borrower requested that the City forgive repayment of the Loan; and

**WHEREAS**, the City does not want to forgo any opportunity of recovering the Loan of public funds; and

**WHEREAS**, the project was analyzed in the EIR prepared for the West Oakland Specific Plan, certified on July 29, 2014 and none of the circumstances requiring preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163 are present, in that:

1. There are no substantial changes to the project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the previous CEQA document;

2. There are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the previous CEQA document; and

3. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous CEQA document was certified, which would result in: (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the previous CEQA document; or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the previous CEQA document and which would substantially reduce significant effects of the project, but the City declines to adopt them.

As a separate and independent basis, the project is also exempt from CEQA review pursuant to CEQA Guidelines Section 15183, projects consistent with a community plan, general plan or zoning; and now, therefore be it

**RESOLVED:** That the City Council hereby authorizes the City Administrator or designee to negotiate and execute a Third Amendment to the Loan Agreement and Promissory Note between City and Borrower and; be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City to abstain from the enforcement of its current rights to repayment of the Loan under the Loan Agreement and the Note until the Borrower has sufficient moneys, from any source, to repay the Loan to the City or any of the following occur, at which time the Borrower shall repay the Loan to the City:

1. The Property becomes developable, as evidenced by the issuance of a grading permit or building permit.
2. The Property is sold or transferred by the Borrower.
3. The Borrower recovers damages from a person who is liable for the release, presence or existence of any hazardous material on the Property.

**FURTHER RESOLVED:** That the Third Amendment to the Loan Agreement shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution; and be it

**FURTHER RESOLVED:** That the City Administrator or designee shall cause a Notice of Exemption from CEQA requirements to be filed with the County of Alameda; and be it

**FURTHER RESOLVED:** That the City Administrator or designee is further authorized to negotiate and enter into other agreements and take whatever action is necessary with respect to and consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 19 2016

**PASSED BY THE FOLLOWING VOTE:**

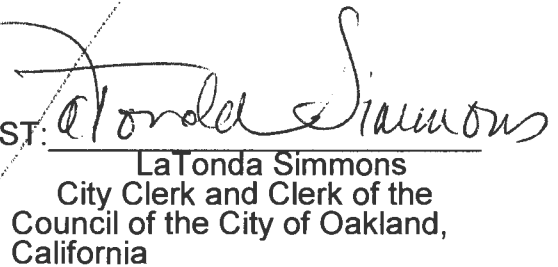
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID,  
COUNCIL PRESIDENT GIBSON MCELHANEY - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

  
LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of Oakland,  
California