

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 JAN 10 PM 3:38

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. 87496 = C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO: 1) SUBMIT AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE SPONSORSHIP AND MAINTENANCE OF A PERMANENT PUBLIC ART PROJECT DESIGNED BY THE ARTIST TEAM MACHINIC LLC (“FUTURE CITIES LAB”) FOR THE 500 BLOCK OF MADISON STREET, UNDER INTERSTATE 880 BETWEEN 5TH AND 6TH STREETS, AS PROPOSED AND FUNDED BY CP V JLS, LLC TO COMPLY WITH OAKLAND MUNICIPAL CODE CHAPTER 15.78 – PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT; AND 2) ENTER INTO AN AGREEMENT WITH CP V JLS, LLC FOR INSTALLATION OF THE PUBLIC ART PROJECT AND ONGOING MAINTENANCE RESPONSIBILITIES

WHEREAS, Oakland Municipal Code (“OMC”) Chapter 15.78 Public Art Requirements For Private Development, requires all new development meeting certain criteria to include permanent public art at the development site or to satisfy the requirement by alternative equivalent means as provided in the OMC; and

WHEREAS, the entity CP V JLS, LLC owns the development site and has proposed to meet this requirement by placement of a permanent artwork entitled “Light Cloud” on State of California Department of Transportation (“Caltrans” or the “State”) property adjacent to the development site at 150 and 155 4th Street; and

WHEREAS, “Light Cloud” is planned for the northern and southern sidewalks on Madison Street between 5th and 6th Streets, and is designed by the artist team Machinic LLC (also known as “Future Cities Lab”); and

WHEREAS, as described in the accompanying report, the permanent artwork proposal furthers the purposes of the Public Art Requirements For Private Development Ordinance through alternative means, by installing art on nearby property owned by other public agencies, and

WHEREAS, the permanent artwork proposed for Caltrans property creates freely accessible public art to an equal or greater extent than installation of the public art on the development site or payment of in lieu fees; and

WHEREAS, the cost of the proposed artwork is equal to or greater than the cost of the public art contribution that would otherwise be required under OMC Chapter 15.78; and

WHEREAS, CP V JLS, LLC will fund the project implementation, based on total building development costs, calculated at \$367,535, and all future maintenance expenses; and

WHEREAS, the City of Oakland Public Art Advisory Committee at its meeting of March 5, 2018 reviewed the design and has recommended that the City Council accept the proposal; and

WHEREAS, CP V JLS; LLC has agreed to maintain the artwork after completion, for the lifespan of the associated building development, or to meet the requirement through an approved alternative means; and

WHEREAS, if the artwork is removed, OMC Chapter 15.78 requires the applicant to make an in-lieu contribution, or to replace the artwork with one of equivalent value; and

WHEREAS, the State of California Department of Transportation ("Caltrans" or "State") requires that the City of Oakland sponsor, and take responsibility for, all artwork authorized by Caltrans for placement on Caltrans property within the Oakland city limits; and

WHEREAS, Caltrans requires that the City submit a Transportation Art proposal for the proposed artwork; and

WHEREAS, as a condition to approving the installation of artwork on Caltrans facilities, Caltrans requires a resolution from the City Council in support of the project and an agreement with the City of Oakland stating that the City will assume responsibility for maintenance and upkeep of artwork on Caltrans facilities within the Oakland city limits at City's expense; and

WHEREAS, the City and CP V JLS, LLC will implement the project immediately upon issuance of all required Caltrans permits; and

WHEREAS, section 504(l) of the City Charter authorizes the City Administrator to enter into intergovernmental agreements subject to City Council approval; and

WHEREAS, the proposed agreement with Caltrans requires that City maintain the artwork including, but not limited to: (1) restoration or replacement of damaged artwork; (2) removal of dirt, debris, graffiti, grown vegetation and weeds surrounding artwork and the immediate area City uses to access and maintain artwork; and (3)

removal of any deleterious item or material on artwork in an expeditious manner, including graffiti removal, which must conform to applicable State policies and guidelines that require prompt removal of offensive messages and timely removal of all other graffiti, for the proposed lifespan of the artwork; and (4) transfer of ownership of the work to Caltrans; and

WHEREAS, Caltrans requires that all work by or on behalf of the City will be done at no cost to State; and

WHEREAS, the proposed agreement with Caltrans requires that the City shall remove artwork whenever, in the opinion of State, it creates a maintenance or operational concern, and states that in the event the City fails to remove artwork in a timely manner, State may remove artwork and will bill the City for all costs of its removal and for the restoration of State owned areas to their original condition; and

WHEREAS, the State requires the City to obtain from artists, or any party the City contracts with for the artwork, an assignment of all copyright interests in the artwork to the State; and

WHEREAS, it is the City's policy through its Public Art Program regulations that gifts of art, works placed in the Public Right of Way, and community-initiated artwork projects may be accepted only on the terms that the artwork sponsor or donor make provision for ongoing maintenance of the artwork, which entails entering into agreements with artists and organizations establishing the artist/donor's agreement and responsibility to provide maintenance and upkeep; and

WHEREAS, City proposes to enter into an Agreement with CP V JLS, LLC which requires them to assume all maintenance responsibilities specific to the artwork as stipulated by State, and comply with all City and State permit requirements for the installation of the mural; and

WHEREAS, the proposed agreement between City and CP V JLS, LLC requires that CP V JLS, LLC shall remove artwork whenever, in the opinion of City, it creates a maintenance or operational concern, and states that in the event it fails to remove artwork in a timely manner, City may remove artwork and will bill CP V JLS, LLC for all costs of its removal and for the restoration of State-owned areas to their original condition; now, therefore be it

RESOLVED: That the City Administrator is hereby authorized to submit to Caltrans a Transportation Art proposal for the artwork, and enter into an Agreement with Caltrans for the sponsorship and maintenance of the permanent artwork by Machinic LLC ("Future Cities Lab"), for the sidewalks on Madison Street between 4th and 5th Streets, at Post Mile ALA880-31.61; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to enter into an agreement with CP V JLS, LLC to install the artwork at the location and require CP V JLS, LLC to assume all maintenance responsibilities specific to the artwork for the lifespan of the artwork; and be it

FURTHER RESOLVED: That the City Administrator is authorized to conduct all negotiations, execute and submit all documents, including but not limited to applications, agreements, amendments, modifications, and related actions which may be necessary for the above-referenced agreements and the public art project; and be it

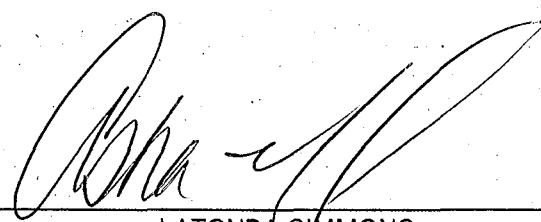
FURTHER RESOLVED: That said agreements shall be reviewed as to form and legality by the Office of the City Attorney and copies will be filed in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: **JAN 22 2019**

AYES - BAS. GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, TAYLOR, THAO. -8

NOES - ~~Ø~~
ABSENT - ~~Ø~~
ABSTENTION - ~~Ø~~

ATTEST: 

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