

CITY OF LONG BEACH

R-22

DEPARTMENT OF FINANCIAL MANAGEMENT, TREASURY BUREAU

333 WEST OCEAN BOULEVARD 6TH FLOOR • LONG BEACH, CALIFORNIA 90802

May 18, 2010

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION

Adopt the attached Resolution determining all unpaid assessments for the City's Assessment District No. 08-01 (The Toledo Utility Undergrounding); and

Adopt the attached Resolution providing for the issuance of improvement bonds in an amount not to exceed \$1,335,000, contingent upon City Council's award of a construction contract, and approving related documents and actions for Assessment District No. 08-01. (District 3)

DISCUSSION

The owners of property along The Toledo between Second Street and the Geneva Walkway requested that the City establish an assessment district to finance the costs of undergrounding overhead electrical, telephone and cable facilities. In response, on September 23, 2008, the City Council adopted RES-08-116 expressing the intention of the City Council to establish City of Long Beach Assessment District No. 08-01 (the "Assessment District"). On November 11, 2008, after conducting a public hearing regarding the Assessment District, an election was held wherein 76 percent of the ballots cast by the owners of the property to be assessed (weighted by the amounts of the proposed assessments on their respective properties) voted in favor of the Assessment District.

On December 16, 2008, the City Council adopted RES-08-0158 overruling protests against the Assessment District and determining the results of the election, and adopted RES-08-0159 confirming the assessments and ordering the improvements for the Assessment District. On December 22, 2008, the City Clerk recorded, in the County Recorder's Office, a Notice of Assessment against each of the parcels in the Assessment District.

The Conservator for the estate of one of the property owners filed an action in Superior Court seeking to invalidate the City's approval of the Assessment District and the assessment levied. On August 31, 2009, a judgment was rendered in favor of the City. As no appeal was filed, the Court order now is final. Following the court action, the City worked with the utility companies (Southern California Edison, Verizon Telephone and Charter Cable) to finalize Plans and Specifications for the installation of conduit and other civil structures for bidding purposes, and distributed a Request for Proposals (RFP) for construction bids for the work. Staff will return to City Council for authorization to award the construction contract.

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The Assessment District includes a total of 38 parcels in the area that will specifically benefit from the undergrounding project, 37 of which were to be assessed for the costs of the utility undergrounding. Twenty-four of the 37 parcels each have proposed assessments of \$37,117, and the remaining parcels have proposed assessments that vary between \$6,186 and \$49,490, except for a parcel owned by the Long Beach Unified School District (LBUSD) with an assessment of \$122,488. On April 7, 2010, the estate of Dr. Gumbiner, a property owner in the Assessment District, prepaid in full the assessment on the LBUSD parcel mentioned above.

On April 12, 2010, a Notice of Assessment was mailed to each of the property owners in the Assessment District allowing them an opportunity to prepay their respective assessments at an 11 percent discount from the total assessment that otherwise will be payable in installments (through inclusion of the annual assessment amount on their County ad valorem property tax bills over the next 20 years). The 11 percent discount represents the proportional costs of the bond financing that will be done for any of the assessments that were not prepaid by May 12, 2010. The City Treasurer has established an account in which the LBUSD parcel prepayment and any other prepayments received by the City were deposited. The City Treasurer has filed with the City Clerk a Paid/Unpaid List, indicating all payments received on account of any prepayments of the assessments.

The City Council is now requested to adopt a Resolution determining the unpaid assessments for the Assessment District, based on the Paid/Unpaid List prepared by the City Treasurer and on file with the City Clerk, directing the City Clerk to transmit the Paid/Unpaid List to the County Auditor so that the unpaid assessments can be collected on the County secured ad valorem tax roll, and authorizing a maximum annual administration charge of \$500 per parcel (with an annual CPI adjustment) to pay for administrative costs of the City related to the Assessment District, all as established each year by the City Engineer. The annual administrative levy was disclosed in the adopted Engineer's Report for the Assessment District.

The City Council also is requested to adopt a Resolution providing for the issuance of improvement bonds for the Assessment District contingent upon City Council's award of a construction contract, and approving related documents and actions. This adoption in advance of the contract award is requested to minimize delays in financing and comply with the expediency requested by the residents. The improvement bonds are proposed to be issued pursuant to a Fiscal Agent Agreement to be entered into by the City and U.S. Bank National Association, as fiscal agent. The Fiscal Agent Agreement clearly provides that the improvement bonds are payable solely from the annual assessments on properties in the Assessment District that have not prepaid their assessments, and from amounts in certain funds established under the Fiscal Agent Agreement. The improvement bonds are not in any way general obligations of the City.

The improvement bonds are expected to be offered for sale in late May 2010, pursuant to a Preliminary Official Statement, which describes the property in the Assessment District and the relevant terms of the improvement bonds. The improvement bonds are expected to be sold pursuant to a Bond Purchase Agreement to be entered into by the City and the bond underwriter, who will market the improvement bonds to prospective investors.

A Continuing Disclosure Certificate has also been prepared, wherein the City agrees to provide certain annual and material event disclosures regarding the Assessment District and the improvement bonds to bond investors. City Councilmembers are encouraged to read the Preliminary Official Statement and to advise City staff if it is believed that there are any material misstatements in the Preliminary Official Statement, or if it omits information material to an investment in the improvement bonds.

The Resolution authorizing the issuance of the improvement bonds upon City Council's award of the construction contract, authorizes the issuance of up to \$1,335,000 principal amount of improvement bonds or, if less, the aggregate amount of the unpaid assessments, and approves the above-described Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Certificate. The Resolution authorizes the execution and delivery of the documents in connection with the issuance of the improvement bonds.

In accordance with the California Environmental Quality Act, Categorical Exemption number CE-110-08 has been issued for this project.

This matter was reviewed by Assistant City Attorney Heather A. Mahood on April 28, 2010 and Budget Management Officer Victoria Bell on April 29, 2010.

TIMING CONSIDERATIONS

A construction contract for the work cannot be awarded until the improvement bonds to be issued have been authorized by the City Council. In order to complete as much of the work as possible prior to the start of the school year, and thereby avoid disruption to the school site located in the Assessment District, the bonds need to be sold and improvement work needs to begin as soon as possible.

FISCAL IMPACT

There is no fiscal impact to the City associated with the requested actions. The costs of the improvement project will be paid solely from the prepaid assessments and the proceeds of the improvement bonds to be issued. All bond proceeds and revenue from the Assessment District will be collected in, and expended from, accounts established for the Assessment District. All expenses related to the formation of the Assessment District will be paid from the proceeds of improvement bonds to be issued, and annual administrative costs of the Assessment District will be paid from the administrative levy, to be included with the assessments that are annually levied on the parcels in the Assessment District.

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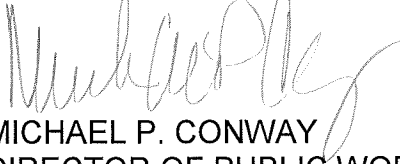
SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



LORI ANN FARRELL
DIRECTOR OF FINANCIAL MANAGEMENT/CFO



MICHAEL P. CONWAY
DIRECTOR OF PUBLIC WORKS

LAF:MPC:DN
K:\Exec\Council Letters\Treasury\05-18-10 ccl - The Toledo UUD Assessments and Bond Issuance.docMPC:MAC:GMM:SC:db

ATTACHMENTS – 2 RESOLUTIONS

APPROVED:



PATRICK H. WEST
CITY MANAGER

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH PROVIDING FOR THE ISSUANCE
OF IMPROVEMENT BONDS AND APPROVING RELATED
DOCUMENTS AND ACTIONS – ASSESSMENT DISTRICT
NO. 08-01 (THE TOLEDO UTILITY UNDERGROUNDING)

WHEREAS, the City Council (the "Council") of the City of Long Beach (the
"City") has heretofore undertaken proceedings pursuant to the Long Beach Assessment
District Procedural Ordinance, being Division IV of Chapter 3.52 of the Long Beach
Municipal Code, and, where applicable, the Improvement Bond Act of 1915, being
Division 10 of the Streets and Highways Code of the State of California (collectively, the
"Bond Law"), for and has confirmed assessments upon lands within an assessment
district described in Resolution No. RES-08-116 adopted by the Council on September
23, 2008 (the "Resolution of Intention") expressing the intention of the Council to
establish the City of Long Beach Assessment District No. 08-01 (The Toledo Utility
Undergrounding) (the "Assessment District"); and

WHEREAS, said proceedings provided for the issuance of bonds pursuant
to the Bond Law, and it is necessary to establish terms and provisions of such issuance;
and

WHEREAS, it is also desired to establish the denominations of the bonds to
represent assessments and the amount to mature each year, and to otherwise approve
the documents necessary to issue the bonds and all actions necessary in connection
therewith;

NOW, THEREFORE, the City Council of the City of Long Beach resolves as
follows:

Section 1. Recitals. The Council finds that the above recitals are all true

1 and correct.

2 Section 2. Issuance of the Bonds. Pursuant to the Bond Law, the
3 issuance of the City of Long Beach Assessment District No. 08-01 (The Toledo Utility
4 Undergrounding) 2010 Limited Obligation Improvement Bonds (the "Bonds"), as set forth
5 in the Fiscal Agent Agreement (as described below), is hereby authorized. The Bonds
6 shall be in a principal amount not to exceed the lesser of \$1,335,000 or the aggregate
7 principal amount of the unpaid Assessments levied in the Assessment District, and shall
8 mature on the dates and pay interest at the rates set forth in the Fiscal Agent Agreement,
9 by and between The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the
10 "Fiscal Agent") and the City (the "Fiscal Agent Agreement"). The Fiscal Agent
11 Agreement, in the form on file in the City Attorney's office, is hereby approved. The City
12 Manager, Director of Financial Management or City Treasurer (each being a "Designated
13 Officer" and, collectively, the "Designated Officers"), each acting alone, are hereby
14 authorized to execute and deliver the Fiscal Agent Agreement in said form, together with
15 such additions thereto or changes therein as are approved by the Designated Officer
16 executing such document upon consultation with the City Attorney and Bond Counsel,
17 including such additions or changes as are necessary or advisable in accordance with
18 Section 8 hereof, the approval of such additions or changes to be conclusively evidenced
19 by the execution and delivery of the Fiscal Agent Agreement by a Designated Officer.

20 Section 3. Execution of Bonds. The Bonds shall be executed by the
21 Treasurer of the City and by the City Clerk, by manual or facsimile signature, and the
22 corporate seal of the City shall be imprinted on the Bonds in a similar manner. The
23 Bonds shall then be delivered to the Fiscal Agent for authentication and registration.

24 Section 4. Performance of Duties by Officers. Each and every officer of
25 the City is authorized to perform his or her services on behalf of the City required under
26 the Fiscal Agent Agreement and otherwise required in connection with the establishment
27 and administration of the Assessment District. The City Treasurer is authorized to pay
28 the costs of such services as are necessary to effect the issuance of the Bonds. Such

1 services shall include, but are not limited to, printing the Bonds, printing the disclosure
2 documents, legal services, financial consultant's services, Fiscal Agent's services and
3 any other services appropriate for the issuance of the Bonds. These costs shall be paid
4 from Bond proceeds out of the Costs of Issuance Fund established by the Fiscal Agent
5 Agreement.

6 Section 5. Bond Purchase Agreement. The Bond Purchase Agreement
7 (the "Purchase Contract"), between the City and Stone & Youngberg LLC (the
8 "Underwriter"), in the form on file in the City Attorney's office, is hereby approved. The
9 Designated Officers, each acting alone, are hereby authorized to accept the offer of the
10 Underwriter to purchase the Bonds contained in the Purchase Contract (provided that the
11 aggregate principal amount of the Bonds sold thereby is not in excess of the limitation
12 described in Section 2 above, the true interest cost on the Bonds is not in excess of
13 6.50% per annum and the underwriter's discount, without regard to any original issue
14 discount, is not in excess of 1.5% of the principal amount of the Bonds), and to execute
15 and deliver the Purchase Contract in said form, with such additions thereto or changes
16 therein as are recommended or approved by the Designated Officer executing said
17 document for the City upon consultation with the City Attorney and Bond Counsel, the
18 approval of such additions or changes to be conclusively evidenced by the execution and
19 delivery of the Purchase Contract by a Designated Officer.

20 Section 6. Official Statement. The official statement relating to the
21 Bonds (the "Official Statement"), in the form on file in the City Attorney's office, is hereby
22 approved. The Designated Officers each acting alone, are hereby authorized to execute
23 the Official Statement in said form, with such additions thereto or changes therein as are
24 recommended or approved by the Designated Officer executing such document upon
25 consultation with the City Attorney and Bond Counsel, the approval of such additions or
26 changes to be conclusively evidenced by the execution and delivery of said Official
27 Statement by a Designated Officer. The Underwriter is hereby authorized to distribute
28 copies of the Official Statement to persons who may be interested in the purchase of the

1 Bonds and is directed to deliver such copies to all actual purchasers of the Bonds.

2 Distribution of a preliminary official statement relating to the Bonds is hereby approved
3 and authorized.

4 The Director of Financial Management and the City Treasurer, each acting
5 alone, are hereby authorized to execute a certificate or certificates to the effect that the
6 Official Statement and such preliminary official statement were deemed "final" as of their
7 respective dates for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934, as
8 amended, and each are authorized to so deem such statements final.

9 Section 7. Continuing Disclosure Certificate. The Continuing Disclosure
10 Certificate, in the form attached as an appendix to the Official Statement, is hereby
11 approved. The Designated Officers, each acting alone, are hereby authorized to execute
12 and deliver the Continuing Disclosure Certificate in said form, with such additions thereto
13 or changes therein as are deemed necessary, desirable or appropriate by the Designated
14 Officer executing such documents upon consultation with the City Attorney and Bond
15 Counsel, the approval of such changes to be conclusively evidenced by the execution
16 and delivery by a Designated Officer of the Continuing Disclosure Certificate.

17 Section 8. Ratification of Previous Actions; Future Actions. All actions
18 heretofore taken by officers and agents of the City with respect to the authorization of the
19 acquisition and construction of the improvements to be funded by the Assessment District
20 and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and
21 the Mayor, the City Manager, the City Engineer, the Director of Financial Management,
22 the Treasurer and the City Clerk and the other officers of the City are hereby authorized
23 and directed to take any actions and execute and deliver any and all documents as are
24 necessary to accomplish the issuance, sale, and delivery of the Bonds in accordance
25 with the provisions of this Resolution and the documents herein approved.

26 Section 9. This resolution shall take effect immediately upon its adoption
27 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

28 I hereby certify that the foregoing resolution was adopted by the City

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Council of the City of Long Beach at its meeting of May 18, 2010 by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk