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7/23 7/23/07

RESOLUTION NUMBER R- 302864

DATE OF FINAL PASSAGE AUG 01 2007

A RESOLUTION DECLARING THE RESULTS OF THE ASSESSMENT BALLOT TABULATION, CONFIRMING THE ASSESSMENT, ORDERING THE CONSTRUCTION OF IMPROVEMENTS, TOGETHER WITH APPURTENANCES, AND APPROVING THE ENGINEER'S REPORT

CITY OF SAN DIEGO
LA JOLLA MESA VISTA UNDERGROUNDING
ASSESSMENT DISTRICT NO. 4098

WHEREAS, the City Council of the City of San Diego, California, was presented with an executed petition [Petition] submitted by the owners of certain real property located in the City of San Diego [City] requesting that the City Council initiate proceedings to form an assessment district for the purpose of financing the conversion of certain overhead electric and communications facilities to underground locations; and

WHEREAS, in response to the Petition, the City Council authorized the initiation of proceedings pursuant to the "Municipal Improvement Act of 1913", being Division 12 of the Streets and Highways Code of the State of California [Improvement Act], the San Diego Improvement District Procedural Ordinance, being Chapter 6, Article 1, Division 23 of the San Diego Municipal Code [Procedural Ordinance], Article XIID of the Constitution of the State of California [Article XIID] and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) [Implementation Act] and, together with the Improvement Act, the Procedural Ordinance and Article XIID, [Assessment District Law] to consider the formation of an assessment district to be known and designated as La Jolla Vista Mesa Undergrounding Assessment District No. 4098 [Assessment District]; and

WHEREAS, on June 5, 2007 the City Council adopted Resolution No. R-302707 approving a map showing the proposed boundaries of the Assessment District [Boundary Map]

as reflected in the Petition and Resolution No. R-302708 [Resolution of Intention] declaring the intention of the City Council to order the conversion of the overhead electric and communications facilities to underground locations defined therein as the [Improvements], describing the properties which will specially benefit from the Improvements by reference to the Boundary Map and directing Bureau Veritas North America, Inc. [Assessment Engineer] to make and file a report [Engineer's Report] as required by the Assessment District Law and taking certain other actions with respect to the proceedings to consider the formation of the Assessment District; and

WHEREAS, pursuant to such Resolution of Intention, a report of the Assessment Engineer [Engineer's Report], as therein ordered and as required by the Assessment District Law, was presented to the City Council at its meeting of June 5, 2007, considered and preliminarily approved by the City Council by the adoption of Resolution No. R-302709; and

WHEREAS, Resolution Nos. R-302707, R-302708 and R-302709 were executed by the Mayor of the City on June 6, 2007 and became effective on such date; and

WHEREAS, by adoption of Resolution No. R-302709, the City Council also (a) set the time and place for conducting a public hearing for the purpose of hearing protests to the proposed construction of the Improvements and the assessment proposed to be levied on land within the Assessment District and (b) ordered that the record owner of each parcel proposed to be assessed have the right to submit an assessment ballot in favor of or in opposition to the assessment proposed to be levied on such parcel; and

WHEREAS, the original notices of such hearing accompanied by assessment ballot materials were regularly mailed in the time, form and manner required by the Assessment

District Law and as evidenced by a certificate on file with the transcript of these proceedings;
and

WHEREAS, subsequent to the mailing of such notices and assessment ballot materials, the Assessment Engineer was asked to review the proposed assessments for the parcels located at 5566 and 5572 Candlelight Drive (further identified as Assessor's Parcel Nos. 357-691-12 and 357-691-13, respectively) [5566 and 5572 Candlelight Drive Parcels] and the Assessment Engineer determined that the assessments for each of these parcels should be increased from \$9,386.96 to \$12,439.86 and that the assessments for the other parcels within the Assessment District should be proportionately reduced; and

WHEREAS, revised notices and assessment ballot materials reflecting the increased assessments were mailed to the owners of the 5566 and 5572 Candlelight Drive Parcels, however, such mailings did not occur more than 45 days prior to the scheduled date of the public hearing; and

WHEREAS, the owners of the 5566 and 5572 Candlelight Drive Parcels have each provided a written waiver of such owners' right under the Assessment District Law that the public hearing to consider the increased assessments on such parcels as described above take place not less than 45 days after the mailing of the revised notice and assessment ballot materials; and

WHEREAS, at the time and place fixed for such public hearing, the Assessment Engineer submitted the final Engineer's Report, which was prepared and contained all the matters and items called for pursuant to the provisions of the Assessment District Law, including the following:

- A. Plans and specifications of the Improvements;

- B. An estimate of the cost of the construction of the Improvements, including the cost of the incidental expenses, in connection therewith, including that portion of such costs and expenses representing the special benefit to be conferred by such Improvements on the parcels within the Assessment District;
- C. A diagram showing the Assessment District, which also shows the boundaries and dimensions of the respective subdivisions of land within such Assessment District, as the same existed at the time of the passage of the Resolution of Intention, with each of which subdivisions given a separate number upon such diagram;
- D. The proposed assessment of the assessable costs and expenses of the construction of the Improvements upon the several divisions of land in the Assessment District in proportion to the estimated special benefits to be conferred on such subdivisions, respectively, by such Improvements. Such proposed assessments reflect the adjustment due to the recommended increase in the assessments for the 5566 and 5572 Candlelight Drive Parcels and the corresponding proportionate decrease in the assessments for the other parcels within the Assessment District. Such assessment refers to such subdivisions upon such diagram by the respective numbers thereof; and
- E. A description of the Improvements;

The final Engineer's Report has been made a part of the record of these proceedings and is on file in the office of the City Clerk of the City [City Clerk]; and

WHEREAS, at this time a full hearing has been given, and all assessment ballots submitted and received pursuant to the Assessment District Law prior to the close of such public

hearing have been tabulated by the City Clerk of the City, acting as the tabulation official appointed by the City, all in the manner provided by the Assessment District Law; and

WHEREAS, the City Clerk has prepared and submitted to this legislative body a Certificate of Tabulation Official and Statement of Assessment Ballots Submitted [Certificate of the Tabulation Official], a copy of which is attached as Exhibit A hereto and incorporated herein by this reference, which reflects the results of the tabulation of the assessment ballots; and

WHEREAS, at this time based upon the Certificate of Tabulation Official this City Council determines that the assessment ballots received by the City in opposition to the proposed assessment and weighted as required by the Assessment District Law do not exceed the assessment ballots received in favor of the assessment and similarly weighted and, therefore, a majority protest pursuant to the Assessment District Law does not exist; and

WHEREAS, this legislative body is now satisfied with the assessment and all matters contained in the Engineer's Report as submitted; NOW THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego as follows:

1. Recitals. The above recitals are all true and correct.
2. Assessment Ballot Tabulation. The assessment ballots submitted pursuant to the Assessment District Law in opposition to the assessment and weighted as required by the Assessment District Law do not exceed the assessment ballots submitted in favor of the assessment and similarly weighted. It is therefore determined that a majority protest pursuant to Assessment District Law to the levy of assessments within the Assessment District does not exist.
3. Special Benefits Received. Based upon the Engineer's Report and the testimony and other evidence received at the public hearing, it is hereby determined that:

- A. The Engineer's Report identifies all properties within the boundaries of the Assessment District that receive a special benefit from the Improvements;
- B. The proportionate special benefit derived by each parcel proposed to be assessed has been determined in relationship to the entirety of the cost of construction of the Improvements;
- C. No assessment is proposed to be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit to be conferred on such parcel from the Improvements;
- D. Only special benefits have been assessed; and
- E. There are no parcels within the Assessment District which are owned or used by any agency as such term is defined in Article XIID, the State of California or the United States.

4. Public Interest and Convenience. The public interest and convenience require the construction of the Improvements, and therefore it is hereby ordered that the Improvements be constructed, as set forth in the Resolution of Intention previously adopted and as set forth in the Engineer's Report presented and considered, and as now approved.

5. Engineer's Report. The Engineer's Report, as now submitted, is hereby approved and such Report shall stand as the report as required by the Assessment District Law for all future proceedings for this Assessment District.

6. Confirmation of Assessments. The assessments, as now filed in the Engineer's Report and diagram for the Improvements to be constructed, together with appurtenances and appurtenant work in connection therewith, are hereby confirmed.

The final assessments represent the costs and expenses to finance that portion of the cost of construction of the Improvements representing the special benefit conferred by the Improvements on the parcels within the Assessment District, as authorized for these proceedings.

7. Recordation of Assessment. The City Clerk shall forthwith deliver to the Superintendent of Streets the assessment, together with the diagram attached thereto and made a part thereof, as confirmed, with his certificate of such confirmation attached and the date thereof; and that such Superintendent of Streets shall then immediately record such diagram and assessment in his Office in a suitable book to be kept for that purpose and attach thereto his certificate of the date of such recording.

8. County Recorder Notice. Upon confirmation of the assessments and recordation of the assessment roll and diagram, a certified copy of the assessment diagram shall be immediately filed in the Office of the County Recorder. Immediately thereafter, a copy of the notice of assessment shall be recorded in the Office of the County Recorder in the manner and form as set forth by law and specifically Section 3114 of the Streets and Highways Code of the State of California.

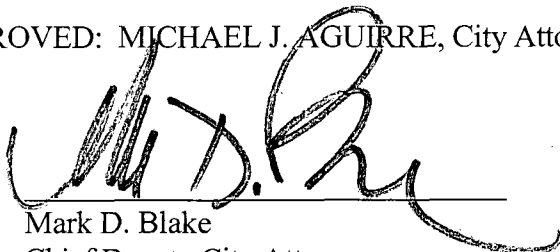
9. Mailed Notice. Upon recordation of the diagram and assessment, a notice shall be mailed to each owner of real property within the Assessment District at his last known address, as such address appears on the last equalized tax rolls of the County, such notice to set forth a statement containing a designation of the property assessed, as well as the amount of the final confirmed assessments, and further indicating that the assessments are now due and payable and will be collected in a single installment to be placed on the 2007-2008 secured property tax roll of the County of San Diego, as authorized by Section 61.2361 of the San Diego Municipal Code.

10. Publication. Notice shall also be given by publication in a newspaper of general circulation, such notice setting forth the amount of the final assessments and indicating that such assessments are now due and payable, and further indicating that the assessments will be collected in a single installment to be placed on the 2007-2008 secured property tax roll of the County of San Diego.

11. Assessment Collection. The assessments shall be collected pursuant to Section 61.2361 of the San Diego Municipal Code. City representatives shall take all actions as directed by such Section 61.2361(b)(1) and (2). The County Auditor is hereby authorized and directed to collect the assessments in accordance with the provisions of such Section 61.2361.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By:



Mark D. Blake
Chief Deputy City Attorney

MDB:jdf
07/11/07
Or.Dept: Debt Management
R-2008-47

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 23 2007.

ELIZABETH S. MALAND
City Clerk

By *Mary Yamaya*
Deputy City Clerk

Approved: 8-1-07
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Exhibit A

CERTIFICATE OF TABULATION OFFICIAL
AND STATEMENT OF ASSESSMENT BALLOTS SUBMITTED

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF SAN DIEGO)

The undersigned, the City Clerk and duly authorized tabulation official appointed by the City Council of the City of San Diego, DOES HEREBY CERTIFY that pursuant to the provisions of Article XIID of the Constitution of the State of California and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following), I did tabulate the assessment ballots timely submitted in the assessment ballot proceedings pertaining to La Jolla Mesa Vista Undergrounding Assessment District No. 4098.

I FURTHER CERTIFY that this Statement of Assessment Ballots Received shows the assessment ballots submitted in favor of the assessment and the assessment ballots submitted in opposition to the assessment, each total weighted according to the financial obligation of the affected properties for which the assessment ballots were submitted.

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|---|--------------|-------|
| Total assessment ballots distributed | 56 | |
| Total assessment ballots received | 52 | |
| Assessment ballots received <u>in favor</u> of the proposed assessment: | 39 | |
| Weighted value of assessment ballots received <u>in favor</u> of the proposed assessment | \$485,154.38 | 75.7% |
| Assessment ballots received <u>in opposition</u> to the proposed assessment: | 13 | |
| Weighted value of assessment ballots received <u>in opposition</u> to the proposed assessment | \$155,498.20 | 24.3% |

This certification is executed this July day of 23, 2007 in San Diego, California.

City Clerk
City of San Diego

By: RAOVEL RODGERS
Title: HEARINGS SUPERVISOR
(DEPUTY CITY CLERK)