

Attachment C

Resolution No. 2021-59

RESOLUTION NO. 2021- 59

**RESOLUTION OF THE CITY COUNCIL OF CITY OF
NEWPORT BEACH, CALIFORNIA, AUTHORIZING AND
PROVIDING FOR THE ISSUANCE OF BONDS PURSUANT
TO THE PROVISIONS OF THE IMPROVEMENT BOND ACT
OF 1915 FOR CITY OF NEWPORT BEACH ASSESSMENT
DISTRICT NO. 113 AND APPROVING CERTAIN
DOCUMENTS AND AUTHORIZING CERTAIN ACTIONS IN
CONNECTION THEREWITH**

WHEREAS, the City Council of the City of Newport Beach ("City") has taken proceedings under the Municipal Improvement Act of 1913, Division 12 of the California Streets and Highways Code ("Code"), for the formation of City of Newport Beach Assessment District No. 113 ("Assessment District") and has confirmed an assessment in the amount of Six Million Two Hundred Forty Nine Thousand Five Hundred Dollars and 00/100 (\$6,249,500.00), which assessment and a related diagram were recorded in the office of the City's Public Works Director, acting as the Superintendent of Streets, and with the County Recorder of the County of Orange, State of California;

WHEREAS, a notice of assessment, as prescribed in Code Section 3114, has been recorded with the County Recorder of the County of Orange, State of California, whereupon the assessment attached as a lien upon the property assessed within the Assessment District as provided in Section 3115 of the Code;

WHEREAS, said proceedings provide that bonds ("Bonds") will be issued pursuant to the Improvement Bond Act of 1915, Division 10 of the Code ("Act") to represent and be secured by the unpaid assessments on the parcels within the Assessment District;

WHEREAS, the City Council desires to delegate to the City Manager the authority to determine the amount of unpaid assessments upon the security of which such Bonds are to be issued in an amount not to exceed the unpaid assessments;

WHEREAS, it is necessary and desirable that the City sell the Bonds to be issued to represent a portion of the unpaid assessments and that the Bonds be issued primarily to finance the undergrounding of utilities within the Assessment District;

WHEREAS, there has been presented to the City Council the forms of a Fiscal Agent Agreement between the City and U.S. Bank National Association, as Fiscal Agent ("Fiscal Agent Agreement"), a Continuing Disclosure Agreement by and between the City and Digital Assurance Certification, LLC ("Continuing Disclosure Agreement"), a Bond Purchase Agreement to be entered into between the City and Stifel, Nicolaus & Company, Incorporated ("Underwriter"), as the purchaser of the Bonds ("Bond Purchase Agreement"), and the form of a Preliminary Official Statement for the Bonds ("Preliminary Official Statement"); and

WHEREAS, the City desires to approve the forms of the Fiscal Agent Agreement, the Continuing Disclosure Agreement and the Bond Purchase Agreement; to authorize the issuance of the Bonds and the sale thereof to the Underwriter on the terms approved hereby; to authorize the mailing of the Preliminary Official Statement to prospective purchasers of the Bonds and to authorize the officers of the City to take all actions required for the issuance of the Bonds.

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

Section 1. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 2. The Fiscal Agent Agreement is approved in substantially the form presented to the City Council. The Mayor, the City Manager and the Finance Director, acting as Treasurer of the Assessment District, and their written designee(s) ("Authorized Officers"), are authorized and directed to execute, and the City Clerk, or his or her written designee(s), is authorized to attest to, the Fiscal Agent Agreement substantially in the form approved with such additions thereto and changes therein as the officer or officers executing the Fiscal Agent Agreement deem necessary to cure any ambiguity or defect therein, to insert the offering price(s), interest rate(s), selling compensation, principal amount per maturity, redemption dates and prices and such other related terms and provisions of the Bonds, or to conform any provisions therein to the Bond Purchase Agreement and the Official Statement, or as required by the City Attorney, and the City's Bond Counsel, Stradling Yocca Carlson & Rauth, a Professional Corporation ("Bond Counsel"). Approval of such changes shall be conclusively evidenced by the execution and delivery of the Fiscal Agent Agreement by one or more Authorized Officers.

Section 3. Bonds in an aggregate principal amount not to exceed Four Million Five Hundred Eighty-Nine Thousand One Hundred Eighty-Nine Dollars and 13/100 (\$4,589,189.13) representing a portion of the amount of the unpaid assessments as determined by the City Manager shall be issued pursuant to the provisions of the Act upon the security of unpaid assessments levied within the Assessment District and as set forth in the Fiscal Agent Agreement. The Bonds shall be dated, be in such aggregate principal amount, bear interest at such rates, and mature on such dates and in such amounts as are set forth in the Bond Purchase Agreement upon the execution and delivery thereof in accordance with Section 7 below. The Bonds shall be issued substantially in the form of bonds set forth in the Act, except as such form may vary from the terms and conditions set forth in this Resolution and the Fiscal Agent Agreement. The principal amount of the Bonds to be sold will be determined by the City Manager, the Finance Director, or their designee(s).

Neither the faith and credit nor the taxing power of the City, the County of Orange, the State of California or any political subdivision thereof is pledged to the payment of the Bonds. The City is not obligated to advance available funds from the City treasury to the Redemption Fund in the event of a delinquency in the payment of an assessment installment or installments. The Bonds are not general obligations of the City; they are limited obligations payable solely from the funds specified in the act and the Fiscal Agent Agreement.

The Bonds are being issued in compliance with the City's Debt Management Policy, and in accordance with Section 4 thereof, additional information relating to the Bonds is set forth in Exhibit A attached hereto and incorporated herein by reference. In addition, in accordance with Government Code section 5852.1, this City Council has been presented with certain Good Faith Estimates for the Bonds, which Good Faith Estimates are set forth in the staff report accompanying this Resolution and are incorporated herein by reference.

Section 4. The provisions of Part 11.1 (commencing with Section 8760) of the Act, providing an alternative procedure for the division of land and the Bonds, shall apply.

Section 5. The Continuing Disclosure Agreement is approved in substantially the form presented to the City Council; and each Authorized Officer is hereby authorized and directed, for and in the name of and on behalf of the City, to execute, and the City Clerk, or her written designee(s), to attest to and deliver to Digital Assurance Certification, LLC, as Dissemination Agent, the Continuing Disclosure Agreement substantially in the form hereby approved, with such additions thereto and changes therein, including the selection of an alternate Dissemination Agent from time to time, as may be approved by the Authorized Officer executing such agreement or required by the City Attorney or Bond Counsel, such approval or requirement to be conclusively evidenced by the execution and delivery of the Continuing Disclosure Agreement.

Section 6. The form of the Preliminary Official Statement presented at this meeting is hereby approved, and the Underwriter is hereby authorized to distribute the Preliminary Official Statement to prospective purchasers of the Bonds in the form hereby approved, together with such additions thereto and changes therein as are determined necessary by the City Manager or the Finance Director, or the written designee of either, to make such Preliminary Official Statement final as of its date for purposes of Rule 15c2-12 of the Securities and Exchange Commission, as amended, including, but not limited to, such additions and changes as are necessary to make all information set forth therein accurate and not misleading. Each of the Authorized Officers is hereby authorized to execute a final Official Statement in the form of the Preliminary Official Statement, together with such changes as are determined necessary by the City Manager, or his written designee, to make such Official Statement complete and accurate as of its date. The Underwriter is further authorized to distribute the final Official Statement for the Bonds and any supplement thereto to the purchasers thereof upon its execution by one of the Authorized Officers.

Section 7. Subject to Section 3 hereof, the sale of the Bonds to the Underwriter is hereby approved provided that (a) the Underwriter's discount, exclusive of original issue discount, shall not exceed One and One-Tenths percent (1.10%) of the original aggregate principal amount of the Bonds, (b) the interest rates on the Bonds shall not exceed five percent (5.0%) per annum, and (c) the final principal amounts, discount and interest rates for the Bonds shall have been approved by the City Manager of the Finance Director, acting as Treasurer; and, subject to such approval, any one of the Authorized Officers is hereby authorized and directed to evidence the City's acceptance of the offer made by executing and delivering to the Underwriter a Bond Purchase Agreement substantially in the form hereby approved with such additions thereto and changes therein as may be approved by the Authorized Officer executing the agreement, or required by City Attorney or Bond Counsel, such approval or requirement to be conclusively evidenced by the execution and delivery of the Bond Purchase Agreement.

Section 8. The Fiscal Agent is hereby authorized and directed to authenticate the Bonds and to deliver them to The Depository Trust Company on behalf of the Underwriter upon payment of the purchase price thereof.

Section 9. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the sale and delivery of the Bonds and otherwise to effectuate the purposes of this resolution; and any actions previously taken by such officers for these purposes are hereby ratified and confirmed.

Section 10. Any action authorized or directed in this resolution to be taken or performed by an Authorized Officer may be taken or performed by their designee with the same force and effect as if taken or performed by such Authorized Officer.

Section 11. If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 12. The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6 Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 13. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

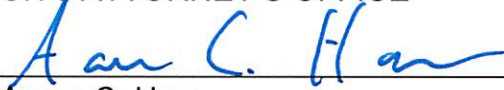
ADOPTED this 8th day of June, 2021.

Brad Avery, Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment: Exhibit A

EXHIBIT A

1. The maximum term of the Bonds: 20 years (final maturity on September 2, 2041)
2. The estimated maximum annual debt service on the Bonds: \$292,494
3. The call provisions for the Bonds:
 - a. The Bonds are expected to be subject to optional redemption prior to maturity on and after a date that is no later than ten years after the issuance thereof. It is possible that a shorter call period would result in better pricing for the Bonds, but that won't be known until the time that the Bonds are priced.
 - b. Pursuant to Part 11.1 of the Improvement Bond Act of 1915, the Bonds must be available for redemption from the prepayment of Assessments on each interest payment date after the issuance thereof.
4. The estimated costs of issuance of the Bonds: \$143,738
5. The list of consultants hired with respect to the Bonds:
 - a. Bond and Disclosure Counsel: Stradling Yocca Carlson & Rauth
 - b. Assessment Engineer: NV5, Inc.
 - c. Assessment District Consultant: Willdan Financial Services
 - d. Trustee: U.S. Bank National Association
 - e. Municipal Advisor: Urban Futures, Inc.
 - f. Underwriter: Stifel, Nicolaus & Company, Incorporated