

Staff Report

TO: Mayor and City Council Members
Chair and Boardmembers of the Beaumont Financing Authority

FROM: Richard Warne, City Manager and Executive Director

DATE: October 18, 2016

SUBJECT: Approval of Resolutions Accepting Modified Certificate Regarding Approval of Thirty-Second Supplemental Indenture

Background and Analysis:

On September 6, 2016, the City Council approved a resolution making certain findings and requesting the transfer of certain funds pursuant to a Thirty-Second Supplemental Indenture by and Between the Beaumont Financing Authority and MUFG Union Bank, N.A., as Trustee, in connection with the Beaumont Financing Authority Local Agency Revenue Bonds and authorizing related actions.

In addition, on September 6, 2016, the Governing Board of the Beaumont Financing Authority (the "Authority") authorized the execution and delivery of a Thirty-Second Supplemental Indenture by and between the Beaumont Financing Authority and MUFG Union Bank, N.A., as Trustee, in connection with the Beaumont Financing Authority Local Agency Revenue Bonds and authorizing related actions.

The adoption of these resolutions was based on a certificate (the "Completion Certificate") filed by the Director of Public Works and Interim City Manager to the effect that the facilities and improvements to be funded with proceeds of certain of the Authority's Local Agency Revenue Bonds have been completed and no further funds were needed for such facilities and improvements.

Subsequent to the City Council and Governing Board of the Authority approval, based upon further review by City staff of the improvements to be financed from the proceeds of the Authority's Local Agency Revenue Bonds, the conditions of development of the Improvement Areas for which such bonds were issued and the physical conditions in such Improvement Areas, and upon consultation with counsel, the Interim City Manager and Director of Public Works have proposed modifications to the Completion Certificate to more accurately reflect the conditions in each Improvement Area that was used for the basis for the adoption of the Thirty-Second Supplemental Indenture. The revised form of certificate (the "Modified Certificate") is presented with this staff report as Exhibit C.

The City Staff requests the City Council and Governing Board of the Authority consider the affirmation of their approvals that were provided on September 6, 2016, based the execution of the Modified Certificate instead of the Completion Certificate.

Fiscal Impact:

Approval of these resolutions will result in the transfer of \$5,069,508.87 to the general fund of the City, which will reduce the deficit position of the general fund by that amount. Repayment of the advance in the same amount from the Wastewater Enterprise Fund will result in a reduction in the fund balance of the Wastewater Enterprise Fund. Staff has confirmed that the remaining balance in the Wastewater Enterprise Fund will be sufficient to meet expected needs of that fund.

Finance Director Review: 

Recommendations:

1. Approve Resolution of the City Council Making Certain Findings and Affirming the Request to Transfer Certain Funds Pursuant to a Thirty-Second Supplemental Indenture by and between the Beaumont Financing Authority and MUFG Union Bank, N.A., as Trustee, in connection with the Beaumont Financing Authority Local Agency Revenue Bonds and Authorizing Related Actions (Exhibit A).
2. Approve Resolution of the Governing Board of the Beaumont Financing Authority Affirming the Authorization of the Execution and Delivery of a Thirty-Second Supplemental Indenture by and between the Beaumont Financing Authority and MUFG Union Bank, N.A., as Trustee, in connection with the Beaumont Financing Authority Local Agency Revenue Bonds and Authorizing Related Actions (Exhibit B).

City Manager Review: RW

Exhibit A

Resolution of the City Council Making Certain Findings and Affirming the Request to Transfer Certain Funds Pursuant to a Thirty-Second Supplemental Indenture by and between the Beaumont Financing Authority and MUFG Union Bank, N.A., as Trustee, in connection with the Beaumont Financing Authority Local Agency Revenue Bonds and Authorizing Related Actions

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL MAKING CERTAIN FINDINGS AND AFFIRMING THE REQUEST TO TRANSFER CERTAIN FUNDS PURSUANT TO A THIRTY-SECOND SUPPLEMENTAL INDENTURE BY AND BETWEEN THE BEAUMONT FINANCING AUTHORITY AND MUFG UNION BANK, N.A., AS TRUSTEE, IN CONNECTION WITH THE BEAUMONT FINANCING AUTHORITY LOCAL AGENCY REVENUE BONDS AND AUTHORIZING RELATED ACTIONS

Intent of the Parties and Findings

(i) The Beaumont Financing Authority (the "Authority") entered into an Indenture of Trust, dated as of January 15, 1994, as supplemented and amended from time to time (as supplemented and amended, the "Indenture") with Meridian Trust Company of California, succeeded by MUFG Union Bank, N.A. (the "Trustee") to provide for the issuance of various series of Local Agency Revenue Bonds (the "Authority Bonds"); and

(ii) the Authority has approved the execution and delivery of a Thirty-Second Supplement Indenture (the "Thirty-Second Supplemental Indenture") dated as of September 1, 2016 by and between the Authority and the Trustee) that amends certain provisions of the Indenture related to the authorized transfers and uses of the Residual Accounts held under the Indenture; and

(iii) On November 17, 2014, the Authority requested that the Trustee transfer the sum of \$5,069,508.87 from certain of the Residual Accounts to the City and the Trustee made such transfer; and

(iv) The City applied such amounts as an advance to the City's Wastewater Enterprise Fund, and used such advance to pay off the Beaumont Utility Authority Variable Rate Revenue Bonds, 2001 Series A (Wastewater Enterprise Project); and

(v) The City now desires to repay said advance from amounts on hand in the Wastewater Enterprise Fund; and

(vi) Section 5A of the Joint Exercise of Powers Agreement creating the Authority establish that the Authority may assist the City of Beaumont in funding working capital for the City, and Section 5.05 of the Indenture permits the Authority to make transfers of funds in the Residual Accounts for any lawful purposes of the Authority; and

(vii) on September 6, 2016, the City Council directed that an amount of \$5,069,508.87 be withdrawn from the City's Wastewater Enterprise Fund to repay the Authority advance described in subparagraph (iv) above, for transfer to the Authority for credit to the Residual Accounts held under the Indenture;

(viii) the City Council direction was based on a Certificate of City Director of Public Works and City Manager Regarding Beaumont Financing Authority Local Agency Revenue Bonds (the "Completion Certificate") that was included in the Staff Report provided in connection with such City Council action;

Resolution No. _____

(ix) Subsequent to the City Council and Governing Board of the Authority approval, based upon further review by City staff of the improvements to be financed from the proceeds of the Authority's Local Agency Revenue Bonds, the conditions of development of the Improvement Areas for which such bonds were issued and the physical conditions in such Improvement Areas, and upon consultation with counsel, the City Manager and Director of Public Works have proposed modifications to the Completion Certificate to more accurately reflect the conditions in each Improvement Area that was used for the basis for the adoption of the Thirty-Second Supplemental Indenture; and

(x) The revised form of the Completion Certificate (the "Modified Certificate") has been presented to the Council in connection with consideration of this resolution;

NOW, THEREFORE, the City Council of the City of Beaumont, California does resolve, declare, determine and order as follows:

SECTION 1. Each of the above recitals is true and correct and is adopted by the City Council.

SECTION 2. The City Council accepts the Modified Certificate and affirms its direction of September 6, 2016 to direct an amount of \$5,069,508.87 be withdrawn from the City's Wastewater Enterprise Fund to repay the Authority advance described in subparagraph (iv) above, for transfer to the Authority for credit to the Residual Accounts held under the Indenture.

SECTION 3. The City affirms its request that the Authority transfer such amounts from the Residual Accounts to the City for deposit in the City's general fund, as a permanent transfer and not as an advance, to be applied by the City for working capital purposes as defined in Section 53852 of the Government Code. If affirmed by the Authority, the transfer requests affirmed in Sections 2 and 3 of this resolution may be set off such that funds will not be transferred through the Trustee.

SECTION 4. This Resolution shall take effect upon the execution and delivery, and effectiveness, of the Thirty-Second Supplemental Indenture.

PASSED, APPROVED and ADOPTED this 18th day of October, 2016.

Mike Lara, Mayor

Resolution No. _____

I, Julio Martinez, City Clerk of the City of Beaumont, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the City Council of the City of Beaumont held on the 18th day of October, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Julio Martinez, City Clerk

Exhibit B

**Resolution of the Governing Board of the Beaumont Financing Authority
Affirming the Authorization of the Execution and Delivery of a Thirty-Second
Supplemental Indenture by and between the Beaumont Financing Authority
and MUFG Union Bank, N.A., as Trustee, in connection with the Beaumont
Financing Authority Local Agency Revenue Bonds and Authorizing Related
Actions**

RESOLUTION NO. _____

RESOLUTION OF THE GOVERNING BOARD OF THE BEAUMONT FINANCING AUTHORITY AFFIRMING THE AUTHORIZATION OF THE EXECUTION AND DELIVERY OF A THIRTY-SECOND SUPPLEMENTAL INDENTURE BY AND BETWEEN THE BEAUMONT FINANCING AUTHORITY AND MUFG UNION BANK, N. A., AS TRUSTEE, IN CONNECTION WITH THE BEAUMONT FINANCING AUTHORITY LOCAL AGENCY REVENUE BONDS AND AUTHORIZING RELATED ACTIONS

Intent of the Parties and Findings

(i) The Beaumont Financing Authority (the "Authority") entered into an Indenture of Trust, dated as of January 15, 1994, as supplemented and amended from time to time (as so supplemented and amended, the "Indenture") with Meridian Trust Company of California, succeeded by MUFG Union Bank, N.A. (the "Trustee") to provide for the issuance of various series of Local Agency Revenue Bonds (the "Authority Bonds"); and

(ii) the Authority desires to approve the execution and delivery of a Thirty-Second Supplement Indenture (the "Thirty-Second Supplemental Indenture") dated as of September 1, 2016 by and between the Authority and the Trustee) that amends certain provisions of the Indenture related to the authorized transfers and uses of the Residual Accounts held under the Indenture; and

(iii) The Director of Public Works and City Manager have filed a certificate (the "Completion Certificate") with the Authority to the effect that the facilities and improvements to be funded with the proceeds of the Authority's Local Agency Revenue Bonds 2004 Series A, B, C and D, 2005 Series A, B and C, 2006 Series A and B, and 2007 Series A, B and C/D (the "Affected Bonds") have been completed and no further funds are needed for such facilities and improvements; and

(iv) The Executive Director of the Authority has filed a certificate of the Authority to the effect that the Asset Coverage Test is met with respect to the Affected Bonds as well as the Authority's Local Agency Revenue Bonds, 1994 Series A and B; and

(v) On November 17, 2014, the Authority requested that the Trustee transfer the sum of \$5,069,508.87 from certain of the Residual Accounts to the City and the Trustee made such transfer; and

(vi) The City applied such amounts as an advance to the City's Wastewater Enterprise Fund, and used such advance to pay off the Authority's 2001 Series A Wastewater Revenue Bonds; and

(vii) The City has determined to repay said advance from amounts on hand in the Wastewater Enterprise Fund; and

(viii) Section 5A of the Joint Exercise of Powers Agreement creating the Authority establish that the Authority may assist the City of Beaumont in funding working capital for the City, and Section 5.05 of the Indenture permits the Authority to make transfers of funds in the Residual Accounts for any lawful purposes of the Authority; and

Resolution No. _____

(ix) the City Council has affirmed its request made on September 6, 2016 that the Authority transfer the funds so repaid to the City for working capital purposes of the City as defined in Section 53852 of the Government Code and has determined that there are significant public benefits to providing additional working capital funds to the City so that the City can continue to deliver vital public services; and

(x) the City Council direction was based on the Completion Certificate that was included in the Staff Report provided in connection with such City Council action; and

(xi) Subsequent to the City Council and Governing Board of the Authority approval, based upon further review by City staff of the improvements to be financed from the proceeds of the Authority's Local Agency Revenue Bonds, the conditions of development of the improvement Areas for which such bonds were issued and the physical conditions in such Improvement Areas, and upon consultation with counsel, the City Manager and Director of Public Works have proposed modifications to the Completion Certificate to more accurately reflect the conditions in each Improvement Area that was used for the basis for the adoption of the Thirty-Second Supplemental Indenture; and

(x) The revised form of the Completion Certificate (the "Modified Certificate") has been presented to the Board in connection with consideration of this resolution;

NOW, THEREFORE, the Governing Board of the Beaumont Financing Authority does resolve, declare, determine and order as follows:

SECTION 1. Each of the above recitals is true and correct and is adopted by this Governing Board.

SECTION 2. The Authority hereby affirms its approval on September 6, 2016 of the Thirty-Second Supplemental Indenture based on the Modified Certificate.

SECTION 3. Upon repayment of the advance in the amount of \$5,069,508.87 made to the City's Wastewater Enterprise Fund on or about November 30, 2014 from transfers from the Authority's Residual Accounts on or about such date, as directed by the City, the Authority affirms the authorization of the simultaneous transfer of such amounts to the City for deposit in the City's general fund, as a permanent transfer and not as an advance, to be applied by the City for working capital purposes as defined in Section 53852 of the Government Code. The transfers affirmed in this Section 3 may be set off such that funds will not be physically transferred through the Trustee's accounts.

SECTION 4. This Resolution shall take effect upon the execution and delivery, and effectiveness, of the Thirty-Second Supplemental Indenture.

PASSED, APPROVED and ADOPTED this 18th day of October, 2016.

Mike Lara, Chair of the Board

Resolution No. _____

I, Julio Martinez, Secretary of the Beaumont Financing Authority, do hereby certify that the foregoing Resolution was passed and adopted at a [regular/special] meeting of the Governing Board of the Beaumont financing Authority held on the 18th day of October, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Julio Martinez, Secretary

Exhibit C
Completion Certificate

CERTIFICATE OF DIRECTOR OF PUBLIC WORKS AND CITY MANAGER

**BEAUMONT FINANCING AUTHORITY
LOCAL AGENCY REVENUE BONDS**

We, Richard Warne, the Interim City Manager of the City of Beaumont (the "City"), and Amer Jakher, the Director of Public Works of the City, hereby certifies to the following:

1. Regarding the Beaumont Financing Authority 2004 Local Agency Revenue Bonds, Series A (the "2004 Series A Bonds"):

(a) All of the real property within the boundaries of the City's Community Facilities District No. 93-1 (the "CFD") Improvement Area No. 18 ("Improvement Area No. 18") and subject to the Special Tax securing the 2004 Series A Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 18; and

(b) Each developed parcel in Improvement Area No. 18 is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 18.

2. Regarding the Beaumont Financing Authority 2004 Local Agency Revenue Bonds, Series B (the "2004 Series B Bonds"):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 16 ("Improvement Area No. 16") and subject to the Special Tax securing the 2004 Series B Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 16; and

(b) Each developed parcel in Improvement Area No. 16 is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 16.

3. Regarding the Beaumont Financing Authority 2004 Local Agency Revenue Bonds, Series C (the "2004 Series C Bonds"):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 8A (“Improvement Area No. 8A”) and subject to the Special Tax securing the 2004 Series C Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 8A; and

(b) Each developed parcel in Improvement Area No. 8A is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 8A.

4. Regarding the Beaumont Financing Authority 2004 Local Agency Revenue Bonds, Series D (the “2004 Series D Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 19A (“Improvement Area No. 19A”) and subject to the Special Tax securing the 2004 Series D Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 19A; and

(b) Each developed parcel in Improvement Area No. 19A is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 19A.

5. Regarding the Beaumont Financing Authority 2005 Local Agency Revenue Bonds, Series A (the “2005 Series A Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 6A1 (“Improvement Area No. 6A1”) and subject to the Special Tax securing the 2005 Series A Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 6A1; and

(b) Each developed parcel in Improvement Area No. 6A1 is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 6A1.

6. Regarding the Beaumont Financing Authority 2005 Local Agency Revenue Bonds, Series B (the “2005 Series B Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 7A (“Improvement Area No. 7A”) and subject to the Special Tax securing the 2005 Series B Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 7A; and

(b) Each developed parcel in Improvement Area No. 7A is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 7A.

7. Regarding the Beaumont Financing Authority 2005 Local Agency Revenue Bonds, Series C (the “2005 Series C Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 6A1 (“Improvement Area No. 6A1”) and subject to the Special Tax securing the 2005 Series C Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 6A1; and

(b) Each developed parcel in Improvement Area No. 6A1 is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 6A1.

8. Regarding the Beaumont Financing Authority 2006 Local Agency Revenue Bonds, Series A (the “2006 Series A Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 19C (“Improvement Area No. 19C”) and subject to the Special Tax securing the 2006 Series A Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 19C; and

(b) Each developed parcel in Improvement Area No. 19C is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 19C.

9. Regarding the Beaumont Financing Authority 2006 Local Agency Revenue Bonds, Series B (the “2006 Series B Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 8B (“Improvement Area No. 8B”) and subject to the Special Tax securing the 2006 Series B Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 8B; and

(b) Each developed parcel in Improvement Area No. 8B is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 8B.

10. Regarding the Beaumont Financing Authority 2007 Local Agency Revenue Bonds, Series A (2000A Refunding) (the “2007 Series A Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 3 (“Improvement Area No. 3”), Improvement Area No. 11 (“Improvement Area No. 11”), Improvement Area No. 14 (“Improvement Area No. 14”), and Improvement Area No. 14B (“Improvement Area No. 14B”), and subject to the Special Tax securing the 2007 Series A Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 3, Improvement Area No. 11, Improvement Area No. 14, and Improvement Area No. 14B; and

(b) Each developed parcel in Improvement Area No. 3, Improvement Area No. 11, Improvement Area No. 14, and Improvement Area No. 14B is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 3, Improvement Area No. 11, Improvement Area No. 14, and Improvement Area No. 14B.

11. Regarding the Beaumont Financing Authority 2007 Local Agency Revenue Bonds, Series B (2002A Refunding) (the “2007 Series B Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 8 (“Improvement Area No. 8”) and subject to the Special Tax securing the 2007 Series B Bonds has been fully developed (with certificates of occupancy issued by the City where

required) in a manner consistent with the approvals related to the development of Improvement Area No. 8; and

(b) Each developed parcel in Improvement Area No. 8 is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within Improvement Area No. 8.

12. Regarding the Beaumont Financing Authority 2007 Local Agency Revenue Bonds, Series C (2003A Refunding) and the Beaumont Financing Authority 2007 Local Agency Revenue Bonds, Series D (2003A Refunding) Taxable (together, the “2007 Series C & D Bonds”):

(a) All of the real property within the boundaries of the CFD Improvement Area No. 9 (“Improvement Area No. 9”), Improvement Area No. 10A (“Improvement Area No. 10A”), Improvement Area No. 12A (“Improvement Area No. 12A”), and Improvement Area No. 14A (“Improvement Area No. 14A”), and subject to the Special Tax securing the 2007 Series C & D Bonds has been fully developed (with certificates of occupancy issued by the City where required) in a manner consistent with the approvals related to the development of Improvement Area No. 9, Improvement Area No. 10A, Improvement Area No. 12A, and Improvement Area No. 14A; and

(b) Each developed parcel in of Improvement Area No. 9, Improvement Area No. 10A, Improvement Area No. 12A, and Improvement Area No. 14A is served by infrastructure and public facilities adequate to serve such parcels and for their permitted uses; and

(c) No additional improvements, infrastructure, or facilities are needed or required in order to allow the continued use and occupancy of any developed parcel within of Improvement Area No. 9, Improvement Area No. 10A, Improvement Area No. 12A, and Improvement Area No. 14A.

Dated: October __, 2016

By: _____
Richard Warne
Interim City Manager

By: _____
Amer Jakher
Director of Public Works