

Department of Public Works

Board of Public Works,
Financial Mgmt. Division

Report No. 1

February 2, 2021
CD Nos. All

AS AMENDED*
ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California
AND REFERRED TO THE CITY COUNCIL
FEB 02 2021

AND REFERRED TO THE MAYOR

Executive Officer
Board of Public Works

AUTHORITY FOR A PUBLIC WORKS TRUST FUND LOAN TO COMPLETE A VALUATION STUDY OF THE SOUTHERN CALIFORNIA GAS COMPANY FRANCHISE PUBLIC RIGHT OF WAY VALUE

RECOMMENDATIONS:

That the Board of Public Works (Board):

1. **FIND** that the requested loan proceeds will be deposited into the City's General Fund No. 100 (Dept. 74), which interest earned is retained by the General Fund and is also the same fund where interest earned in the Public Works Trust Fund No. 834 (Dept. 50) is transferred to on an interim basis;
2. **APPROVE** the waiver of interest assessment;
3. **AUTHORIZE** a new \$368,000 loan from the Public Works Trust Fund (Fund 834/ Dept. 50) to front-fund the cost associated with the completion of a valuation study of public right of way value for the Southern California Gas Company Franchise;
4. **AUTHORIZE** the Board of Public Works, Director of Accounting, to transfer \$368,000 from available funds within the Public Works Trust Fund No. 834, Department No. 50 to the General Fund No. 100, Department No. 74 (Board of Public Work), Account 003040, Contractual Services;
5. **AUTHORIZE** the reimbursement of funds from a direct appropriation from the General Fund or other alternate identified source of funding to be recommended by the Mayor's Office of Budget and Innovation, subject to approval by the City Council, where the amount and time of reimbursement will be determined to repay the loan in full on or by Fiscal Year End 2022-2023 (June 30, 2023); and
6. **AUTHORIZE** the Board of Public Works, Executive Officer, or designee, to make any technical or accounting updates to the recommendations above to effectuate the intent of the Mayor and City Council.

TRANSMITTALS

1. Southern California Gas Company Franchise (Ordinance No. 186821)
2. Request for Bids (RFB) - Yielded one proposal from Alvarez and Marsal (A&M)
3. Email from the Mayor's Office of Budget and Innovation on Repayment Fund Recommendation

DISCUSSION

The Board is requesting a new \$368,000 loan from the Public Works Trust Fund to front-fund the cost associated with the completion of a valuation study of public right of way value for the Southern California Gas Company Franchise. This study will provide an independent expert determination of the value of the franchise agreement that will be negotiated and inform the City on potential significant changes that could be considered during the nature of ongoing negotiations with Southern California Gas Company Franchise, which will expire on December 31, 2021 (Transmittal No. 1; Ordinance No. 186821; CF No. 12-1880-S8). The proposed valuation study is one of two legal tests that the City must satisfy in order to support its fee structure and increases, if any. The second test is good-faith negotiations.

On March 11, 2019, the Board's Office of Petroleum and Natural Gas Administration and Safety (OPNG) released a Request for Proposal (LABAVN No. 36127). One proposal was received by the due date of April 22, 2019. On or about June 2019, based on the evaluation of the proposal, the evaluation committee recommended not to award or select said firm for the contract. As a second attempt, on May 13, 2020, the OPNG solicited the services again using the Bureau of Engineering's Pre-Qualified On-Call Wastewater and Environmental Engineering Services Consultants List, which proposals were due on May 29, 2020 (LABVN ID 39769). However, no proposals were received. It is important to note that one potential proposer did not submit due to potential conflict of interest. Continuing its efforts and as a third attempt, the OPNG partnered with the Office of the City Administrative Officer to solicit proposals using their Economic Development pre-approved consultant on-call list. The Request for Bids was released on August 14, 2020 and proposals were due back on September 18, 2020 (Transmittal 2). The RFB yielded one proposal from A&M in the amount of \$368,000, which the evaluation team has recommended to retain this firm. Contract award is subject to approval by the Board and Mayor pursuant to Executive Directive No. 3 and will be submitted to the Board for its consideration within the next month via separate report. A&M is projected to complete the study by June 2021 with the final report due in July/August 2021 or sooner.

BACKGROUND

Between 2014 and June 2017, the California court system considered many legal pleadings on the matter of Jacks (Rolland) et al. v. City of Santa Barbara. In February 2015, the Court of Appeal entered an order/judgement to reverse and remand its lower court decision that franchise fees are considered a tax under the State of California Proposition 218 guidelines. This reversal was appealed to the Supreme Court. The Supreme Court limited its review to the following issue: *“Is the City of Santa Barbara’s 1 percent increase on its electricity bill a tax subject to Proposition 218’s voter approval requirement or a franchise fee that may be imposed by the City without voter consent?”* In June 2017, the Supreme Court decided that fees for use of government property are not taxes requiring voter approval.

Public utilities, such as Southern California Gas and Southern California Electric Company, typically pay an annual franchise fee equivalent to two (2) percent of their annual gross revenues derived from its operation or a fee for its pipelines as part of their formula to pay for the right of use to public streets to run gas and electric services. Some municipalities add a surcharge on top of the franchise fee that can range from 1% to 2%. However, many do not. Franchise fees generate discretionary revenues that can be used for any lawful purpose of the agency.

Based on the ruling by the Supreme Court, it established a new limit on a franchise for use of government property. This limit is that a franchise fee must not “exceed any reasonable value of the franchise” but must be “reasonably related to the value of the franchise.” Therefore, the requested study will determine the reasonable value of the franchise due to this new legal ruling and would allow the Board to hire an outside technical consultant on a temporary basis to perform a franchise valuation and assessment study focused on determining the value of the franchise agreement being negotiated. Moreover, this study will inform the City on significant changes that could be considered during the nature of ongoing negotiations, such as those desired in its Southern California Gas franchise.

REPAYMENT SCHEDULE

The Office of the Mayor’s Budget and Innovation has agreed to make a recommendation for a direct appropriation from the General Fund or other alternate identified source of funding (Transmittal 3), such as appropriation from franchise revenues or potentially sharing the cost with the franchisee. Therefore, the repayment of this loan will be a one-time balloon payment by end of fiscal year 2022-2023 (i.e. June 2023) or until such time

that a new franchise agreement is negotiated, whichever is later. The Mayor's Office, at its discretion and subject to City Council approval, may authorize interim repayments to reduce the outstanding loan balance.

Repayment Schedule Table:

Fiscal Year	Amount
2020-21	-
2021-22	-
2022-23	\$368,000

FINANCIAL STATUS OF PWTF

As of June 30, 2020, total deposits (balance) in the Public Works Trust Fund (PWTF) is \$144,443,898. As of June 30, 2020, pending loans in the PWTF had a total outstanding balance of \$35,398,833. This equates to a 24.51% Balance-to-Loan Percentage for PWTF disbursed loans. However, the Board approved additional loans that have been disbursed in Fiscal Year 2020-2021 or have not yet been disbursed in the amount of \$78,919,813. This includes a \$75 million loan to provide emergency cash flow in response to the COVID-19 Emergency Pandemic disbursed in July 2020. Therefore, the total aggregate loans approved (disbursed and undisbursed) is \$114,318,646 or 79.14% Balance-to-Loan Percentage.

Approval of this loan of \$368,000, will increase the total loans outstanding from \$114,318,646 to \$114,686,646 or from 79.14 to 79.40%PWTF Balance-to-Loan percentage.

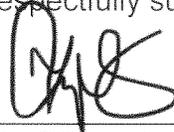
FISCAL IMPACT STATEMENT

Approval of the proposed Public Works Trust Fund loan in the amount of \$368,000 will have an impact to either the General Fund or other alternate identified source of fund(s). The PWTF loan will front-fund the cost of \$368,000 associated with the completion of a valuation study of public right of way value for the Southern California Gas Company Franchise. Loan repayment will be made in one balloon payment on or by June 30, 2023. The impact to the General Fund will be determined when the actual source of reimbursement is recommended by the Mayor's Office of Budget and Innovation.

Further, this report recommends not to assess interest on this loan request since the loan proceeds will be deposited into the City's General Fund No. 100 (Dept. 32), which interest

earned is retained by the General Fund and is also the same fund where interest earned in the Public Works Trust Fund No. 834 (Dept. 50) is transferred on an interim basis.

Respectfully submitted,



DR. FERNANDO CAMPOS
Executive Officer
Board of Public Works

Prepared By:



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Public Works Trust Fund Manager
Board of Public Works, Financial Mgmt.

REVIEWED AND APPROVED BY:



MIGUEL DE LA PENA, Director
Office of Accounting
Date: 02/01/2021

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(FC/NT: fc/nt/mp)