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May 9, 2016

RECEIVED
CITY CLERK'S OFFICE
2016 MAY -9 PM 5:14

City of Manhattan Beach
Attn: City Clerk
1400 Highland Av.
Manhattan Beach, CA 90266

Re: Petition to File Late Claim for Refund of Underground Utilities Money, or in the Alternative, Petition for Reconsideration of Rejected Claim

Dear Sir or Madam:

In late 2010, I submitted a claim to the City for the purpose of requesting a refund of an \$80,000 contribution that I made to the City in 2006 for the purpose of putting the issue of underground utilities in District 8 to a Proposition 218 vote. The basis for the refund is that the City never put the underground utility issue to a Prop 218 vote of District 8, as promised when I advanced the funds for that purpose. In late 2009, the City decided to dissolve District 8 without putting the underground utility issue to a vote.

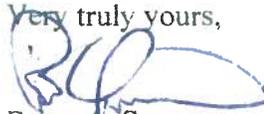
The claim that I submitted was rejected on the basis that it was not timely filed. The reason why the claim was not timely filed is that I was pursuing efforts to get the City to reconsider its position. I hereby request that I be permitted to file the claim as a late claim, or, in the alternative, that the City reconsider my rejected claim.

Attached is a copy of my proposed claim. As background for the claim, in 2006, I and other residents within District 8 of the City of Manhattan Beach sought to have electrical utilities within our district placed underground, as has been done throughout most of the coastal areas of Manhattan Beach. After initial surveying of District 8 residents revealed a simple majority in support of the underground utilities district, the City was reluctant to proceed with the anticipated \$80,000 in engineering costs that would be required before a Prop 218 vote could be taken. I agreed to provide the \$80,000 needed so that the matter could move forward to a Prop 218 vote. Attached is an excerpt of the minutes from the November 21, 2006 City Council meeting, covering the discussion of Agenda Item 14 (Report on Final Survey Results for Proposed Utility Underground Assessment Districts 8, 12, 13 and 14). The minutes show that

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the Council voted to “approve District 8 moving forward to a Proposition 218 vote and to accept the residents’ contribution of \$80,000 toward District 8 engineering costs.” However, the matter was never submitted to a Prop 218 vote and in 2009 District 8 was dissolved. I am now seeking a refund of the \$80,000 that I contributed since the City did not proceed as required by the terms of the contribution that I made.

Very truly yours,



Brian A. Sweeney

Enc.

Proposed Claim

In accordance with Government Code Section 910, I submit the following information:

(a) **Name and post office address of the claimant:** Brian A. Sweeney, 116 – 11th St., Manhattan Beach, CA 90266.

(b) **Post office address to which notices should be sent:** 116 – 11th St., Manhattan Beach, CA 90266.

(c) **Date, place and other circumstances of the occurrence:** As noted above, I provided \$80,000 to the City on November 21, 2006 for the purpose of putting the underground utility issue to a Proposition 218 vote in District 8. In or about October, 2009, the City Council dissolved District 8 without ever putting the matter to a Proposition 218 vote.

(d) **General description of the indebtedness:** As noted above, the City Council accepted the \$80,000 for the purpose of using the money for engineering costs required to putting the underground utility issue to a Proposition 218 vote in District 8. The City Council reneged on that obligation even though it used the funds that I contributed to pay for engineering costs.

(e) **Name(s) of the Public Employee(s) causing the injury:** The City Council caused the injury by dissolving District 8 without putting the matter to a Proposition 218 vote.

(f) **Amount of the Claim:** The amount claimed exceeds \$10,000 and if the matter proceeds to litigation, it will not be a limited civil case.

Respectfully submitted,



Brian A. Sweeney

VOID AFTER 90 DAYS

11-35/1210

2023516311

Bank of America 

Issuer: Bank of America, N.A., San Francisco, California

MATCH THE AMOUNT IN WORDS WITH THE AMOUNT IN NUMBERS



SN - 2023516311 B-0064 T-DAVID 01

***** 14 2006 IN EIGHTY THOUSAND DOLLARS AND 00 CENTS

Pay To The Order Of *****CITY OF MANHATTAN BEACH*****

UNRECORDED DISTRICT 0

FEE COLLECTED

[Empty box for fee collected]

PURCHASER:
BRIAN A. SENEY
VOID OVER \$20,000.00

Cashier's Check

NON-NEGOTIABLE
PURCHASER COPY

ISSUED IN US DOLLARS
Signature of Purchaser

NOTICE: This copy is your receipt and you should save it. If your check is lost, stolen or destroyed before the void date, you may be required to sign an indemnity agreement before we will provide a refund or replacement. Stops may be placed at any time after purchase. However, you are entitled to a refund until after 90 days from the purchase date provided that we are not otherwise required to pay the item or hold the funds. To obtain information regarding this check or to report a loss, contact Bank of America, N.A., San Francisco, California at 888.217.4038

Council continued discussion included whether District 8 should be dissolved or move forward, as well as the importance of making a decision and moving on. The Council considered the idea of accepting the \$80,000 donation from residents and moving forward with a Proposition 218 vote on District 8, with the understanding that the \$80,000 would be forfeited if the 60% threshold is not met.

MOTION: Councilmember Ward moved to dissolve District 8. The motion was seconded by Councilmember Fahey and passed by the following roll call vote.

Ayes: Fahey, Ward and Mayor Tell.
Noes: Montgomery and Aldinger.
Abstain: None.
Absent: None.

RECESS AND RECONVENE

At 8:09 p.m. the Council recessed and reconvened at 8:24 p.m. with all Councilmembers present.

Mayor Tell explained that, during discussion of Agenda Item 14 earlier this evening, he incorrectly related that the survey returns for District 8 were against utility undergrounding (61 households in favor and 60 against) and that he mistakenly applied the 60% threshold to District 8, when only a simple majority is necessary to move forward.

MOTION: Councilmember Fahey moved to reconsider Agenda Item 14 (Report on Final Survey Results for Proposed Utility Underground Assessment Districts 8,12, 13 and 14, and Consideration of an Appropriation of \$220,000 for Engineering Services for Districts 13 and 14). The motion was seconded by Councilmember Montgomery and passed by the following unanimous roll call vote:

Ayes: Montgomery, Fahey, Ward, Aldinger and Mayor Tell.
Noes: None.
Abstain: None.
Absent: None.

Senior Civil Engineer Katsouleas clarified that the Council's previous determination required a simple majority percentage of those voting, as well as a simple majority of the households for Districts 14 and below, and a 60% threshold of the number of households responding for Districts 15 and above, as long as the weighted vote is over 50%; that the District 8 survey returns included 61 households in favor, 60 households opposed and 17 households non-responsive (which equals a simple majority of 50.4% in support and 49.6% against); that District 8 could move forward to a Proposition 218 vote within one year; and that Districts 7, 9, 10 and 11 were previously dissolved.

MOTION: Mayor Pro Tem Aldinger moved to approve District 8 moving forward to a Proposition 218 vote and to accept the residents' contribution of \$80,000 toward District 8 engineering costs. The motion was seconded by Councilmember Montgomery and passed by the following roll call vote:

Ayes: Montgomery, Aldinger and Mayor Tell.
Noes: Fahey and Ward.
Abstain: None.
Absent: None.