

Agenda Report

TO: CITY COUNCIL

June 23, 2008

FROM: CITY MANAGER

SUBJECT: ADOPTION OF A RESOLUTION OF THE CITY OF PASADENA APPROVING THE EXECUTION AND DELIVERY OF NOT TO EXCEED \$75,000,000 AGGREGATE INITIAL PRINCIPAL AMOUNT OF REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2008, APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIFTH SUPPLEMENTAL TRUST AGREEMENT, A SUPPLEMENT NO.5 TO LEASE, A SUPPLEMENT NO. 5 TO SUBLEASE, A PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER RELATED DOCUMENTS, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT, APPROVING THE TERMINATION OF THE SWAP WITH AMBAC AND APPROVING OTHER RELATED ACTIONS IN CONNECTION THEREWITH.

RECOMMENDATION:

It is recommended that the City Council adopt a Resolution:

1) approving the execution and delivery of not to exceed \$75,000,000 aggregate initial principal amount of refunding certificates of participation, series 2008, approving the form of and authorizing the execution and delivery of a fifth supplemental trust agreement, a supplement to No. 5 to lease, a supplement No. 5 to sublease, a purchase agreement, a continuing disclosure agreement, and other related documents, authorizing the distribution of an official statement and approving other related actions in connection therewith.

2) Authorizing the termination of the existing SWAP with Ambac which was entered into in 2003 in connection with the issuance of the 2003 Variable Rate City Hall Certificates of Participation, including the authority to pay a termination fee to Ambac provided such payment, based upon the advise of underwriters, would be more than offset by interest rate savings on the certificates of participation.

BACKGROUND

In 2003 the City issued \$73.79 million Variable Rate Demand Certificates of Participation (City Hall and Park Improvement Project) in order to finance the City Hall seismic improvement and rehabilitation project. The Certificates of Participation (COPs) were issued with a AAA municipal bond insurance policy provided by Ambac.

The City simultaneously entered into a cost of funds swap agreement with Ambac when it issued the series 2003 COPs. The swap requires the City to pay a fixed rate of 4.12% to Ambac in exchange for variable rate payments. Unlike in the case of a London Interbank Offered Rate (LIBOR) based swap or Bond Market Association (BMA) Index based swap, the variable rate leg in the cost of funds swap is actually the interest rate paid on the City's variable rate COPs and therefore represents a perfect hedge. In this case, if the variable interest rate, which rests weekly, on the City's bonds is set below the 4.12% rate, the City makes up the difference by making a payment to Ambac and when the interest rate on the City's bonds exceed the 4.12% rate, Ambac pays the difference to the City. A Cost of Funds swap represents a perfect hedge but generally includes provisions converting the swap to an index under certain circumstances and gives the swap provider significant control over factors that may influence the City's cost of financing. Some of these factors include disruptions in the variable rate bond market and decline in the credit quality of the agency or the provider.

Impact of Sub-prime Mortgage crisis

The sub-prime mortgage crisis has had a far reaching impact in the capital markets. The increasing rate of defaults on sub-prime mortgages, which serves as collateral for asset-backed securities and collateralized debt obligations (CDOs), has created a chain reaction in the capital markets. Investment banks have written off billions in losses for the unsold inventories of such securities that continue to decline in value, while bond insurers have experienced downgrades due to insufficient capital reserves to cover mounting defaults on the loans they have guaranteed. This has resulted in a liquidity crisis in the financial markets that has severely impacted the auction rate market as well as the insured taxable and tax exempt variable rate bond market.

In the past months there has been wide-spread interest rate dislocation in the insured variable rate tax exempt market which gave rise to concerns of Ambac converting the City's 2003 cost of funds swap to an alternative floating rate swap, as is its right under the swap agreement. Should Ambac exercise its right to convert the swap, the City's cost of financing City Hall could increase significantly by as much as 2.50% rate as of June 2008 or approximately over \$1.8 million annually based on current interest rates.

Staff has negotiated an agreement with Ambac whereby Ambac has agreed to value the swap at BMA plus 32 basis points instead of market value. This formula will be in favor of the City by approximately \$2.3 million as of June 12, 2008. In other words, Ambac will write off \$2.3 million in return for terminating the swap. Ambac is willing to do this in order to reduce its financial exposure as it struggles to regain its position.

The market value of the swap fluctuates with changes in Treasury interest rates. Given the recent high interest rate volatility, the timing of the termination becomes of critical importance. Staff recommends termination of the swap when interest rates reach the break even point for the City at BMA plus 32 basis points or more. In other words, when the value of the swap results in a termination value of zero Dollar exchange or a gain to the City, then the City will terminate the swap.

Terminating the swap would leave the City with un-hedged variable rate bonds. Staff proposes to refinance these Variable Rate Demand Certificates of Participation with fixed rate bonds with the final maturity in 2038, five years beyond the original maturity. Given the level of current interest rates, it is anticipated that the all in true interest cost on a thirty year fixed rate bond will be approximately 4.85% to 5.0%. This will eliminate the City's exposure to fluctuations in interest rates and the risks associated with the existing Ambac swap associated with the COPs. Currently, the cost of the financing is 4.5% comprised of 4.12% for the fixed rate on the swap, 0.30% liquidity facility fee and 0.075% remarketing fee.

Prior to concluding the recommended refunding, staff has evaluated other proposals from investment bankers and advisors as well as evaluated alternative financing solutions which include issuing fixed rate bonds, variable rate bonds with a synthetic fixed rate by entering into a new LIBOR based swap, and amendments to the existing standby purchase agreement (liquidity facility) to ease investors' concerns.

The following are the advantages and disadvantages of the proposed financing:

Advantages:

- Refunding the Variable Rate COPs with fixed rate bonds permanently fixes the current problem;
- The proposed refunding eliminates the City's exposure to abnormal market rates and risks associated with the swap;
- The true interest rate on the new bonds is expected to be 4.85 -5.0%.
- Ambac will write off approximately \$2.3 million of the swap market value currently in its favor. The City would otherwise have to pay this amount in order to terminate the swap agreement.

Disadvantages:

- The City will lose the insurance from Ambac. The insurance premiums were paid in lump sum in 2003. The unamortized portion of the premium in the amount of \$514,988 is considered sunk cost;
- There is an estimated \$560,000 additional cost to cover the issuance cost and the underwriter's fee.

FISCAL IMPACT:

The refunding COPs will have a maximum term of 30 years with a final maturity in 2038. The certificates will be issued as fixed rate bonds with level debt service. The average annual debt service is estimated at \$4.65 million as compared to the current debt service of \$4.85 million. The level debt service structure will generate the lowest true interest cost on the financing at an estimated rate of 4.85%– 5.0% range. The following represents the estimated sources and uses of funds:

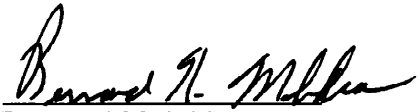
Sources:

Bond proceeds	\$72,930,000
Existing Reserve Fund	<u>4,836,374</u>
Total Sources	77,766,374

Uses:

Refunding escrow deposit	72,295,000
Reserve Fund	4,895,000
Cost of issuance	200,000
Underwriter's discount	375,000
Rounding	<u>1,374</u>
Total uses	\$77,766,374

Respectfully submitted,



Bernard Melekian
City Manager

Prepared by:



Vic Erganian
Acting Deputy Director of Finance

Approved by



Steve Mermell
Director of Finance

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA APPROVING THE EXECUTION AND DELIVERY OF NOT TO EXCEED \$75 MILLION AGGREGATE INITIAL PRINCIPAL AMOUNT OF REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2008C, APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIFTH SUPPLEMENTAL TRUST AGREEMENT, A SUPPLEMENT NO. 5 TO LEASE, A SUPPLEMENT NO.5 TO SUBLEASE, A PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER RELATED DOCUMENTS, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT AND APPROVING OTHER RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, in 1993, the City of Pasadena (the "City") financed and refinanced the acquisition and construction of certain public facilities and capital improvements through the sale and delivery of City of Pasadena 1993 Certificates of Participation (Refunding and Capital Projects) (the "1993 Certificates"), executed and delivered pursuant to a Trust Agreement, dated as of January 1, 1994 (the "1993 Trust Agreement"), by and among The Bank of New York Trust Company, N.A., as successor trustee (the "Trustee"), the Pasadena Civic Improvement Corporation (the "Corporation"), the obligations of which have been assumed by the Pasadena Public Financing Authority (the "Authority") as described below, and the City;

WHEREAS, the City leased certain real property, and the improvements thereto (the "1993 Property") to the Corporation pursuant to an Amended and Restated Lease, dated as of January 1, 1994 (the "1993 Lease"), and the City subleased the 1993 Property back from the Corporation pursuant to an Amended and Restated Sublease, dated as of January 1, 1994 (the "1993 Sublease");

WHEREAS, all rights to receive base rental payments payable by the City under the 1993 Sublease were assigned without recourse by the Corporation to the Trustee, pursuant to an Assignment Agreement, dated as of January 1, 1994 (the "1993 Assignment Agreement");

WHEREAS, in 1996, the City financed the acquisition and construction of certain public facilities and capital improvements (the "1996 Project") through the sale and delivery of City of Pasadena 1996 Certificates of Participation (Multi-Purpose Projects) (the "1996 Certificates") executed and delivered pursuant to a Trust Agreement, dated as of March 1, 1996 (the "1996 Trust Agreement"), by and among the Trustee, the Corporation and the City;

WHEREAS, in connection with the financing of the 1996 Project, the City and the Corporation added to the property leased under the 1993 Lease and 1993 Sublease certain real property and the improvements thereto pursuant to a Lease, dated as of March 1, 1996, constituting an amendment to the 1993 Lease (as amended, the "1996 Lease"), and a Sublease, dated as of March 1, 1996, constituting an amendment to the 1993 Sublease (as amended, the "1996 Sublease");

WHEREAS, all rights to receive base rental payments payable by the City under the 1996 Sublease were assigned without recourse by the Corporation to the Trustee, pursuant to an Assignment Agreement, dated as of March 1, 1996 (the "1996 Assignment Agreement");

WHEREAS, the City, the Corporation and the Authority have entered into an Assignment, Assumption and Consent Agreement, whereby the Corporation assigned to the Authority, with the consent of the City, all of its right, title and interest in, and its obligations under, and with respect to, the 1993 Lease, the 1993 Sublease, the 1993 Trust Agreement, the 1993 Assignment Agreement, the 1996 Lease, the 1996 Sublease, the 1996 Trust Agreement and the 1996 Assignment Agreement, and all other agreements and instruments executed by the Corporation, and property leased, in connection with the execution and delivery of the 1993 Certificates and the 1996 Certificates;

WHEREAS, in 2003, the City financed a portion of the costs of renovation of Pasadena City Hall and certain other public improvements (the "2003 Project") through the sale and delivery of City of Pasadena 2003 Variable Rate Demand Certificates of Participation (City Hall and Park Improvement Projects) (the "2003 Certificates"), executed and delivered pursuant to the Amended and Restated Trust Agreement, dated as of January 1, 2003 (the "Trust Agreement"), by and among the Trustee, the Authority and the City, and consented to by Ambac Assurance Corporation (the "Insurer");

WHEREAS, in connection with the financing of the 2003 Project, the Authority and the City entered into an Amended and Restated Lease, dated as of January 1, 2003 (the "Lease"), in order to amend and restate the 1993 Lease and the 1996 Lease, and entered into an Amended and Restated Sublease, dated as of January 1, 2003 (the "Sublease"), in order to amend and restate the 1993 Sublease and the 1996 Sublease, so as to increase the amount of base rental payments payable thereunder, and, in both cases, to make the provisions thereof applicable to the 2003 Project and to make certain other modifications in order to provide for the execution and delivery of Additional Certificates in accordance with the provisions of the 1996 Trust Agreement;

WHEREAS, the Authority and the Trustee entered into an Amended and Restated Assignment Agreement, dated as January 1, 2003 (the "Assignment Agreement"), in order to amend and restate the 1993 Assignment Agreement and the 1996 Assignment Agreement so as to expressly provide that all rights to receive the base rental payments payable by the City under the Sublease, including the increased amounts thereof provided for in the Sublease, were assigned without recourse by the Authority to the Trustee;

WHEREAS, the City entered into a swap agreement (the "Swap Agreement") in connection with the execution and delivery of the 2003 Certificates to provide a hedge with respect to interest rate risks on the 2003 Certificates;

WHEREAS, in 2004, the City refunded a portion of the 1993 Certificates and a portion of the 1996 Certificates through the sale and delivery of City of Pasadena Refunding Certificates of Participation, Series 2004A (the "2004A Certificates") and City of Pasadena Refunding Certificates of Participation, Series 2004B (the "2004B Certificates" and together with the 2004A Certificates, the "2004 Certificates"), executed and delivered pursuant to a First

Supplemental Trust Agreement, dated as of March 1, 2004 (the “First Supplemental Trust Agreement”), by and among the Trustee, the Authority and the City;

WHEREAS, the City and the Authority entered into a Supplement No. 1 to Lease and a Supplement No. 1 to Sublease in order to supplement the Lease and the Sublease, respectively, and so as to make the provisions thereof applicable to the 2004 Certificates;

WHEREAS, in 2006, the City financed the construction, expansion and renovation of the Pasadena Conference Center and certain other improvements through the sale and delivery of City of Pasadena Certificates of Participation (Conference Center Project), Series 2006A (the “2006A Certificates”) and City of Pasadena Certificates of Participation (Conference Center Project), Series 2006B (the “2006B Certificates” and together with the 2006A Certificates, the “2006 Certificates”) executed and delivered pursuant to a Second Supplemental Trust Agreement, dated as of September 1, 2006 (the “Second Supplemental Trust Agreement”), by and among the Trustee, the Authority and the City;

WHEREAS, the City and the Authority entered into a Supplement No. 2 to Lease and a Supplement No. 2 to Sublease in order to supplement the Lease and the Sublease, respectively, and so as to make the provisions thereof applicable to the 2006 Certificates;

WHEREAS, in April 2008, the City refunded the 2006B Certificates through the sale and delivery of City of Pasadena Variable Rate Demand Refunding Certificates of Participation, Series 2008A (the “2008A Certificates”), executed and delivered pursuant to a Third Supplemental Trust Agreement, dated as of April 1, 2008 (the “Third Supplemental Trust Agreement”), by and among the Trustee, the Authority and the City;

WHEREAS, the City and the Authority entered into a Supplement No. 3 to Lease and a Supplement No. 3 to Sublease in order to supplement the Lease and the Sublease, respectively, and so as to make the provisions thereof applicable to the 2008A Certificates;

WHEREAS, in May 2008, the City refunded the 2004 Certificates through the sale and delivery of City of Pasadena Refunding Certificates of Participation, Series 2008B (the “2008B Certificates”), executed and delivered pursuant to a Fourth Supplemental Trust Agreement, dated as of May 1, 2008 (the “Fourth Supplemental Trust Agreement”), by and among the Trustee, the Authority and the City;

WHEREAS, the City and the Authority entered into a Supplement No. 4 to Lease and a Supplement No. 4 to Sublease in order to supplement the Lease and the Sublease, respectively, and so as to make the provisions thereof applicable to the 2008B Certificates;

WHEREAS, the Trust Agreement provides that the City may at any time cause the execution and delivery of additional certificates payable on a parity with the outstanding 1993 Certificates, 2003 Certificates, 2006A Certificates, the 2008A Certificates and the 2008B Certificates, pursuant to a supplemental trust agreement;

WHEREAS, the City now desires to cause to be executed and delivered an additional series of certificates in an aggregate initial principal amount not to exceed \$75 million and designated as City of Pasadena Refunding Certificates of Participation, Series 2008C (the

“2008C Certificates”) for the purpose of refunding the outstanding 2003 Certificates, funding, if necessary, a deposit to a reserve fund and financing the costs of execution and delivery of the 2008C Certificates;

WHEREAS, the City also desires to terminate the Swap Agreement in connection with the refunding of the outstanding 2003 Certificates;

WHEREAS, the City has determined to appoint Sidley Austin, LLP as Special Counsel and Public Financial Management, Inc. as Financial Advisor for the 2008C Certificates transaction;

WHEREAS, the Trustee, the Authority and the City will enter into a Fifth Supplemental Trust Agreement (the “Supplemental Trust Agreement”), in order to provide for the execution and delivery of the 2008C Certificates;

WHEREAS, the City has determined to sell the 2008C Certificates as fixed rate certificates;

WHEREAS, the Authority and the City will enter into a Supplement No. 5 to Amended and Restated Lease (the “Lease Supplement”) and a Supplement No. 5 to Amended and Restated Sublease (the “Sublease Supplement”) in order to supplement the Lease and the Sublease, respectively, to increase the amount of base rental payments payable by the City under the Sublease and to make the provisions thereof applicable to the 2008C Certificates;

WHEREAS, the City, the Authority and De La Rosa & Co. and Wedbush Morgan Securities, Inc. (collectively, the “Underwriters”) will enter into a certificate purchase agreement for the 2008C Certificates (the “Purchase Agreement”) pursuant to which the Underwriter will purchase the 2008C Certificates and the City will cause the execution and delivery of the 2008C Certificates to the Underwriters upon certain conditions;

WHEREAS, the Underwriters will distribute an official statement (the “Official Statement”) relating to the 2008C Certificates to prospective purchasers of the 2008C Certificates;

WHEREAS, the City will execute and deliver a continuing disclosure agreement (the “Continuing Disclosure Agreement”) for the benefit of the Owners (as defined in the Trust Agreement) of the 2008C Certificates and in order to assist the Underwriters in complying with S.E.C. Rule 15c2-12(b)(5); and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND FOUND, by the City Council of the City that:

Section 1. Declaration and Findings of City Council. The City Council hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City, and that the statements, findings and determinations of the City set forth herein, in the preambles above and in the documents approved herein are true and correct.

The City Council hereby finds and determines that the maximum annual fair rental value of the Leased Property (as described in the Sublease Supplement) is not less than \$35,000,000 and upon completion of the improvements to the Pasadena Convention Center will not be less than \$50,000,000. In making such determination, the City has given consideration to variety of factors, including the replacement costs of existing improvements on the Leased Property, other obligations of the parties under the Sublease, the uses and purposes which may be served by the improvements on the Leased Property and the benefits therefrom which will accrue to the City and the general public.

Section 2. Approval of Financing. The execution and delivery by the Trustee of the 2008C Certificates fixed rate certificates in an aggregate initial principal amount not to exceed \$75 million, is hereby approved.

Section 3. Approval of Termination of Swap Agreement. The termination of the Swap Agreement relating to the 2003 Certificates is hereby approved. The City Manager or the Director of Finance or the City Treasurer is hereby authorized and directed for and on behalf of the City to execute and deliver any termination agreement or certificates requested by the swap counterparty as are reasonably required to evidence the termination of the Swap Agreement, in such form as shall be approved by Bond Counsel.

Section 4. Supplemental Trust Agreement. The form of Supplemental Trust Agreement presented to this meeting and on file with the City Clerk is hereby approved. The City Manager or the Director of Finance is hereby authorized and directed for and on behalf of the City, to execute and deliver said Supplemental Trust Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Lease Supplement. The form of Lease Supplement presented to this meeting and on file with the City Clerk is hereby approved. The City Manager or the Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver said Lease Supplement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. Sublease Supplement. The form of Sublease Supplement presented to this meeting and on file with the City Clerk is hereby approved. The City Manager or the Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver said Sublease Supplement in substantially said form, with such changes

therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. Continuing Disclosure Agreement. The form of the Continuing Disclosure Agreement presented to this meeting and on file with the City Clerk is hereby approved. The City Manager or the Acting Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver said Continuing Disclosure Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the acknowledgement and delivery thereof.

Section 8. Purchase Agreement. The form of Purchase Agreement presented to this meeting and on file with the City Clerk is hereby approved. The City Manager or the Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Purchase Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the acknowledgement and delivery thereof; provided, however, the Underwriter's discount provided therein shall not exceed 0.75% of the par amount of the 2008C Certificates, the maximum interest rate on the 2008C Certificates shall not be more than 5.5%, and the final maturity of the 2008C Certificates shall not exceed 30 years.

Section 9. Official Statement. The form of the preliminary Official Statement of the City relating to the 2008C Certificates presented to this meeting and on file with the City Clerk is hereby approved in substantially said form, with such changes therein as the City Manager or the Director of Finance may require or approve. The City Manager or the Director of Finance is hereby authorized to certify that the preliminary Official Statement, with such changes therein as the officer so certifying shall approve, are, as of their respective dates "deemed final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission. The City Manager or the Director of Finance is hereby authorized to execute for and on behalf of the City the final Official Statement, in substantially the form of the preliminary Official Statement, with such changes therein (and additions thereto to reflect the terms of the sale of the 2008C Certificates) as the City Manager or the Director of Finance shall approve, such approval to be evidenced by the execution and delivery thereof. The Underwriters are authorized to distribute copies of the preliminary Official Statements to persons who may be interested in the purchase of the 2008C Certificates, and the Underwriters are directed to deliver copies of any final Official Statement to all actual purchasers of the 2008C Certificates.

Section 10. Attestations. The City Clerk is hereby authorized and directed to attest the signature of the City Manager, the Director of Finance or such other City officers, as may be required or appropriate in connection with the execution and delivery or acknowledgement of said Supplemental Trust Agreement, Lease Supplement, Sublease Supplement, Purchase Agreement, Official Statement or related documents.

Section 11. Approval of Professionals. The appointment of Sidley Austin, LLP as Special Counsel and Disclosure Counsel is hereby approved;

Section 12. Other Actions. The City Manager, the Director of Finance, the City Clerk and the other 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 transactions contemplated and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, including, without limitation, any actions or the execution of any documents in connection with the securing by the City of any reserve fund deposit in connection with the 2008C Certificates. Such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 13. Effective Date. This Resolution shall take effect from and after its date of passage and adoption, and the authorization hereunder shall expire 180 days from the date of passage and adoption, unless the 2008C Certificates have been issued on or prior to such date.

ADOPTED at a special meeting of the City Council of the City of Pasadena on the ___ day of June, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

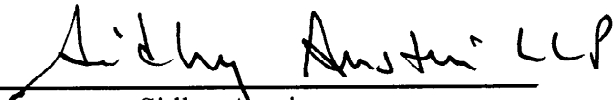
Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM:

for  *6/17/08*

Michele Beal Bagneris
City Attorney

APPROVED AS TO FORM:



Sidley Austin LLP