

Agenda Report

TO: CITY COUNCIL

January 12, 2009

THROUGH: FINANCE COMMITTEE

FROM: CITY MANAGER

SUBJECT: ADOPTION OF A RESOLUTION OF THE CITY OF PASADENA APPROVING THE AMENDMENT OF THE TRUST AGREEMENT AND THE STANDBY BOND PURCHASE AGREEMENT RELATED TO THE PASADENA PUBLIC FINANCING AUTHORITY TAXABLE VARIABLE RATE DEMAND LEASE REVENUE REFUNDING BONDS (PASEO COLORADO PARKING FACILITIES), SERIES 2008; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER RELATED DOCUMENTS AND APPROVAL OF OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

RECOMMENDATION:

It is recommended that the City Council adopt a Resolution approving the amendment of the Trust Agreement and the Standby Bond Purchase Agreement related to Pasadena Public Financing Authority Taxable Variable Rate Demand Lease Revenue Refunding Bonds (Paseo Colorado Parking Facilities), Series 2008; and authorizing the execution and delivery of other related documents and approval of other documents and actions in connection therewith.

BACKGROUND

In 2000 the Pasadena Public Financing Authority issued \$32,080,000 Taxable Variable Rate Demand Lease Revenue Bonds (Paseo Colorado Parking Facilities) Series 2000 (the "2000 Bonds") in order to finance certain improvements to the parking facilities and public property adjacent to and beneath the then existing Plaza Pasadena shopping center and finance the acquisition of the right, title and interest of H-CHH Associates, a California limited partnership (the Developer).

In August 2008, the Authority refunded the 2000 Bonds by the issuance of the 2008 series (the "2008 Bonds") and terminated the insurance on the bonds provided by Ambac. The 2008 Bonds were issued as variable rate demand bonds. The rate on the 2008 Bonds is reset weekly by the remarketing agent. The Authority, the City and KBC Bank, the liquidity bank, have entered into a Standby Bond Purchase agreement which provides for the purchase of 2008 Bonds that have not been remarketed upon the optional or mandatory tender for purchases thereof under the Trust Agreement. The liquidity facility is available at all times for the sole purpose of paying the purchase price of the 2008 Bonds.

During September 2008, the credit crisis intensified in the financial markets and the bonds were tendered to the remarketing agent. The remarketing agent has been unable to remarket the bonds from time to time, and such bonds have been tendered to the bank for purchase. As a result, the rate on the bonds purchased by the bank has increased to an initial rate 7.5% in accordance to the Standby Bond Purchase Agreement. As of today, credit conditions remain the same and there are very few investors willing to buy municipal bonds. As a result, a large portion of the bonds are still owned by the bank at high interest rates.

The Internal Revenue Service has ruled that the temporary purchase by the City of its tax exempt securities (through December 31, 2009) will not disturb their tax exempt status. The City Council already adopted its investment policy for fiscal year 2009 and included variable rate demand bonds as authorized investments. However, under the Trust Agreement, neither the City nor the Authority may purchase the 2008 Bonds for its own account from the Remarketing Agent, and under the Standby Bond Purchase Agreement, 2008 Bonds owned by the City would not be eligible to be purchased from moneys available under the Standby Bond Purchase Agreement. The recommended amendment of the Trust Agreement and the Standby Bond Purchase Agreement will enable the City to purchase the 2008 Bonds for its own account until such time the credit crisis subsides and liquidity comes back to the financial market.

FISCAL IMPACT:

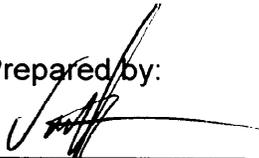
The City will potentially save annually up to \$980,000 in interest cost by purchasing the bonds in its own account.

Respectfully submitted,



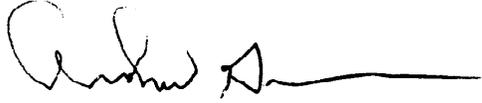
Michael J. Beck
City Manager

Prepared by:



Vic Erganian
Acting Deputy Director of Finance

Approved by:



Andrew Green
Director of Finance

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA APPROVING THE AMENDMENT OF THE TRUST AGREEMENT AND THE STANDBY BOND PURCHASE AGREEMENT RELATED TO THE PASADENA PUBLIC FINANCING AUTHORITY TAXABLE VARIABLE RATE DEMAND LEASE REVENUE REFUNDING BONDS (PASEO COLORADO PARKING FACILITIES), SERIES 2008; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER RELATED DOCUMENTS AND APPROVAL OF OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Pasadena Public Financing Authority (the "Authority") has heretofore issued its Taxable Variable Rate Demand Lease Revenue Refunding Bonds (Paseo Colorado Parking Facilities), Series 2008 (the "Bonds"); and

WHEREAS, pursuant to Section 4.01 of that certain trust agreement, by and between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), dated September 1, 2008 (the "Trust Agreement"), the Bonds may be tendered for purchase at the option of the holders upon seven (7) days' notice; and

WHEREAS, KBC Bank N.V., acting through its New York Branch (the "Bank") has entered into a standby bond purchase agreement (the "Standby Bond Purchase Agreement") with the Authority, the City of Pasadena, California (the "City"), and the Trustee to provide liquidity for the Bonds tendered for purchase which cannot be remarketed; and

WHEREAS, due to the financial crisis in the marketplace, Bonds have been tendered to the remarketing agent for the Bonds (the "Remarketing Agent," as defined in the Trust Agreement), the Remarketing Agent has been unable to remarket the Bonds from time to time, and such Bonds have been tendered to the Bank for purchase; and

WHEREAS, under the Trust Agreement, neither the City nor the Authority may purchase the Bonds for its own account from the Remarketing Agent; and

WHEREAS, under the Standby Bond Purchase Agreement, Bonds owned by the City or Authority would not be eligible to be purchased from moneys available under the Standby Bond Purchase Agreement; and

WHEREAS, the Authority and the Trustee wish to amend the Trust Agreement pursuant to a supplemental trust agreement (the "First Supplemental Trust Agreement") and the City wishes to amend the Standby Bond Purchase Agreement pursuant to an amendment ("Amendment No. 1 to Standby Bond Purchase Agreement"), in order to permit the City or the Authority or any affiliate thereof to purchase the Bonds from the Remarketing Agent and for such Bonds to be eligible for purchase by the Bank under the Standby Bond Purchase Agreement; 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 of Pasadena that:

Section 1. Declaration 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 in the preambles above and in the documents approved herein are true and correct.

Section 2. Amendment of the Trust Agreement. In connection with the Bonds, the City Manager or the Director of Finance or the duly authorized designee of either of such officers is hereby authorized and directed, for and in the name and on behalf of the City, to consent to the First Supplemental Trust Agreement, or to do any and all things and to execute and deliver any and all documents which such officer may deem necessary or advisable in order to consummate the First Supplemental Trust Agreement. The form of the First Supplemental Trust Agreement presented to this meeting and on file with the City Clerk is hereby approved.

Section 3. Amendment of the Standby Bond Purchase Agreement. In connection with the Bonds, the City Manager or the Director of Finance or the duly authorized designee of either of such officers is hereby authorized and directed, for and in the name and on behalf of the City, to amend the Standby Bond Purchase Agreement, as set forth in Amendment No. 1 to Standby Bond Purchase Agreement, or to do any and all things and to execute and deliver any and all documents which such officer may deem necessary or advisable in order to consummate Amendment No. 1 to Standby Bond Purchase Agreement. The form of Amendment No. 1 to Standby Bond Purchase Agreement presented to this meeting and on file with the City Clerk is hereby approved.

Section 4. 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 and to affix and attest the seal of the City, as may be required or appropriate in connection with the execution and delivery of said First Supplemental Trust Agreement and Amendment No. 1 to Standby Bond Purchase Agreement or related documents.

Section 5. 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 the First Supplemental Trust Agreement and Amendment No. 1 to Standby Bond Purchase Agreement. Such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 6. Effective Date. This Resolution shall take effect from and after its date of passage and adoption.

PASSED by the City Council of the City of Pasadena at a regular meeting this ___ day of January, 2009, by the following vote:

AYES:

NOES:

ABSENT:

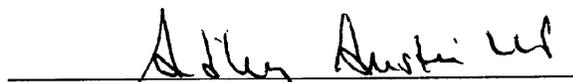
ATTEST:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:


Michele Beal Bagnieris
City Attorney

APPROVED AS TO FORM:


Sidley Austin LLP
Bond Counsel

FIRST SUPPLEMENTAL
TRUST AGREEMENT

by and between the

PASADENA PUBLIC FINANCING AUTHORITY

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

Dated as of January 1, 2009

relating to

\$28,800,000
Pasadena Public Financing Authority
Taxable Variable Rate Demand Lease Revenue Refunding Bonds
(Paseo Colorado Parking Facilities)
Series 2008

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FIRST SUPPLEMENTAL
TRUST AGREEMENT

THIS FIRST SUPPLEMENTAL TRUST AGREEMENT (the "First Supplement"), is made and entered into as of January 1, 2009, by and between PASADENA PUBLIC FINANCING AUTHORITY (the "Authority") and WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Authority and the Trustee entered into a Trust Agreement, dated as of September 1, 2008 (the "Trust Agreement"), to provide for the issuance of the Authority's Taxable Variable Rate Demand Lease Revenue Refunding Bonds (Paseo Colorado Parking Facilities), Series 2008 (the "Bonds"); and

WHEREAS, the Authority and the Trustee a desire to amend the Trust Agreement to provide for the purchase of Bonds from the Remarketing Agent (as defined in the Trust Agreement) by the Authority, or any person who controls, is controlled by, or under common control with, the Authority; and

WHEREAS, Section 13.01 of the Trust Agreement provides for the amendment of the Trust Agreement under certain conditions described therein;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. Definitions. All terms used herein which are defined in the Trust Agreement shall have the meanings assigned to them therein.

Section 2. Amendment of Section 4.05(A) of the Trust Agreement. Section 4.05(A) of the Trust Agreement is hereby amended by replacing it in its entirety with the following:

(A) Upon notice of the tender for purchase of Bonds, the Remarketing Agent shall offer for sale and use its best efforts to sell such Bonds at a price equal to the principal amount thereof plus accrued interest thereon, if any, any such sale to be made on the date of such purchase in accordance with Section 4.01 or 4.02. Any Bond which is tendered for purchase pursuant to Section 4.01 after such Bond has become subject to mandatory tender for purchase pursuant to Section 4.02(A) or 4.02(B), shall be sold by the Remarketing Agent only to a purchaser who specifically agrees in writing that such Bond is so subject to mandatory tender for purchase on the applicable Mandatory Tender Date and agrees to hold such Bond only to such Mandatory Tender Date. The Remarketing Agent shall not be obligated to remarket Bonds during a Weekly Rate Period if the Liquidity Facility is not in full force and effect.

Section 3. Amendment of Section 10.02 of the Trust Agreement. Section 10.02 of the Trust Agreement is hereby amended by replacing the first paragraph of such section with the following:

Section 10.02. Qualifications of Remarketing Agent; Resignation; Removal. The Remarketing Agent shall be a member of the National Association of Securities Dealers, having a combined capital stock, surplus and undivided profits of at least \$5,000,000 and authorized by law to perform all the duties imposed upon it by this Trust Agreement. A Remarketing Agent may at any time resign and be discharged of the duties and obligations described in this Trust Agreement by giving at least 60 days' notice to the Authority, the Trustee, the Tender Agent and the Liquidity Bank. Successor Remarketing Agents may be appointed from time to time by the Authority with the written consent of the Liquidity Bank. A Remarketing Agent may be removed at any time by the Authority upon written notice to such Remarketing Agent, the Trustee, the Tender Agent, the Liquidity Bank and the City, so long as a successor Remarketing Agent shall have assumed the duties thereof by the effective date of such removal.

Section 4. Requirements of Section 13.01 To Modify the Trust Agreement. Pursuant to Section 13.01 of the Trust Agreement, (i) by their signatures hereto, the City and the Liquidity Bank have given their written consent to modify the Trust Agreement with this First Supplement and (ii) the Trustee has received a written representation from the Authority to the effect that this First Supplement will not materially and adversely affect the interests of the Owners of the Bonds.

Section 5. Notice Required by Section 15.08 of the Trust Agreement. Pursuant to Section 15.08 of the Trust Agreement, the Trustee hereby agrees to notify S&P and Fitch of the amendment of the Trust Agreement by this First Supplement.

Section 6. Full Force and Effect. All other provisions of the Trust Agreement shall remain in full force and effect.

Section 7. Effective Date. This First Supplement shall become effective as of the date above.

Section 8. Governing Law. This First Supplement shall be governed by and construed in accordance with the Constitution of the State of California and the laws applicable to contracts made and performed in the State of California.

Section 9. Invalidity of Certain Provisions. In case any one or more of the provisions contained in this First Supplement should be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions contained in this First Supplement and, to the extent and only to the extent that any such provision is invalid, illegal or unenforceable, this First Supplement shall be construed as if such provision had never been contained herein.

Section 10. Execution of Several Counterparts. This First Supplement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to

be an original, and any and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority, the Trustee, the City and the Liquidity have each caused this First Supplement to be executed or consented to in their respective names by their respective duly authorized officers, as of the date first above written.

PASADENA PUBLIC FINANCING
AUTHORITY

By: _____
Executive Director

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
as Trustee

By: _____
Authorized Officer

Consented to by:

CITY OF PASADENA, CALIFORNIA

By: _____
City Manager

KBC BANK N.V., acting through its New York Branch,
as the Liquidity Bank

By: _____
Authorized Officer

By: _____
Authorized Officer

AMENDMENT NO. 1 TO
STANDBY BOND PURCHASE AGREEMENT

Dated as of January 1, 2009

By and Among

PASADENA PUBLIC FINANCING AUTHORITY,

CITY OF PASADENA, CALIFORNIA,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

and

KBC BANK N.V.,
acting through its New York Branch

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AMENDMENT NO. 1 TO
STANDBY BOND PURCHASE AGREEMENT

THIS AMENDMENT NO. 1 TO STANDBY BOND PURCHASE AGREEMENT (the "Amendment No. 1"), is made and entered into as of January 1, 2009, among PASADENA PUBLIC FINANCING AUTHORITY (the "Authority"), CITY OF PASADENA, CALIFORNIA (the "City"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee (the "Trustee"), and KBC BANK N.V., acting through its New York Branch (the "Bank").

WITNESSETH:

WHEREAS, the Authority, the City, the Trustee and the Bank entered into a Standby Bond Purchase Agreement, dated as of September 1, 2008 (the "Agreement"), to establish a standby purchase facility (the "Facility") for the purchase of the Authority's Taxable Variable Rate Demand Lease Revenue Refunding Bonds (Paseo Colorado Parking Facilities), Series 2008 (the "Bonds") that have been tendered and cannot be remarketed as provided for in the Trust Agreement, dated as of September 1, 2008 (the "Trust Agreement"); and

WHEREAS, the Authority, the City, the Trustee and the Bank desire to amend the Agreement to provide for the Bank's purchase, pursuant to the Facility, of Bonds registered in the name of the Authority or the City or any affiliate thereof with the Bank's approval that have been tendered and cannot be remarketed as provided for in the Trust Agreement; and

WHEREAS, Section 8.8 of the Agreement provides for the amendment of the Agreement under certain conditions described therein;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. Definitions. Unless changed by this Amendment No. 1, all terms used herein which are defined in the Agreement shall have the meanings assigned to them therein.

Section 2. Amendment of Section 1.1. Section 1.1 of the Agreement is hereby amended by adding or replacing the following definitions, as applicable:

"Control Person" means the Authority or the City or any affiliate thereof.

"Effective Date" means the second Business Day following the Bank's receipt of notice from a Control Person pursuant to Section 2.17 hereof.

"Eligible Bonds" means Bonds which bear interest at a Weekly Rate and which are not Bank Bonds or Bonds registered in the name of a Control Person, provided, however, that Eligible Bonds shall include any Bonds purchased by a Control Person pursuant to Section 2.17 hereof.

Section 3. Amendment of Section 2.2(c). Section 2.2(c) of the Agreement is hereby amended by inserting the underlined text as follows:

(c) *Purchase Notices*. Prior to 12:00 noon (New York time) on any Business Day on which a Bank Bondowner holds Bank Bonds, unless the Bank has delivered a Notice of Termination, the Remarketing Agent may deliver a notice (a "Purchase Notice") to a Bank Bondowner as registered on the bond register pursuant to the Trust Agreement (and, if held as Book Entry Bonds, then through DTC Procedures) and to the Bank, stating that it has located a purchaser (the "Purchaser") for some or all of such Bank Bonds, and if such Purchaser is a Control Person, expressly stating such fact, and that such Purchaser desires to purchase on the Business Day following the date on which a Bank Bondowner receives, prior to 12:00 Noon (New York time), a Purchase Notice (a "Sale Date"), an authorized denomination of such Bonds at a price equal to the principal amount thereof plus unpaid accrued interest thereon, if any, received by the Bank with respect thereto in accordance with the Trust Agreement (the "Sale Price"), any accrued interest thereon to be paid by the City and the Authority on the Sale Date as provided in Section 3.1(a) hereof. The Bank shall have no obligation to deliver the Bank Bonds as directed by the Remarketing Agent unless the City or the Authority has paid or duly provided for the payment of the Differential Interest Amount to the Bank.

Section 4. Addition of Section 2.17. The Agreement is hereby amended by adding Section 2.17 as follows:

Section 2.17. Purchase of Bonds by a Control Person. If at any time while this Agreement is in effect, a Control Person determines that it is in the best interests of such Control Person to purchase Bonds being remarketed by the Remarketing Agent, including Bank Bonds, then such Control Person shall provide notice to the Bank stating that such Control Person desires to purchase Bonds from the Remarketing Agent. If the Bank has not provided notice of its objection to such purchase by 5:00 p.m. (New York time) on the Effective Date, then any Bonds purchased by such Control Person from time to time after the Effective Date and until such notice is rescinded by such Control Person shall constitute Eligible Bonds under this Agreement.

Section 5. Notice Required by Section 8.8 of the Agreement. Pursuant to Section 8.8 of the Agreement, the Authority hereby agrees to notify the Rating Agency of this Amendment.

Section 6. Full Force and Effect. All other provisions of the Agreement shall remain in full force and effect.

Section 7. Effective Date. This Amendment No. 1 shall become effective as of the date above.

Section 8. Governing Law. The laws of the State of New York shall govern this Amendment No. 1.

Section 9. Severability. In case any one or more of the provisions contained in this Amendment No. 1 should be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions contained in this Amendment

No. 1 and, to the extent and only to the extent that any such provision is invalid, illegal or unenforceable, this Amendment No. 1 shall be construed as if such provision had never been contained herein.

Section 10. Execution of Several Counterparts. This Amendment No. 1 may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and any and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority, the City, the Trustee and the Bank have each caused this Amendment No. 1 to be executed in their respective names by their respective duly authorized officers, as of the date first above written.

PASADENA PUBLIC FINANCING
AUTHORITY

By: _____
Executive Director

CITY OF PASADENA, CALIFORNIA

By: _____
City Manager

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
as Trustee

By: _____
Authorized Officer

KBC BANK N.V., acting through its New York
Branch

By: _____
Authorized Officer

By: _____
Authorized Officer