THE CITY OF SAN DIEGO

# REPORT TO THE CITY COUNCIL

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| DATE ISSUED: | December 21, 2006 | REPORT NO. 06-193 |
| ATTENTION: | Council President and City Council<br>Docket of January 16, 2007 | |
| SUBJECT: | Refunding of the Ballpark Bonds | |
| REFERENCE: | City Manager's Report No. 03-148, dated July 16, 2003 | |

REQUESTED ACTIONS:

Authorize the issuance of refunding bonds (the "Refunding Ballpark Bonds") by the Public Facilities Financing Authority in an amount not to exceed $172,000,000 and related financing documents, to refund the previously issued $169,685,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) (the "Original Ballpark Bonds"). The related financing documents would include an Amended and Restated Site Lease, an Amended and Restated Ballpark Facility Lease, a Second Reaffirmation of Assignment Agreement, an Indenture, Escrow Instructions, a Purchase Agreement, and a Continuing Disclosure Certificate. Also authorize the City Attorney to appoint Nixon Peabody LLP for bond counsel services and Hawkins, Delafield, & Wood LLP for disclosure counsel services, and to pay fees for such services in amounts not to exceed $280,000 and $100,000, respectively, plus expenses in each case not to exceed $5,000.

STAFF RECOMMENDATION – Approve the requested actions.

SUMMARY:

## I. BACKGROUND

A. Original Ballpark Bonds

The Original Ballpark Bonds were issued on February 15, 2002 under a Lease Revenue Bond structure. Lease Revenue Bonds are based on a lease, lease-back arrangement between two entities: a governmental entity (the City) and a joint powers authority ("JPA"), which issues the bonds. JPAs have broad powers to issue bonds for a variety of public purposes under the Joint

Exercise of Powers Law found in the California Government Code.

The Original Ballpark Bonds were issued by the Public Facilities Financing Authority (the "Authority"), which was established in 1991 through a Joint Exercise of Powers Agreement between the City and the City's Redevelopment Agency. The City leases the Ballpark Facility to the Authority under a Site Lease (the "Site Lease"), and the Authority then leases the Ballpark Facility back to the City under a Facility Lease (the "Facility Lease"). The lease payments paid by the City are assigned by the Authority to the Trustee for the bonds (Wells Fargo Bank, N.A., which would also be the Trustee for the refunding bonds) under the Assignment Agreement. The Trustee is then obligated to use the lease payments to make bond principal and interest payments. The "Ballpark Facility" consists of the Ballpark and the outfield park located adjacent to the Ballpark, and the respective site. Padres L.P. owns certain identified components of the Ballpark, which are excluded from the leasing arrangement set forth above, but that does not affect the basic structure of the bond transaction.

The City's obligation to make lease payments to the Authority is not debt that requires voter approval. It is considered a contingent obligation because it is subject to abatement, meaning that the City is not legally mandated to make lease payments unless it has use and occupancy of the Ballpark Facility. The City is required to budget and make lease payments from any general funds legally available to it, but the requirement to make lease payments is not one for which the City is obligated to levy or pledge any form of taxation.

The Original Ballpark Bonds provided a portion of the funding for the Ballpark Project. A Certificate of Occupancy for the Ballpark Facility was issued in February 2004.

B. Pricing Impacts on Original Ballpark Bonds

There was significant litigation outstanding when the Original Ballpark Bonds were issued that caused legal uncertainty over the validity and tax-exempt status of the bonds. The pendency of the litigation caused the bonds to be issued with a qualified bond counsel opinion. This was unusual because municipal bonds are typically issued with an unqualified legal opinion that the bonds are valid and exempt from taxation.

To facilitate the sale of the Original Ballpark Bonds, the City obtained municipal bond insurance to guaranty the payment of debt service on the bonds in the event the City could not pay for any reason. Ambac Assurance Corporation ("Ambac"), one of the major municipal bond insurers, provided bond insurance on the Original Ballpark Bonds. The insurance premium paid to Ambac was a non-refundable premium, paid at the time of issuance, and reflected the heightened risk the insurer was taking. However, Ambac agreed to issue a Forward Commitment for Bond Insurance (the "Forward Commitment"), under which Ambac would provide bond insurance in connection with a refunding of the Original Ballpark Bonds without additional premium provided certain conditions set forth in the Forward Commitment could be met by the City.

The Original Ballpark Bonds were sold through a contract of purchase with Merrill Lynch & Co. ("Merrill Lynch"), and, subject to certain restrictions, Merrill Lynch was permitted to place the

Original Ballpark Bonds with a limited group of institutional investors (it is believed that an affiliate of Merrill Lynch currently owns the bonds). Merrill Lynch purchased the Original Ballpark Bonds at a time of significant legal uncertainty. While the municipal bond insurance mitigated most of the uncertainty, it could not mitigate the impact of tax status uncertainty. That is, bond insurance would cover a shortfall in debt service due on the bonds, but would not reimburse bondholders for federal and state income taxes due if the bonds were deemed taxable as a result of the litigation.

Due to the circumstances described above, the average coupon rate (7.66%) paid to the holders of the Original Ballpark Bonds was considerably above other insured, tax-exempt Lease Revenue Bonds issued at the time. However, it was anticipated that as soon as the outstanding litigation related to the bonds was favorably resolved to the City, bond counsel could issue an unqualified legal opinion and the Original Ballpark Bonds could be refunded with bonds bearing a lower rate of interest. Accordingly, the Original Ballpark Bonds were structured with a three year par call. Tax-exempt Lease Revenue Bonds are typically issued with ten-year call protection, and the earlier call date also impacted the rate for the Original Ballpark Bonds.

C. <u>Prior Refunding Plan and Authorization</u>

In August of 2003, the City Council adopted a financing ordinance and related documents to refund the Original Ballpark Bonds in a public offering. The Court of Appeal had found in favor of the City on the litigation described above and no appeal had been taken to the California Supreme Court. It was understood that the new bonds could be issued with an unqualified legal opinion. Prior to the pricing of the refunding bonds, however, the City became aware of certain errors with respect to its 2002 Comprehensive Annual Financial Report ("CAFR") and the refunding was put on hold.

In calendar years 2004 and 2005, City staff explored the feasibility of refunding the Original Ballpark Bonds. A competitive selection process was conducted in August 2004 to select an underwriting team for a negotiated sale of refunding bonds. Through this process, Banc of America Securities LLC was selected as the senior managing underwriter.

At this time, and as described below, it is possible for the City to move forward with the issuance of the Refunding Ballpark Bonds in a manner that would result in significant savings to the City. Given the passage of time and proposed changes to the refunding, it was thought advisable to obtain current authorization for the issuance of the Refunding Ballpark Bonds and the related financing documents.

## <u>II. DISCUSSION:</u>

### Proposed Plan of Refunding:

<u>A. Insured Fixed Rate Lease Revenue Refunding Bonds</u>

The City's current Financing Team for the Refunding Ballpark Bonds includes staff of the

Department of Finance, including the Chief Financial Officer, the Debt Management Department, and the City Auditor and Comptroller's Office, the City Attorney's Office, and outside consultants, including a financial advisor (Kitahata & Company), bond counsel (Nixon Peabody LLP), disclosure counsel (Hawkins, Delafield, & Wood LLP), structuring agent and purchaser (Banc of America Securities LLC and Bank of America N.A., respectively), and purchaser's counsel (Fulbright & Jaworski LLP).

As more fully described below, the Financing Team for the Refunding Ballpark Bonds has discussed and analyzed a method of sale (the "Private Placement Structure") involving a direct purchase of refunding bonds by Bank of America N.A. ("Bank of America"), an affiliate of Banc of America Securities LLC (and both subsidiaries of Bank of America Corporation). The City's disclosure counsel and the City Attorney's Office have advised that the City's CAFRs should be current before the City enters the public markets. By structuring the refunding as a Private Placement, the City could proceed with an offering in the near term, rather than wait until the City is current with its CAFRs.

As contemplated in 2003, fixed rate Lease Revenue Refunding Bonds would be issued utilizing the same lease, lease-back structure described above with respect to the Original Ballpark Bonds. The Refunding Ballpark Bonds would be insured by Ambac. Although Ambac had issued its Forward Commitment under which no additional premium would be payable in connection with a refunding of the Original Ballpark Bonds, that commitment also required the City's financial information to be current at the time of the refunding bond sale. In addition, the Forward Commitment, as amended in January 2006 just prior to its original expiration date, is now set to expire on January 15, 2007. Although the City will not be in a position to exercise the Forward Commitment, Ambac has agreed to issue a new commitment for bond insurance which would allow the City to move forward with the Private Placement Structure for a new one-time premium of .90% of the total debt service on the Refunding Ballpark Bonds (approximately $2.5 million).[1] The premium on the Original Ballpark Bonds was 1.35% of total debt service.

B. Method of Sale

Under the proposed structure, the Refunding Ballpark Bonds would be privately placed with Bank of America through a direct purchase. No disclosure document, or official statement, would be required or provided. The Securities and Exchange Commission ("SEC") rules that require the preparation of a disclosure document would not apply to the proposed structure because the issuance would be a private placement to one buyer and not to the general public. Bank of America would be required to represent, among other things, that it: (1) has such knowledge and experience in financial and business matters and that it is capable of evaluating the merits and risks of the prospective investment in the Refunding Ballpark Bonds; (2) has conducted its own investigation into the merits and risks of its investment in the Refunding Ballpark Bonds and has received all information it deems necessary to make an informed

[1] The premium required by Ambac is based on a sliding scale and depends on whether Standard & Poor's ("S&P") has restored its ratings of the City's credit, and to what level, at the time the refunding bonds are issued. The City would pay 90 basis points if the S&P credit ratings are not restored at the time of bond issuance.

investment decision; (3) is purchasing the Refunding Ballpark Bonds for its own account or for resale to an affiliated entity; (4) acknowledges that there are restrictions on the transfer of the bonds; and (5) understands that the City is not current with its CAFRs.

The Refunding Ballpark Bonds would also be issued with certain resale restrictions. Specifically, for a six-month period commencing with the closing of the bonds, Bank of America could only transfer or sell the Refunding Ballpark Bonds to an affiliated entity that must execute a letter (the "Investor Letter") containing substantially the same representations required of Bank of America when it initially purchases the bonds, as described above. The agreement with Bank of America would also specify that after the six month period and up to three years after the closing of the bonds, Bank of America could only sell or transfer the bonds to Qualified Institutional Buyers ("QIBs"), as defined under Rule 144A of the Securities Act of 1933, in addition to affiliated entities. In general, QIBs include large insurance companies, banks, and investment companies that own and invest on a discretionary basis at least $100 million in securities. Any sale that occurs during this time-frame would also require execution of an Investor Letter by the new investor. Upon the third anniversary of the issuance of the Refunding Ballpark Bonds, the transfer restrictions lapse.

By approaching the financing in the manner described above, the City could proceed with the financing at this time. The Private Placement Structure, including the associated resale restrictions, addresses the issue of potential secondary market impacts related to the lack of current financial information about the City and would be in compliance with SEC rules regarding preparation of a disclosure document.

C. Bond Issuance Size – Sources and Uses of Funds

Based upon current estimates, the par amount of the Refunding Ballpark Bonds would be approximately $156.4 million. This amount, in addition to an original issue premium paid by Bank of America for the bonds as well as certain funds available in connection with the Original Ballpark Bonds would fund the Escrow Fund, a portion of a required debt service reserve fund ("DSRF"), and the costs to issue the refunding bonds. The Original Ballpark Bonds became currently callable as of February 15, 2005. As a result, the Escrow Fund would provide funds to redeem the Original Ballpark Bonds, including accrued interest payments due on the outstanding bonds prior to redemption, during a 30 day escrow period as required under the notice provisions of the financing documents for the Original Ballpark Bonds. The table below provides a breakdown of the Sources and Uses of Funds, and is followed by additional information with respect to some of its components.

## Sources and Uses of Funds*

Estimated Sources:

| | |
|---|---|
| Par Amount of Refunding Ballpark Bonds | $ 156,370,000 |
| Original Issue Premium paid by Bank of America | $ 9,858,000 |
| Release of Original Ballpark Bonds Debt Service Reserve Fund | $ 7,520,000 |
| TOTAL: | $ 173,748,000 |

Estimated Uses:

| | |
|---|---|
| Escrow Fund to Defease Original Ballpark Bonds | $ 166,198,000 |
| Debt Service Reserve Fund for Refunding Ballpark Bonds | $ 3,926,000 |
| Costs of Issuance** | $ 3,624,000 |
| TOTAL: | $ 173,748,000 |

* Preliminary, subject to change.
** Costs of Issuance include legal fees, consultant costs, title insurance, bond insurance, Bank of America structuring fee, and certain other expenses related to the issuance of the bonds.

### Premium Bonds

While the outstanding principal on the Original Ballpark Bonds would be $165.3 million at the time it is anticipated the refunding bonds would be issued, it is estimated the par amount of the Refunding Ballpark Bonds would be $156.4 million.[2] This is due in part to Bank of America's proposal that the bonds be issued as premium bonds, which has been a coupon structure attractive to institutional investors in the municipal market over the last few years. This results in Bank of America paying an original issue premium to the City. An original issue premium is the amount by which the price paid for the bonds exceeds the par value of the bonds, and is generally paid in exchange for a higher bond coupon rate. Under the proposed structure, the premium paid by Bank of America would result in a higher average coupon on the bonds than for a structure that does not include premium bonds; however, the higher interest rate would be offset by the lower par (borrowing) amount because the original issue premium is an upfront source of funds for the financing. The true interest cost ("TIC")[3] on the bonds would essentially be equivalent to the TIC for a structure that does not include premium bonds.

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[2] Under current market conditions, it is estimated that the principal amount of the Refunding Ballpark Bonds would be $156.4 million. However, authority to issue up to $172.0 million (which is 10% above $156.4 million) is being requested as a cushion in the event market conditions significantly change.
[3] The true interest cost is a measure of the interest cost of an issue that accounts for the time value of money and the costs of issuance relating to the bonds. It is distinguished from the coupon rate that is paid to the holder of a bond.

**Debt Service Reserve Fund (DSRF) - Surety Bond**

The DSRF is established at the time of issuance to benefit the bondholder and is held by the Trustee. It is available and may be drawn upon by the Trustee to make principal and interest payments if there are insufficient funds available to make such payments. A typical DSRF would be established in an amount equal to the maximum annual debt service on the bonds, and could be funded with cash and/or a surety bond policy. A surety bond policy is a commitment issued by a municipal bond insurance company that is deposited into the DSRF in lieu of cash, and, like a DSRF, offers security for a bond issue. The surety provides that, in the event a required bond payment is not made on a timely basis, monies would be advanced by the bond insurer to make the payment up to the amount of the surety bond policy. The monies advanced must then be repaid by the issuer to the bond insurer.

The DSRF for the Original Ballpark Bonds is approximately equal to one year of debt service ($15.0 million), and is provided through a combination of cash, which covers one-half of the original reserve requirement (approximately $7.5 million) and a surety bond provided by Ambac (the "Surety Commitment") covering the remaining one-half of the requirement ($7.5 million). The financing documents approved for the Original Ballpark Bonds and for the proposed Refunding Ballpark Bonds authorize the use of a surety for some or all of the DSRF. Ambac, under its Surety Commitment issued in connection with the Original Ballpark Bonds, agreed to transfer the existing surety to the Refunding Ballpark Bonds at no additional cost. Due to the fact that the annual debt service will be lower for the Refunding Ballpark Bonds (approximately $11.3 million) than for the Original Ballpark Bonds ($15.0 million), the surety provided by Ambac ($7.5 million) would now cover approximately two-thirds of the DSRF requirement, leaving only $3.9 million to be cash funded. The difference between the cash funded portion of the Original Ballpark Bonds and the cash funded portion of the Refunding Ballpark Bonds would be applied to the refunding of the Original Ballpark Bonds and would reduce the principal amount of the new bonds by the same amount.

D. Pricing of Refunding Ballpark Bonds and Savings Amounts

Under current market conditions as of December 12, 2006, the estimated TIC and average coupon rate on the Refunding Ballpark Bonds is approximately 4.78% and 5.23%, respectively; the estimated annual lease payment would be approximately $11.3 million. By contrast, the comparable interest rates on the Original Ballpark Bonds are 8.53% (TIC) and 7.66% (average coupon), and the average annual lease payment is $15.0 million. (The actual interest rates and average lease payment amounts for the Refunding Ballpark Bonds would be determined at the time of the bond sale.) This translates into estimated savings of approximately $3.7 million per year, and gross and net present value savings of $92.9 million, and $51.5 million, respectively, over the term of the bonds. The term of the bonds is 25 years (the final maturity of the Refunding Ballpark Bonds would be 2032, which is the same as the maturity of the Original Ballpark Bonds).

The following table provides a financing comparison between the Original Ballpark Bonds and the proposed Refunding Ballpark Bonds.

**FINANCING COMPARISON**

| | Original Ballpark Bonds | Refunding Ballpark Bonds (Estimate) |
|---|---|---|
| Issuance Size | $169.7 Million | $156.4 Million |
| Annual Lease Payment | $15.0 Million | $11.3 Million |
| True Interest Cost (TIC) | 8.53% | 4.78% |
| Average Coupon | 7.66% | 5.23% |
| Maturity Date | 2032 | 2032 |
| Total Debt Service* | $376.0 Million | $283.0 Million |

* For the Original Ballpark Bonds, the Total Debt Service figure reflects the amount remaining following the payment of debt service due on February 15, 2007.

The pricing on the Refunding Ballpark Bonds is based on the Municipal Markets Data AAA Index (the "MMD Index," which is a national index of AAA rated municipal bonds) plus .55% (55 basis points). Under current conditions in the California insured municipal market, general fund Lease Revenue Bonds would be expected to price at MMD Index plus approximately .20%. The .35% interest rate penalty ("Credit Penalty") stems from the fact that the bonds would be issued as a Private Placement with resale restrictions, and without disclosures and current CAFRs. Even with this Credit Penalty, the estimated net present value savings of $51.5 million (31.2% of refunded par) that could be achieved under the proposed plan of finance is well in excess of the industry threshold of 3% to 5% that issuers typically require in order to proceed with a refunding executed to generate economic savings.

**Public Offering Option**

Under the proposed plan of refunding, Bank of America would grant the City an option (the "Option"), which, if exercised by the City, would cause the Refunding Ballpark Bonds to be resold or revalued in a public offering subject to certain conditions. The City could exercise the Option for up to three years after the closing of the Refunding Ballpark Bonds, under the following conditions: (1) the City must provide a remarketing memorandum, or disclosure document, approved by the City Council; (2) all audited CAFRs that would customarily be available at the time of the initial bond sale must have been issued; and (3) the City must be in full compliance with respect to the Continuing Disclosure Certificate that would be executed in connection with the Refunding Ballpark Bonds, as more fully described below. If the Option is exercised by the City, the Refunding Ballpark Bonds would remain outstanding with the same coupon rates established when the bonds are initially issued but would be reoffered at then current prices to public investors. The City would receive a one time cash payment from Bank of America if the value of the Refunding Ballpark Bonds improves based on the credit spread on the bonds tightening relative to the MMD Index compared to the original credit spread on the bonds. This new lower credit spread would be expected to reflect the City becoming current with respect to its CAFRs and having a current disclosure document.

This Option would be solely the City's to exercise and gives the City an opportunity to capture additional refunding savings in the future. Based on the public re-offering, a Credit Spread Tightening Amount (CSTA) would be determined by calculating the change in price for each maturity of the bonds that is attributable to changes in the overall spread over the MMD Index from the time of issuance. This calculation is not impacted by movements in underlying interest rates. Presumably, the availability of financial information and the elimination of the transfer restrictions would result in a lower premium paid over the MMD Index. A total CSTA is derived by adding together the CSTAs for each maturity, and, of this total, the City would receive 60% from Bank of America. Given that the Option is solely the City's to exercise, there is no scenario under which the City would be liable for such a payment to Bank of America.

To illustrate the potential economics of the Option, it is assumed that the City could execute the Option in February 2008. In addition, it is assumed that the California market for insured general fund Lease Revenue Bonds would be unchanged (i.e., the spread for these factors remains at approximately plus .20% above the MMD Index), the City would be current with its CAFRs and continuing disclosure obligations, and the City's ratings would be restored sufficient to narrow the spread on the Refunding Ballpark Bonds to MMD + .20%. Based on these assumptions, the CSTA would be approximately $3.8 million of which the City's 60% share would be approximately $2.3 million. This payment would increase net present value savings from approximately $51.5 million (31.2% of refunded par) from the current private offering to $53.8 million (32.5% of refunded par). The actual payment could be different depending on whether conditions for the California market for insured general fund Lease Revenue Bonds have changed, and whether the Credit Penalty is completely eliminated at the time the Option is triggered. In addition, the City would expend funds in connection with the Option, including staff costs and outside counsel costs.

Importantly, if the City executes the Option, it does not utilize its advance refunding provision. That is, if interest rates decline in the future, the City still has the ability to generate savings through an advance refunding executed prior to the first call date on the Refunding Ballpark Bonds (the Refunding Ballpark Bonds are being issued with ten year call protection).[4]

[4] An advance refunding (as opposed to a current refunding) is a defeasance of outstanding debt at least 90 days prior to the date the bonds can be called by depositing cash and/or securities in escrow sufficient to pay all principal and interest payments when due up to, and including, the call date. Generally, following an initial issuance of bonds, an issuer may execute one advance refunding related to that initial issuance. The Refunding Ballpark Bonds are being issued as a current refunding (because the call date of February 15, 2005 has passed), thereby preserving the ability to do an advance refunding in the future.

E. Financing Ordinance and Documents

It is recommended that the City Council approve the requested actions, which would authorize the issuance of the Refunding Ballpark Bonds. The Financing Ordinance and documents that would be approved through the requested actions are described below:

**A. Financing Ordinance** – The Financing Ordinance authorizes the issuance of the Refunding Ballpark Bonds, the approval of the operative legal documents (described below), and any other actions of the Mayor and his designees that may be necessary to issue the Refunding Ballpark Bonds.

**B. The Financing Documents -** The financing documents include the Amended and Restated Site Lease, the Amended and Restated Ballpark Facility Lease, the Second Reaffirmation of Assignment Agreement, the Indenture, the Escrow Instructions, the Continuing Disclosure Certificate, and the Purchase Agreement. Additional information with respect to each document follows:

1. Amended and Restated Site Lease - The Amended and Restated Site Lease is the agreement between the City and the Authority under which the City leases the Ballpark Facility to the Authority. The primary provision being amended (as compared to the Site Lease for the Original Ballpark Bonds) is that the Amended and Restated Site Lease expressly includes the Ballpark and the Park, in addition to the Site, in the property description.

2. Amended and Restated Ballpark Facility Lease – The Amended and Restated Ballpark Facility Lease is an agreement between the City and the Authority under which the City leases the Ballpark Facility back from the Authority. The lease payments made by the City are equal to the principal and interest payments on the Refunding Ballpark Bonds issued by the Authority. The Amended and Restated Ballpark Facility Lease also contains certain covenants of the City including that it would take the necessary action to include all lease payments due under the lease in its operating budget each year and that it would comply with the provisions contained in the Continuing Disclosure Certificate. The primary provisions being amended (as compared to the Ballpark Facility Lease for the Original Ballpark Bonds) are those relating to the lease payments, reflecting the lower debt service on the Refunding Ballpark Bonds.

3. Second Reaffirmation of Assignment Agreement – The Second Reaffirmation of Assignment Agreement is an agreement between the Authority and the Trustee. Under the agreement, the Authority reaffirms its assignment to the Trustee of its rights to receive lease payments under the Amended and Restated Ballpark Facility Lease.

4. Indenture – The Indenture is an agreement between the Authority and the Trustee. Generally, it outlines the Authority's and the Trustee's responsibilities and obligations, and the rights of bondholders, with respect to the Refunding Ballpark

Bonds. The Indenture includes information regarding the amount of the bonds, the use of bond proceeds, and the nature of the security for bonds (i.e., that the bonds are limited obligations of the Authority payable from lease payments made by the City under the Ballpark Facility Lease). It sets forth the maturities and interest rates on the Refunding Ballpark Bonds, provides that the Trustee would establish and maintain certain funds and accounts, specifies how any funds (e.g., DSRF monies) would be invested, and how the DSRF would be utilized. Under the Indenture, the Authority makes certain covenants including that it would cause the principal and interest on the bonds to be paid punctually to the extent lease payment revenues from the City are available. In addition, the Indenture sets forth the transfer restrictions pertaining to the bonds.

5. Escrow Instructions – The Escrow Instructions govern the use and investment of funds deposited in the Escrow Fund. As described above, the Escrow Fund provides funds to redeem the Original Ballpark Bonds, including accrued interest payments due on the outstanding bonds prior to redemption during a 30 day escrow period required under the financing documents for the Original Ballpark Bonds.

6. Continuing Disclosure Certificate – The Continuing Disclosure Certificate ("CDC") specifies the information related to the Refunding Ballpark Bonds and the City that the City would be required to submit to a national information repository annually. The CDC for the Refunding Ballpark Bonds would not require the City to file such annual reports until the City is current with respect to its CAFRs and other General Fund annual continuing disclosure obligations. The contingent nature of this obligation is feasible because, under the proposed Private Placement Structure, the City is not required to file an annual report pursuant to SEC Regulation 15c2-12.

7. Purchase Agreement – The Purchase Agreement is an agreement among the City, the Authority, and the Purchaser, Bank of America, pursuant to which the Authority agrees to sell, and the Purchaser agrees to buy, the Refunding Ballpark Bonds. It specifies the purchase price for the Refunding Ballpark Bonds, and certain terms of the bonds, such as interest rates and maturities. In addition, it describes the circumstances under which the Purchaser may cancel its obligation to purchase the bonds, such as changes in the tax treatment of the bonds, and other events (e.g., a national or international crisis that impacts the national financial markets).

   The agreement also specifies documents that the Purchaser and the City must receive prior to the closing of the bond purchase, including the Bond Counsel opinion regarding the validity and tax exempt nature of the bonds as well as certain opinions and certificates of the City Attorney and other City and Authority officials. Such opinions and certificates, among other things, would confirm that all the steps necessary to authorize the execution of the financing documents and issuance of the Refunding Ballpark Bonds have been properly taken.

The Purchase Agreement also specifies the transfer restrictions pertaining to the bonds, includes a form of the Investor Letter, and includes provisions for the execution by the City of the Option and any payment made by Bank of America to the City in connection with the execution of such option.

F. Schedule

The Disclosure Practices Working Group reviewed the proposed financing on December 14, 2006. If the City Council approves the Financing Ordinance and related financing documents for the Refunding Ballpark Bonds, it is anticipated that the refunding bonds would be sold to Bank of America in mid February 2007. The bond closing (receipt of bond proceeds) would occur at the end of February 2007.

## III. ALTERNATIVES:

Instead of issuing the Refunding Ballpark Bonds under the proposed Private Placement Structure described above, the City Council could request the Mayor's staff to wait until it can issue the refunding bonds in a public offering format. The Ordinance and financing documents are structured to permit the Mayor's staff to issue the bonds in a public offering, conditioned on the Mayor's staff returning to City Council with a completed disclosure document, which would include current CAFRs.

Issuing the Refunding Ballpark Bonds under the Private Placement Structure would result in an interest rate penalty of approximately .35%. However, as of the date of this report, general municipal bond rates are at their lowest point in almost thirty years. By proceeding now, the City could lock-in immediate annual lease payment savings. Further, the Option, if executed in the future, could result in additional savings to the City.

## IV. FISCAL CONSIDERATIONS:

Based on current market conditions, the annual lease payment relating to the Refunding Ballpark Bonds would be approximately $11.3 million, which would be approximately $3.7 million lower than the average annual lease payment for the Original Ballpark Bonds. The actual annual lease payment amounts would be determined at the time of the bond sale, which is anticipated to occur in February of 2007.

Costs related to the issuance of the Refunding Ballpark Bonds, including, but not limited to, legal fees, consultant costs, title insurance, bond insurance, Bank of America's structuring fee, and certain other expenses, would be reimbursed or paid directly from bond proceeds.

## V. PREVIOUS CITY COUNCIL and/or COMMITTEE ACTIONS:

The City Council previously approved certain actions relating to the refunding of the Original Ballpark Bonds. These actions included the adoption of Ordinance O-19204 and Resolution R-298301 on August 4, 2003, approving and authorizing the issuance of refunding bonds and the related financing documents. Given the passage of time and proposed changes to the refunding, it was deemed prudent to obtain current authorization for the issuance of the Refunding Ballpark Bonds and the related financing documents.

## VI. COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

There were no community participation or outreach efforts.

## VII. KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Business entities involved in this transaction are: Bank of America N.A. (Refunding Ballpark Bonds purchaser); Banc of America Securities LLC (structuring agent); Fulbright & Jaworski LLP (purchaser's counsel); Nixon Peabody LLP (bond counsel); Hawkins, Delafield, & Wood LLP (disclosure counsel); Wells Fargo Bank, National Association (trustee); Ambac Assurance Corporation (bond insurer); Chicago Title Company (title insurer); and Kitahata & Company (financial advisor).

Respectfully submitted,

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|---|---|
| ___________________________ | ___________________________ |
| Lakshmi Kommi | Jay M. Goldstone |
| Debt Management Director | Chief Financial Officer |