



## AGENDA REPORT

**Meeting Date:** September 2, 2008  
**Item Number:** F-8  
**To:** Honorable Mayor & City Council  
**From:** City Attorney  
**Subject:** APPROVAL OF AMENDED AND RESTATED EMPLOYMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BYRON POPE.  
**Attachments:** 1. Amended and Restated Employment Agreement

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### RECOMMENDATION

The City Council approve the Amended and Restated Employment Agreement between the City of Beverly Hills and Byron Pope.

### INTRODUCTION

The City Council reviews the compensation and performance of the City Clerk annually. Following the reviews, the City Council may approve changes to compensation and other terms and conditions of employment. This amended and restated employment agreement implements changes proposed as a result of this process.

### DISCUSSION

The terms and conditions of Byron Pope's employment by the City as City Clerk are specified in an employment agreement between the City and Mr. Pope. The agreement provides that the City will review compensation and performance annually and may grant increases or make mutually agreeable changes to the agreement. Following this year's review, three changes are proposed. If approved, the Amended and Restated Employment Agreement will implement these changes:

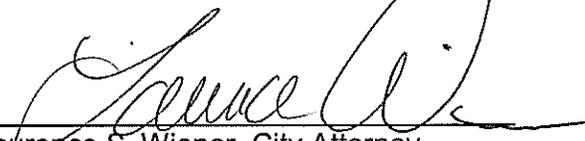
- A base salary increase to \$133,025.00 annually, prorated and paid on the City's normal pay days.
- Performance pay in the one-time lump sum amount of \$11,000.00 will be provided to Mr. Pope.
- Management Compensation Pay of \$600.00 per month, consistent with that received by other management employees of the City, is being added to the agreement.

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The City started the practice of preparing amended and restated employment agreements in place of a succession of amendments. This is the first amended and restated agreement for the City Clerk. It includes terms from the original agreement and those portions of the prior amendments with continuing effect. It also adds specific fringe benefit terms that were only incorporated in the original agreement by reference to the executive compensation plan. Adding these terms is not intended to change any of the City Clerk's existing fringe benefits.

**FISCAL IMPACT**

If approved, the Amended and Restated Employment Agreement will increase the City Clerk's base salary by \$4,845.00 annually, provide him with a one-time \$11,000.00 lump sum performance payment and add Management Compensation Pay at \$600.00 per month.



Laurence S. Wiener, City Attorney

## AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement ("Agreement") is made as of \_\_\_\_\_, 2008; is entered into by and between the City of Beverly Hills, a California municipal corporation, ("Employer" or "City") and Byron Pope, an individual ("Employee"); and fully amends, restates and replaces in its entirety that Employment Agreement ("Employment Agreement"), dated December 23, 2005, identified as Agreement Number 92-06, and thereafter amended by Amendment No. 1, identified as Agreement Number 423-07, and Amendment No. 2, identified as Agreement Number 115-08. Upon execution of this Agreement by the City and Employee, such Agreement Number 92-06, as amended, shall be superceded and of no further force or effect.

### RECITALS

- A. The City Clerk is an appointive officer of the City of Beverly Hills, established pursuant to California law and appointed by the City Council.
- B. The Office of the City Clerk is established pursuant to Beverly Hills Municipal Code ("BHMC") § 2-3.1001. The City Clerk administers the office and is responsible for its functions.
- C. Employee was employed in the Office of the City Clerk as Deputy City Clerk and as Acting City Clerk, prior to appointment as City Clerk.
- D. Employer appointed Employee and Employee accepted appointment as City Clerk, as provided in the original employment agreement (92-06).
- E. Employee represents that he has the requisite specialized skills, training, certifications, licenses, and authorizations and is otherwise qualified to serve as City Clerk.
- F. In connection with and contingent on Employee's appointment as City Clerk, Employer and Employee wish to continue their Employment Agreement setting forth the rights and obligations of the parties and superceding all prior negotiations, discussions or agreements. The parties intend for their agreement to continue the employment relationship without interruption.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, Employer and Employee agree as follows:

1. **COMMENCEMENT OF EMPLOYMENT.** The City Council appointed Employee and Employee accepted appointment as City Clerk, effective December 23,

2005, subject to the terms and conditions of this Agreement. The employment relationship between Employer and Employee continues without interruption.

**2. DUTIES AND AUTHORITY.** Employee shall exercise the full powers and perform the duties of the position of City Clerk, as set forth in the laws of the State of California; the BHMC; all other applicable laws, rules, regulations and procedures; and the applicable job description (if any), as they now exist or as they may hereafter be amended. Employee shall exercise such other powers and perform such other duties as the City Council or its designee may from time to time assign.

**3. EMPLOYEE'S OBLIGATIONS.** Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote the City's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with, his duties and responsibilities to Employer. Employee shall obtain prior authorization from the City Council or designee for any outside employment, consulting, teaching or enterprise.

**4. SALARY AND BENEFITS.**

**A. Salary and Performance Pay.**

(1) Base Salary. Effective April 4, 2008, Employer shall pay Employee a base salary of \$133,025.00 (One Hundred Thirty-Three Thousand Twenty-Five and No/100 Dollars) annually, subject to legally permissible or required withholding, prorated and paid on Employer's normal paydays. Employee's salary is compensation for all hours worked. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

(2) Salary Review and Performance Pay. Employer, by its City Council, will conduct an annual salary review. The City Council may, but is not required to, consider or approve cost of living increases, bonuses, incentives, merit increases, performance pay or other compensation enhancements in conjunction with the annual salary review. Employee will request and schedule such reviews, as appropriate, pursuant to City Council agenda procedures or as otherwise directed by City Council. Performance pay, if any, shall be in an amount as determined by the City Council, up to and including 10% of the annual base salary, based on the level of completion of goals identified by the City Council.

(3) 2008 Annual Performance Review. Based on its 2008 annual review, pursuant to Section 4, Paragraph A, Sub-paragraph (2), above, Employer agrees to pay Employee performance pay of \$11,000.00 (Eleven Thousand and No/100 Dollars), in a single lump sum, subject to legally permissible or required withholding, on or before the regular payday for the first full pay period following full execution of this Agreement. The performance pay provided under this sub-paragraph (3) is intended as special

compensation, in addition to the salary provided in Section 4, Paragraph A, Sub-paragraph (1), of the Agreement and is paid for normally required duties performed during normal hours of employment.

(4) Management Compensation Pay. Employee shall be entitled to special Management Compensation Pay at the rate of \$600 per month, pro-rated and paid on Employer's normal paydays.

B. Employment Benefits. In addition to base salary and performance pay, if any, Employer shall provide to Employee the following benefits:

(1) Holidays.

(a) Regular Holidays. Employee shall be entitled to the following paid holidays if Employee worked the regularly assigned work period the day before and the day after the holiday or was absent on authorized paid leave during said period:

New Year's Day	January 1
Martin Luther King Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25

If the following holidays (January 1, July 4, November 11, and December 25) fall on a Saturday, the preceding Friday shall be considered the holiday; if the holiday falls on Sunday, the following Monday shall be considered the holiday.

(b) Personal Holidays. Employee shall be entitled to two additional paid holidays each calendar year. Said holidays may be taken at Employee's discretion. Said holidays are non accruable and shall not be paid for if not taken.

(2) Vacation, Sick and Other Leave.

(a) Vacation. Employee shall accrue vacation time at the rate of 4.60 hours each biweekly pay period, the equivalent of 120 hours annually. When a holiday falls within an employee's vacation leave, the leave time shall be extended or credited by the amount of the holiday time. Employee may accumulate accrued vacation up to a maximum of 240 hours. The current year accrual shall not be included in the accumulation. If Employee has 240 hours or more of vacation leave at the end of any

calendar year, upon Employee's request, Employee can receive cash payment for up to 80 vacation hours earned but not taken during the calendar year.

(b) Sick Leave. Employee shall accrue sick leave at the rate of 8 hours for each month of employment. Sick leave may be used immediately during any period of illness.

(i) Job Connected Disability. Except as provided herein, Employee shall be entitled to use accumulated sick leave during any period for which he is entitled to receive temporary disability indemnity under Division 4 (Section 3201, et seq.) of the Labor Code of the State. If Employee is entitled to receive such temporary disability indemnity, Employee may elect (for a period not to exceed twelve (12) months after he first makes such election) to use as much of his accumulated sick leave or accumulated vacation, so when added to his disability indemnity will result in a payment to him of not more than full base pay or wage.

(ii) Sick Leave Incentive. Employee, if he accrues 72 hours or more of sick leave in any payroll year, may convert up to 24 hours of sick leave to cash during the month of January of the following year. The limit of payment shall be 24 hours per year.

(c) Bereavement Leave. Employee may use 40 hours of bereavement leave, per calendar year, in the event of the death of a family member, herein defined as a spouse, registered domestic partner, parent, brother, sister, child, grandparent, or in-law of Employee. In the event Employee needs additional time off for this leave, he may use up to 40 hours of sick leave per calendar year.

(d) Witness and Jury Leave. If Employee is required to serve as a witness pursuant to a lawful subpoena in any judicial or quasi judicial proceeding or is required to serve as a juror, Employee shall be allowed time off without loss of pay to perform such duties. However, Employee shall not be allowed time off without loss of pay if Employee is a party to the matter for reasons other than actions within the scope of Employee's current or past public employment. All fees to which Employee is entitled by law for such service shall be paid (less transportation allowance, if any) to the City.

(e) Administrative Leave. Employee will be granted 120 hours of Administrative Leave each calendar year. Administrative Leave as provided herein is non cumulative between calendar years. At the end of each calendar year, upon Employee request, Employee will receive cash payment for up to 80 hours administrative leave earned but not taken as time off during the calendar year.

(f) Leave Scheduling. Vacation and other paid leaves susceptible to advance scheduling shall be scheduled with the City Council in advance.

(3) Group Insurance Programs.

(a) Medical Insurance. Employer shall provide a medical health insurance program to Employee and his dependents, the cost of which shall be borne by the City.

(i) Leave without Pay. In the event Employee is on leave without pay as a result of an illness or injury and has exhausted 50% of vacation leave and all sick leave credit, the City shall pay the health insurance premium of Employee and dependents coverage to the limit of one month's coverage for each full year of Employee's City services.

(ii) Industrial Injury. Employer shall pay the premium for Employee and dependents, if any, for hospital and medical benefits during the continuous periods of Employee's absence if caused by an injury or job related illness while on duty. The schedule of payment shall be at the rate of one month's premium contribution for each year of service or major portion thereof.

(iii) Flexible Benefits Package. The payment of benefits toward this health insurance program will be through the administration of a flexible benefit package. Employer shall pay the minimum required under Government Code Section 22892 (b) or its successor on behalf of Employee. In addition to the minimum payment required under Government Code Section 22892 (b) or its successor, flexible benefits shall be provided as follows:

- Employer shall pay the difference between the minimum required under Government Code Section 22892 (b) or its successor and the actual cost of medical insurance premiums up to the full family coverage of the PERSCare Plan.
- Employer shall provide a retiree health insurance benefit of the minimum payment required under Government Code Section 22892(b) if employee remains continuously retired from the City of Beverly Hills without reinstatement to active status with PERS. To remain eligible for this benefit, Employee cannot work for another PERS contracting agency and make contributions to PERS to enhance his retirement and cannot be eligible for further PERS benefits. In addition, subject to this same condition, Employer shall provide an additional retirement benefit if Employee:
  - Completes a minimum of 5 years of full time employment with the City of Beverly Hills; and
  - Receives a service retirement from the City of Beverly Hills

If Employee meets these two conditions, the City shall pay a retirement benefit of

the difference between the minimum required under Government Code Section 22892 (b) or its successor and the actual cost of medical insurance up to the two-party rate of the PERSCare plan under PERS at the following rate:

- The City will pay 25% of the cost of the insurance premium for Employee beginning after his 5th anniversary of service with the City of Beverly Hills.
- In addition to the 25% cited in subparagraph (i) above, the City will also pay 5% of the cost of the PERSCare two-party insurance premium for each additional year of Employee service with the City of Beverly Hills up to 100%.

(b) Dental Insurance. Employer shall provide a dental insurance plan to Employee, the cost of which shall be borne by the City. The cost of the coverage may vary, contingent upon the number of dependents and/or spouse or domestic partner enrolled. Upon retirement, Employee can continue in the City's dental plan, at his own expense to the extent and subject to the terms and conditions of the then-applicable plan document. The City reserves the right to modify or discontinue retiree dental insurance based on availability, market conditions and other factors.

(c) Life Insurance. Employee shall be entitled to a \$300,000.00 (Three Hundred Thousand and No/100 Dollars) term life insurance policy under the City's life insurance program. The full premium for such policy shall be paid for by the City under the life insurance program of its choosing. Employee shall have the option to purchase additional life insurance at the City's unit cost, if available. Employee shall name the beneficiary of the life insurance policy.

(d) Disability Insurance. Employer shall provide long term disability insurance to Employee. The disability plan will pay two thirds (66%) of the employee's base pay, up to a maximum of \$10,000.00 (Ten Thousand and No/100 Dollars) per month. In FY 2007-08 the City went from a 30-day disability wait period to a 90-day disability wait period.

(e) Extended Disability Pay and Benefits Continuation. Employer shall provide to Employee extended disability base pay and benefits (less legally required deductions) continuance in the event that Employee sustains an injury or illness causing long term disability. This continuance shall be up to 90 days, as approved by City Council, at its sole discretion. After this period, the City's Extended Disability Base Pay and Benefits Continuance shall stop. To qualify for this pay and benefits continuance, Employee must notify Human Resources in writing immediately upon becoming aware that an injury or illness may result in a long term disability. Human Resources, in consultation with the Risk Management Division, will contact the Employee's physicians and medical treatment centers as may be appropriate to determine the severity and scope of injury/illness and probable length of absence of Employee. Employee must also make himself available for examination by a City-appointed physician (at City expense).

Employee must file for disability insurance within the prescribed insurance required time-lines and provide the City with a written statement from a physician, satisfactory to the Assistant Director of Administrative Services-Human Resources after consultation with the Risk Management Division, detailing Employee's injury or illness and recommending disability leave.

No Extended Disability Base Pay and Benefits Continuance shall be granted for Employee if he does not follow the procedures as set forth in this sub-paragraph (e), or does not qualify for disability insurance.

Employee shall not receive a monetary amount greater than he would normally receive if he had been working under normal conditions. Any disability indemnity received by Employee from the State of California for the purpose of insuring a weekly or monthly income as the result of the same work incurred injury for which Employee is receiving extended disability base pay and benefits continuance from the City shall be paid to the City.

(f) Optical Insurance. Employer shall provide an optical insurance plan to Employee, the cost of which will not exceed \$32.00 per month. Upon retirement, Employee can continue in the City's optical plan, at his own expense to the extent and subject to the terms and conditions of the then-applicable plan document. The City reserves the right to modify or discontinue retiree optical insurance based on availability, market conditions and other factors.

(4) Deferred Compensation. Employee shall be eligible to participate in Employer's deferred compensation plan, to the extent and as provided by the applicable plan document and controlling law. In the event of Employee's participation, Employer shall contribute at least \$30 per month to the City's deferred compensation plan.

(a) Conversion of Sick Leave to Deferred Compensation. Employee may convert accumulated sick leave to base pay. The extra pay may only be used to fund "catch up" contributions to deferred compensation. The following restrictions apply to this sick leave conversion program:

- Employee must have a minimum of 7 years of service with the City of Beverly Hills; and
- Employee's sick leave accumulation cannot be reduced below 240 hours; and
- The conversion is limited to the time period allowed by the IRS for "catch-up" provisions in 457, 401(k) and other plans as adopted by the City and the conversion can be used only for funding these deferred compensation "catch-ups"; and
- A conversion of no more than \$9,500 per calendar year is allowed; and

- The conversion will be at the then-existing sick leave payoff percentage.

(5) Retirement Plan. Employee shall be enrolled in Employer's retirement plan with the California Public Employees' Retirement System ("PERS"), subject to the applicable benefit formula, terms and conditions provided in the contract between Employer and PERS and also subject to applicable law and regulations. Pursuant to Government Code section 20636(c)(4), Employer will pay the 8% employee's contribution to PERS for Employee and Employer will report the monetary value of those normal contributions paid by Employer on behalf of Employee (known as "employer paid member contribution") as compensation earnable.

(6) Reimbursement and Savings Plans. Employee may participate in Employer's medical reimbursement, childcare reimbursement, retiree health savings and any similar plan based exclusively on employee contributions and according to the terms and conditions of the applicable plan documents.

(7) Benefit Terms. Employer reserves the right to enhance, reduce, terminate, amend or to otherwise change its benefit programs at any time, to the maximum extent permitted by law. Except as otherwise provided in this Agreement, all benefits shall be provided according to the terms of applicable plan document, schedule or City policy and subject to applicable laws and regulations. No term or requirement of this Employment Benefits section will be effective if it would violate any provision of law or related regulations (such as, without limitation, the Internal Revenue Code or Public Employment Retirement Law) and the inability of Employer to effectuate such requirements shall not constitute a breach of this Agreement.

(8) Expenses. Employer recognizes that Employee may incur certain expenses of a non-personal and job related nature. Employer agrees to reimburse or to pay such business expenses which are incurred and submitted according to Employer's normal expense approval and reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.

(9) Bonding. Employer shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law or ordinance by virtue of his employment as City Clerk.

**5. EVALUATIONS**. Employee shall report to and may be evaluated by the City Council.

6. **INDEMNIFICATION.** Except as otherwise permitted, provided, limited or required by law, including, without limitation, California Government Code Sections 825, 995, and 995.2 through 995.8, the Employer will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement.

8. **AT-WILL RELATIONSHIP.** Employee shall hold office and continue in employment at the pleasure of the City Council. Except as otherwise provided by law, the City Council may remove Employee from office and may terminate this Agreement and the employment relationship with or without cause and with or without prior notice. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with City, subject only to Employee providing sixty (60) calendar days prior written notice to City.

9. **TERM AND TERMINATION OF AGREEMENT.**

A. **Term.** Subject to earlier termination, as provided in this Agreement, this Agreement shall remain in full force and effect for an approximate six (6) year and three (3) month term, from December 23, 2005 to April 3, 2012.

B. **Termination Without Cause.** If Employer terminates this Agreement (thereby terminating Employee's Employment), without cause, Employer shall pay Employee severance as follows:

(1) If termination is effective during the first five (5) years and three (3) months of this Agreement, ending on and including April 3, 2011, Employer shall pay Employee a lump sum severance benefit equal to six (6) months of his then applicable base salary.

(2) If termination is effective during the last year of this Agreement, following the period specified in Sub-Paragraph (1), above, and prior to April 3, 2012, Employer shall pay Employee a maximum lump sum severance benefit equal to three (3) months of his then applicable base salary.

C. **Termination for Cause.** For purposes of this Agreement, the following grounds for termination shall be considered termination for cause. Any other term of this Agreement notwithstanding, Employer may terminate this Agreement and the employment relationship at any time without prior written notice if Employee:

(1) Refuses or wilfully fails to perform the duties of City Clerk;

(2) Refuses or wilfully fails to carry out the orders, directives or decisions of Employer;

(3) Commits any material act of dishonesty; or

(4) Engages in any other action or inaction that materially and substantially impedes or disrupts the performance of Employer or its organizational units, is detrimental to employee safety or public safety, violates properly established rules or procedures, adversely affects the reputation of City, its officers or employees or has a substantial and adverse effect on Employer's interests.

D. Compensation on Termination. Employer shall pay Employee for all services through the effective date of termination.

(1) Limitations. If Employee resigns from employment or Employer terminates this Agreement (thereby terminating Employee's Employment), with cause, as defined above, Employee shall not be entitled to any severance. Under no circumstances shall Employee receive any amount in excess of the limitations provided in Government Code §§ 53260 – 53264, or other applicable law.

(2) Vacation. Employee shall be paid for all properly accrued and unused vacation time at the time of termination. The rate of pay off shall be based on the rate of pay at the time of termination. Employee will not have the option of utilizing accrued vacation in lieu of vacation pay off at the time of termination.

(3) Sick Leave. At termination, if Employee has achieved seven (7) or more continuous years of service, he shall be eligible for sick leave pay off upon termination of employment with the City. The rate of sick leave pay off shall be calculated as follows:

- For the first 7 years - 4% of accrued, unused sick leave per full year of service.
- For each year thereafter - 6% of accrued, unused sick leave per full year of service to a maximum of 100%.
- Sick leave pay off shall be calculated at the rate of base pay received by Employee at the time of termination.

(4) Administrative Leave. At termination, Employee shall receive a pro-rated amount of administrative leave unused during the calendar year of departure at the rate of 10 hours per month up to a maximum of 80 hours.

**10. METHOD OF AMENDMENT.** No amendments to this Agreement may be made except by a writing signed and dated by Employer and Employee.

**11. NOTICES.** Any notice to Employer under this Agreement shall be given in writing to Employer, either by personal service or by registered or certified mail, postage prepaid, addressed to the City Council care of the City Manager's Office at City's then

principal place of business. A courtesy copy shall be given to the City Attorney in a like manner. Any such notice to Employee shall be given in a like manner and, if mailed, shall be addressed to Employee at his home address then shown in Employer's files maintained by the Human Services Office. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this section.

## **12. GENERAL PROVISIONS.**

A. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

B. This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to Employer's generally applicable rules, policies and regulations, including those pertaining to employment matters, such as rules and regulations addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable Codes, Ordinances and Resolutions.

D. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement.

[Signatures on the Following Page.]

**IN WITNESS WHEREOF**, each party has caused this Agreement to be signed and executed personally or on its behalf by its duly authorized representative.

**EMPLOYEE**

  
\_\_\_\_\_  
BYRON POPE

**EMPLOYER**

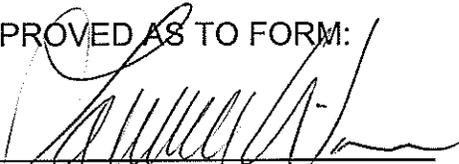
CITY OF BEVERLY HILLS, A California  
Municipal Corporation

By: \_\_\_\_\_  
BARRY BRUCKER  
Mayor

ATTEST:

\_\_\_\_\_(Seal)  
PATTY OGDEN  
Deputy City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney