

## **RESOLUTION NO. 2009-465**

Adopted by the Sacramento City Council

July 14, 2009

### **APPROVING \$10-MILLION LINE OF CREDIT FOR EQUIPMENT ACQUISITIONS**

#### **BACKGROUND**

- A. Since 2004, the Office of the City Treasurer has facilitated numerous equipment acquisitions through a Master Equipment Lease/Purchase Agreement with Banc of America Leasing & Capital LLC (City Agreement No. 2004-047, the "Master Agreement"). The equipment acquired to date includes pay & display parking meters, solid-waste-refuse vehicles, and firefighting apparatus.
- B. Because the bank has changed its operating practices to reflect the current financial market, and because the Office of the City Treasurer has arranged for the bank to provide a \$10-million line of credit the City can use to acquire additional essential assets, the Master Agreement must be amended as follows: by substituting Bank of America NA for Banc of America Leasing & Capital LLC; and by adding terms and conditions that implement the \$10-million line of credit.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1. The Office of the City Treasurer is hereby authorized to enter into an amendment to the Master Agreement that will—

- (a) substitute Bank of America NA as Lessor in place of with Banc of America Leasing & Capital LLC; and
- (b) add terms and conditions that, in the opinion of the City Attorney's Office and the Office of the City Treasurer, are substantially the same as those set forth in Exhibit A to this resolution.

Section 2. The Office of the City Treasurer is hereby authorized to execute lease-financing documents to secure funding for acquisition of essential assets through the amendment to the Master Agreement, including an LNG mobile storage trailer in the amount of \$246,556; green-waste containers in the amount of \$3,065,430; and firefighting apparatus in the amount of \$4,200,000.

Section 3. The actual interest rate for each lease financing will not be determined until the date of which financing documents are executed. For a 5-year term, the rate will be calculated by multiplying the Average Weighted Life Swap Index (3 Year) by 0.65 and adding 235.65. For a 10-year term, the rate will be calculated by

multiplying the Average Weighted Life Swap Index (6 Year) by 0.65 and adding 254.25.

Section 4. The Finance Director is authorized to amend the Solid Waste operating budget to reflect the purchasing and lease payment expenditure authority related to this lease financing.

Adopted by the City of Sacramento City Council on July 14, 2009 by the following vote:

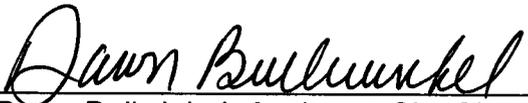
Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.

Attest:

  
Dawn Bullwinkel, Assistant City Clerk

  
Mayor Kevin Johnson



Jill M. Forsyth  
Senior Vice President  
Government Finance Specialist

Bank of America Public Capital Corp  
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Scottsdale, AZ 85251  
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**SUMMARY OF TERMS AND CONDITIONS**

- Date:** June 11, 2009
- Lessee:** City of Sacramento, CA
- Lessor:** Banc of America Public Capital Corp, Bank of America NA or designee ("Lessor").
- Equipment:** Essential Use Equipment
- Structure:** Master Lease Line of Credit. The lease line will be set for a total of \$10MM. Indexing the rate will be valid until 9/30/09 and is reviewed quarterly.
- Security:** Lien on the assets
- Term:** A) 5 Years      B) 10 Years, payable Semi-annually in arrears
- Interest Rate:** A) 4.04%      B) 4.98% (Assumes Bank Qualified Status)

The rates above as of 6/11/09 have been based on the following formula:

Average Weighted Life Swap Index (3 year) 2.59% X .65 + 235.65 = 4.04%

Average Weighted Life Swap Index (6 year) 3.75 X .65 + 254.25 = 4.98%

**Market Disruption:** Notwithstanding anything contained herein to the contrary, in the event any material change shall occur in the financial markets after the date of this proposal letter, including but not limited to any governmental action or other event which materially adversely affects the extension of credit by banks, leasing companies or other lending institutions, Lessor may modify the indicative pricing described above.

**Payments:** Semi-annually payments in arrears

**Governmental Entity Lease:** The Base Rent installments are calculated on the assumptions, and Lessee will represent, that Lessee is a state or political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code (the "Code"), and that this transaction will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code. Lessee shall provide Lessor with such evidence as Lessor may request to substantiate and maintain such tax status. Lessee shall comply with the filing requirements of Section 149(c) of the Code. Lessee will pay Lessor amounts calculated at a taxable rate sufficient to maintain Lessor's yield in the Lease, in the event Lessor suffers a loss of Federal income tax exemption of the

interest portion of the rentals.

**Early Termination:**

After the first 50% of the term, the Lessee may prepay the Lease with 30 days written notice. After the 50% of the term, the prepayment penalty will be 3%, 2% and 1% for the remaining years. The amount paid will also include accrued interest, principal balance and any other charges due.

**End of Term:**

At the expiration of the Lease Term, Lessee will purchase all (but not less than all) the Equipment for \$1.00 ("Purchase Price").

**Opinion of Counsel:**

Lessee's counsel shall deliver a validity opinion to Lessor at closing, in form and substance satisfactory to Lessor, that covers the following matters: (1) The Lessee is a charter city of the State of California and is authorized by the Constitution and laws of that state to enter into the transactions contemplated by the transaction documents and to carry out its obligations under the transaction documents. (2) Lessee has the requisite power and authority to lease and acquire the equipment, to execute and deliver the transaction documents, and to perform its obligations under the Lease. (3) The Lease and all amendments to it have been duly authorized, approved, executed, and delivered by and on behalf of Lessee, and the transaction documents are valid and binding obligations of Lessee, enforceable in accordance with their terms. (4) The authorization, approval, execution, and delivery of the transaction documents and all other proceedings of Lessee relating to the transactions contemplated in the transaction documents have been performed in accordance with all open-meeting laws, public-bidding laws, and all other applicable state or federal laws. (5) To the current, actual knowledge of Lessee's counsel, Lessee has not been served with process in, or overtly threatened with, any lawsuit, administrative proceeding, or investigation in any court or before any governmental authority, arbitration board, or tribunal that, if adversely determined against Lessee, would adversely affect the transactions contemplated by the transaction documents or the security interest of Lessor or Lessor's assigns, as the case may be, in the equipment or other collateral under the transaction documents.

**Tax Opinion:**

If any individual schedule drawn on the master lease is in excess of \$5MM, the City must provide a tax opinion from bond counsel. The opinion of bond counsel will cover the following tax matters, in addition to other customary opinions:

- (a) the portion of Base Rent designated as and constituting interest paid by Lessee and received by Lessor is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from state personal income taxes;
- (b) such interest is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes; and
- (c) counsel has examined, approved and attached the text of the enabling resolution of Lessee's governing body authorizing Lessee to enter into the Lease.

**Escrow Account:**

In compliance with applicable regulations, including but not limited to arbitrage reporting, the proceeds of the Lease may be deposited into an escrow account acceptable to Lessor, and disbursements made therefrom to pay for the equipment upon execution and delivery of an acceptance certificate (and related documents) by Lessee and approved by Lessor.

**Documentation:**

The master lease will need to be modified to reflect the terms detailed in the cover sheet and terms. This transaction is subject to acceptable documentation in Lessor's sole discretion.

**Credit Approval:**

This transaction has not been formally credit approved but will be submitted quickly after an acceptance of terms.

**Proposal Expiration:**

This proposal will expire on July 31, 2009 and may be re-issued at Lessor's discretion.