



REPORT TO COUNCIL

City of Sacramento

11

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

CONSENT
November 17, 2009

Honorable Mayor and
Members of the City Council

Title: Ratify Master Lease/Purchase Agreement

Location/Council District: Citywide

Recommendation: Adopt a **Resolution** ratifying the 2004 Master Lease / Purchase Agreement between the City of Sacramento and Banc of America Leasing Capital, LLC.

Contacts: Chris Tjie, Treasury Analyst, 808-5517, Janelle Gray, Treasury Manager, 808-8296

Presenters: Not applicable

Department: Treasurer

Division: Public Finance

Organization No: 05001011

Description/Analysis:

Issue: 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 computers, pay & display parking meters, solid-waste-refuse vehicles, and firefighting apparatus. On July 14, 2009, City Council adopted Resolution No. 2009-465 authorizing the Office of the City Treasurer to enter into an amendment of the Master Agreement. Among other things, the amendment will change the Lessor from Banc of America Leasing & Capital, LLC to Bank of America NA.

Since July 14, staff has since discovered a procedural irregularity that occurred when the City Council approved the Master Agreement in 2004. The approval of the Master Agreement was Item 3.25 on the consent calendar for March 16, 2004. In the report presented to the city council for Item 3.25, staff recommended

“that the City Council adopt the attached Resolution approving the City Treasurer's actions to secure financing and to execute the Master Equipment Lease/Purchase Agreement between the City of Sacramento and [Banc of America Leasing & Capital, LLC]” The approved minutes for the meeting indicate that the City Council approved Item 3.25 without comment. Specifically, the minutes state, consistent with staff’s recommendation, that the City Council “[a]dopted Resolution 2004-187 approving Agreement 2004-047 [i.e., the Master Agreement].” Likewise, the Master Agreement itself recites that the City Council “authorized the execution and delivery of [the Master Agreement] pursuant to Resolution No. 2004-187 approved on March 16, 2004.” The problem, however, is that Resolution No. 2004-187 did not explicitly authorize the City Treasurer to execute the Master Agreement. Rather, it only stated, for purposes of complying with Treasury Regulation 1.150-2, that the City intended to reimburse itself from the proceeds of indebtedness for certain expenditures.

Under the circumstances outlined above, staff believes that this irregularity does not affect the Master Agreement's validity. Nevertheless, to ensure that the record is clear, staff recommends that the City Council adopt the attached resolution ratifying the City Treasurer’s execution of the Master Agreement in 2004.

Policy Considerations: The proposed ratification of the Master Equipment Lease/Purchase Agreement is consistent with the City Council’s intent in March 2004 and with its intent in adopting Resolution No. 2009-465 earlier this year, thereby authorizing the City Treasurer to execute an amendment to the Master Agreement.

Committee/Commission Action: Not applicable

Environmental Considerations: Not applicable

California Environmental Quality Act (CEQA): Not applicable

Sustainability Considerations: Not applicable

Rationale for Recommendation: Adopting the ratifying resolution will remove any doubt, reasonable or unreasonable, concerning the City Treasurer’s authority in 2004 to execute the Master Agreement.

Financial Considerations:

None.

Attachment 1

RESOLUTION NO. 2009-XXXX

Adopted by the Sacramento City Council

November 17, 2009

**RATIFYING THE 2004 MASTER EQUIPMENT LEASE / PURCHASE AGREEMENT
WITH BANC OF AMERICA CAPITAL LEASING & FINANCING**

BACKGROUND

- A. Item 3.25 on the agenda for the City Council's regular meeting on the afternoon of March 16, 2004, requested that the City Council authorize the City Treasurer to execute, on the City's behalf, a Master Equipment Lease / Purchase Agreement with Banc of America Leasing & Capital, LLC (the "Master Agreement"). The full text of Item 3.25 read as follows: "Master Equipment Lease/Purchase Agreement between the City of Sacramento and B] of A Leasing and Capital Corporation [sic ("B of A Leasing") for the purpose of financing \$1.51 million IBM Enterprise server upgrade."
- B. In the report that staff submitted to the City Council for Item 3.25, staff recommended "that the City Council adopt the attached Resolution approving the City Treasurer's actions to secure financing and to execute the Master Equipment Lease/Purchase Agreement between the City of Sacramento and [Banc of America Leasing & Capital, LLC]"
- C. By approving Item 3.25, the City Council intended to authorize the City Treasurer to execute the Master Agreement on the City's behalf, and believed that it had done so. Consistent with this intent and belief, the approved minutes for the meeting stated, consistent with staff's recommendation, that the City Council "[a]dopted Resolution 2004-187 approving Agreement 2004-047 [i.e., the Master Agreement]." Likewise, the Master Agreement itself recites that the City Council "authorized the execution and delivery of [the Master Agreement] pursuant to Resolution No. 2004-187 approved on March 16, 2004."
- D. Following the meeting of March 16, 2004, the City Treasurer executed the Master Agreement. Since then, the City has successfully used the Master Agreement to finance the acquisition of equipment—such as computers, pay & display parking meters, solid-waste-refuse vehicles, and firefighting apparatus—that the City needs perform essential governmental and proprietary functions.
- E. While working recently on an amendment to the Master Agreement (an amendment the City Council authorized on July 14, 2009, by adopting Resolution No. 2009-465), staff discovered that Resolution No. 2004-187 did not explicitly

authorize the City Treasurer to execute the Master Agreement. Rather, it only stated, for purposes of complying with Treasury Regulation 1.150-2, that the City intended to reimburse itself from the proceeds of indebtedness for certain expenditures.

- F. Because Resolution No. 2004-187 does not clearly reflect the City Council's intent in approving Item 3.25, and to clear up any unintentional ambiguities about the City Council's intent, the City Council desires to ratify the Master Agreement.

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

Section 1. The City Council hereby ratifies the Master Equipment Lease / Purchase Agreement that is dated March 16, 2004, and is between the City of Sacramento and Banc of America Leasing & Capital, LLC (City Agreement No. 2004-047).

Section 2. In accordance with California law, the City Council intends that this ratification relate back to March 16, 2004.