



**City of Sacramento  
City Council**

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915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date: 2/7/2012**

**Report Type: Consent**

**Title: Supplemental Agreement: 2004 Master Lease/Purchase Agreement [To Be Delivered]**

**Report ID: 2012-00181**

**Location: Citywide**

**Recommendation:** Pass a motion authorizing the City Treasurer or his designee to sign, on the City's behalf, Amendment No. 2 to the 2004 Master Lease / Purchase Agreement between the City of Sacramento and Bank of America N.A., thereby adding Banc of America Public Capital Corp as a Lessor.

**Contact:** Brian Wong, Senior Debt Analyst, (916) 808-5811; Janelle Gray, Debt Manager, (916) 808-8296, Office of the City Treasurer

**Presenter: None**

**Department: City Treasurer**

**Division: City Treasurer**

**Dept ID: 05001011**

**Attachments:**

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- 1-Description/Analysis
  - 2-Amendment No. 2 to Master Lease Agreement
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**City Attorney Review**

Approved as to Form  
Joseph Cerullo  
2/2/2012 3:50:27 PM

**Approvals/Acknowledgements**

Department Director or Designee: Russell Fehr 2/1/2012: 3:25:32 PM



## Description/Analysis

**Issue:** Since 2004, the Office of the City Treasurer has facilitated numerous equipment acquisitions through a Master Equipment Lease / Purchase Agreement (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. Originally the Master Agreement was with Banc of America Leasing & Capital, LLC as Lessor. But on July 14, 2009, the City Council adopted Resolution No. 2009-465 authorizing an amendment of the Master Agreement that, among other things, changed the Lessor to Bank of America N.A.

In July/August 2011, the Office of the City Treasurer staff received a request from Solid Waste division staff to obtain a financing quote for a proposed small equipment lease financing for the acquisition of solid waste refuse trucks, 18 of which are to be lease financed. The City Council conceptually approved this \$5.028 million financing on August 23, 2011, and authorized the Office of the City Treasurer to secure financing from Bank of America, N.A. using the Master Agreement (Resolution No. 2011-492). As it turns out, however, this financing cannot be with Bank of America, N.A. Instead, it must be with an affiliate, Banc of America Public Capital Corp. This is so because Bank of America, N.A. does not handle financings that exceed \$5 million (known under IRS regulations as “non-bank qualified” transactions).

Accordingly, staff proposes to amend the Master Agreement a second time, so that the Lessor can be *either* Bank of America, N.A. *or* Banc of America Public Capital Corp, depending on whether a financing is “bank qualified” or “non-bank qualified” (“Amendment No. 2”).

**Policy Considerations:** The proposed Amendment No. 2 will add Banc of America Public Capital Corp as a Lessor. This will enable the City to enter into a lease agreement with Banc of America Public Capital Corp to obtain approximately \$5.028 million in necessary financing for the acquisition of 18 solid waste refuse trucks for the City’s Solid Waste division. (The vehicles have already been procured by the City’s Procurement and Fleet division staff and some of the vehicles have already been delivered to the City.) It will also enable the City to enter into any future “bank qualified” financings with Bank of America, N.A.

**Environmental Considerations:** Not applicable

**Sustainability:** Not applicable

**Commission/Committee Action:** None

**Rationale for Recommendation:** Authorizing the City Treasurer or his designee to sign Amendment No. 2 on the City’s behalf will enable the City to complete the lease financing of 18 solid waste refuse trucks.

**Financial Considerations:** None

**Emerging Small Business Development (ESBD):** Not applicable

## AMENDMENT NO. 2 TO MASTER LEASE AGREEMENT

This amendatory agreement (“*Amendment No. 2*”), dated as of February 7, 2012, is between Bank of America, N.A.; Banc of America Public Capital Corp, a Kansas corporation; and the City of Sacramento, a California municipal corporation.

WHEREAS, Bank of America, N.A. and the City of Sacramento are parties to a *Master Equipment Lease/Purchase Agreement* dated as of March 16, 2004 (City Agreement No. 2004-047), which was amended by *Amendment No. 1 to Master Lease Agreement* dated as of November 18, 2009 (City Agreement No. 2010-0413) (collectively, the “Master Lease”); and

WHEREAS, Bank of America, N.A. and the City of Sacramento now desire to amend the Master Lease by adding Banc of America Public Capital Corp as a Lessor (all defined terms in the Master Lease that are not otherwise defined herein are used with the meanings given them in the Master Lease).

NOW, THEREFORE, the parties agree as follows:

1. Revised Preamble. Revise the preamble of the Master Lease so that it reads as follows:

This Master Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of March 16, 2004, is between Bank of America, N.A., and Banc of America Public Capital Corp, a Kansas corporation (collectively and individually, “*Lessor*”); and the City of Sacramento, a California municipal corporation (“*Lessee*”).

2. Revised Definition of “Lessor”. Revise the definition of “*Lessor*” in Section 1.01 of the Master Lease by adding the following sentence at the end:

Each Schedule will identify whether Bank of America, N.A., or Banc of America Public Capital Corp is the Lessor for purposes of that Schedule.

3. Ratification of Master Lease and Lease. Except as expressly modified and superseded by this Amendment No. 2, the Master Lease and each Lease are ratified and confirmed in all respects and shall continue in full force and effect.

4. Tax Matters. Lessee has complied and will continue to comply with the tax covenants set forth in Section 4.05 of the Lease and with any applicable tax compliance certificate (the “*Tax Certificate*”). The amendments to the Master Lease set forth in this Amendment No. 2 are not inconsistent with such tax covenants and Tax Certificate. Lessee agrees that it will calculate and make, or cause to be calculated or made, payments of any rebate in the amounts and at the times and in the manner provided in Section

148(f) of the Internal Revenue Code, pursuant to the provisions of the Master Lease and the related Tax Certificate.

5. Counterparts. This Amendment No. 2 may be executed in two or more counterparts, each of which is deemed to be an original but all of which together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment No. 2 by telecopier or email will be as effective as delivery of a manually executed counterpart.

6. Successors and Assigns; Third Parties. This Amendment No. 2 is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns. No third party beneficiaries are intended in connection with this Amendment No. 2.

7. Severability. If any provision of this Amendment No. 2 is found by a court with jurisdiction to be prohibited or invalid under applicable law, such provision shall be invalidated without affecting the remaining provisions of this Amendment No. 2, the Master Lease, or any Lease.

8. Entire Agreement. This Amendment No. 2, together with the Master Lease, contains the entire and exclusive agreement of the parties with reference to the matters discussed herein and therein. This Amendment No. 2 supersedes all prior drafts and communications with respect to the matters discussed herein.

9. Governing Law. This Amendment No. 2 is to be governed by and construed in accordance with the internal laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 to the Master Lease as of the day and year written above in the preamble.

BANK OF AMERICA, N.A.

CITY OF SACRAMENTO

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Authorized Agent

Russell T. Fehr  
City Treasurer

BANC OF AMERICA PUBLIC CAPITAL  
CORP

By: \_\_\_\_\_

Title: Authorized Agent