



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 2/28/2012

Report Type: Consent

Title: Cooperative Purchase Agreement: Fleet Vac-Con Equipment

Report ID: 2012-00067

Location: Citywide

Recommendation: 1) Pass a Motion: a) approving the use of Houston-Galveston Area Council (HGAC) cooperative purchase agreement (Contract No. SC01-12) with Vac-Con, Inc. for the purchase of two sewer cleaning trucks in an amount not to exceed \$710,000 through December 31, 2012, or until the contract is no longer available for use; and b) authorizing the City Manager or the City Manager's designee to execute purchases in the amount specified above provided that sufficient funds are available in the budget adopted for the applicable fiscal year(s); and 2) Pass a Resolution: a) authorizing the City Treasurer or the City Treasurer's designee to secure funding for the acquisition of two sewer cleaning trucks and approve, execute, and deliver all lease-financing documents required to obtain funding in an amount not to exceed \$710,000; b) declaring the City's official intent to use proceeds of an obligation (i.e., the Master Lease Line of Credit associated with the Master Equipment Lease/ Purchase Agreement with Banc of America Public Capital Corp as modified by Amendment No. 2 by City Council approval on February 7, 2012) to reimburse itself for the original expenditures; and c) authorizing the Finance Director to amend the Fleet Management and Field Services budgets to reflect the procurement and financing of two sewer cleaning trucks as secured by the Office of the City Treasurer.

Contact: Keith Leech, Fleet Manager, (916) 808-5869, General Services Department

Presenter: None

Department: General Services Dept

Division: Fleet Management Admin

Dept ID: 13001311

Attachments:

- 1-Description/Analysis
- 2-Vac Con Cooperative Agreement
- 3-Resolution
- 4-Exhibit 1 Financing Terms

City Attorney Review

Approved as to Form
Lan Wang
2/15/2012 2:54:35 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
2/9/2012 3:41:13 PM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz - 2/15/2012 12:43:37 PM

Description/Analysis

Issue: The Department of General Services, Fleet Management Division has a customer requirement to purchase two additional sewer cleaning trucks for the Department of Utilities (DOU). As a result of expanding regulatory requirements and recent litigation by the California Sportfishing Protection Alliance, DOU will be required to significantly increase wastewater collection system maintenance activities. Without the recommended purchase, DOU will be unable to meet the increased maintenance requirements.

Policy Considerations: In accordance with City Code section 3.56.240, the City Manager may, by cooperative purchase agreements approved by City Council, purchase supplies or nonprofessional services through contracts of other governmental jurisdictions without separate competitive bidding, where it is advantageous to the City. Using the recommended HGAC cooperative purchase agreement to purchase two additional sewer cleaning trucks is advantageous to the City as the agreement meets the needs of the City's fleet equipment specifications and will result in cost and time savings.

The recommendations in this report are also consistent with Resolution No. 2010-346 prohibiting the City from entering into any contract to purchase goods or services from any business or entity headquartered in Arizona.

Environmental Considerations:

California Environmental Quality Act (CEQA): The recommendations in this report involve the purchase of City vehicles and are not considered to be a "project" in accordance with Section 15378 (b)(2) of the CEQA guidelines. Therefore, as determined by the City's Environmental Services Planning Manager, no environmental review is necessary.

Sustainability: The recommended purchase is consistent with the Fleet Sustainability Policy adopted by City Council on February 16, 2010 (Resolution No. 2010-083). The 2011 or newer model year diesel powered vehicles to be purchased under the recommended contract will be California Air Resources Board and United States Environmental Protection Agency certified. Model year 2011 heavy duty diesel engines feature a 98.8 percent reduction of particulate matter and a 99.8 percent reduction of nitrogen oxides when compared to earlier model year vehicles.

Commission/Committee Action: Not applicable

Rationale for Recommendation: The Department of General Services, Fleet Management Division has a customer requirement to purchase two additional sewer cleaning trucks for DOU. As a result of expanding regulatory requirements and recent litigation by the California Sportfishing Protection Alliance, DOU will be required to significantly increase wastewater collection system maintenance activities. Without the recommended purchase, DOU will be unable to meet the increased maintenance requirements.

In an ongoing effort to maximize cost savings and staff resources, many government agencies share contracting efforts through cooperative purchasing. This procurement approach increases pricing competitiveness and lowers operating costs through volume buying. When comparing the administrative costs of procurement, staff considers product research, source

selection, specifications, advertising, staff reports, awarding, protest, and administration of the contract. It is often more cost-effective to eliminate the cost and time spent on these administrative processes and purchase items and services through a cooperative purchasing program.

The City has used both regional and national cooperative purchase agreements to complement its own contracting initiatives. Cooperative purchasing enables City departments and the Procurement Services Division to evaluate a broader range of contracting opportunities and to share resources with other jurisdictions. Cooperative purchasing also leverages internal and external resources to maximize cost savings opportunities for the City.

Financial Considerations: The two sewer cleaning trucks recommended for purchase in this report were unforeseen purchases for DOU and are additions to the City fleet to meet increased sewer maintenance requirements. These purchases were agreed to by the City as a component of the financial terms of recent litigation. DOU will propose future Sewer Fund (Fund 6006) rate increases for FY2012/13 through FY2015/16, which includes the annual debt service for these purchases. In the event that rate increases are not approved at a level required to satisfy the debt service, DOU will implement program reductions and other efficiencies to ensure that there is sufficient revenue within existing funding resources.

On August 23, 2011, City Council adopted Resolution No. 2011-492 giving the Office of the City Treasurer the authority to formally enter into a \$6 million Master Lease Line of Credit with Banc of America Public Capital Corp., Bank of America NA (BofA). The majority of this line of credit (\$5.1 million) is designated for the acquisition of 18 refuse truck chassis and bodies, leaving an estimated \$900,000 in available funds from the line of credit, which is the source of funding for the recommended purchase.

The existing master lease line of credit with BofA will expire on June 30, 2012. In the event that the delivery of the two sewer cleaning trucks and the necessary payment occurs after June 30, 2012, arrangements will be made with BofA to reset the applicable interest rate formula and extend the line of credit to December 2012. As of the date of this council report, there is no assurance that BofA will extend the master lease line of credit beyond June 30, 2012 for this proposed financing or other subsequent financings. In the event BofA elects not to extend the master lease line of credit, the Office of the City Treasurer will evaluate the feasibility of other financing options by way of bids/quotes from other banks or financial intermediaries.

If BofA elects to extend the master lease line of credit with the City, BofA has the discretion to modify the variables of the interest rate formula (benchmark interest rate index, index spread, etc.). The “new” interest rate formula could differ from the current interest rate formula identified below.

The estimated rate of financing as of January 26, 2012 based on the known BofA interest rate formula as of the date of this council report is 3.110 percent. The financing rate is subject to changes in market conditions and the actual drawdown period of necessary funds. The general methodology of computing the financing rate per BofA is noted below:

5 year term rate = Average Weighted Life Swap Index (3 years)* x 0.65 + 2.653% = 3.050%;
however, the current terms and conditions specify that the minimum financing rate cannot be less than 3.110%

* Source of Swap Rate: U.S. Federal Reserve as of January 26, 2012

Based on using \$710,000 of the line of credit, the associated debt service obligation based on the sample interest rate above is approximately \$77,213 for each of the ten semi-annual debt service payments. In accordance with the debt service schedule provided by the Office of the City Treasurer for the financing terms specified above, DOU will commence debt service payments effective FY2012/13.

Emerging Small Business Development (ESBD): Vac Con, Inc. is not certified with the City as an emerging/small business. Cooperative purchase agreements are created, evaluated and awarded by other government agencies that may or may not have similar emerging and small business programs. However, the Department of General Services, Fleet Management and Procurement Services divisions will consider other alternatives if it is determined that using cooperative contracts may have a negative impact on small businesses.



Back to Table
of Contents

Attachment 1

HGAC Contract

A CONTRACT BETWEEN
HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas
AND
VAC-CON, INC.
Green Cove Springs, Florida

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **Vac-Con, Inc.** hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 969 Hall Park Road, Green Cove Springs, Florida 32043.

ARTICLE 1: SCOPE OF SERVICES

The parties have entered into a **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** Contract to become effective as of **January 1, 2012**, and to continue through **December 31, 2014** (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** through the **H-GAC** Contract to **END USERS**.

ARTICLE 2: THE COMPLETE AGREEMENT

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No:SC01-12, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No:SC01-12, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3: LEGAL AUTHORITY

CONTRACTOR and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 4: APPLICABLE LAWS

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 5: INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

ARTICLE 6: END USER AGREEMENTS

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer to, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

H:\CONTRACTS\Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services \Vac-Con, Inc.\SC01-12.21

ARTICLE 7:

SUBCONTRACTS & ASSIGNMENTS

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

ARTICLE 8:

EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9:

REPORTING REQUIREMENTS

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10:

MOST FAVORED CUSTOMER CLAUSE

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure. *EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

ARTICLE 11:

SEVERABILITY

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 12:

DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.

ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the **CONTRACTOR** and an **END USER**, **CONTRACTOR's** total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify

H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and **CONTRACTOR** agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will **CONTRACTOR** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. **CONTRACTOR** understands and agrees that it shall be liable to repay and shall repay upon demand to **END USER** any amounts determined by **H-GAC**, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will **H-GAC** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless **H-GAC**, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of **CONTRACTOR's** negligent act or omission under this Contract. **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against **CONTRACTOR** relating to this Contract.

ARTICLE 15: TERMINATION FOR CAUSE

H-GAC may terminate this Contract for cause based upon the failure of **CONTRACTOR** to comply with the terms and/or conditions of the Contract; provided that **H-GAC** shall give **CONTRACTOR** written notice specifying **CONTRACTOR'S** failure. If within thirty (30) days after receipt of such notice, **CONTRACTOR** shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then **H-GAC** may, at its option, place **CONTRACTOR** in default and the Contract shall terminate on the date specified in such notice. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation was received by **CONTRACTOR**.

ARTICLE 16: TERMINATION FOR CONVENIENCE

Either **H-GAC** or **CONTRACTOR** may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. **CONTRACTOR** may be entitled to payment from **END USER** for services actually performed; to the extent said services are satisfactory to **END USER**. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation is received by **CONTRACTOR**.

ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by **H-GAC**, the State of Texas, and the acts and regulations of any funding entity. **CONTRACTOR** agrees to notify **H-GAC** of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 18: GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE

CONTRACTOR agrees to sell its products to **END USERS** based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable **H-GAC** order processing charge. On notification from an **END USER** that an order has been placed with **CONTRACTOR**, **H-GAC** will invoice **CONTRACTOR** for the applicable order processing charge. Upon delivery of any product/service by **CONTRACTOR** and acceptance by **END USER**, **CONTRACTOR** shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay **H-GAC** the full amount of the applicable order processing charge, whether or not **CONTRACTOR** has received an invoice from **H-GAC**. For sales made by **CONTRACTOR** based on this contract, including sales to entities without Interlocal Contracts, **CONTRACTOR** shall pay the applicable order processing charges to **H-GAC**. Further, **CONTRACTOR** agrees to encourage entities who are not members of **H-GAC's** Cooperative Purchasing Program to execute an **H-GAC** Interlocal Contract. **H-GAC** reserves the right to take appropriate actions including, but not limited to, contract termination if **CONTRACTOR** fails to promptly remit **H-GAC's** order processing charge. In no event shall **H-GAC** have any liability to **CONTRACTOR** for any goods or services an **END USER** procures from **CONTRACTOR**.

ARTICLE 20: LIQUIDATED DAMAGES

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

ARTICLE 21: PERFORMANCE BONDS FOR INDIVIDUAL ORDERS

Except as described below for fire apparatus, CONTRACTOR agrees to provide a Performance Bond at the request of END USER within ten (10) days of receipt of END USER's purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the END USER. Failure of CONTRACTOR to provide such performance bond within ten (10) days of receipt of END USER's order may constitute a total breach of contract and shall be cause for cancellation of the order at END USER's sole discretion. END USER may choose to delete the requirement for a Performance Bond at END USER's sole discretion. If the bond requirement is waived, END USER shall be entitled to a price reduction commensurate with the cost that would have been incurred by CONTRACTOR for the bond.

ARTICLE 22: CHANGE OF CONTRACTOR STATUS

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

ARTICLE 23: LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]

CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston Area Council, Houston, Texas: Jack Steele, Executive Director

Attest for Houston-Galveston Area Council, Houston, Texas: Deidre Vick, Director of Public Services
Date: 29, 2011

Signed for Vac-Con, Inc. Green Cove Springs, Florida: _____
Printed Name & Title: Todd Masley, Sales Manager

Date: 29 November 2011

Attest for Vac-Con, Inc. Green Cove Springs, Florida: _____
Printed Name & Title: Jan Chapman, Sales Coordinator

Date: 29 November, 2011

Attachment A
Vac Con, Inc.
 Sewer Cleaning, Hydro-Excavating, Inspection Equipment and Miscellaneous Services
 Contract No. SC01-12

H-GAC Product Code	Manufacturer	Description	Base Offered Price	Meets Buy America	
A. Sewer Cleaners, Centrifugal Compressor Fan Type, For Truck Mounting				Yes	No
A007	Vac-Con	Combination Sewer Cleaner, 3 Yd Debris Body, Single Engine	\$122,267.00	Yes	
A008	Vac-Con	Combination Sewer Cleaner, 9 Yd Debris Body, Dual Engine	\$132,629.00	Yes	
B. Sewer Cleaners, Positive Displacement Type, For Truck Mounting					
B060	Vac-Con	Comb PD Sewer Cleaner, 9 Yd3 Debris Body, Single Engine	\$146,124.00	Yes	
B061	Vac-Con	Comb PD Sewer Cleaner, 9 Yd3 Debris Body, Dual Engine	\$153,006.00	Yes	
C. Jet Rodders, For Truck & Trailer Mounting					
C095	Vac-Con	HS-1000 Truck Mounted Jet Rodding Machine, 1000 Gal	\$64,610.00	Yes	
C096	Vac-Con	HS-1600 Truck Mounted Jet Rodding Machine, 1600 Gal	\$68,565.00	Yes	
D. Hydroexcavators, Truck & Trailer Mounted					
D033	Vac-Con	Truck Mounted Hydro-Excavator	\$156,097.00	Yes	



RESOLUTION NO. 2012-XXXX

Adopted by the Sacramento City Council

February 28, 2012

APPROVING THE USE OF A COOPERATIVE PURCHASE AGREEMENT FOR THE PURCHASE OF TWO SEWER CLEANING TRUCKS

BACKGROUND

- A. The Department of General Services, Fleet Management Division has a customer requirement to purchase two additional sewer cleaning trucks for the Department of Utilities.
- B. In accordance with City Code section 3.56.240, the City Manager may, by cooperative purchase agreements approved by City Council, purchase supplies or nonprofessional services through contracts of other governmental jurisdictions without separate competitive bidding, where it is advantageous to the City.
- C. Using the recommended Houston-Galveston Area Council cooperative purchase agreement to purchase two additional sewer cleaning trucks is advantageous to the City as the agreement meets the needs of the City's fleet equipment specifications and will result in cost and time savings.
- D. Since 2004, the Office of the City Treasurer has facilitated numerous equipment acquisitions through a Master Equipment Lease/Purchase Agreement with Banc of America Public Capital Corp, Bank of America, NA (City Agreement No. 2004-047, as amended on November 18, 2009 and February 7, 2012, together the "Master Agreement).
- E. Section 1.150-2 of the United States Treasury Regulations ("Section 1.150-2") requires the City to declare its reasonable "official intent" to reimburse itself with proceeds for expenditures it expects to pay before the equipment lease is executed and funds available.

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

- Section 1. The City Treasurer or the City Treasurer's designee is hereby authorized to secure funding for the acquisition of two sewer cleaning trucks and approve, execute, and deliver all lease-financing documents required to obtain funding in an amount not to exceed \$710,000.

- Section 2. The City hereby declares its official intent to use proceeds of an obligation, (i.e. the Master Lease Line of Credit associated with the Master Equipment Lease/Purchase Agreement with Banc of America Public Capital Corp as modified by Amendment No. 2 by City Council approval on February 7, 2012) to reimburse itself for the original expenditures.
- Section 3. The Finance Director is hereby authorized to amend the Fleet Management and Field Services budgets to reflect the procurement and financing of two sewer cleaning trucks as secured by the City Treasurer.
- Section 4. Exhibit 1 is part of this Resolution.

Exhibit 1



Jill M. Forsyth
Senior Vice President
Government Finance Specialist

Banc of America Public Capital Corp
AZ3-588-02-02
14648 N. Scottsdale Road, Suite 250
Scottsdale, AZ 85254
Email: jill.m.forsyth@baml.com
Tel: (480) 624-0369
Fax: (415) 796-1301

SUMMARY OF TERMS AND CONDITIONS

Date: August 19, 2011

Lessee: City of Sacramento, CA

Lessor: Banc of America Public Capital Corp, Bank of America, NA or designee ("Lessor").

Equipment: **Essential Use Equipment**

Structure: Non Bank Qualified Master Lease Line of Credit. The lease line will be set for a total of \$6MM.

Security: Lien on the assets

Term: 5 Years

Interest Rate: **Rate will be fixed for funding until January 30, 2012**

3.11% -

RATES: The current rates are locked from the date of this Term Sheet and will be honored so long as the transaction is funded before the date indicated on this term sheet. If the transaction does not fund by that time, the rate may need to be modified if there is a change in market conditions, but in no case will it be less than the rate quoted herein. Acceptance of this proposal must be done within 5 business day to have this rate locked.

Payments: Semi-annually payments in arrears starting 7/1/2012 and ending 1/2/2017.

**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(e) 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: Lessee may prepay the Lease and thereby terminate the Lease early in accordance with the following:

- (a) *Optional Prepayment.* Beginning in the 31st month of the Lease Term, Lessee may prepay the Lease in full by giving Lessor 30-days’ prior written notice and by paying the applicable prepayment price set out in paragraph (c) below.
- (b) *Private Activity.* If required to avoid a determination that the Lease is a private-activity bond, then Lessee may prepay the Lease in full at any time during the Lease Term by giving Lessor 30-days’ prior written notice and by paying the applicable prepayment price set out in paragraph (c) below.
- (c) *Prepayment Price.* As used here, the “amount due” consists of all unpaid accrued interest, the outstanding principal balance, and any other charges due. The prepayment price is as follows: during the first three years of the Lease Term, 103% of the amount due; during the fourth year of the Lease Term, 102% of the amount due; and during the fifth year of the Lease Term, 101% of the amount 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:

This transaction is subject to acceptable documentation in Lessor's sole discretion.

Credit Approval:

This transaction has been formally credit approved but is still subject to acceptable documentation in Lessor's sole discretion.

Proposal Expiration: This proposal will expire on August 26, 2011 and may be re-issued at Lessor's discretion.