



REPORT TO COUNCIL City of Sacramento

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

Consent
November 6, 2007

Honorable Mayor and
Members of the City Council

Title: Sacramento Marina South Basin Renovation Project Financing

Location/ Council: Sacramento Marina, 2710 Ramp Way / District 4

Recommendation: Adopt a **resolution** authorizing the execution and delivery of a Ground and Facilities Lease, a Sublease, and other documents associated with an estimated \$1.5 million loan from Banc of America Public Capital Corp. for the Sacramento Marina South Basin Renovation.

Contact: Thomas S. Berke, Acting City Treasurer, Janelle Gray, Public Finance and Banking Manager

Presenters: N/A

Department: Office of the City Treasurer

Division: Public Finance

Organization No: 0900

Description/Analysis

Issue: On April 10, 2007, the City Council authorized the City Manager to enter into a loan agreement with Bank of America for the Sacramento Marina South Basin Renovation Project. The loan is needed to finance engineering-design costs and provide a contingency fund, and is not to exceed \$1.5 million. The City Treasurer's Office is now seeking approval of the financing documents associated with the \$1.5 million loan, as well as approval of \$23,000 in estimated issuance costs. The loan agreement will be with an affiliate of Bank of America, Banc of America Public Capital Corp.

Policy Considerations: This loan is a lease-and-leaseback financing that requires the City to lease City-owned property to the bank (the Ground and Facilities Lease) in return for the bank's lump-sum rental payment of \$1.5 million. The bank will in turn sublease the property back to the City for 15 years (the

Sublease), and the City's semi-annual rental payments under the Sublease will equal debt service on the loan. Both the Ground and Facilities Lease and the Sublease will terminate when the loan is fully repaid.

Usually, the City must follow the bidding procedures in chapter 3.68 of the Sacramento City Code when leasing City-owned property. Given the nature of this transaction, however, the proposed resolution invokes Sacramento City Code section 3.68.110, subsection F, to authorize awarding the Ground and Facilities Lease without bidding. Under that subsection, the City Council may waive bidding for a lease of City-owned property if the City Council finds that doing so is in the best interest of the City and, in addition, finds and determines that special circumstances make the use of bidding inappropriate.

The associated agreements and documents are attached to the report. While they have not been signed by City Attorney's Office as "approved for legal form", they have been reviewed by the City Attorney's Office, are in substantially final form, and will be executed after the financing documents are approved.

Environmental Considerations: This report concerns administrative activities which do not constitute a "project" for purposes of the California Environmental Quality Act (CEQA). These activities are thus not subject to CEQA. (Cal. Code Regs., tit. 14, §§ 15060(c) & 15378(a).)

On February 22, 2005, City Council approved the Mitigated Negative Declaration and adopted the Mitigation Monitoring Plan for the Marina South Basin Improvements Project (CIP# IA66), Resolution No. 2005-108.

Rationale for Recommendation: Approval of the recommended actions authorizes the City Treasurer to take the actions necessary for the execution of related documents to secure needed financing for the Sacramento Marina South Basin Renovation Project.

Financial Considerations: The total cost for this project is estimated at \$10.5 million, of which \$9 million has been loaned by the State Department of Boating and Waterways. The remaining \$1.5 million, which is needed for engineering-design work, will be covered by the loan from Banc of America Public Capital Corp. The annual debt payment for the \$1.5 million loan will be approximately \$139,600, with full payment to be paid by the Marina Fund, which has sufficient revenue cash flow.

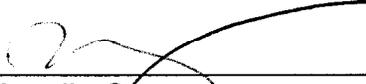
The terms of the financing arranged by the City Treasurer are estimated as follows:

Estimated Amount of Loan:	\$1,523,000 (includes cost of issuance)
Term of Loan:	15 years
Interest Rate:	4.38%
Estimated Annual Debt Service:	\$139,583

See **Attachment 2** for the detailed indicative terms and conditions.

Emerging Small Business Development (ESBD): Any goods and services will be purchased in accordance with established City policies.

Respectfully Submitted by:



Janelle Gray
Public Finance and Banking Manager

Approved by:



Thomas S. Berke
Acting City Treasurer

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RESOLUTION NO. 2007-

Adopted by the Sacramento City Council

APPROVING \$1.523 MILLION LOAN FOR THE SACRAMENTO MARINA SOUTH BASIN RENOVATION PROJECT

BACKGROUND

- A.** On April 10, 2007, the City Council authorized the City Manager to enter into a loan agreement with Bank of America for the Sacramento Marina South Basin Renovation Project. The loan is needed to finance engineering-design costs and provide a contingency fund, and is not to exceed \$1.5 million. The City Treasurer's Office is now seeking approval of the financing documents associated with the \$1.5 million loan, as well as approval of \$23,000 in estimated issuance costs. The loan agreement will be with an affiliate of Bank of America, Banc of America Public Capital Corp. (the "Bank").
- B.** The City Treasurer's Office has had various financings through Bank since 1996, each using a lease-and-leaseback structure. The City will utilize this financing structure to borrow the \$1.5 million needed to complete the Sacramento Marina South Basin Renovation Project. The City will lease City-owned property to the Bank (the Ground and Facilities Lease) in return for the Bank's lump-sum rental payment of \$1.5 million. The Bank will in turn sublease the property back to the City for 15 years (the Sublease), and the City's semi-annual rental payments under the Sublease will equal debt service on the loan. Both the Ground and Facilities Lease and the Sublease will terminate when the loan is fully repaid. The source of payment of this lease financing will be derived from the Marina Budget.
- C.** In accordance with Sacramento City Code section 3.68.110, subsection F, the City Council finds and determines that, given the special circumstances of this transaction, the competitive-bidding procedures under chapter 3.68 of the Sacramento City Code are inappropriate and that it is in the best interest of the City to enter into the Ground and Facilities Lease without bidding.
- D.** It is desirable and necessary to approve the forms of the various documents and to authorize the City Treasurer to perform the actions necessary to secure the financing.
- E.** The City Council is fully advised on this matter.

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

Section 1. The above recitals are true, and City Council so finds and determines.

Section 2. The City Council hereby approves the \$1.523 million loan from the Bank, consisting of \$1.5 million plus \$23,000 in issuance costs.

Section 3. The City Treasurer is hereby authorized to execute and deliver to the Bank, on the City's behalf, the Ground and Facilities Lease and the Sublease required for the \$1.5 million loan from the Bank, each to be substantially in the form now on file with the City Clerk, with such non-substantive changes as the City Treasurer may require or approve in the interest of the City after consulting with the City Attorney. The City Treasurer is further authorized to execute and deliver, on the City's behalf and after consulting with the City Attorney, any other documents required for the loan.

ATTACHMENT 2

INDICATIVE SUMMARY OF TERMS AND CONDITIONS

- Date:** August 31, 2007
- Lessee:** The City of Sacramento, CA (“County” or “Lessee”)
- Lessor:** Banc of America Public Capital Corp or its designee (“Lessor”)
- Project:** **Sale/leaseback financing of one existing building and associated land** (individually “Improvement” and “Parcel” and collectively “Property”).
- Project Cost:** **\$ 1,500,000**
- Tenant:** City of Sacramento
- Use Restrictions:** Lessee will covenant that the Improvements and Property will be used exclusively throughout the Ground Lease Term (i) for essential governmental or proprietary functions consistent with the permissible scope of applicable authority, and (ii) by the City of Sacramento.
- Lease Structure:** A Lease Purchase Agreement (“Agreement”) and a Ground Lease/Sublease (“Ground Lease”) transaction under which all tax benefits will remain with Lessee. The Agreement will be a net financial lease, and all expenses, including (but not limited to) liability and casualty insurance, maintenance, and taxes, will be for the account of Lessee. The Agreement shall be based on an appropriations structure. The assets financed will be used for an asset transfer financing.
- Ground Lease:** Lessee will enter into a ground lease with Lessor covering the Parcel; where the Improvements are located, and sublease the Parcel and Improvements back from Lessor on a triple-net basis for a period at least equal to the useful life of the Improvements plus a cushion of 15 years. The Ground Lease will include, at Lessor’s option, other support agreements pursuant to which Lessee shall provide to Lessor the various support resources necessary to occupy and use the Property, or access to such resources. Upon an event of default under the Agreement, Lessor will have the immediate right to sublet the Property to other users.

Term: 15 years ("Agreement")
30 years ("Ground Lease")

**Lease
Commencement
Date:**

It is anticipated that funding will occur on or after
September 2007.

Rent: Lessee shall make semiannual payments in arrears

**Indicative
Tax Exempt
Interest Rate:** 4.38%

Such indicative Tax Exempt Interest Rates will be held until
September 28, 2007. Subsequent to that date, the Tax-
Exempt Interest Rate will be fixed approximately five
business days prior to new fundings equal to a tax-exempt
interest rate of:

$(.65 \times 10\text{-yr Interest Rate Swap}) + .987$

Lessor will maintain its economic yield in the lease outside
of the interest rate lock period described above and prior to
funding. The lease will be a fixed rate financing
subsequent to funding.

The interest rate is indicative only and is based on the
following Index :

Index: The "Index Rate" is herein defined as the 10-year Interest
Rate Swap as defined in the Federal Reserve Board
Statistical Release H.15, which can be found at
<http://www.federalreserve.gov/releases/h15/update/>. The
10-year Index Rates was equal to 5.22 % as of August 31,
2007 (representing the end of business on August 30,
2007).

**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: On any rental payment date and upon 30 days' notice, Lessee may prepay in full all amounts then outstanding under the Agreement, including accrued interest, principal balance, and other unpaid charges under the following schedule:

Years	Percent of Outstanding Balance
0-2	102.0 %
3-5	101.5 %
6-7	100.5 %

End of Term: At the expiration of the Agreement, Lessee will purchase all (but not less than all) of the Project for \$1.00 ("Purchase Price") and Lessor will release its interest in the Ground Lease and the Property.

Expenses: Expenses to document the Agreement and Ground Lease and related documents will be for the account of the Lessee and may be included in the Project Cost up to the maximum permitted by law.

Lease Documents: Documents must be mutually satisfactory to both Lessee and Lessor. Lessee will provide City Council resolution, incumbency certificates and other documentation required by Lessor.

Opinion of Counsel: Lessee shall furnish a legal opinion from its counsel to Lessor at closing covering validity and enforceability of the Lease, among other matters, and shall be in form and substance satisfactory to Lessor. Lessee shall also furnish an opinion of qualified tax counsel that will cover the

following tax matters:

- (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;
- (c) existence of initial Ground Lease and any subsequent sublease to Lessee or another end user will not impact the availability of tax-exempt status for the Agreement; 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.

Other Conditions: Lessee shall be required to provide the following prior to closing:

- (a) Satisfactory Environmental Audit Phase I; [WAIVED]
- (b) Appraisal by appraiser acceptable to Lessor to establish an acceptable value of the building and associated land. A desk top appraisal will be acceptable. [Lessee valuation method acceptable]
- (c) Certification as to the location of the property within any flood hazard area; [WAIVED]
- (d) Certified survey by a registered land surveyor, detailing all boundaries of the property subject to the Agreement and Ground Lease with dimensions, boundary descriptions, and locations of streets, building lines, existing buildings or improvements, right-of-ways, easements, encroachments, or any aspect that may affect the Property. [WAIVED, but subject to item (e) below]
- (e) Title insurance for property;
- (f) Subordination, non-disturbance and attornment agreements and estoppel certificates from any tenant or sublessee associated with the Property. [WAIVED]
- (g) Other documentation, information, reports, etc. the Lessor may reasonably request, including but not limited to

compliance with applicable zoning, safety and legal access ordinances.

(h) Evidence of insurance for property.

**Assignment
by Lessor:**

The Lessor shall be entitled to assign its right, title and interest in the Agreement and the Ground Lease on a private placement basis to qualified purchasers. In addition, Lessor shall be entitled to assign its right, title and interest in the Agreement and Ground Lease to a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in such Lease, provided such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represent that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment (ii) such purchaser understands neither the Lease or certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) that it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933.

Patriot Act:

Lessee acknowledges that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), Lessor is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Patriot Act.

Utilization

Period :

Utilization period will extend until December 15, 2007

Proposal

Expiration Date:

This proposal will expire on September 28, 2007.

ATTACHMENT 3

**CITY OF SACRAMENTO
FINANCING OF SACRAMENTO MARINA SOUTH BASIN RENOVATION
LIST OF DOCUMENTS**

The following documents are not published as part of the agenda package.

They are available for review on the City's Website at www.cityofsacramento.org, or the Office of the City Clerk:

Office of the City Clerk
915 I Street
HCH, 1st Floor
Sacramento, CA 95814

- A. Ground and Facilities Lease
- B. Sublease
- C. Arbitrage and Tax Certificate
- D. Form of Opinion of Counsel
- E. Other Associated Financing Documents

