

## RESOLUTION NO. 2012-048

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.

Adopted by the City of Sacramento City Council on February 28, 2012 by the following vote:

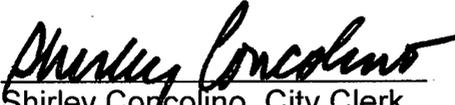
Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

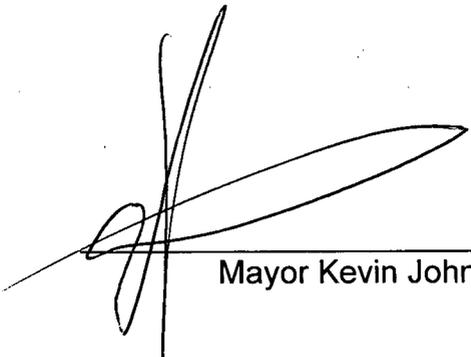
Noes: None.

Abstain: None.

Absent: None.

Attest:

  
Shirley Concolino, City Clerk

  
\_\_\_\_\_  
Mayor Kevin Johnson

## Exhibit 1

**Bank of America.**



**Jill M. Forsyth**  
Senior Vice President  
Government Finance Specialist

Bank of America Public Capital Corp  
AZ3-588-02-02  
14648 N. Scottsdale Road, Suite 250  
Scottsdale, AZ 85254  
Email: jill.m.forsyth@bamf.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 31<sup>st</sup> 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.**