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OFFICE OF THE
CITY TREASURER

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August 5, 2004
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City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: AUTHORIZE THE CITY TREASURER'S ACTIONS TO SECURE FINANCING AND TO EXECUTE THE ACQUISITION FUND AGREEMENT AND SCHEDULE OF PROPERTY NO. 3 ¹ BETWEEN THE CITY OF SACRAMENTO AND BANC OF AMERICA LEASING AND CAPITAL, LLC ("B of A Leasing"); AND AUTHORIZATION TO INCREASE CONTRACT AMOUNT RESULTING FROM BID NO. 1829 FOR REFUSE AND RECYCLING CONTAINERS

LOCATION AND DISTRICT: Citywide

RECOMMENDATION:

This report recommends that the City Council adopt the attached resolution:

- 1) Authorizing the City Treasurer's actions to secure financing and to execute the Acquisition Fund Agreement and Schedule of Property No. 3 ¹ between the City of Sacramento and B of A Leasing and;
- 2) Increase the contract amount resulting from Bid 1829

CONTACT PERSONS: Thomas P. Friery, City Treasurer (916) 808-5168
Lydia Abreu, Deputy City Treasurer (916) 808-5168

FOR COUNCIL MEETING OF: August 17, 2004

SUMMARY:

This report advises the City Council of the City Treasurer's actions to secure financing for the acquisition of greenwaste and recycling containers and requests that the City Council approve the City Treasurer's actions. Staff anticipates that the cost of this

¹ Schedule of Property No. 3 is associated with Master Equipment Lease/Purchase Agreement – City Agreement No. 2004-047 that was approved on March 16, 2004.

project will not exceed \$1.2 million through two tranches of financing and will be paid back over two separate five-year maturity schedules. The first tranche of the financing is anticipated to occur in late-Aug 2004 while the second tranche of the financing is expected to occur in late-Dec 2004 or early-Jan 2005. The source of debt service payment for both tranches of the financing would be derived from fees assessed and paid by existing and future homeowners.

At the request of the Solid Waste Division Manager, this report also requests increasing the contract amount resulting from Bid No.1829 from an annual amount not to exceed \$800,000.00 to an annual amount not to exceed \$2,000,000.00 and from an aggregate amount not to exceed \$3,500,000.00 to an aggregate amount not to exceed \$5,900,000.00, in order to supply additional containers for the pilot Voluntary Containerized Lawn and Garden Collection Program approved by Council in May.

COMMITTEE/COMMISSION ACTION: None

BACKGROUND INFORMATION:

On June 22, 2004, City Council authorized the City Treasurer to seek financing related to the acquisition of greenwaste containers for the City's Solid Waste Division.

Pursuant to the City Council's direction, the City Treasurer conducted a search for the most beneficial financing for the Project. As a result of the issue size, the equipment lease was the most efficient and economical structure. The City Treasurer's Office has had a contract with B of A Leasing since 1996 and has provided equipment leases for other projects throughout the years. B of A Leasing proposed a 3.16% rate over five years for the first tranche of this financing.

Staff anticipates that the acquisition of approximately 30,000 additional greenwaste and recycling containers for the pilot Voluntary Containerized Lawn and Garden Collection Program (15,000 containers in each of the tranches of the financing) will not exceed \$1.2 million and will be purchased from the contract resulting from Bid No. 1829. The source of debt service payment for both tranches of the financing would be derived from fees assessed and paid by existing and future homeowners where the greenwaste and/or recycling containers will be delivered to.

FINANCIAL CONSIDERATIONS:

The source of debt service payment for both tranches of the financing would be derived from fees assessed and paid by existing and future homeowners. No budget increase is required for this purpose over the term of the debt.

The actual terms of the financing arranged by the City Treasurer for the first tranche of the financing are as follows:

Amount of Loan:	\$580,072.13
Term of Loan:	5 years
Interest Rate:	3.16%
Annual Debt Service:	\$126,334

August 17, 2004
Greenwaste Recycling Containers

See Exhibit 1 for detailed terms and conditions.

Please note that we will seek City Council approval when the time comes to proceed with the second tranche of the financing.

ENVIRONMENTAL CONSIDERATIONS:

This report concerns ongoing administrative or maintenance activities which are not for purposes of a public works construction project and do not constitute a "project" as defined by the California Environmental Quality Act (CEQA) Guidelines Section 15378(a). These activities are, therefore, not subject to the requirements of CEQA [CEQA Guidelines 15060(c)].

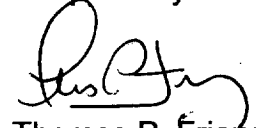
POLICY CONSIDERATIONS:

This recommendation is consistent with the City's Strategic Plan and the goal of the City Council to implement organizational improvements

ESBD CONSIDERATIONS:

Goods and services will be purchased in accordance with established City policies.

Respectfully Submitted,



Thomas P. Friery
City Treasurer

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

APPROVED:



Ken Nishomoto
Deputy City Manager

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SUMMARY OF TERMS AND CONDITIONS

Date: July 27, 2004

Lessee: The City of Sacramento, California

Lessor: Banc of America Leasing & Capital, LLC or its designee ("Lessor")

Equipment: **New refuse containers (\$1,200,000)** (individually "Unit" and collectively "Equipment")

Maximum Purchase Price: the lower of \$1,200,000 and the fair market value of the Equipment

Lease Structure: A lease intended as security transaction; under which all tax benefits will remain with Lessee. The lease will be a net financial lease, and all expenses, including (but not limited to) insurance, maintenance, and taxes, will be for the account of Lessee.

Term: **Lease Commencement Date:** It is anticipated that funding will occur after August 15, 2004.

Lease Term: 5 year term.

**Indicative
Tax Exempt
Interest Rate:** **3.16 %**

Such indicative Tax Exempt Interest Rate will be held until August 27, 2004. Subsequent to that date and subject to the economic yield maintenance requirements below, the Tax-Exempt Interest Rate will be fixed five business days prior to funding equal to a tax-exempt interest rate of

(.65 x 5-year U.S. Treasuries) plus .7225 %

Lessor will maintain its economic yield in the lease outside of the interest rate lock period described above and prior to funding.

Rent: Lessee shall make semiannual payments, each equal to the stated percentage of Maximum Purchase Price, payable in arrears ("**Indicative**

Rental Rate”). This rental amount is indicative only and is comprised of principal and interest at the Tax Exempt Interest Rate based on the following Index:

Index: The index on which the Tax Exempt Interest Rate is based is the bond-equivalent yield per annum for comparable-year U.S. Treasury obligations as quoted by Bloomberg Daily Market Summary. As of July 27, 2004, the Index was 3.75 % for 5 years.

**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: After the Lease Commencement Date, on any rental payment date and upon 30 days’ notice, Lessee may prepay in full all amounts then outstanding under the Lease, including accrued interest, principal balance, and other unpaid charges according to the following schedule: year 0-2 at 101% of outstanding balance; year 3 at 100.5% of outstanding balance; and from year 4 forward, at 100% of outstanding balance.

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”).

Expenses: Lessee and Lessor will each be responsible for its own expenses incurred in connection with the preparation, negotiation and closing of the lease documentation.

Lease Documents: Master lease documents already negotiated between Lessee and Lessor will be utilized for this transaction with additional schedules, conforming to the details of this financing. Lessee will also provide board resolutions and other documentation required by Lessor.

Executed lease documents shall control the final transaction.

**Opinion
of Counsel:**

Lessee's counsel shall deliver an opinion to Lessor at closing in form and substance satisfactory to Lessor concerning the due authorization, execution, delivery, and enforceability of the lease.

**Assignment
by Lessor:**

The Lessor shall be entitled to assign its right, title and interest in the Lease and leased equipment on a private placement basis to qualified purchasers. In addition, Lessor shall be entitled to assign its right, title and interest in the 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.

Filing Fees:

Lessor will obtain Uniform Commercial Code financing statement searches in Lessee's headquarters and each Equipment location. If Lessor requests, Lessee will also furnish duly executed landlord and mortgage waivers and supporting information. Lessee will also provide board resolutions, incumbency certificates and other documentation required by Lessor.

**Utilization
Period :**

Utilization period will extend until July 27, 2005, or 12 months from the date of documentation closing.

**Proposal
Expiration Date:**

This proposal will expire on August 27, 2004.

RESOLUTION NO.

ADOPTED BY THE CITY COUNCIL

ON THE DATE OF _____

SECURE FINANCING FOR THE PURPOSE OF PROVIDING FUNDS FOR THE ACQUISITION OF GREENWASTE AND RECYCLING CONTAINERS IN AN AMOUNT NOT TO EXCEED \$1.2 MILLION; AUTHORIZATION TO INCREASE THE AMOUNT OF THE EXISTING CONTRACT RESULTING FROM BID NO. 1829 FOR REFUSE AND RECYCLING CONTAINERS

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

- 1) The City Treasurer is hereby authorized to secure financing and to execute the Acquisition Fund Agreement and the Schedule of Property No. 3 ¹ between the City of Sacramento and B of A Leasing.
- 2) The City Manager is hereby authorized to increase the amount of the existing contract with Environmental Delivery Services, Inc. and Toter, Inc., joint payees, 9101 W. Sahara Ave., Ste. 105-G-30, Las Vegas, NV 89117, to an annual amount not to exceed \$2,000,000 and an aggregate amount not to exceed \$5,900,000.

MAYOR

ATTEST:

CITY CLERK

¹ Schedule of Property No. 3 is associated with Master Equipment Lease/Purchase Agreement – City Agreement No. 2004-047 that was approved on March 16, 2004.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____