

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

AN ORDINANCE

AUTHORIZING THE MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT AND AN ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT FOR THE ACQUISITION OF VARIOUS EQUIPMENT FOR THE SOLID WASTE MANAGEMENT DEPARTMENT; AUTHORIZING SCHEDULE A TO THE MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT IN THE TOTAL AMOUNT OF \$24,030,918.00, AUTHORIZING THE EXECUTION OF DOCUMENTS RELATED TO THE TRANSACTION; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

* * * * *

WHEREAS, the City of San Antonio, Texas (“City” or “Lessee”) is a home rule municipality, a political subdivision of, and is duly organized and existing pursuant to the Constitution and laws of the State of Texas (“State”); and

WHEREAS, pursuant to applicable law, the City Council (“Council”) of the City is authorized to acquire, dispose of, and encumber personal property, including, without limitation, rights and interest in property, and leases necessary to the functions or operations of the City; and

WHEREAS, a Request for Bid for Tax-Exempt Equipment Lease/Purchase Financing (“RFB”), soliciting bids for a tax-exempt master equipment lease/purchase financing provider was issued by the City on December 7, 2015; and

WHEREAS, eight (8) financial institutions submitted bids in response to the RFB, which were received by the City and evaluated by the Finance Department; and

WHEREAS, City Staff recommended that the City as Lessee enter into a Master Agreement defined herein with Banc of America Public Capital Corp as “Lessor” (attached hereto as **Exhibit A**) and an Escrow and Account Control Agreement with the Lessor, the Lessee, and Frost Bank, San Antonio, Texas (as “Acquisition Fund Custodian”), providing terms and conditions under which lease/purchase transactions shall be conducted by and between the parties; and

WHEREAS, the Lessee desires to acquire on or about February 17, 2016, eighteen (18) refuse collection trucks for the Solid Waste Management Department (the “Refuse Collection Trucks”) for the total amount of \$5,084,982.00, as disclosed in Schedule A to the Master Agreement attached hereto as Exhibit B and incorporated by reference for all purposes; and

WHEREAS, the Lessee also desires to acquire on or about February 17, 2016, three hundred forty-four thousand five hundred forty-four (344,544) refuse containers (the “Refuse Containers”) for the total amount of \$18,945,936.00, as also disclosed in Schedule A to the Master Agreement attached hereto as Exhibit B; and

WHEREAS, the Refuse Collection Trucks and the Refuse Containers are sometimes hereafter collectively referred to as the “Equipment”; and

WHEREAS, Lessor shall act as lessor under Schedule A to the Master Agreement; and

WHEREAS, the Equipment is essential for the Lessee to perform its governmental and/or proprietary functions; and

WHEREAS, the Council hereby finds and determines that the adoption of this Ordinance and authorization for the execution and delivery of Schedules A to the Master Agreement are in the best interests of the City; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City hereby approves the bid form presented by Banc of America Public Capital Corp as the low bid and selects and approves Banc of America Public Capital Corp as the finance provider of the Master Tax-Exempt Equipment Lease/Purchase Agreement which provided for the financing of (1) \$5,084,982.00 for the acquisition of eighteen (18) refuse collection trucks for the Solid Waste Management Department at an interest rate of 1.29% for a sixty (60) month term to pay the costs of the transaction and (2) \$18,945,936.00 for the acquisition of three hundred forty-four thousand five hundred forty-four (344,544) refuse containers for the Solid Waste Management Department at an interest rate of 1.09% for a thirty-six (36) month term to pay the costs of the transaction. The terms and conditions of that certain Master Tax-Exempt Equipment Lease/Purchase Agreement (“Master Agreement”) by and between the City and Banc of America Public Capital Corp, a true and correct copy of which is attached hereto as **Exhibit A**, are hereby approved. The City Manager, the City Manager’s designee, and/or the City’s Chief Financial Officer or his designee, and/or the Director of Finance or his designee, acting on behalf of the City, are hereby authorized to execute and enter into the Master Agreement in substantially the form set forth in **Exhibit A** hereto.

SECTION 2. The City hereby selects and approves Frost Bank, San Antonio, Texas, as the account agent of the Escrow and Account Control Agreement (the “Account Control Agreement”). The terms and conditions of that certain Escrow and Account Control Agreement (“Escrow Agreement”) by and between the City, Frost Bank, San Antonio, Texas, and Banc of America Public Capital Corp, a true and correct copy of which is attached hereto as **Exhibit B**, are hereby approved. The City Manager, the City Manager’s designee, and/or the City’s Chief Financial Officer or his designee, and/or the Director of Finance or his designee, acting on behalf of the City, are hereby authorized to execute and enter into the Acquisition Account Agreement in substantially the form set forth in Exhibit B hereto.

SECTION 3. Schedule A to the Master Agreement, as attached hereto as **Exhibit C** is hereby approved and is incorporated by reference into this Ordinance for all purposes.

SECTION 4. The City Manager, the City Manager’s designee, and/or the City’s Chief Financial Officer or his designee, and/or the Director of Finance or his designee, acting on behalf of the City, are hereby authorized to negotiate, execute and enter into Schedule A to the Master Agreement in substantially the forms set forth in **Exhibit B** hereto, which document is available for public inspection at the Office of the City Clerk. The Mayor, City Manager, Chief Financial Officer, City Attorney, and the City Clerk (each an “Authorized Officer”), acting on behalf of the City, are each hereby authorized to enter into, execute, and deliver such other documents and certificates relating to Schedule A to the Master Agreement as the Authorized Officer deems necessary and appropriate as specified in Schedule A to the Master Agreement, without further action by this Council. All other related contracts, certificates, and agreements necessary and incidental to Schedule A to the Master Agreement are hereby authorized, with the exception of adding future Schedules to the Master Agreement, other than Schedule A as authorized by this Ordinance. Future Schedules to the Master Agreement shall require approval by Council.

SECTION 5. The aggregate original principal amount for the Refuse Collection Trucks and the Refuse Containers, respectively, shall not exceed the amount set forth in Schedule A to the Master Agreement and shall bear interest as set forth in Schedule A to the Master Agreement and Schedule A to the Master Agreement shall contain such options to purchase and/or prepay by the City as set forth therein.

SECTION 6. The City’s obligations under Schedule A to the Master Agreement shall be subject to annual appropriation or renewal by the Council as set forth in Schedule A to the Master Agreement and the City’s obligations under Schedule A to the Master Agreement shall not constitute a general obligation of the City or indebtedness under the Constitution or laws of the State.

SECTION 7. The Chief Financial Officer and/or the Director of Finance are authorized to record and account for Schedule A to the Master Agreement in accordance with generally accepted accounting principals and all other applicable laws.

SECTION 8. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION 9. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

SECTION 10. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 11. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 12. Expenses not to exceed \$24,030,918.00 associated with this ordinance will be available in Fund 55005007, 2016 Equipment Acquisition-SWMD, contingent upon the execution of a lease agreement. Principal and interest payments will be charged to Cost Center 5501010001 and General Ledgers 5404010 and 5404020, respectively.

SECTION 13. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 14. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

RKN
__/__/16
Item #

SECTION 15. This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND ADOPTED by an affirmative vote of ____ members of the City Council of the City of San Antonio, Texas, this the ____ day of _____, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

I the undersigned, Acting City Attorney of the City of San Antonio, Texas, hereby certify that I read, passed upon, and approved as to form the foregoing Ordinance prior to its adoption and passage aforesaid.

Martha G. Sepeda, Acting City Attorney
City of San Antonio, Texas