

AN ORDINANCE

98072

ACCEPTING THE OFFER FROM HEIDELBERG USA, INC. FOR THE LEASE/PURCHASE OF A NETWORK PRINTER AND MAINTENANCE AND SUPPLIES AND AUTHORIZING THE EXECUTION OF A LEASE PURCHASE AGREEMENT WITH KEY MUNICIPAL FINANCE FOR A TERM OF SIXTY-MONTHS FOR THE PRINTER AND ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE FOR A TOTAL ESTIMATED MONTHLY COST OF \$10,638.80

WHEREAS, the City of San Antonio, Texas (the *City*) 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 (the *State*); and

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

WHEREAS, the City issued a Request for Offers for the lease of a network printer for the Purchasing & General Services Department Central Stores, utilizing the State of Texas catalogue purchasing program; and

WHEREAS, an offer was submitted by Heidelberg USA, Inc. (*Heidelberg*), a catalogue information systems vendor, in cooperation with Key Municipal Finance, a division of Key Corporate Capital, Inc., with Heidelberg supplying the printer and providing maintenance and supplies therefore; and

WHEREAS, this procurement meets the requirement under the terms of the State of Texas Cooperative Purchasing Agreement adopted by the City by Resolution No. 91-39-53 on September 12, 1991; and

WHEREAS, the Council hereby finds and determines that the execution of the Master Tax-Exempt Lease/Purchase Agreement attached hereto as Exhibit A (the *Equipment Lease*) in the principal amount not exceeding the amount stated therein for the purpose of acquiring the property (*Equipment*) to be described in the Equipment Lease is appropriate and necessary to the functions and operations of the City; and

WHEREAS, Key Municipal Finance (the *Lessor*) shall act as Lessor under the Equipment Lease; and

WHEREAS, the Council hereby finds and determines the adoption of this ordinance and the execution of the Equipment Lease, and the acceptance of the Heidelberg offer, are in the best interests of the citizens of the City;

NOW, THEREFORE,

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

SECTION 1. The Equipment Lease attached hereto as Exhibit A is incorporated by reference to this Ordinance for all purposes.

SECTION 2. The Mayor, City Manager, Director of Finance, Director of Purchasing & General Services, City Attorney, and the City Clerk or Acting City Clerk (each an “Authorized Representative”) acting on behalf of the City, are hereby authorized to negotiate, enter into, execute, and deliver one or more Equipment Leases in substantially the form set forth in Exhibit A hereto, which document is available for public inspection at the office of the City. Each Authorized Representative acting on behalf of the City is hereby authorized to negotiate, enter into, execute, and deliver such other documents and certificates relating to the Equipment Lease as the Authorized Representative deems necessary and appropriate. All other related contracts, certificates, and agreements necessary and incidental to the Equipment Lease are hereby authorized.

SECTION 3. The aggregate original principal amount of the Equipment Lease shall not exceed the amount set forth in the Equipment Lease and shall bear interest as set forth in the Equipment Lease and the Equipment Lease shall contain such options to purchase by the City as set forth therein.

SECTION 4. The City’s obligations under the Equipment Lease shall be subject to annual appropriation or renewal by the Council as set forth in the Equipment Lease and the City’s obligations under the Equipment Lease shall not constitute a general obligation of the City or indebtedness under the Constitution or laws of the State.

SECTION 5. The City hereby acknowledges and recognizes that the Equipment Lease (the “2003 Obligations”) are being issued by the City as “state or local bonds” under and pursuant to section 103(a) of the Internal Revenue Code of 1986, as amended, and the City hereby covenants and agrees with respect to the use of proceeds of sale of the 2003 Obligations and the use of the Equipment as follows:

(a) Definitions. When used in this Section, the following terms have the following meanings:

“*Closing Date*” means the date on which the 2003 Obligations are first authenticated and delivered to the initial purchasers against payment therefor.

“*Code*” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“*Computation Date*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Gross Proceeds*” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the 2003 Obligations.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the 2003 Obligations are invested and which is not acquired to carry out the governmental purposes of the 2003 Obligations.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the 2003 Obligations. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (i) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (ii) the 2003 Obligations has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any 2003 Obligation to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any 2003 Obligation, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of 2003 Obligations:

(i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the 2003 Obligations, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the

2003 Obligations or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the 2003 Obligations to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (i) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (ii) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (iii) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the 2003 Obligations directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the 2003 Obligations.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the 2003 Obligations to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Payment of Rebatable Arbitrage. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding 2003 Obligation is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the 2003 Obligations with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain

such calculations with its official transcript of proceedings relating to the issuance of the 2003 Obligations until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the 2003 Obligations by the initial purchasers thereof and the use of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall remit for payment to the United States the amount described in paragraph (g)(2) above and the amount described in paragraph (g)(4) below, at the times, in the manner and accompanied by such forms or other information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraph (g)(2), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including the amount remitted for payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(h) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the 2003 Obligations, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the 2003 Obligations not been relevant to either party.

(i) 2003 Obligations Not Hedge Bonds.

(1) The City reasonably expects to spend at least 85% of the spendable proceeds of the 2003 Obligations within three years after such 2003 Obligations are issued.

(2) Not more than 50% of the proceeds of the 2003 Obligations will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

SECTION 6. The Authorized Representative is authorized for 30 business days to negotiate and execute the Equipment Lease. It is anticipated that funding will occur on October 15, 2003. If the Equipment Lease is not negotiated and executed within 30 business days from the date hereof, or if the parties cannot agree to the terms in substantially the form of the Equipment Lease attached hereto as Exhibit A, then there shall be no authority to execute the Equipment Lease unless there is subsequent Council approval of the Equipment Lease. The Director of Finance is authorized to record and account for the Equipment Lease in accordance with generally accepted accounting principals and all other applicable laws.

SECTION 7. The offer of Heidelberg USA, Inc. to provide the Purchasing & General Services Department with a network printer, with Key Municipal Finance acting as Lessor, and to provide maintenance and supplies at a cost of approximately \$10,638.80 per month, is hereby accepted, contingent upon Key Municipal Finance acting as Lessor as described herein. A copy of the offer is attached hereto and incorporated herein as Exhibit B.

SECTION 8. Funds will be encumbered in Fund 71- 000000 (Intergovernmental Services Fund) in Index Code 233515 entitled Maintenance & Repairs - Machinery & Equipment and made payable to Heidelberg USA, Inc. for \$4,295.06 per month for a period of sixty months. Funding for estimated maintenance costs of \$257,703.60 for the lease period are subject to annual appropriations in accordance with the 2003/2004 Budget to be approved by City Council.

SECTION 9. Funds will be encumbered in Fund 71- 000000 (Intergovernmental Services Fund) in Index Code 233515 entitled Maintenance & Repairs - Machinery & Equipment and made payable to Key Municipal Finance for casualty insurance to cover the equipment for \$1,572.87 per year for a period of five years. Funding for estimated casualty insurance costs of \$7,864.35 for the lease period are subject to annual appropriations in accordance with the 2003/2004 Budget to be approved by City Council.

SECTION 10. A five year lease/purchase agreement for an estimated total amount of \$382,084.94 based on an estimated cost of \$19,077.84 per quarter will be recorded in Fund 71- 000000 for the lease purchase of a network printer. Funding for the lease/purchase agreement is subject to annual appropriations in accordance with the 2003/2004 Budget to be approved by City Council.

SECTION 11. The City's Director of Finance is hereby authorized to record and account for the Equipment Lease in accordance with Generally Accepted Accounting Principles (GAAP).

SECTION 12. 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 13. 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 14. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 15. 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 16. 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.

SECTION 17. This Ordinance shall take effect on the tenth day after the date of its passage by the Council.

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PASSED AND APPROVED, this the 28th day of August, 2003.

CITY OF SAN ANTONIO, TEXAS



Mayor

EDWARD D. GARZA

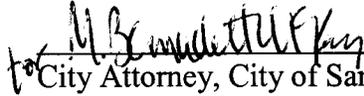
ATTEST:



Acting City Clerk

(CITY SEAL)

I, the undersigned, 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 as aforesaid.



City Attorney, City of San Antonio, Texas