

AN ORDINANCE 101077

AN ORDINANCE AUTHORIZING THE SECOND DRAW ON THE 2005 MASTER LEASE PURCHASE AGREEMENT WITH BANC OF AMERICA LEASING AND CAPITAL, LLC, FOR \$629,396.00 FOR THE ACQUISITION OF ONE FIRE TRUCK AT A RATE OF 3.26% FOR A 60 MONTH TERM TO PAY THE COSTS OF THE TRANSACTION; AND ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE.

* * * * *

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, the Council previously adopted Ordinance No. 100438 on February 17, 2005 (the "Original Ordinance") authorizing the execution of the Master Equipment Lease/Purchase Agreement, dated as of February 24, 2005, attached to the Original Ordinance as Exhibit A, including the Acquisition Fund Agreement, dated February 24, 2005, by and among the Lessor, the Lessee, and The Frost National Bank, San Antonio, Texas ("Equipment Lease") in the principal amount not exceeding the amount stated therein for the purpose of acquiring the personal property ("Equipment") to be described in the Equipment Lease as appropriate and necessary to the functions and operations of the City; and

WHEREAS, the City desires to purchase the Pierce 100' Aerial Platform Fire Truck for the total contract price of \$629,396.00, including certain costs of issuance, as disclosed in Schedule B to the Equipment Lease attached hereto as Exhibit A and incorporated by reference for all purposes; and

WHEREAS, Banc of America Leasing & Capital, LLC ("Lessor") shall act as Lessor under Schedule B to the Equipment Lease; and

WHEREAS, the Council hereby finds and determines the adoption of this ordinance and the execution of Schedule B to the Equipment Lease 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. Schedule B to the Equipment Lease as attached hereto as Exhibit A is hereby approved and is incorporated by reference to this Ordinance for all purposes.

SECTION 2. The Mayor, City Manager, Director of Finance, City Attorney, and the City Clerk (each an "Authorized Representative") acting on behalf of the City, are hereby authorized to negotiate, enter into, execute, and deliver Schedule B to the Equipment Lease 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 Schedule B to the Equipment Lease as the Authorized Representative deems necessary and appropriate as specified in Schedule B to the Equipment Lease, without further action by this Council. All other related contracts, certificates, and agreements necessary and incidental to Schedule B to the Equipment Lease are hereby authorized, with the exception of adding future Schedules to the Equipment Lease, other than Schedule B as shown on Exhibit A, which future Schedules shall require approval by Council.

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

SECTION 4. The City's obligations under Schedule B to the Equipment Lease shall be subject to annual appropriation or renewal by the Council as set forth in Schedule B to the Equipment Lease and the City's obligations under Schedule B to 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 Schedule B to the Equipment Lease (the "2005-A Obligations") is 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 2005-A 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 2005-A 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 2005-A 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 2005-A Obligations are invested and which is not acquired to carry out the governmental purposes of the 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A 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 2005-A Obligation is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the 2005-A 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 2005-A Obligations until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the 2005-A 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 2005-A 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 2005-A Obligations not been relevant to either party.

(i) 2005-A Obligations Not Hedge Bonds.

(1) The City reasonably expects to spend at least 85% of the spendable proceeds of the 2005-A Obligations within three years after such 2005-A Obligations are issued.

(2) Not more than 50% of the proceeds of the 2005-A 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 45 business days to negotiate and execute Schedule B to the Equipment Lease. It is anticipated that the initial funding will occur on or about July 20, 2005. If Schedule B to the Equipment Lease is not negotiated and executed within 45 business days from the date hereof, or if the parties cannot agree to the terms in substantially the form of Schedule B to the Equipment Lease attached hereto as Exhibit A, then there shall be no authority to execute Schedule B to the Equipment Lease unless there is subsequent Council approval of Schedule B to the Equipment Lease. The Director of Finance is authorized to record and account for Schedule B to the Equipment Lease in accordance with generally accepted accounting principals and all other applicable laws.

SECTION 7. 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 8. 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 9. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 10. 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 11. 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 12. This Ordinance shall take effect immediately upon its passage, and it is so enacted.

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PASSED AND ADOPTED by an affirmative vote of 10 members of the City Council of the City of San Antonio, Texas, this the 30th day of June, 2005.

CITY OF SAN ANTONIO

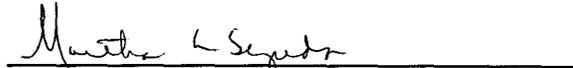

Mayor

ATTEST:


City Clerk

(CITY SEAL)

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 as aforesaid.


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

Agenda Voting Results

Name: 4A.

Date: 06/30/05

Time: 10:46:18 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing the second draw on the 2005 Master Lease Purchase Agreement with Banc of America Leasing and Capital, LLC, for \$629,396.00 for the acquisition of one fire truck at a rate of 3.26% for a 60 month term to pay the costs of the transaction; and enacting other provisions incident and related to the subject and purpose of this ordinance. [Presented by Milo D. Nitschke, Director, Finance; Melissa Byrne Vossmer, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1	Not present			
SHEILA D. McNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		