

January 28, 2008
Date

RESOLUTION AUTHORIZING EXECUTION AND DELIVERY OF A SUPPLEMENT NO. C1, IN THE PRINCIPAL AMOUNT OF \$708,000, TO THE GOVERNMENTAL LEASE-PURCHASE MASTER AGREEMENT BETWEEN THE CITY OF DES MOINES AND BANC OF AMERICA PUBLIC CAPITAL CORP.

WHEREAS, the City of Des Moines, Iowa (the "City") is in need of funds to pay costs of acquiring vehicles and equipment for the Public Works Department, including two (2) 2WD one ton utility body trucks, three (3) tandem axle dump trucks with snow and ice control equipment and one (1) single axle truck with vacuum street sweeper (defined herein as the "Equipment"), and it is deemed necessary and advisable that a lease purchase agreement in the principal amount of not to exceed \$750,000 be entered into for the purpose of acquiring such Equipment; and

WHEREAS, Banc of America Public Capital Corp., having an office for the transaction of business in Tucker, Georgia (the "Lessor"), has agreed to lease the Equipment to the City pursuant to the terms of a Governmental Lease-Purchase Master Agreement dated as of February 18, 2005 (the "Master Lease") and a Supplement No. C1 issued thereunder in the principal amount of \$708,000 (the "Supplement"); and

WHEREAS, pursuant to notice published as required by Sections 364.4(4) and 384.25 of the Code of Iowa (the "Code"), this Council has held a public meeting and hearing upon the proposal to institute proceedings for the authorization and issuance of a Supplement to the Master Lease for such purpose, in the principal amount of not to exceed \$750,000, and the Council is therefore now authorized to proceed with the authorization of said Supplement; and

WHEREAS, this Council has determined that the term of the Supplement does not exceed the economic life of the Equipment being acquired pursuant thereto; and

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WHEREAS, payments of rent due under the Supplement shall be payable solely and only out of the Debt Service Fund of the City of Des Moines; and

WHEREAS, there has been presented to this meeting the form of Supplement which the City proposes to enter into; and

WHEREAS, the City desires to enter into an Acquisition Fund Agreement (defined herein) in connection with the issuance of the Supplement; and

WHEREAS, it appears that such instrument is in appropriate form for the purposes intended.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by necessary implication requires otherwise:

"Acquisition Fund Agreement" shall mean the Acquisition Fund Agreement by and among the Lessor, the City and the Acquisition Fund Custodian;

"Acquisition Fund Custodian" shall mean Bank of America, N.A.;

"Equipment" shall mean those items of equipment as set forth in the Supplement, consisting of vehicles for the Public Works Solid Waste Division, including two (2) 2WD one ton utility body trucks, three (3) tandem axle dump trucks with snow and ice control equipment and one (1) single axle truck with vacuum street sweeper;

"Financing Documents" shall mean any insurance, delivery, transcript and incumbency certificates to be delivered by the City in conjunction with the closing of the Supplement, UCC-1 financing statements relating to the Equipment to be acquired pursuant to the Supplement, an Acquisition Fund Agreement and Form 8038-G Information Reporting Return;

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"Issuer" or "City" shall mean the City of Des Moines, Iowa;

"Lessor" shall mean Banc of America Public Capital Corp.;

"Master Lease" shall mean the Governmental Lease-Purchase Master Agreement dated as of February 18, 2005 by and between the City and the Lessor;

"Paying Agent" shall mean the City Treasurer, or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein as Issuer's agent to provide for the payment of principal of and interest on the Supplement as the same shall become due;

"Project Fund" shall mean the fund established in the Acquisition Fund Agreement for the deposit of the proceeds of the Supplement;

"Registrar" shall mean the City Treasurer, or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein with respect to maintaining a register of the owner of the Supplement. Unless otherwise specified, the Registrar shall also act as Transfer Agent for the Supplement;

"Supplement" shall mean Supplement No. C1 to the Master Lease to be entered into by and between the City and Lessor with respect to the acquisition of the Equipment, to be dated as of the date of delivery of the Equipment to the City, to be in the principal amount of \$708,000 and to bear interest at the rate per annum described in the Master Lease;

"Tax Exemption Certificate" shall mean the Tax Exemption Certificate executed by the City Treasurer and delivered at the time of issuance and delivery of the Supplement.

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Section 2. Authority and Purpose. The Supplement authorized by this Resolution shall be issued pursuant to Sections 364.4(4) and 384.25 of the City Code of Iowa, and in compliance with all applicable provisions of the Constitution and laws of the State of Iowa. The Supplement is hereby authorized to be issued in the principal amount of \$708,000 for the purpose of paying costs of acquiring the Equipment as provided thereunder.

Section 3. Source of Payment. Rental payments due under the Supplement shall be payable from the debt service fund of the City, but subject to non-appropriation under the terms of Section 7 of the Master Lease.

Section 4. Approval of Supplement. The Lessor shall acquire the Equipment on behalf of the City and shall thereafter lease the same to the City pursuant to the Master Lease and Supplement, which provides for the payment of rent by the City from the date of delivery of the Equipment to the City, in the amounts and at the rate and in installments as shall be specified therein, and the form and content of the Supplement, the provisions of which are incorporated herein by reference, hereby are in all respects authorized, approved and confirmed. The Mayor and the City Clerk are authorized, empowered and directed to execute, attest, seal and deliver the Supplement for and on behalf of the City, including necessary counterparts and in substantially the form and content now before this meeting but with such changes, modifications, additions or deletions therein as shall to them, upon the advice of the City Attorney, seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the form and content of the Supplement now before this meeting, and from and after the execution and delivery of the Supplement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and execute all such documents as may be necessary to carry out and comply with the provisions of the Supplement as so executed.

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Section 5. Approval of Financing Documents. The Mayor, the City Clerk and the City Treasurer also are authorized, empowered and directed to execute, attest, seal and deliver for and on behalf of the City any and all Financing Documents and any other additional certificates, documents or other papers and perform all other acts, including without limitation the execution of all closing documents, as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 6. Registration of Supplement; Appointment of Registrar; Transfer; Ownership and Delivery.

(a) Registration. The ownership of the Supplement may be transferred only by the making of an entry upon the books kept for the registration and transfer of ownership of the Supplement, and in no other way. The City Treasurer is hereby appointed as Registrar and Paying Agent under the terms of this Resolution. Registrar shall maintain the books of the Issuer for the registration of ownership of the Supplement for the payment of principal of and interest on the Supplement as provided in this Resolution. The Supplement shall be negotiable as provided in Article 8 of the Uniform Commercial Code subject to the provisions for registration and transfer contained in the Master Lease and in this Resolution.

(b) Transfer. The ownership of the Supplement may be transferred only upon the Registration Books kept for the registration and transfer of the Supplement and only upon surrender thereof at the office of the Registrar together with an assignment duly executed by the holder or his duly authorized attorney in fact in such form as shall be satisfactory to the Registrar, along with the address and social security number or federal employer identification number of such transferee (or, if registration is to be made in the name of multiple individuals, of all such transferees). In the event that the address of the registered owner of the Supplement (other than a registered owner which is the nominee of the broker or dealer in question) is that of a broker or dealer, there must be disclosed on the Registration Books the information pertaining to the registered owner required above. Upon the transfer of the Supplement, a new fully registered Supplement, in aggregate principal amount equal to the unmatured and unredeemed principal amount of such transferred fully registered Supplement, and bearing interest at the same rate and maturing on the same date or dates shall be delivered by the Registrar. Any costs or

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expenses, including counsel fees, of the Registrar incurred in connection with an exchange or transfer of the Supplement shall be paid by the holder of the Supplement requesting such transfers as a condition precedent to the exercise of the privilege of making such exchange or transfer.

(c) Registration of Transferred Supplement. In all cases of the transfer of the Supplement, the Registrar shall register, at the earliest practicable time, on the Registration Books, the Supplement, in accordance with the provisions of this Resolution.

(d) Ownership. As to the Supplement, the person in whose name the ownership of the same shall be registered on the Registration Books of the Registrar shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of the Supplement and the premium, if any, and interest thereon shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Supplement, including the interest thereon, to the extent of the sum or sums so paid.

Section 7. Application of Proceeds. The Lessor shall lease the Equipment to the Issuer pursuant to the Master Lease and Supplement. All proceeds of the Supplement received by the City shall be credited to the Project Fund and expended only for the purposes of acquiring the Equipment. Any amounts on hand in the Project Fund shall be available for the payment of the principal of or interest on the Supplement at any time that other funds shall be insufficient to the purpose, in which event such funds shall be repaid to the Project Fund at the earliest opportunity.

Section 8. Investment of Project Fund Proceeds. Any and all moneys held in the Project Fund shall be invested subject to the provisions of the Acquisition Fund Agreement and Tax Exemption Certificate. All such investments shall mature before the date on which the moneys are required for payment of principal of or interest on the Supplement as herein provided.

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Section 9. Non-Arbitrage Covenants. The Issuer reasonably expects and covenants that no use will be made of the proceeds from the Supplement authorized hereunder which will cause the Supplement to be classified as an arbitrage bond within the meaning of Section 148(a) and (b) of the Internal Revenue Code of the United States, and that throughout the term of the Supplement it will comply with the requirements of said statute and regulations issued thereunder.

To the best knowledge and belief of the Issuer, there are no facts or circumstances that would materially change the foregoing statements or the conclusion that it is not expected that the proceeds of the Supplement will be used in a manner that would cause the Supplement to be an arbitrage bond. Without limiting the generality of the foregoing, the Issuer hereby agrees to comply with the provisions of the Tax Exemption Certificate and the provisions of the Tax Exemption Certificate are hereby incorporated by reference as part of this Resolution. The City Treasurer is hereby directed to make and insert all calculations and determinations necessary to complete the Tax Exemption Certificate in all respects and to execute and deliver the Tax Exemption Certificate at issuance of the Supplement to certify as to the reasonable expectations and covenants of the Issuer at that date.

The Issuer covenants that it will make no change in the use of the proceeds available for the acquisition of the Equipment or change in the use of any portion of the Equipment by persons other than the Issuer or the general public unless it has obtained an opinion of bond counsel or a revenue ruling that the proposed project or use will not be of such character as to cause interest on the Supplement not to be exempt from federal income taxes in the hands of holders under the provisions of Section 142(a) of the Internal Revenue Code of the United States, related statutes and regulations.

Section 10. Additional Covenants, Representations and Warranties of the Issuer. The Issuer certifies and covenants with the purchasers and holders of the Supplement that the Issuer through its officers, (a) will make such further specific covenants, representations and assurances as may be necessary or advisable; (b) comply with all representations, covenants and assurances contained in the Tax Exemption Certificate, which Tax Exemption Certificate shall constitute a part of the contract between the Issuer and the owners of the Supplement; (c) consult with bond counsel (as defined in the Tax

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Exemption Certificate); (d) pay to the United States, as necessary, such sums of money representing required rebates of excess arbitrage profits relating to the Supplement; (e) file such forms, statements and supporting documents as may be required and in a timely manner; and (f) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the Issuer in such compliance.

Section 11. Amendment of Resolution to Maintain Tax Exemption. This Resolution may be amended without the consent of any owner of the Supplement if, in the opinion of bond counsel, such amendment is necessary to maintain tax exemption with respect to the Supplement under applicable Federal law or regulations.

Section 12. Severability Clause. If any section, paragraph, clause or provision of this Resolution be held invalid, such invalidity shall not affect any of the remaining provisions hereof, and this Resolution shall become effective immediately upon its passage and approval.

Section 13. Repeal of Conflicting Resolutions or Ordinances. All resolutions in conflict herewith are hereby repealed.

★ Roll Call Number

Agenda Item Number

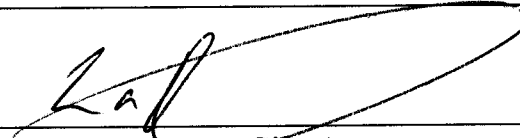
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Moved by: _____ to adopt.

Form approved: _____



Deputy City Attorney

DCORNELL/ 565075.1 /MSWord\10387155

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLISSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

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City Clerk

AHLERS & COONEY, P.C.

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January 11, 2008

Mr. Allen McKinley
Finance Director
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309

RE: Supplement No. C1 to Governmental Lease-Purchase
Master Agreement between City of Des Moines and
Banc of America Public Capital Corp.

Dear Mr. McKinley:

With this letter I am enclosing three suggested Roll Calls to be acted upon by the City Council on the date fixed for the hearing on the proposed authorization of Supplement No. C1, in the principal amount of not to exceed \$750,000 (the "Supplement") to the Governmental Lease-Purchase Master Agreement ("Master Lease"). It is my understanding that the hearing has been set for January 28, 2008.

The first of these Roll Calls has been prepared to show the receipt of any oral or written objections from any resident or property owner to the proposed action of the Council to authorize the Supplement. A summary of objections received or made, if any, should be attached to the first Roll Call. After all objections have been received and considered and if the Council decides not to abandon the proposal to authorize the Supplement, a second Roll Call follows for the purpose of taking additional action for the authorization of the Supplement.

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The Council is required to adopt the resolution taking additional action to authorize the Supplement at the hearing - or an adjournment thereof. If necessary to adjourn, the second Roll Call should be revised to reflect that action. In the event the Council decides to abandon the proposal to authorize the Supplement, then the second Roll Call should not be adopted. We would suggest that, in this event, a motion merely be adopted to the effect that such proposal is abandoned.

Section 384.25 of the Code of Iowa provides that any resident or property owner of the City may appeal the decision to take additional action to authorize the Supplement to the District Court of a county in which any part of the City is located, within 15 days after such additional action is taken, but that the additional action is final and conclusive unless the court finds that the Council exceeded its authority. In the event an appeal is filed by any resident or property owner, please see that we are notified immediately; and, as soon as available, a copy of the notice of appeal should be furnished to our office for review.

The third suggested Roll Call approves the form of Supplement in the final principal amount of \$708,000, and authorizes its execution by the Mayor and City Clerk. As you know, the interest rate on Supplement No. C1 will be set according to the Treasury Note index found in Section 6 of the Master Lease, and will not be calculated until shortly before the Supplement closes. A preliminary draft of the Supplement, which is approved as to form in the Roll Call, is enclosed for that purpose.

Following Council action, we would appreciate receiving certified copies of the enclosed Roll Calls for our transcript of the action taken. We also would appreciate receiving a copy of the publisher's affidavit prepared with respect to the publication of the hearing once it becomes available.

Should any questions arise, please don't hesitate to contact us.

Yours very truly,



William J. Noth

WJN:dc
encl.

cc: Diane Rauh (w/originals)
Larry McDowell (w/encl.)