

Date July 28, 2008

RESOLUTION AUTHORIZING EXECUTION AND DELIVERY OF A SUPPLEMENT NO. 2, IN THE PRINCIPAL AMOUNT OF \$3,025,000.00, TO THE GOVERNMENTAL LEASE-PURCHASE MASTER AGREEMENT BETWEEN THE CITY OF DES MOINES AND DELAGE LANDEN PUBLIC FINANCE LLC

WHEREAS, the City of Des Moines, Iowa (the "City") is in need of funds to pay costs of acquiring certain equipment described as five recycling trucks and 40,000 recycling bins for the Public Works Department (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 \$3, 025,000.00 be entered into for the purpose of acquiring such Equipment; and

WHEREAS, DeLage Landen Public Finance LLC (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 July 11, 2008 (the "Master Lease") and a Supplement No. 2 issued thereunder in the principal amount of \$3,025,000.00 (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 \$3,025,000.00, 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

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, but subject to non-appropriation as described in Section 7 of the Master Lease; and

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

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

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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:

"Equipment" shall mean those items of equipment as set forth in the Supplement, consisting of five recycling trucks and 40,000 recycling bins for the Public Works Department;

"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, and Form 8038-G Information Reporting Return;

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

"Lessor" shall mean DeLage Landen Public Finance LLC;

"Master Lease" shall mean the Governmental Lease-Purchase Master Agreement dated as of July 11, 2008 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;

"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;

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"Supplement" shall mean Supplement No. 2 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 \$3,025,000.00 and to bear interest at the rate per annum described in the Master Lease;

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 \$3,025,000.00 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 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.

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(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 expended only for the purposes of acquiring the Equipment. Any such amounts on hand 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 at the earliest opportunity.

Section 8. Investment of Proceeds. Any and all proceeds of the Supplement received by the City shall be invested subject to the provisions of State law and the tax covenants set forth in the Financing Documents. 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.

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.

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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 tax covenants included in the Financing Documents and said provisions 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 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 Financing Documents, which shall constitute a part of the contract between the Issuer and the owners of the Supplement; (c) consult with bond counsel; (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.

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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.

(Council Communication No. 08-431)

Moved by: \_\_\_\_\_ to adopt.

Form approved:

*Ann DiDonato*

Ann DiDonato  
Assistant City Attorney

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