



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: September 25, 2012 REPORT NO: 12-103

ATTENTION: Council President and City Council

SUBJECT: Amendments to existing Master Lease Agreements to fund additional equipment

REFERENCE: Amendment to the Master Lease Agreement to fund additional equipment, Budget and Finance Committee (Report # 12-092)

REQUESTED ACTION(S):

1. Approve the Ordinance authorizing the form and execution of the First Amendment to the Master Lease Agreement with JPMorgan Chase Bank, NA, increasing the amount by \$1 million to finance the acquisition of the Balboa Park Trams.
2. Approve the Resolution authorizing the form and execution of the Second Amendment to the Master Lease Agreement with IBM Credit LLC, increasing the amount by \$2.6 million to finance the acquisition of IT Equipment.

STAFF RECOMMENDATION:

Approve the requested actions.

SUMMARY:

I. Background

As necessary, the City utilizes lease purchase short-term financing option to acquire essential equipment and fleet purchases. The funding is facilitated under a master lease agreement with a lender (the “Lessor”) by establishing an upfront tax-exempt line of credit over an agreed upon acquisition period. Over the years, this option has been utilized to finance vehicles under the annual fleet replacement plan, refuse containers and refuse packers for the implementation of the Automated Refuse Collection Program, helicopters for the Fire and Police Departments, public safety communications equipment, and the City Enterprise Resource Planning system. Under various Master Lease Agreements established between 2003 and 2012, as of August 31, 2012, the City has approximately \$73.5 million in outstanding principal and interest.

The additional equipment described below has been identified to be acquired using this financing option by the Information Technology Department and through the Plaza de Panama Improvement Agreement (approved by the City Council on July 9, 2012, R-307558).

II. Discussion

A. Additional Equipment

a. Information Technology Equipment (estimated \$2.6 million)

The City Council approved the Information Technology Sourcing Strategy in March 2011 and the service contract with Atos IT Solutions & Services, Inc. (“Atos”) for the data center services in May 2012. As part of the implementation of this IT Sourcing Strategy certain data center and computer Wide Area Network (“WAN”) equipment have been identified to be replaced or acquired. The equipment will be owned by the City and managed and operated through Atos in facilities in Texas and San Diego. The immediate replacement and acquisition of this equipment will coincide with the normal lifecycle replacement and enhancement of this equipment and will also assist with the implementation of the IT Sourcing Strategy. The data center migration must be completed before June 30, 2013.

Servers and Storage systems for the data center need to be purchased totaling approximately \$2.2 million in hardware and virtualized hardware costs, and \$536,000 in soft costs. Approximately \$300,000 is expected to be cash funded and \$400,000 to be credited for existing equipment, resulting in net estimated acquisition cost of \$2 million. WAN optimization equipment is a combination of hardware, firmware and software designed to increase the efficiency and performance of the network. Equipment costs are estimated at \$600,000 (\$458,000 in hardware costs and \$142,000 in soft costs), resulting in a total project cost of \$2.6 million to be financed.

b. Balboa Park Trams (estimated \$1 million)

The Balboa Park Plaza de Panama Circulation and Parking Garage Project, approved in July 2012, includes the use of passenger trams to provide service to and from key locations in Balboa Park. The new trams (approximately 3 motorized trams and 9 trailers), with an expected useful life of 10-20 years, would be low-floor, low-speed vehicles that can share the road with pedestrians and provide access to all park visitors, including disabled visitors. The proposed tram vehicles would each carry between 10 and 100 passengers each, and collectively carry up to 300 passengers (The actual number of motorized trams and trailers may vary based on the actual manufacturer selected during the procurement process). User-friendly features would include a low floor for easy loading and unloading for passengers of all ages and abilities and would provide several options for wheelchair accessibility using on-board ramps and tie downs.

Tram service is expected to begin upon the commencement of construction of the Project to mitigate visitor inconvenience and allow for seamless traffic flows during construction. In order to meet this objective, if needed, the tram vehicles will be obtained on a rental basis by the Plaza de Panama Committee until the permanent Trams can be competitively procured through the City’s purchasing and contracting process. As prescribed in the Plaza de Panama Improvement Agreement (approved by the City Council on July 9,

2012, R-307558), the Plaza de Panama Committee will pay all tram operation expenses, including tram rental and/or lease expenses, during construction of the parking garage. The City will assume responsibility for the cost of operating the tram service, including lease payments, upon substantial completion of the parking garage and its transfer to the City for operations. Following the opening of the parking garage for public use, lease payments will be paid by the City from the parking fee revenues of the parking garage.

B. Updates to the financing option discussed at the Budget and Finance Committee meeting

At the Budget and Finance Committee Meeting on July 25, 2012, staff presented a proposal to finance the IT equipment and the Balboa Park Trams through an amendment to the Master Lease Agreement with JP Morgan Chase and the Committee voted to forward this item to the City Council for approval.

Subsequent to this action, due to the nature of the IT equipment consisting of hardware and software components coupled with the equipment to be utilized in the context of data services contract with Atos at a remote location, JPMorgan Chase imposed an additional requirement of securing the lease by collateralizing unencumbered equipment such as fire apparatus for the IT Equipment. This is in contrast to the existing terms of the Master Lease Agreement whereby the financed equipment serves as the security. In researching other existing master lease agreements, due to its familiarity and experience in financing computer equipment, IBM Credit LLC (“IBM”) was identified by staff as an alternative Lessor to finance the IT Equipment. IBM agreed to finance the IT equipment through an amendment to its existing agreement with the City and does not require additional collateral to be held to secure the lease-purchase of the IT Equipment. IBM was originally identified through a competitive lease provider selection process to provide funding for City’s SAP system. See below.

It is recommended that an amendment be made to the JPMorgan Chase Master Lease Agreement for the financing of the Balboa Park Trams, and a separate amendment be made to the IBM Credit LLC Master Lease Agreement for the financing of the IT Equipment.

The IT equipment and the Balboa Park Trams operations will be managed through multi-year operating agreements with third party operators. Each of these financed assets will be used solely for City purposes and the City will retain ownership of the assets. Based on this, it is expected that assets will be financed at tax-exempt interest rates. However, upon further legal review of the operating agreements prior to the funding of these assets, in the event a portion or all of the IT equipment or the Balboa Park Trams funding does not qualify on a tax-exempt basis due to the role of the non City operators, a Non-Qualified (taxable) Lease Rate option was included to finance on taxable basis in each of the contract amendments.

C. Amendment to Master Lease Agreements

1. Amendment to Master Lease Agreement with IBM Credit LLC

The Master Lease Agreement, together with the First Amendment to this Master Lease Agreement between the City and IBM Credit LLC (the “IBM Agreement”) is for a not to exceed amount of \$37 million to fund IT software and equipment (Ordinance O-19618 and O-19860). The City’s enterprise resource planning system (SAP) was financed under this IBM Agreement.

The IT equipment of up to \$2.6 million will be financed on a 4-year term. The Lease Rate as described in the amendment will be established at the time the equipment is funded as a fixed spread over a 2-year LIBOR index (100% of the 2-year LIBOR index + 2.24%). The Non-Qualified (taxable) Lease Rates are calculated as 100% of the 2-year LIBOR index + 3.96%.

This item under consideration will execute an amendment to the IBM Agreement to (i) Section 1.3 to increase the limit of equipment to be financed by \$2.6 million from \$37 million to an amount not to exceed \$39.6 million to fund the additional equipment; (ii) Section 1.12 to extend the Contract Year; (iii) Sections 1.15, 1.21, 1.32, 3.2, and 4.1.1 to add a four (4) year lease term to the Agreement and update the lease rates. The amendment is provided as Attachment 1 to this report.

2. Amendment to Master Lease Agreement with JPMorgan Chase Bank, N.A.

The City currently has a Master Lease Agreement between the City and JPMorgan Chase Bank N.A. (the “JPMorgan Agreement”) executed on July 2, 2012, for a not to exceed amount of \$25.3 million to fund fleet and equipment (Ordinance O-20166).

This item under consideration will execute an amendment to the existing JPMorgan Agreement to (i) Section 1.3 to increase the limit of equipment to be financed by \$1 million from \$25.3 million to an amount not to exceed \$26.3 million to fund the additional equipment. The Lease Rate calculation will remain unchanged for the amendment to the JPMorgan Agreement. The Non-Qualified (taxable) Lease Rates are calculated as 160% of the Equipment Lease Rate.

The amendment is provided as Attachment 2 to this report.

FISCAL CONSIDERATIONS:

After the two amendments with the lease providers authorized by the City Council, purchase orders will be placed for the IT Equipment and the Balboa Park Trams. Once the equipment is received and funded, lease payment schedules are executed with the first payment commencing 6-months after the funding date. Per the respective project time lines, it is anticipated that the IT Equipment will be financed by January 2013 and the Balboa Park Trams are expected to be financed by March 2013.

Pursuant to the lease purchase terms, the effective interest rate as of September 7, 2012, is estimated at 2.71% on a 4-year term and 1.29% on a 7-year term for the IT Equipment and Balboa Park Trams, respectively. Based on the expected delivery and funding of the equipment and assuming one draw for each project the estimated lease payments are as follows:

1. Information Technology Equipment (up to \$2,600,000 principal amount): Estimated sales tax in the amount of \$201,500 would be cash funded in FY 2013. Annual lease payments of approximately \$690,000 are projected to occur in FY 2014-2017 totaling approximately \$2,761,000. Funding for the lease payments will be budgeted in the Information Technology Department Budget. Revenues required to satisfy the payments will be recovered in the IT cost allocations to City departments. The sales tax is included in the approved FY 2013 budget. Approval for subsequent budgets will be obtained through the City Council annual budget process.
2. Balboa Park Trams (\$1 million principal amount): Estimated annual lease payments of approximately \$150,000 in FY 2014-2020 totaling \$1,049,000. As noted above, it is anticipated that the Plaza de Panama Committee will assume all lease payment costs prior to the completion of construction of the parking garage (April 2013-January 2014 totaling approximately \$125,000). Upon substantial completion of the parking garage, the annual lease payments (February 2014 – March 2020 totaling approximately \$924,000) are expected to be assumed by the City to be paid from parking revenues collected in a new Organ Pavilion Parking Garage and Tram Fund, to be established in the Park and Recreation Department. City Council approval for the annual lease payments are to be obtained through the annual budget process. As contemplated in the Plan of Finance for the Balboa Park Plaza de Panama authorized by the City Council an internal safety fund funded by the parking garage net revenues will be established to provide a funding source to cure any revenue shortfalls for the lease payments.

The final fiscal impact will depend on the actual amounts drawn from the line of credit and the specific timing of the funding by the Lessor. The City is under no obligation to utilize the full amount established under the line of credit. There is no commitment fee for establishing and maintaining the funds amount through the term of the JPMorgan Agreement or the IBM Agreement. If alternate sources of funding is identified, or cash purchases (“pay go”) is preferred, the City will have that flexibility.

PREVIOUS COUNCIL MEETING and/or COMMITTEE ACTION:

On May 21, 2007, the City Council approved Ordinance Number O-19618 authorizing the execution of the Master Lease Agreement with IBM Credit, LLC.

On May 20, 2009, the City Council approved Ordinance Number O-19860 authorizing the First Amendment to the Master Lease Agreement with IBM Credit, LLC.

On May 30, 2012, the City Council approved Ordinance Number O-20166 authorizing the execution of the Master Lease Agreement with JPMorgan Chase Bank, N.A.

On July 25, 2012, the Amendment to the Master Lease Agreement with JPMorgan Chase Bank, N.A., was presented to the Budget and Finance Committee (the “Committee”). The Committee voted 4-0, with Councilmember Emerald not present, to forward the item for City Council consideration. Responses to questions at the Committee meeting were provided by staff via a memorandum dated August 3, 2012 (Attachment 3).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: See above.

Additionally, pursuant to City Charter Section 99, a notice of public hearing will be published in an official city newspaper at least 10 days in advance of the City Council meeting that will be held to consider the adoption of the ordinance related to this item.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

JPMorgan Chase Bank, N. A. is the lease provider for the Balboa Park Trams.

IBM Credit LLC is the lease provider for the IT Equipment.



Lakshmi Kommi
Debt Management Director



Jay M. Goldstone
Chief Operating Officer

Attachments:

1. First Amendment to the Master Lease Agreement with JPMorgan Chase Bank, N.A.
2. Second Amendment to the Master Lease Agreement with IBM Credit, LLC.
3. Memorandum to Budget and Finance Committee dated August 03, 2012

FIRST AMENDMENT TO MASTER LEASE AGREEMENT

**CITY OF SAN DIEGO, CALIFORNIA
(AS LESSEE)**

AND

JPMorgan Chase Bank, N.A. (AS LESSOR)

DATED AS OF _____, 2012

FIRST AMENDMENT TO MASTER LEASE AGREEMENT

This FIRST AMENDMENT TO MASTER LEASE AGREEMENT dated as of _____, 2012, amends and supplements that certain Master Lease Agreement, dated as of July 2, 2012 (this "Agreement" or this "Lease"), between **JPMorgan Chase Bank, N.A.** as the Lessor hereunder (the "Lessor"), and the City of San Diego, California (the "City") as the Lessee hereunder, a political subdivision of the State of California (the "State").

RECITALS

WHEREAS, pursuant to a Request For Proposals, dated February 27, 2012, the City appointed Lessor to enter into arrangements for the lease purchase of various Equipment under the terms of the Agreement; and

WHEREAS, in accordance with Section 10.6 of the Agreement, Lessor and Lessee desires to provide for the financing of all such Equipment under the terms of the Agreement and in furtherance thereof the parties deem it necessary and desirable to amend certain terms of the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as follows:

Section 1. The term "Acquisition Period" defined at Section 1.3 of the Agreement is hereby amended to read as follows:

Acquisition Period: means the period commencing on the execution of this Agreement and ending on the earlier of July 2, 2014, or the date on which \$_____ million of Equipment has been financed under the Agreement. The City reserves the right to (i) request to increase the limits upon exhausting the initial limits for and of the terms upon mutual agreement and pre-approval by Lessor, and (ii) request to extend the Acquisition Period for a period upon terms acceptable to Lessor.

Section 2. The following shall be added as Section 5.8.3 to the Lease:

5.8.3 **Taxable Appendix:** The City and Lessor understand that in certain circumstances the intended use of Equipment under an Appendix by the City may be such that the interest component of Lease Payments under said Appendix do not qualify for exemption from federal income tax. In such an event the Equipment Lease Rate for said Appendix shall be multiplied by 1.60 in computing the Lease Payments for said Appendix and Sections 5.8.1 and 5.8.2 of the Lease shall not be applicable with respect to said Appendix. In addition, Schedule 4 to said Appendix shall have the following language inserted at the end

of the second paragraph of said Schedule: “**This Appendix is a taxable Appendix.** The Equipment Lease Rate shall be further adjusted by multiplying said Equipment Lease Rate by 1.60. Sections 5.8.1 and 5.8.2 of the Lease shall not be applicable with respect to this Appendix.”

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF SAN DIEGO, LESSEE

By: _____
(Name)

Chief Operating Officer
(Title)

JPMorgan Chase Bank, N.A., LESSOR

By: _____
(Name)

(Title)

APPROVED AS TO FORM AND LEGALITY this ____ day of _____ 2012.

By: _____
(Name)

Deputy City Attorney
(Title)

SECOND AMENDMENT TO MASTER LEASE AGREEMENT

**CITY OF SAN DIEGO, CALIFORNIA
(AS LESSEE)**

AND

IBM CREDIT LLC

(AS LESSOR)

DATED AS OF _____, 2012

SECOND AMENDMENT TO MASTER LEASE AGREEMENT

This SECOND AMENDMENT TO MASTER LEASE AGREEMENT (this "Amendment") dated and effective as of _____, 2012, amends and supplements that certain First Amendment to Master Lease Agreement, dated as of June 30, 2009 ("First Amendment"), which amended and supplemented that certain Master Lease Agreement, dated as of June 21, 2007 between IBM Credit LLC as the Lessor thereunder (the "Lessor"), and the City of San Diego, California (the "City") a political subdivision of the State of California (the "State") as the Lessee thereunder (together the "Amended Agreement").

RECITALS

Whereas, the City and Lessor entered into an arrangement for the lease purchase by the City of various Equipment including but not limited to equipment and for software license fees, consulting fees, and related expenses as specified in the Amended Agreement and with Lessor, and a copy of the Original Agreement and First Amendment is attached hereto as Exhibit A.

Whereas, the City and the Lessor desire to modify the Amended Agreement to increase the aggregate amount of the financing provided in the Amended Agreement from \$37,000,000 to an amount not to exceed \$39,600,000 and to extend the Acquisition Period and to revise certain definitions as set forth in this Amendment.

Whereas, Section 10.6 of the Amended Agreement provides the procedures for the amendment of the Amended Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. The term "Acquisition Period" defined at Section 1.3 of the Amended Agreement is hereby amended to read in its entirety as follows:

- 1.3 **Acquisition Period:** means the period commencing on execution of the Amendment and ending on the earlier of: (i) May 31, 2013, or (ii) the date upon which an aggregate amount of \$39,600,000 of Equipment and/or Financed Items has been funded by the Lessor. The City reserves the right to request an increase to the limits of the amounts financed herein after exhausting the initial limits set forth in this Amendment and a change to the terms thereof upon the mutual agreement and pre-approval of the Lessor.

Section 2. The term "Contract Year" defined at Section 1.12 of the Amended Agreement is hereby amended to read in its entirety as follows:

- 1.12 **Contract Year:** means individually each year of the Contract Term. The initial Contract Year shall begin on the date the contract is executed, and end on

June 30, 2013, and thereafter each Contract Year shall begin July 1 and end on the following June 30.

Section 3. The term “Lease Rate” defined at Section 1.15 of the Amended Agreement is hereby amended to read in its entirety as follows:

1.15 **Lease Rate:** means, commencing on execution of this Amendment a fixed rate of interest calculated by: (i) multiplying the applicable Percentage of the Index Rate (or alternative method as specified herein) by the applicable Index plus (ii), a spread of 2.24% for a four (4) year term (respectively the “Applicable Spread”).

The Lease Rate for a Non-Qualified Lease is a fixed rate of interest calculated by: (i) multiplying the applicable Percentage of the Index Rate (or alternative method as specified herein) by the applicable Index plus (ii) a spread of 3.96% for a four (4) year term (the “Applicable Spread”).

1.20 **Index:** means the applicable Interest Rate swap(s) for the week ending prior as defined in section 1.21 and as published at:
<http://www.federalreserve.gov/releases/H15/>

Section 4. The term “Index Rate” defined at Section 1.21 of the Amended Agreement is hereby amended to read in its entirety as follows:

(i) 1.21 **Index Rate:** means a four-year financing term Index Rate using the 2-year swap Index Rate for the week ending two (2) weeks prior to the Acceptance Date for the lease term as published at:
<http://www.federalreserve.gov/releases/H15/>

Section 5. The term “Percentage of the Index Rate” defined at Section 1.32 of the Amended Agreement is hereby amended to read in its entirety as follows:

1.32 **Percentage of the Index Rate:** means the percentage proposed by the Lessor for the lease term(s) awarded to the Lessor which is to be multiplied by the Index Rate in the calculation of the Lease Rate in an Appendix, for all lease purchase appendices during the term of this Agreement. The Percentage of the Index Rate is 100% of the Index Rate.

Section 6. Section 3.2 of the Amended Agreement is hereby amended to read in its entirety as follows:

The payment term of each Appendix entered into pursuant to this Amendment shall be for a period of four (4) years, subject only to a request by the Lessee at the time the equipment is required to be funded by the City and the Lessor hereby agrees to accept such determination, and further subject to earlier termination as provided herein.

Section 7.

- 4.1.1 The Lease Rate will be established on the Acceptance Date through execution of an Appendix by:
- (i) multiplying the Percentage of the Index Rate by
 - (ii) the Index Rate as defined in Section 1.21 herein and as listed for the week ending two (2) weeks prior to the Acceptance Date for the lease term plus the Applicable Spread.

All provisions in the Amended Agreement, except as modified in this Amendment, shall remain in full force and effect and are reaffirmed. Other than as stated in this Amendment, this Amendment shall not operate as a waiver of any condition or obligation imposed on the parties under the Amended Agreement.

Section 8. In the event of any conflict, inconsistency or incongruity between this Amendment and the Amended Agreement, this Amendment shall govern and control.

Section 9. All capitalized terms not expressly defined herein shall have the meanings set forth in the Amended Agreement.

Section 10. The City and the Lessor hereby represent and warrant that the individual signing this Amendment on its behalf has the necessary authority and legal capacity to execute this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

CITY OF SAN DIEGO, LESSEE

By: _____
(Name)

Chief Operating Officer
(Title)

Date: _____

IBM CREDIT LLC, LESSOR

By: _____
(Name)

(Title)

Date: _____

APPROVED AS TO FORM AND LEGALITY this _____ day of _____ 2012.

By: _____
(Name)

Deputy City Attorney





CITY OF SAN DIEGO

M E M O R A N D U M

DATE: August 03, 2012

TO: Honorable Members of the Budget and Finance Committee

FROM: Lakshmi Kommi, Debt Management Director Via  Jay. M. Goldstone, COO 

SUBJECT: Item 2 – Budget and Finance Committee Meeting of July 25, 2012 – Amendment to the Master Lease Agreement to fund additional vehicles and equipment

At the July 25, 2012, Budget and Finance Committee meeting, the above referenced item was approved to be forwarded to City Council for consideration. In consult with Fleet Services – Public Works Department, the following responses were prepared to the questions at the Committee Meeting by Councilmember DeMaio.

1. Is the replacement of police vehicles centralized and are the vehicles cash funded or financed?

The replacement of police vehicles is centralized and managed by Fleet Services, Public Works Department. All police vehicles under the Fiscal Year 2013 replacement list managed by Fleet Services, with the exception of undercover vehicles, are scheduled to be lease-purchased. The Police Department cash funds undercover vehicles; approximately 22 undercover vehicles are expected to be cash funded in Fiscal Year 2013.

2. Will the Ford Explorers that are replacing Crown Victorias be funded through the Fiscal Year 2013 Master Lease Agreement? What is the replacement cycle of the SUVs?

The Fiscal Year 2013 fleet replacement list includes replacement of approximately 78 Crown Victorias with Ford Explorers. The average life of the Crown Victorias being replaced is approximately 7 years, with an average mileage of approximately 130,000 miles. The Ford Explorer replacements on the FY 2013 fleet replacement list will be funded under the Master Lease Agreement over a 7-year repayment term. The vendor identified for this procurement is Folsom Lake Ford under the public agency clause on a California Department of General Services Bid (Solicitation No. IFB DGS 1009-014, Contract No 1-12-23-14).

cc: Tony Heinrichs, Director, Public Works Department
 Almis Udrys, Deputy Director, IRD & Fiscal Policy
 Pam Ison, Committee Consultant, Budget & Finance Committee