

RESOLUTION NO. 72-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING THE AWARD OF A PURCHASE AGREEMENT CONTRACT AND CONSTRUCTION SERVICES CONTRACT; AND AUTHORIZING THE CITY TO CONTRACT WITH PACIFIC GAS AND ELECTRIC FOR TURNKEY STREET LIGHT UPGRADE AND ELECTRICAL CONNECTION SERVICES, TRANSFER OF STREET LIGHT FACILITIES TO THE CITY'S OWNERSHIP, AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

WHEREAS, the City of Richmond (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of California, is authorized by the laws of the State of California to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment with a cost not to exceed \$5,000,000 constituting personal property necessary for the Lessee to perform essential governmental functions (the "*Equipment*"); and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (the "*Agreement*") with Banc of America Public Capital Corp (or one of its affiliates)(the "*Lessor*"), the form of which has been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the City Council of the City of Richmond deems it for the benefit of the Lessee and for the effective administration thereof to enter into the Agreement the documentation relating to the financing of the Equipment for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, the Richmond City Council does resolve as follows:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Manager or Finance Director of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the Finance Director of the Lessee is hereby authorized and directed to execute, and the City Clerk of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto, and the City Clerk of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Other Actions Authorized. The City Manager of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated ion the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 3. Contract Award & Budget Appropriation for Street Light Services. The City Manager is authorized to execute the following contracts associated with the Agreement and appropriate funds to the City's budget as follows:

- 1) A purchase agreement contract with Omega Pacific for the purchase of street lights and associated equipment in an amount not to exceed \$2.5 million dollars with a term ending December 31, 2015.
- 2) A construction services contract with Net Electric for the installation of street lights and associated equipment in an amount not to exceed \$600,000 dollars with a term ending December 31, 2015.
- 3) A contract with Pacific Gas & Electric (PG&E) to provide turnkey street light upgrade services and transfer of ownership of PG&E streetlights to the City of Richmond for an amount not to exceed \$2 million dollars.
- 4) A service agreement contract with PG&E to splice and connect new street lights onto empty wood poles for an amount not to exceed \$750,000.
- 5) Appropriate up to \$1 million dollars of the equipment lease proceeds to repair wire theft along the Richmond Parkway into the 2013-14 fiscal year budget.

Section 4. No General Liability. Nothing contained in this Resolution, the Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

Section 5. Appointment of Authorized Lessee Representatives. The City Manager and Finance Director of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 16, 2013 by the following vote:

AYES: Councilmembers Bates, Beckles, Butt, Myrick, Rogers, Vice Mayor Boozé, and Mayor McLaughlin.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 72-13**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 16, 2013.