

## RESOLUTION NO. 3763 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT IN AN AMOUNT NOT TO EXCEED \$1,000,000 FOR THE PURPOSE OF PROVIDING FUNDS TO PAY ALL OR A PORTION OF THE COSTS OF CERTAIN PROJECTS OF THE CITY AND TO PAY ALL NECESSARY LEGAL, FINANCIAL, ARCHITECTURAL, ENGINEERING AND OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE AWARD OF SAID LEASE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND THE TAKING OF CERTAIN OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LEASE; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Glendale, Arizona (the "City") has distributed a request for financing proposal (an "RFP"), which sets forth certain terms for equipment financing and for the lease thereof (a "Lease") related thereto; and

WHEREAS, pursuant to such RFP, Bids for the financing and Lease have been received; and

WHEREAS, there have been filed with the City Clerk and submitted to the Council of the City at this meeting proposed forms of the following documents:

- (a) the RFP
- (b) the form of Lease related to the RFP; and

WHEREAS, it appears that each of the above-referenced documents which are now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the respective parties named therein to the extent called for thereby for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

*Section 1. Purpose; Execution of Lease.* That for the purpose of providing funds for certain equipment as specified in the Lease (which may include multiple leases depending upon the term of the Lease and whether an escrow agreement is required, all such leases collectively referred to herein as the "Lease"), and to pay all necessary legal, financial, architectural, engineering and contingent costs in connection therewith, the City hereby authorizes the execution and delivery of the Leases in an aggregate amount not to exceed \$1,000,000, as determined by the City's Chief Financial Officer.

*Section 2. Terms of Lease.* The terms of each Lease as set forth in such Lease are hereby approved, with such changes as the City's Chief Financial Officer shall deem appropriate.

*Section 3. Execution.* Each Lease and the escrow agreement, if any, shall be signed by the Mayor and attested by the City Clerk (references in this Resolution to such officers shall include persons acting in the capacity of such officers) in their official capacities or such other City officials as are authorized to execute such documents, including the City Manager.

*Section 4. Award of Lease.* Having received and reviewed bid proposals for each Lease submitted in accordance with the RFP, this Council hereby determines that the proposal of the party set forth on Exhibit A attached hereto related to the RFP (the "Lender"), was the best proposal from a reasonable bidder for the RFP and the Lease is hereby awarded to the Lender.

*Section 5. Application of Proceeds.* The proceeds from each Lease shall be paid into the proper fund or funds and credited to separate book accounts, and those proceeds are appropriated and shall be used in the amounts and solely for the purposes as set forth in the respective RFP. The City's Chief Financial Officer is authorized to create one or more escrow accounts with a financial institution to hold moneys derived from a Lease prior to disbursement.

*Section 6. Tax Covenants.* The City covenants that it will use, and will restrict the use and investment of, the proceeds of any Lease for which tax-exemption of the portion of lease payments is designated interest is intended in such manner and to such extent as may be necessary so that (a) such Lease will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code"), or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code.

The City further covenants (a) that it will take or cause to be taken such actions that may be required of it for the interest related to any such Lease to be and remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of such Lease to the governmental purposes of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Mayor, the City Manager, the Chief Financial Officer or any other officer of the City having responsibility for execution and delivery of any such Lease is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Lease as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of such Lease or interest thereon or assisting

compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Lease, and (c) to give one or more appropriate certificates of the City for inclusion in the transcript of the proceedings for such Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of such Lease, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest related to, and the tax status of, such Lease.

*Section 7. Ratification of Prior Actions; Other Actions Authorized.* All actions of the officers and agents of the City which are in conformity with the purposes and intent of this Resolution and in furtherance of the execution and delivery of a Lease as contemplated by this Resolution whether heretofore or hereafter taken shall be and are hereby ratified, confirmed and approved, including the distribution of the RFP. The Mayor, the City Manager, the Chief Financial Officer, the City Clerk and other appropriate officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Resolution.

*Section 8. All Conditions Met.* This Council determines that all acts and conditions necessary under the Act and other applicable laws to be performed by the City or to have been met precedent to and in the execution and delivery of a Lease in order to make them legal, valid and binding special obligations of the City, have been performed and met, or will at the time of delivery of the Lease have been performed and met, in regular and due form as required by law; and that no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Lease.

*Section 9. Open Meeting.* This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

*Section 10. No General Liability.* Nothing contained in this Resolution, any Lease, the Escrow Agreement nor any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Resolution, any Lease, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power,

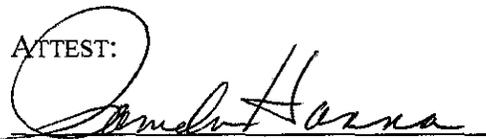
except to the extent that payments under the Lease are special limited obligations of the City as provided in any Lease.

*Section 11. Severability.* If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

*Section 12. Emergency.* In order for the City to obtain the terms provided for in the Lease in a favorable financial market and to obtain funds prior to June 30, 2004, the end of the City's fiscal year, the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety of the City; therefore, an emergency is hereby declared to exist and this Resolution is enacted as an emergency measure and shall be in full force and effect from and after the passage and adoption by the Council of the City, as required by law, and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED and APPROVED by the City Council of the City of Glendale, Arizona, this 1<sup>st</sup> day of June, 2004.

  
MAYOR

ATTEST:  
  
City Clerk [SEAL]

APPROVED AS TO FORM:

  
Special Counsel

REVIEWED BY:

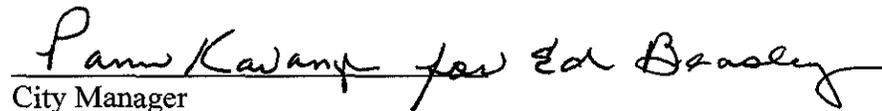
  
City Manager

EXHIBIT A

SELECTION OF LEASE PROVIDER

1. City of Glendale Tax-Exempt 2004 Equipment Lease (approximately \$665,000):  
Awarded to Banc One Leasing Corporation, as Lessor, at an all-inclusive interest rate of 3.1249%.