



<b>TRANSMITTAL MEMORANDUM</b>
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TO: The Honorable Mayor and City Council

FROM: Karl R. Amylon, City Manager

DATE: April 16, 2021

RE: **Ordinance No. 21-1931 - Authorizing The Execution And Delivery Of A Schedule To The Existing Master Equipment Lease/Purchase Agreement For The Acquisition, Financing And Leasing Of An Ambulance And Related Ambulance Agreement; Authorizing The Execution And Delivery Of Other Documents Required In Connection Therewith; Authorizing All Other Actions Necessary To The Consummation Of The Transactions Contemplated By This Ordinance; Exempting The Lease From Competitive Bidding And Certain Other Procurement Requirements; Providing For The Filing of Referendum Petitions; And Establishing An Effective Date**

The attached ordinance was approved in first reading at the City Council meeting of April 15, 2021. If adopted in second reading, Ordinance No. 21-1931 provides for continuing the existing 2019 master lease financing agreement with Banc of America Public Capital Corp., in order to purchase the Ford North Star 167-3 Module Ambulance that the City Council authorized at its meeting of April 15, 2021. Finance Director Michelle Johansen's transmittal memorandum details the continuation of the master lease agreement and acquisition of the Ford North Star 167-3 Module Ambulance under the same terms as agreed to for the 2019 apparatus purchase and requires no further elaboration on the part my office. I concur with the Finance Director's recommendation.

The City Attorney has advised that per Section 5-16 of the City Charter, an affirmative vote of at least five members of the City Council will be required for the final passage of Ordinance No. 21-1931 to exempt the lease from competitive bidding.

The Finance Director and the City Attorney will be attending the City Council meeting of May 6, 2021, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

## **RECOMMENDATION**

It is recommended the City Council adopt the motion approving in second reading Ordinance No. 21-1931 authorizing the execution and delivery of a schedule to the existing Master Equipment Lease/Purchase agreement for the acquisition, financing and leasing of an ambulance and related ambulance agreement; authorizing the execution and delivery of other documents required in connection therewith; authorizing all other actions necessary to the consummation of the transactions contemplated by this ordinance; exempting the lease from competitive bidding and certain other procurement requirements; providing for the filing of referendum petitions; and establishing an effective date.

**Recommended Motion:** I move the City Council approve in second reading Ordinance No. 21-1931 authorizing the execution and delivery of a schedule to the existing Master Equipment Lease/Purchase agreement for the acquisition, financing and leasing of an ambulance and related ambulance agreement; authorizing the execution and delivery of other documents required in connection therewith; authorizing all other actions necessary to the consummation of the transactions contemplated by this ordinance; exempting the lease from competitive bidding and certain other procurement requirements; providing for the filing of referendum petitions; and establishing an effective date.

# "UNAPPROVED" April 15, 2021

## Change Order No. 1 (Final) to Contract No. 20-16 – Ketchikan Police Department Re-Siding - Island Contractors, Inc.

Moved by Kiffer, seconded by Flora the City Council approve Change Order No. 1 (Final) in the amount of \$11,201 to Contract No. 20-16, Police Department Re-Siding, between the City of Ketchikan and Island Contractors, Inc., bringing the total contract amount to \$196,001; authorize funding from the police Department's Building Re-Siding Project Capital Account; and direct the City Manager to execute the change order on behalf of the City Council.

Motion passed with Bergeron, Flora, Zenge, Gage, Kiffer, Gass and Bradberry voting yea.

## Exempting the Procurement of a Ford North Star 167-3 Module Ambulance from the Competitive Bidding/Written Quotation Requirements of the Ketchikan Municipal Code – Braun Northwest, Inc.

Moved by Kiffer, seconded by Flora pursuant to subparagraph 9 of Section 3.12.050(a) of the Ketchikan Municipal Code, the City Council exempt the procurement of a Ford North Star 167-3 Module Ambulance from the competitive bidding/written quotation requirements of the Ketchikan Municipal Code; authorize the purchase of such vehicle from Braun Northwest, Inc. at a cost of \$240,853 under Houston Galveston Area Council (HGAC) Contract No. AM10-20; approve funding from the Fire Department's 2021 Additional Ambulance Capacity Capital Account; and direct the City Manager to execute the contract documents on behalf of the City Council.

Motion passed with Bergeron, Flora, Zenge, Gage, Kiffer, Gass and Bradberry voting yea.

## Ordinance No. 21-1931, Authorizing the City to Enter Into a Lease (With Option to Purchase) for the Acquisition of an Ambulance; Exempting the Lease from Competitive Bidding and Certain Other Procurement Requirements – First Reading

Ordinance No. 21-1931 was available for all persons present.

Moved by Kiffer, seconded by Flora the City Council approve in first reading Ordinance No. 21-1931 authorizing the City to enter into a lease with an option to purchase for the acquisition of an ambulance; exempting the lease from competitive bidding and certain other procurement requirement; providing for the filing of referendum petitions; and establishing an effective date.

Motion passed with Bergeron, Flora, Zenge, Gage, Kiffer, Gass and Bradberry voting yea.

## Exempting the Procurement of SCADA Network Security Services from Competitive Bidding/Written Quotation Requirements of the Ketchikan Municipal Code – Darktrace Limited

Moved by Kiffer, seconded by Flora pursuant to subparagraph 6 of Section 3.12.050(a) of the Ketchikan Municipal Code, the City Council exempt the procurement of SCADA network security services for the Electric Division from the competitive bidding and written quotation requirements of the Ketchikan Municipal Code; authorize the General Manager to enter into an agreement for the acquisition of such SCADA network annual security services with Darktrace Limited in an amount not to exceed \$14,211; approve funding from the Electric Division's 2021 Software & Equipment Maintenance Services Account No. 635.04.

Motion passed with Bergeron, Flora, Zenge, Gage, Kiffer, Gass and Bradberry voting yea.

**MEMORANDUM**  
**CITY OF KETCHIKAN, ALASKA**  
**Finance Department**  
*Office of the Finance Director*

*Michelle Johansen, Finance Director*  
*Camille Nelson, Financial Analyst*  
*Phone: (907) 228-5621*  
*Facsimile: (907) 228-5617*

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**TO:** Karl R. Amylon, City Manager/KPU General Manager

**FROM:** Michelle Johansen, Finance Director

**DATE:** April 5, 2021

**SUBJECT:** **Ordinance No. 21-1931, Authorizing The City To Enter Into A Lease (With Option To Purchase) For The Acquisition Of An Ambulance; Exempting The Lease From Competitive Bidding And Certain Other Procurement Requirements; Providing For The Filing of Referendum Petitions; And Establishing An Effective Date**

As you may recall, the previous Finance Director and the City Attorney worked with its bond counsel, Straddling Yocca Carlson & Rauth, P.C. to establish the parameters for lease financing of certain equipment per Ordinance 19-1898. The attached ordinance is presented to the Council for the purpose of continuing the existing 2019 lease financing agreement with Banc of America Public Capital Corp to replace an ambulance for the Fire Department.

In 2019, David Thompson of Stradling Yocca Carlson & Rauth, P.C., the City's bond counsel, and the previous Finance Director, Bob Newell completed the review of 10 proposals from a number of financial institutions. Mr. Thompson performed a legal review of the sample lease documents and I performed a financial review of the proposals. They both concluded that the proposal from Banc of America Public Capital Corp. was the most advantageous to the City. Banc of America's proposal included interest rates ranging between 1.985% and 2.01%, waived the fee to set up and administer the escrow account, and indicated in writing that there would no other fees associated with the lease financing. The interest rates offered by the other proposers ranged between 2.21% and 3.08%.

The current cost of borrowing \$280,000 at a rate of 2.0% would be approximately \$22,850 over seven years. Upon approval of this ordinance the City will be able work with Banc of America Public Capital Corp to move forward with the purchase of the ambulance and lock in the rate for financing.

Finally, I have reviewed the ordinance with City Attorney Mitch Seaver and he concurs that this transaction is consistent with the provisions outlined in the ordinance. I am recommending that the City Council approve Ordinance 21-1931.

**Recommended Motion:**

I move the City Council pass Ordinance 21-1931 in first reading, authorizing the City to enter into a lease (with option to purchase) for the acquisition of an ambulance; exempting the lease from competitive bidding and other procurement requirements; providing for the filing of referendum petitions; and establishing an effective date.

## **CITY OF KETCHIKAN, ALASKA**

### **ORDINANCE NO. 21-1931**

AN ORDINANCE OF THE CITY OF KETCHIKAN, ALASKA, AUTHORIZING THE EXECUTION AND DELIVERY OF A SCHEDULE TO THE EXISTING MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT FOR THE ACQUISITION, FINANCING AND LEASING OF AN AMBULANCE AND RELATED AMBULANCE EQUIPMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; EXEMPTING THE LEASE FROM COMPETITIVE BIDDING AND CERTAIN OTHER PROCUREMENT REQUIREMENTS; PROVIDING FOR THE FILING OF REFERENDUM PETITIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, City of Ketchikan, Alaska (the “City”), a home rule municipality duly organized and existing under the laws of the State of Alaska and the Charter of the City of Ketchikan, Alaska, is authorized by the laws of the State and Section 5-17 of its Charter to acquire, finance and lease personal property (tangible and intangible) for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City Council has determined that a need exists for the acquisition and financing of certain property consisting of an ambulance and related equipment for the City’s Fire Department (collectively, the “Equipment”) on the terms herein provided; and

WHEREAS, to finance the cost of acquiring equipment for the City’s Fire Department, the City previously has requested proposals from financial institutions to provide a master lease financing facility (with option to purchase) for acquisition of equipment; and

WHEREAS, Banc of America Public Capital Corp. has provided the proposal for lease financing that is most advantageous to the City and the City previously authorized, by Ordinance 19-1898, the execution of that certain Master Equipment Lease/Purchase Agreement (“Master Agreement”), dated as of December 30, 2019, by and between the City (the “Lessee”) and Bank of America, National Association, a national banking association (together with its successors, assigns and transferees, the “Lessor”), which permits the City to execute additional leases under the terms of the Master Lease (each, a “Schedule”); and

WHEREAS, in order to acquire such Equipment, the City proposes to enter into that certain Schedule of Property (the “Schedule”) with the Lessor, substantially in the proposed form presented to the City, which Schedule incorporates by reference the terms and provisions of the Master Agreement; and

WHEREAS, the City Council deems it for the benefit of the City and for the efficient and effective administration thereof to execute the Schedule and the other documentation relating to the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

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

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Schedule and the form of Rental Payment Schedule, in substantially the form presented to the City, are in the best interests of the City for the acquisition, financing, and leasing of the Equipment.

Section 2. Approval of Documents. The Council hereby authorizes the City to enter into a lease agreement (with option to purchase) (the "Schedule") under the Master Agreement with the Lessor, in substantially the form provided to this Council, which Schedule may include the grant of security interests to the Lessor for financing purposes. The form, terms, and provisions of the Schedule and Rental Payment Schedule are hereby approved in substantially the forms presented to the Council, with such insertions, omissions and changes as shall be approved by the City Manager or any designee of the City Manager (the "Authorized Officials") executing the same, the execution of such documents being conclusive evidence of such approval. The Authorized Officials are each hereby authorized and directed to sign and deliver on behalf of the City the Schedule under which a separate Lease (as defined in the Agreement) is created, the Rental Payment Schedule attached thereto, the Escrow Agreement and any related exhibits attached thereto. As provided in the Master Agreement and the Schedule, the City is also authorized to enter into an escrow agreement if necessary or desirable for making payments to the vendors providing the Equipment.

The aggregate principal component of rental payments under the Lease (including all schedules thereunder) may not exceed \$280,000. The maximum term of any obligation entered into under the Schedule may not exceed ten years. The City Manager or any designee of the City Manager is authorized to execute and deliver the Schedule to the Lessor.

Section 3. Appointment of Authorized Lessee Representatives. The City Manager, his designee, or the Finance Director, are each authorized to execute and deliver to the Lessor an escrow agreement, if any, a Rental Payment Schedule for each acquisition under the Schedule, and related certificates and agreements required under the Master Agreement or the Schedule. are each designated to act as authorized representatives of the Lessee for purposes of the Schedule, the Master Agreement, and the Escrow Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Lease or the Escrow Agreement.

Section 4. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Master Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of a Final Acceptance Certificate, the Escrow Agreement, Disbursement Requests and any tax certificate and agreement, as contemplated in 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 Schedule and the Master Agreement.

Section 5. Lease Payments Election Subject to Appropriation. The City pledges to make the periodic payments due under the Schedule and the Master Agreement in the amounts and on the dates set forth in the Rental Payment Schedule. Such payments shall be designated in principal and interest components. The City's obligation to make such payments in any fiscal year shall constitute a current expense of the City for that fiscal year, subject to annual appropriation by the Council. Neither the Schedule nor the Master Agreement constitutes a general obligation of the City, the State of Alaska or any subdivision thereof. The Schedule and the payments thereunder do not constitute debt within the meaning of the constitution or other laws of the State of Alaska, and neither the full faith and credit nor the taxing power of the City is pledged to make such payments.

Section 6. Tax Covenants; Special Designation. The City hereby covenants that it will not make any use of the proceeds of the Schedule or any other funds of the City that may be deemed to be proceeds of the Schedule pursuant to Section 148 of the Code that will cause the Schedule to be an "arbitrage bond" within the meaning of said section. The City further covenants that it will not take any action or permit any action to be taken that would cause the Schedule to constitute a "private activity bond" under Section 141 of the Code.

Upon the execution of the Schedule or the execution of any schedule thereunder, the Finance Director is authorized to execute a federal tax certificate (the "Tax Certificate"), which will certify to various facts and representations concerning the Master Agreement or the Schedule thereunder, based on the facts and estimates known or reasonably expected on the date of its issuance, and make certain covenants with respect to the Master Agreement or the Schedule thereunder as may be necessary or desirable to obtain or maintain the benefits conferred under the Code relating to tax-exempt obligations.

In the Tax Certificate, the City's Finance Director is authorized to designate the Master Agreement or the Schedule thereunder as a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Code, if the Lease or schedule thereunder is eligible for such designation. The City covenants that it will comply with the Tax Certificate unless it receives advice from nationally recognized bond counsel or the Internal Revenue Service that certain provisions have been amended or no longer apply to the Master Agreement or the Schedule thereunder.

Section 7. Exemption from Certain Code and Charter Requirements. The Schedule authorized by this ordinance is exempt from any competitive bidding requirements concerning the duration of the agreement and the procurement of public improvements, materials, equipment, financial participation and services, including but not limited to those set forth in Ketchikan Municipal Code Chapter 3.12 and Sections 5-16 and 5-17 of the Charter of the City of Ketchikan.

Section 8. No General Liability. Nothing contained in this Ordinance, the Schedule and Master Agreement, the Escrow 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



Ordinance, the Lease, the Escrow 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 Lease entered into pursuant to the Agreement are limited obligations of the Lessee, subject to annual appropriation, as provided in the Agreement.

Section 9. General Authorization; Prior Acts. The Mayor, City Manager, City Clerk, Finance Director, and other appropriate officers of the City are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance and the Lease. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 10. Severability. If any one or more of the provisions of this ordinance are for any reason held to be invalid, such invalidity will not affect or invalidate any other provision of this ordinance or the Lease, but this ordinance and the Lease shall be construed and enforced as if such invalid provision had not been contained herein; provided, however, that any provision that for any reason is held by reason of its extent to be invalid shall be deemed to be in effect to the extent permitted by law.

Section 11. Referendum; Effective Date. If one or more referendum petitions with signatures are properly filed within one month after the passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.

READ FOR THE FIRST TIME at a regular meeting of the Council held on \_\_\_\_\_, 2021.

PASSED AND APPROVED by the City Council of the City of Ketchikan, Alaska, at a regular meeting of the Council held on \_\_\_\_\_, 2021.

CITY OF KETCHIKAN, ALASKA

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



## CLERK'S CERTIFICATE

I, the undersigned, City Clerk of the City of Ketchikan, Alaska (the "City"), and keeper of the records of the City Council (the "Council"), DO HEREBY CERTIFY:

1. That the attached is a true and correct copy of Ordinance No. \_\_\_\_\_ (the "Ordinance"), passed by the Council at its meeting on \_\_\_\_\_, 2021, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the adoption of the Ordinance; that all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 2021.

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City Clerk, City of Ketchikan, Alaska

**From:** Forsyth, Jill M <[jill.m.forsyth@bofa.com](mailto:jill.m.forsyth@bofa.com)>  
**Sent:** Monday, March 22, 2021 6:42 AM  
**To:** Michelle Johansen <[MichelleJ@City.Ketchikan.Ak.Us](mailto:MichelleJ@City.Ketchikan.Ak.Us)>  
**Cc:** Coggi, Lisa A <[lisa.a.coggi@bofa.com](mailto:lisa.a.coggi@bofa.com)>  
**Subject:** RE: City of Ketchikan

### **CAUTION: External Email**

This email originated from a source outside the City of Ketchikan. Do not click links or open attachments unless you recognize the sender and know the content is safe.

We will be using the same agreement as last time but will have a new schedule to that master lease that provides the "new" transaction details. I know that we sent a sample resolution to you and the last time the City passed an ordinance. I do not know the laws of Alaska well enough to know which approach is better.

I need "formally" submit this request for the \$1MM line but will need some COVID questions answered which are required for every transaction. I will have Lisa send those over to you. Thank you!

**Jill M. Forsyth**

Senior Vice President

Bank of America

Global Leasing

14636 N. Scottsdale Road; Suite #250

Scottsdale, AZ 85254

Phone: 480-624-0369

Fax : 415 796-1301

PLEASE NOTE THAT MY EMAIL HAS CHANGED TO [Jill.m.forsyth@bofa.com](mailto:Jill.m.forsyth@bofa.com) effective immediately.

November 25, 2019

**Liquor License Renewal Applications – Ketchikan Entertainment Center, LLC d/b/a My Office and Kub, Inc. d/b/a/ Sourdough Bar**

Moved by Bergeron, seconded by Zenge the City Council approve the Liquor License Renewal Applications for Beverage Dispensary, License No. 1930 – Ketchikan Entertainment Center, LLC, d/b/a My Office, 2050 Sea Level Drive Suite 103, Ketchikan, AK 99901, and License No. 1066 – Kub, Inc. d/b/a Sourdough Bar, 301 Front Street, Ketchikan, AK 99901.

Motion Passed with Coose, Gage, Zenge, Williams, Bergeron and Flora voting yea; Kiffer absent.

**Ordinance No. 19-1898 – Authorizing the City to Enter into a Lease (With Option to Purchase) for the Acquisition of Fire-Fighting Equipment; Exempting the Lease from the Competitive Bidding and Certain Other Procurement Requirements – Second Reading**

Copies of Ordinance No. 19-1898 were available for all persons present.

Moved by Bergeron, seconded by Zenge the City Council approve in second reading Ordinance No. 19-1898 authorizing the City to enter into a lease (with option to purchase) for the acquisition of fire-fighting equipment; exempting the lease from competitive bidding and certain other procurement requirements; providing for the filing of referendum petitions; and establishing an effective date.

Motion Passed with Gage, Zenge, Williams, Flora, Bergeron and Coose voting yea; Kiffer absent.

**Alaska Department of Transportation and Public Facilities South Tongass Highway Improvements, Deermount to Saxman, Project No. NH-0902(039)/Z67685000**

Moved by Bergeron, seconded by Zenge the City Council direct the city manager and public works director to prepare and submit comments regarding the Alaska Department of Transportation and Public Facilities' project for the reconstruction of the South Tongass Highway from Deermount Street to Saxman, Project No. NH-0902(039)/Z67685000, as determined appropriate by the City Council.

Councilmember Coose said regarding the area near Tatsuda's IGA where the intersection is being changed, the City needs to make sure there is adequate turning radiuses for the buses and other large vehicles. He referenced the area in front of the Federal Building had been narrowed down which makes the turn more difficult for these larger vehicles.

Public Works Director Hilson said he would keep an eye on that area.

Motion Passed with Zenge, Bergeron, Gage, Williams, Coose and Flora voting yea; Kiffer absent.