

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING THE LEASE FINANCING OF CERTAIN EQUIPMENT PURSUANT TO AN ANNUAL APPROPRIATION LEASE; APPROVING THE FORMS, AND RELATED LEASE DOCUMENTS BETWEEN THE CITY, AS LESSEE AND BANC OF AMERICA PUBLIC CAPITAL CORPORATION, AS LESSOR; AUTHORIZING THE APPROVAL OF RELATED FINANCING DOCUMENTS, INCLUDING AN ESCROW AGREEMENT AMONG THE CITY, BANC OF AMERICA PUBLIC CAPITAL CORPORATION AND BANK OF AMERICA, NATIONAL ASSOCIATION, AS ESCROW AGENT; PROVIDING FOR CERTAIN AUTHORIZATIONS AND OTHER MATTERS WITH RESPECT THERETO; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION; DEFINITIONS. The City of Pompano Beach, Florida (the “City”) is authorized to adopt this resolution (the “Resolution”) under the authority granted by the provisions of the City Charter of the City, Chapter 166, Florida Statutes, as amended, Section 489.145, Florida Statutes, as amended, and other applicable provisions of law (collectively, the “Act”). All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed thereto in the Lease (hereinafter defined), unless otherwise provided or unless the context otherwise clearly requires.

SECTION 2. FINDINGS. It is hereby found and determined that:

A. The City selected Banc of America Public Capital Corporation (“Banc”) pursuant to a proposal process to lease/purchase equipment of various types to be used for the City’s fire services, recreation activities, and solid waste operations (the “Equipment”).

B. The City has solicited interest in financing the purchase of the Equipment and has selected the proposal presented by Banc for the lease financing of the Equipment as providing the most favorable terms and conditions to the City.

C. The City has the power, under the City Charter of the City and Chapter 166, Florida Statutes, as amended and other applicable provisions of law, to receive, purchase, acquire and lease equipment such as the Equipment and to enter into lease agreements with respect to thereto.

D. The City hereby determines it is necessary and in the best interests of the City to lease finance the acquisition of the Equipment. Whereas the parties entered into a written Master Equipment Lease-Purchase Agreement on January 31, 2020, ("Original Agreement"), and approved by City Resolution No. 2020-120 attached hereto as composite Exhibit A (the “Master Equipment Lease/Purchase Agreement”) with Banc, Lessor, to provide for the lease and financing of the Equipment by the City.

E. The Original Term of each Lease will become effective on the commencement date on the date the Equipment is accepted by City, and shall extend to the last day of the fiscal year of the City in which such commencement date occurs. The City has the option to renew the Original Term for four (4) successive twelve-month periods (each, a “Renewal Term”). Each Renewal Term shall be twelve months, shall correspond to the City’s fiscal year and shall commence on the first day following the last day of the Original Term or the preceding Renewal Term, as the case may be; provided, that the last scheduled Renewal Term shall be such lesser

number of months as may be necessary to cause the then-current Renewal Term to expire on the date that the last rent payment stated in the Lease Schedule is due and payable. The Original Term and each Renewal Term shall be automatically renewed for a succeeding Renewal Term unless the City's gives written notice of its intent to terminate the Lease for the applicable Renewal Term as provided in the Equipment Lease/Purchase Agreement.

F. All amounts payable by the City in connection with the lease financing of the Equipment, including all rent payments due under the Lease, shall be payable solely from unpledged and legally available funds annually appropriated for such purpose by the City and it will not be necessary nor has there been authorized the levy of taxes on any property in the City to pay for same, and the full faith and credit of the City is not pledged for payment of such sums.

G. The City hereby declares its official intent to reimburse itself, either in whole or in part, from proceeds of the tax exempt lease/purchase financing (the "Lease") for costs or expenses paid by the City with respect to the Equipment within 60 days prior to the date of this Resolution and subsequent to the date of this Resolution. This Resolution is intended as a declaration of official intent for purposes of Section 1.150-2 of the Treasury Regulations. The maximum principal amount of the Lease will not exceed \$2,000,000.

SECTION 3. APPROVAL OF LEASE-PURCHASE AGREEMENT AND CERTAIN RELATED DOCUMENTS. The documents comprising the Lease, consisting of the Resolution, Master Equipment Lease/Purchase Agreement, Schedule of Property Exhibit, Escrow Agreement, Rental Payment Schedule, Incumbency and Authorization Certificate, Opinion of Counsel to Lessee, Final Acceptance Certificate, Self-Insurance Certificate, and Notice and Acknowledgment of Assignment. Pursuant to the Lease Documents, the aggregate principal amount of the rent payments payable during the Original Term and any Renewal Term is \$2,000,000.00 (together

with interest thereon in the aggregate amount of \$50,232.70; (ii) the interest rate per annum with respect to the Lease is .9987%; and (iii) the latest date on which the last Renewal Term, if any, of the Lease expiration is November 2, 2025. The City Clerk of the City (the “City Clerk”) and the City Manager, or his designee, are hereby authorized and directed to execute the Lease Documents and the Mayor of the City (the “Mayor”) is hereby authorized and directed to countersign the Lease Documents. The execution and delivery of the Lease Documents by the City Clerk and Mayor shall constitute conclusive evidence of the approval thereof.

SECTION 4. AUTHORIZATION. The Mayor, the City Manager, the City Clerk, the Finance Director of the City, and such other officers and employees of the City as may be designated by the Mayor, are each designated as agents of the City in connection with the Lease Documents and the Finance Agreement, and are authorized and empowered, collectively or individually, to take such actions and steps and to execute such instruments on behalf of the City that are necessary or desirable in connection therewith in order to conclude the transactions contemplated thereby, and which are specifically authorized hereby or are not inconsistent with the terms and provisions of this Resolution.

SECTION 5. SEVERABILITY. If any one or more of the provisions of this Resolution should be held invalid or unenforceable by a court of competent jurisdiction, then such provisions shall be null and void and shall be deemed separate from the remaining provisions of this Resolution.

SECTION 6. CONTROLLING LAW; MEMBERS OF CITY COMMISSION NOT LIABLE. All covenants, stipulations, obligations and agreements of the City contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized by the Act and provided by the Constitution and laws of the State of

Florida. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the City Commission or any officer, agent or employee of the City in his or her individual capacity, and neither the members of the City Commission nor any official or employee of the City with other responsibilities hereunder shall be liable personally under this Resolution or shall be subject to any personal liability or accountability by reason hereof.

SECTION 7. REPEAL OF INCONSISTENT RESOLUTIONS. All resolutions or parts thereof in conflict herewith are to the extent of such conflict superseded and repealed.

SECTION 8. EFFECTIVE DATE. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2021.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/jrm
12/3/2020
L:reso/2021-76

EXHIBIT A

(LEASE DOCUMENTS)