

TAX CERTIFICATE

December 15, 2023

The undersigned, an authorized officer of the City of Pompano Beach, Florida (the “City”) being duly charged with others with responsibility for executing and delivering the Lease Purchase Agreement dated as of December 15, 2023 (the “Agreement”), between the City and TD Equipment Finance, Inc. (the “Lender”), hereby certifies, pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the “Code”), and the proposed, temporary and final Treasury Regulations promulgated thereunder, as follows:

1. This Tax Certificate is being executed and delivered for the purpose of establishing the reasonable expectations of the City as to future events regarding the financing of the costs of certain Equipment (as defined in the Agreement). The undersigned has been duly authorized to execute and deliver this Tax Certificate on behalf of the City. Capitalized terms used herein and not otherwise defined shall have the meanings given such term in the Agreement.

2. To the best of my knowledge, information and belief, the expectations contained in this Tax Certificate are reasonable.

3. The Agreement is being entered into for the purpose of providing funds to be used, together with other available funds, to finance the costs of the Equipment and pay related financing costs. Such funds will be deposited in an account established and held by the City (the “Acquisition Fund”) pending disbursement for the purposes specified in paragraph 4 below. No portion of such funds or any amounts received from the investment thereof will be used as a substitute for other funds of the City that were otherwise to be used as a source of financing for the Equipment and that have been or will be used to acquire directly or indirectly investment property producing a yield in excess of the yield under the Agreement.

4. The amount funds to be advanced by the Lender to the City pursuant to the Agreement is \$5,510,000.00 which will be deposited in the Acquisition Fund and shall be applied as set forth in the Agreement. The funds deposited in the Acquisition Fund, and the reasonably anticipated investment earnings thereon, will be used to pay the costs of the Equipment. Such funds, and reasonably anticipated investment earnings thereon, do not exceed the total amount necessary for the foregoing purposes.

5. The City has caused to be entered into, or reasonably expects to cause to be entered into within six months from the date hereof, binding agreements or commitments obligating the expenditure of not less than 5% of the funds advanced by the Lender to the City toward the acquisition of the Equipment. The City reasonably expects that not less than 85% of the funds advanced by the Lender to the City pursuant to the Agreement will be expended for the paying the costs of the Equipment within three years from the date hereof. The construction of the Equipment will proceed with due diligence to the completion thereof.

6. [Reserved]

7. The Agreement provides that the amounts advanced pursuant to the Agreement will be used to pay the costs described in paragraph 4 above. Further, it is anticipated that such amount will be invested until payment of such costs is due. Any amounts earned from the investment of these funds are expected to be used to pay the costs of the Equipment, including interest payable under the Agreement during acquisition of the Equipment. The City hereby covenants that it will not make any use of such funds or the investment earnings thereon which will result in the City’s obligations under the Agreement being treated as an “arbitrage bond” within the meaning of Section 148(a) of the Code.

The City will not directly or indirectly use or permit the use of any amounts advanced under the Agreement or any other funds of the City, or take or omit to take any action, that would cause the rental payments under the Agreement to be considered “federally guaranteed” within the meaning of Section 149(b) of the Code. The City has not and will not enter into any (a) long-term service contract with any federal governmental agency, (b) service contract with any federal governmental agency under terms that are materially different from the terms of any contracts with persons other than a federal governmental agency or (c) lease of property to any federal governmental agency that would cause the rental payments under the Agreement to be considered “federally” guaranteed within the meaning of Section 149(b) of the Code.

8. Pending expenditure, the funds deposited in the Acquisition Fund may be invested at an unrestricted yield until expended for the purpose specified in paragraph 4 above, but in no event for a period in excess of three years from the date hereof. Investment earnings derived from such amounts may be invested at an unrestricted yield for a period not to exceed three years from the date hereof or one year from the date of receipt, whichever period is longer. After the expiration of such periods, such amounts will not be invested in excess of the yield under the Agreement.

9. (a) Any fund or account of the City that is reasonably expected to be used to make the rental payments under the Agreement is collectively referred to as the “Sinking Fund.” Amounts deposited to the credit of the Sinking Fund will be used primarily to achieve a proper matching of the revenues of the City and the rental payments under the Agreement within each fiscal year, and amounts deposited to such fund will be expended to pay such rental payments at least once a year except for any balance therein which, in the aggregate, will not exceed the greater of (i) the earnings on the fund for the immediately preceding year or (ii) one-twelfth (1/12) of the rental payments under the Agreement for the immediately preceding year.

(b) There are no funds or accounts which have been or will be established by the City other than the Sinking Fund which are reasonably expected to be used to make rental payments under the Agreement, or which are pledged as collateral for such rental payments and for which there is a reasonable assurance that amounts therein will be available to pay such rental payments if the City encounters financial difficulties.

(c) Amounts deposited in the Sinking Fund may be invested at an unrestricted yield for a period not exceeding thirteen months from the date of deposit of such amounts to the Sinking Fund. Earnings on such amounts that are retained in the Sinking Fund may be invested at an unrestricted yield for a period not exceeding one year from the date of receipt of the amount earned.

10. There are no other governmental obligations of the City that (a) have been or will be sold within 15 days before or after the date of delivery of the Agreement, (b) are being sold pursuant to the same plan of finance together with the Agreement and (c) are reasonably expected to be paid from substantially the same source of funds as the Agreement.

11. The City reasonably expects that 50% or less of the amounts deposited in the Acquisition Fund will be invested in nonpurpose investments (as defined in Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four years or more.

12. The City does not expect to sell or otherwise dispose of any property compromising a part of the Equipment prior to the final rental payment under the Agreement, except such part thereof as may be disposed of due to normal wear, obsolescence or depreciation in the ordinary course of business.

13. For purposes of this Tax Certificate, “yield” means that discount rate which when used in computing the present value of all unconditionally payable payments of principal and interest and all payments for a qualified guarantee paid or to be paid with respect to an obligation produces an amount

equal to the issue price of such obligation as determined under Sections 1273 and 1274 of the Code. Present value is computed as of the date of issue of the obligation. The yield on obligations acquired with amounts described in Sections 8 and 9 of this Tax Certificate and the yield on the Agreement shall be calculated by the use of the same frequency interval of compounding interest. For purposes of calculating yield on the Agreement, the purchase price of the Agreement to the first buyer (as defined in Section 1273 of the Code) is equal to the \$5,510,000.00 par amount of the advance as set forth in the certificate of the Lender attached hereto as Exhibit A.

14. (a) As long as the Agreement is outstanding, (a) no more than ten percent (10%) of the amounts advanced to the City under the Agreement or the Equipment will be used for any activities that constitute a “private use” (as such term is defined below) or (b) no more than ten percent (10%) of the principal or interest due under the Agreement, under the terms thereof or under any underlying arrangement, will be secured by any interest in property used for a private use or by payments in respect of property used for a private use.

(b) As long as the Agreement is outstanding, no more than five percent (5%) of the amounts advanced to the City under the Agreement will be used for any activities that constitute a private use which is not related to any governmental use of such amounts or which is disproportionate to the governmental use to which it is related. For purposes of this subsection, the disproportionate private use of such amounts is an amount equal to the excess of such amounts used for a private use over the amount of such amounts used for a “governmental use” (as defined below) to which such private use relates.

(c) As long as the Agreement is outstanding, no more than five percent (5%) of the amounts advanced to the City under the Agreement will be used to finance loans to any person other than to a state or local governmental unit.

(d) For purposes of this Tax Certificate, the term “private use” means any direct or indirect use in a trade or business that is carried on by any person or entity other than governmental units; provided, however, that use as a member of the general public is not considered a private use for this purpose. For purposes of this Section, the United States of America is not deemed to be a governmental unit. For purposes of this Tax Certificate, the term “governmental use” means any use that is not a private use. Counsel has advised that, in most cases, private use will occur only if a nongovernmental person has a special legal entitlement to use the financed facilities under an arrangement with the City, including ownership or actual or beneficial use of the property financed with the funds advanced under the Agreement pursuant to a lease, management or incentive payment contract, research agreement, output contract (including as purchaser of output of facilities under a “take and pay” or “take or pay” contract) or similar arrangement.

(e) As of the date hereof, (i) no portion of the funds advanced under the Agreement is being used to provide property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than governmental units) that involve the management of such property and that do not comply with the standards of Revenue Procedure 2017-13 or any successor provision and (ii) all contracts or other arrangements with persons or entities engaged in a trade or business (other than governmental units) that involve the provision of services or property with respect to property financed with funds advanced under the Agreement under which the person or entity engaged in a trade or business is entitled to use (other than as a member of the general public) such property comply (and will in the future comply) with the requirements of Revenue Procedure 2017-13 or any successor provision.

15. Based on the City’s prior financing practices and experience, the City considers that the scheduled payments under the Agreement are reasonable and that such payments do not have a term longer than is reasonably necessary to carry out the governmental purpose for which the Agreement is being executed and delivered. The term of the Agreement does not exceed 120% of the expected weighted average economic life of the Equipment.

16. Amounts withdrawn and allocated by an entry on the books or records of the City to reimburse the City either for specified prior capital expenditures heretofore paid by the City in connection with the Equipment, or to reimburse the fund or account from which such prior capital expenditures were paid, are treated as an expenditure of such withdrawn amounts on the date such reimbursement allocation is made, and after the date of such reimbursement allocation, such amounts may be invested without regard to yield and may be utilized for any lawful purpose, subject to the restrictions set forth below. Allocations made within 30 days of the date hereof may be treated as made on the date hereof.

Prior to, or within 60 days of, expending any of its own funds to pay for a portion of the Equipment which is to be reimbursed with the funds advanced to the City under the Agreement or investment earnings thereon, the City took all action necessary to declare its official intent to reimburse such costs pursuant to Section 1.150-2 of the Treasury Regulations. All costs of the Equipment to be reimbursed with the funds advanced to the City under the Agreement or investment earnings thereon will have been paid by the City on or after a date which is no earlier than 60 days prior to the date of such official intent (except for reimbursement of any preliminary expenditures described in Section 1.150-2 of the Treasury Regulations, which amount of reimbursement for preliminary expenditures will not exceed 20% of the aggregate issue price of the Agreement). Any reimbursement allocation by the City will be made not later than eighteen months after the later of (a) the date the original expenditure is paid and (b) the date that the Equipment for which the reimbursement is made is placed in service or abandoned, but in no event more than three years after the original expenditure is paid.

Notwithstanding the use of certain funds advanced to the City under the Agreement to reimburse the City for prior costs, the City certifies that within one year after the reimbursement allocation, funds corresponding to the funds advanced under the Agreement for which a reimbursement allocation is made will not be used in a manner that results in the creation of "replacement proceeds" of the Agreement or any other issue, other than amounts deposited in a bona fide debt service fund.

18. The City covenants to regularly review (at least once annually) the use of the amounts advanced under the Agreement as set forth in the documents described below and maintain all records relating to the Agreement and the use and expenditure of the amounts advanced under the Agreement, and to comply with the procedures to ensure compliance with the provision of the Code, as more specifically set forth below.

(a) Types of Records Required to be Retained. The records that must be retained include, but are not limited to, the following:

(i) General. All legal and closing documents relating to the Agreement, including indentures, trust agreements, installment sale agreements, resolutions, public notices, tax certificates, opinions of counsel (issued at the time of closing or subsequently), amendments to the foregoing documents and any and all documents included in the transcript with respect to the Agreement.

(ii) Expenditure of Gross Proceeds.

(A) Equipment Expenditures. Documents evidencing the expenditure of amounts advanced to the City under the Agreement and investment earnings thereon and the specific assets financed with such amounts, including any declarations of official intent to reimburse expenditures, feasibility studies, projected draw schedules, requisitions and closing flow of funds memoranda;

(B) Funds and Accounts. Documents setting forth all funds and accounts relating to the Agreement, including debt service funds, reserve funds, sinking funds and pledged funds, and any agreements with respect thereto; and

(C) Investment of Gross Proceeds - General. Documents pertaining to the investment of the amounts advanced to the City under the Agreement, including the purchase and sale of securities, Time and Demand Deposit SLGS subscriptions, yield calculations for each class of investments, actual investment income received from the investment of such amounts, projected investment income calculations expected to be received from the investment of such amounts, guaranteed investment contracts, credit enhancement, swap transactions and verification reports.

(iii) Economic Life Data. Documents supporting the economic life of the assets financed with the amounts advanced to the City under the Agreement;

(iv) Allocations. Documents evidencing any allocations with respect to the amounts advanced to the City under the Agreement;

(v) Use of Financed Assets; Private Security or Payment.

(A) Use. Documents evidencing the use and ownership of the property financed with amounts advanced to the City under the Agreement, including contracts (leases, management contracts, service contracts and otherwise) with for the use and ownership of such property; and

(B) Payments or Security. Documents evidencing sources of payment or security for the Agreement, including liquidity covenants and negative covenants, and any agreements with respect thereto.

(vi) Tax Returns and Related Information. IRS Form 8038-G, 8038-T and 8038-R, as applicable, and information relating to the pricing of the Agreement, yield calculations, weighted average maturity calculations, other information included in 8038 statistics reports, verification reports and arbitrage rebate reports; and

(vii) Disposition Proceeds. Documents, if any, evidencing the sale or other disposition of any property financed with the amounts advanced to the City under the Agreement.

(b) Required Retention Periods. The City covenants to retain the above described records until the date that is six years after the complete repayment of the Agreement.

(c) Designation and Training of Review Official. The City understands that the Internal Revenue Service has released guidelines that provide certain preferential remedial action treatment to issuers that designate and train an official or employee whose task it will be to review its records and documents described above to ensure compliance with the provisions of the Code.

(d) Form of Records. The City covenants that all records will be kept in a manner that ensures complete access thereto for the applicable above described period either in hard copy or electronic format. If the records are kept in electronic format, compliance is necessary with the requirements of Revenue Procedure 97-22, 1997-1 C.B. 652, which provides guidance for maintaining books and records by using an electronic storage system that either images their hardcopy books and records or transfers their computerized books and records to an electronic storage media (e.g., an electronic data compression system).

(e) Failure to Retain Records. The City acknowledges that a failure to maintain material records required to be retained by this Section may result in the loss of the exclusion of interest on the Agreement from gross income for federal tax purposes and could cause additional arbitrage rebate to be owed.

(f) Correction of Violations. The City will regularly review the use of the amounts advanced under the Agreement to ensure timely identification of the violations of the federal tax requirements for the interest component of the rental payments made under the Agreement to be excluded from gross income for federal tax purposes. In the event such violations are discovered, the City will consult with nationally recognized bond counsel to correct such violations through the use of remedial actions described in the Treasury Regulations or through the Tax Exempt Bonds Voluntary Closing Agreement Program described under Notice 2008-31 or in the Internal Revenue Manual.

[Signature Page Follows]

[Signature page to Tax Certificate]

WITNESS my hand as of the day first above written.

Name:

Title:

CERTIFICATE OF THE LENDER

December 15, 2023

This certificate is being furnished by TD Equipment Finance, Inc. (the “Lender”) in connection with the execution and delivery on the date hereof of the the Lease Purchase Agreement dated as of December 15, 2023 (the “Agreement”), between the City of Pompano Beach, Florida (the “City”) and the Lender.

The Lender HEREBY CERTIFIES as follows:

1. On the date hereof, the Lender is advancing funds to the City in the amount of \$5,510,000.00. The Lender is not acting as an Underwriter with respect to the Agreement. The Lender has no present intention to sell, reoffer, assign or otherwise dispose of the Agreement or any interest therein. The Lender has not contracted with any person pursuant to a written agreement to have such person participate in sale of the Agreement or any interest therein, and the Lender has not agreed with the City pursuant to a written agreement to sell the Agreement or any interest therein to any persons other than the Lender or a related party to the Lender.

2. The following capitalized terms as used in this certificate have the following meanings:

(a) “Public” means any person (including an individual, trust, estate, partnership, association, company or corporation) other than an Underwriter or a related party. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50% common ownership, directly or indirectly.

(b) “Underwriter” means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Agreement to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) above to participate in the initial sale of the Agreement to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Agreement to the Public).

The Lender understands that the information and representations set forth herein will be relied upon by the City in making certain of the representations set forth by the City in the Tax Certificate to which this certificate is attached as Exhibit A (the “Tax Certificate”) and by Womble Bond Dickinson (US) LLP, in connection with rendering its opinions that the interest component of the rental payments made pursuant to the Agreement is not includable in gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G and other federal income tax advice that it may give to the City from time to time relating to the Agreement, provided that the Lender is certifying only as to facts in existence on the date hereof and nothing in this certificate represents the Lender’s interpretation of any laws, in particular the regulations under the Internal Revenue Code of 1986, as amended, or the application of any laws to these facts. The certifications contained in this certificate are not necessarily based on personal knowledge, but may instead be based on either inquiry deemed adequate by the undersigned or institutional knowledge (or both) regarding the matters set forth in this certificate.

Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Tax Certificate to which this certificate is attached as Exhibit A.

TD EQUIPMENT FINANCE, INC.

By: _____
Name:
Title: