

COUNTY OF EATON
(State of Michigan)

Resolution No. 22-4-48

RESOLUTION AUTHORIZING EQUIPMENT LEASE/PURCHASE AGREEMENT

Minutes of a regular meeting of the Board of County Commissioners of the County of Eaton, State of Michigan, held in the Board of Commissioners Room, 1045 Independence Boulevard, Charlotte, MI 48813, on April 20, 2022 at 7:00 p.m., local time.

PRESENT: Commissioner Tim Barnes, Blake Mulder, Terrance Augustine, Brandon Haskell, Jeanne Pearl-Wright, Jane M. Whitacre, Mark Mudry, Joseph Brehler, Brian Droscha, Dairus Reynnet, Wayne Ridge, Brian Lautzenheiser, Jim Mott, Barbara Rogers and Jeremy Whittum.

ABSENT: None.

The following resolution was offered by Member Blake Mulder and supported by Member Terrance Augustine:

WHEREAS, the Board of County Commissioners of the County of Eaton (the "County") has determined that it is in the best interest of the County to acquire various energy conservation improvements to certain County facilities (the "Equipment") to be installed by Johnson Controls, Inc. (the "Vendor"), pursuant to an Performance Contract to be entered into between the County and the Vendor; and

WHEREAS, the County has requested and received a proposal from Banc of America Public Capital Corp to finance the Equipment through a tax-exempt equipment lease-purchase agreement; and

WHEREAS, the Board of County Commissioners has determined that it is in the best interest of the County to finance the acquisition and installation of the Equipment by entering into an Equipment Lease/Purchase Agreement (the "Agreement") between the County, as lessee, and Banc of America Public Capital Corp (or one of its affiliates), as lessor (the "Lessor") pursuant to section 11c of the County Board of Commissioners Act, Act 156, Michigan Public Acts of 1851, as amended ("Act 156"); and

WHEREAS, it will be necessary for the County to enter into an Escrow and Account Control Agreement among Lessor, the County, and BOKF, NA, as escrow agent (the "Escrow Agreement") to set forth the terms and conditions for the disbursement of funds from an escrow account to pay for costs of acquisition and installation of the Equipment;

WHEREAS, it is the desire of the Board of County Commissioners to authorize the Authorized Officers (defined herein) to negotiate and finalize the terms of the Agreement and the Escrow Agreement pursuant to Act 156, and authorize County officials to execute certain other documentation and undertake necessary actions relative thereto.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization to Enter into Agreement. The Board of County Commissioners hereby authorizes the execution and delivery of the Agreement in a principal amount not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000), for a term not to exceed twenty (20) years, at an interest rate not to exceed 4.0% per annum.

2. Selection of Lessor. The proposal of Banc of America Public Capital Corp is hereby determined to produce the highest overall economic benefit to the County.

3. Delegation of Authority; Delivery of Agreement. The Chair of the Board of County Commissioners and the County Administrator/Controller, or either one of them acting alone (each an "Authorized Officer"), are hereby authorized and directed to make all determinations required under Act 156 and as authorized representatives of the County for purposes of the Agreement and the Escrow Agreement until such time as the Board of County Commissioners shall designate any other or different authorized representatives for purposes of the Agreement or the Escrow Agreement. The form, terms and provisions of the Agreement are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by the Authorized Officer executing the same, subject to the parameters set forth in this resolution, the execution of such documents being conclusive evidence of such approval. The Authorized Officers are each hereby authorized and directed to execute the Agreement and any related exhibits attached thereto and such additional documentation as shall be necessary to effectuate the closing of the Agreement.

4. Other Actions Authorized. Any Authorized Officer may 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 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 Agreement.

5. Security; Agreement Not Debt. Payments under the Agreement shall be a current operating expense of the County subject to annual appropriations of funds by the Board of County Commissioners. During the term of the Agreement, the County shall be the vested owner of the Equipment and may grant a security interest in the Equipment to the Lessor. Upon the termination of the Agreement and the satisfaction of the obligations of the County, the Lessor shall release any such security interest in the Equipment. The Agreement shall not be subject to the Revised Municipal Finance Act, Act 34, Michigan Public Acts of 2001, as amended ("Act 34"), and shall not be a municipal security or a debt as those terms are defined in Act 34.

6. Tax Covenant. The County hereby covenants that, to the extent permitted by law, it shall take all actions within its control necessary to maintain the exemption of the interest on the obligations under the Agreement from federal income taxation under the Internal Revenue Code of 1986, as amended (the "Code"), including but not limited to, actions relating to the rebate of arbitrage earnings, if applicable, and the expenditure and investment of proceeds of the Agreement and moneys deemed to be proceeds.

7. Rescission. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

8. Resolution Subject to Michigan Law. The provisions of this resolution are subject to the laws of the State of Michigan.

9. Section Headings. The section headings in this resolution are furnished for convenience of reference only and shall not be considered to be a part of this resolution.

10. Severability. If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this resolution.

11. Effective Date of Resolution. This Resolution is determined by the Board of County Commissioners to be immediately necessary for the preservation of the peace, health and safety of the County and shall be in full force and effect from and after its passage.

YEAS: Commissioner Tim Barnes, Blake Mulder, Terrance Augustine, Brandon Haskell, Jeanne Pearl-Wright, Jane M. Whitacre, Mark Mudry, Joseph Brehler, Brian Droscha, Dairus Reynnet, Wayne Ridge, Brian Lautzenheiser, Jim Mott, Barbara Rogers and Jeremy Whittum.

NAYS: None.

ABSTAIN: None.

RESOLUTION DECLARED ADOPTED.

Diana Bosworth, Clerk
County of Eaton

CERTIFICATION

I, Diana Bosworth, the duly qualified and acting Clerk of the County of Eaton, State of Michigan (the "County") do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of County Commissioners at a meeting held on April 20, 2022, the original of which is on file in my office. Public notice of said meeting was given pursuant to and in compliance with Act 267, Public Acts of Michigan, 1976, as amended.

Dated: April 22, 2022

Diana Bosworth, Clerk
County of Eaton