

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

RESOLUTION NO. 20-111

A RESOLUTION OF THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT WITH BANC OF AMERICA PUBLIC CAPITAL CORP AND RELATED AGREEMENTS WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN ENERGY SERVICES EQUIPMENT IN AN AGGREGATE AMOUNT NOT EXCEEDING \$4,543,100; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT, A MASTER SERVICES CONTRACT WITH JOHNSON CONTROLS, INC. AND RELATED DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING INCIDENTAL ACTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The School Board of Broward County, Florida (“Lessee”), as the governing body of the School District of Broward County, Florida (the “District”), a political subdivision of the State of Florida, is authorized by the laws of the State of Florida and in particular Sections 1001.32(2) and 1001.42(2) to purchase, acquire and lease personal property for the benefit of Lessee and the District and to enter into contracts with respect thereto; and

WHEREAS, Lessee desires to purchase, acquire and lease certain energy services equipment in the aggregate amount of \$4,543,100 constituting personal property necessary for Lessee to perform essential governmental functions (the “Equipment”); and

WHEREAS, in order to acquire the Equipment, Lessee proposes to enter into a Master Services Contract for Guaranteed Energy Performance Contracting Services (“Energy Performance-Based Contract”) with Johnson Controls, Inc. (the “Energy Performance Contractor”), the form of which is attached hereto as **Exhibit A**; and

WHEREAS, in order to finance the Equipment, Lessee proposes to enter into a Master Equipment Lease/Purchase Agreement (the “Master Lease”) and certain agreements related thereto including the forms of Payment Schedule and Equipment Schedule, with Banc of America Public Capital Corp (“Lessor”), a Kansas corporation, the forms of which are attached hereto as **Exhibit B**; and

WHEREAS, the funds made available under the Master Lease will be deposited with Bank of America, N.A., a national banking association (the “Escrow Agent”), pursuant to an Escrow Agreement among Lessee, Lessor and the Escrow Agent (the “Escrow Agreement”), the form of which is also attached hereto as **Exhibit C**; and

WHEREAS, such funds deposited with the Escrow Agent will be applied to the

acquisition of the Equipment in accordance with the Escrow Agreement; and

WHEREAS, there has been presented by Lessor to Lessee a term sheet containing the financial terms upon which Lessor is willing to lease the Equipment to Lessee, a form of which is attached hereto as **Exhibit D**; and

WHEREAS, Lessee deems it for the benefit of Lessee and for the efficient and effective administration thereof to enter into the Energy Performance-Based Contract and the Master Lease including the forms of Equipment Schedule and Payment Schedule, and the Escrow Agreement for the acquisition, purchase, financing and leasing of the Equipment therein described on the terms and conditions provided therein and in Exhibit D;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by The School Board of Broward County, Florida as follows:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Energy Performance-Based Contract, the Master Lease (including the form of Equipment Schedule and the form of Payment Schedule, both attached thereto), and the Escrow Agreement in the forms presented to the Lessee at this meeting, are in the best interests of the Lessee for the acquisition financing and leasing of the Equipment.

Section 2. Approval of Energy Performance-Based Contract. The form, terms and provisions of the Energy Performance-Based Contract as provided therein are hereby approved in substantially the form presented at this meeting as **Exhibit A**, with such insertions, omissions and changes as shall be approved by the Superintendent of Schools of Lessee, the execution of such document being conclusive evidence of such approval; and the Chair of Lessee is hereby authorized and directed to execute, and the Secretary of Lessee is hereby authorized and directed to attest and countersign, the Escrow Agreement and to deliver the Escrow Agreement to the Energy Performance Contractor, and the Secretary of Lessee is hereby authorized to affix the seal of Lessee to such document.

Section 3. Approval of Master Lease. Lessee hereby approves the execution of the Master Lease for an amount not to exceed \$4,543,100. The form, terms and provisions of the Master Lease as provided therein, including the forms of Payment Schedule and Equipment Schedule are hereby approved in substantially the form presented at this meeting as **Exhibit B**, with such insertions, omissions and changes as shall be approved by the Superintendent of Schools of Lessee, the execution of such document being conclusive evidence of such approval; and the Chair of Lessee is hereby authorized and directed to execute, and the Secretary of Lessee is hereby authorized and directed to attest and countersign, the Master Lease and to deliver the Master Lease to Lessor, and the Secretary of Lessee is hereby authorized to affix the seal of Lessee to such document.

Section 4. Approval of Escrow Agreement. The form, terms and provisions of the Escrow Agreement as provided therein are hereby approved in substantially the form presented at this meeting as **Exhibit C**, with such insertions, omissions and changes as shall be approved by the Superintendent of Schools of Lessee, the execution of such document being conclusive evidence of such approval; and the Chair of Lessee is hereby authorized and directed to execute, and the Secretary of Lessee is hereby authorized and directed to attest and countersign, the Escrow Agreement and to deliver the Escrow Agreement to the respective parties thereto, and the Secretary of Lessee is hereby authorized to affix the seal of Lessee to such document.

Section 5. Private Negotiated Financing. It is hereby found and declared that a private negotiated financing through the Master Lease is in the best interest of Lessee and is found to be necessary on the basis of the following reasons, as to which specific findings are hereby made:

Due to (i) the volatility of the market for “annual appropriation” securities such as the Master Lease, (ii) the unique program of the Energy Performance Contractor under which energy savings will offset the cost of the Equipment and (iii) the limited number of institutions engaged in the business of financing governmental equipment leases, the Lessee must be able to execute transactions at the most advantageous times, rather than at specific advertised dates, thereby permitting Lessee to obtain the best possible price and other terms for the Master Lease.

Section 6. Other Actions Authorized. The officers and employees of Lessee including, without limitation, the Chair, Vice Chair, Secretary, Superintendent, the Chief Financial Officer, the Treasurer and the Office of the General Counsel are hereby authorized to take all action necessary or reasonably required by the parties to the Energy Performance-Based Contract, the Master Lease and the Escrow Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of one or more Schedules of Property, Acceptance Certificates, Incumbency Certificates, Payment Schedules, Disbursement Requests and any tax certificates and agreements, as contemplated in the Master Lease) 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 such documents.

Section 7. No General Liability. Nothing contained in this Resolution, the Energy Performance-Based Contract, the Master Lease, the Escrow Agreement nor any other instrument shall be construed with respect to Lessee as incurring a pecuniary liability or charge upon the general credit of Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Energy Performance-Based Contract, the Master Lease, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Master Lease are special limited obligations of Lessee, subject to annual appropriation as provided in the Master Lease.

Section 8. Appointment of Authorized Lessee Representatives. The Superintendent, the Chief Financial Officer and the Treasurer of Lessee are each hereby designated to act as authorized representatives of Lessee for purposes of the Master Lease until such time as Lessee shall designate any other or different authorized representative for purposes

of the Master Lease.

Section 9. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 10. Repealer. All resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent of such inconsistency.

Section 11. Open Meetings. It is hereby found and determined that all formal actions of Lessee concerning and relating to the adoption of this Resolution and the consummation of the transactions contemplated by this Resolution, and all deliberations of Lessee that resulted in such formal action were adopted in compliance with all legal requirements, including, without limitation, the provisions of Chapter 286, Florida Statutes as modified by the Governor's Executive Orders Nos. 20-52 dated March 9, 2020 and 20-69 dated March 20, 2020..

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Section 12. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

Adopted this 19th day of May, 2020.

Donna P. Korn
Chair, The School Board of Broward
County, Florida

Attest:

Robert W. Runcie
Secretary, The School Board of Broward
County, Florida