

## RESOLUTION 25-34

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA AUTHORIZING THE LEASE-PURCHASE FINANCING OF THE ACQUISITION OF CERTAIN WATER EFFICIENCY IMPROVEMENTS; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT, INCLUDING ANY SCHEDULES ATTACHED THERETO, WITH BANC OF AMERICA PUBLIC CAPITAL CORP; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT IN CONNECTION THEREWITH WITH ARGENT INSTITUTIONAL TRUST COMPANY, A FLORIDA TRUST COMPANY; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council (the "City Council") of the City of Marco Island, Florida (the "City") has determined that a true and very real need exists for financing the acquisition of certain water efficiency improvements (the "Equipment"); and

**WHEREAS**, for the benefit of its inhabitants, the City finds, determines, and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the City and its inhabitants and has taken the necessary steps to arrange for the lease-purchase financing of the acquisition of the Equipment satisfies a public purpose; and

**WHEREAS**, the City's Municipal Advisor requested indications of interest from a group of lease financing providers for similar lease structures, and the proposal submitted by the Lessor to the City for the lease-purchase financing of the acquisition of the Equipment contains the most advantageous terms; and

**WHEREAS**, the City now desires to authorize and approve, in connection with the lease-purchase financing of the acquisition of the Equipment, the form of a Master Equipment Lease/Purchase Agreement (including any schedules attached thereto) with Banc of America Public Capital Corp, a Kansas corporation, as lessor (the "Lessor") in substantially the form attached hereto as Exhibit A (the "Lease Agreement"), and the form of an Escrow Agreement by and among the City, the Lessor and Argent Institutional Trust Company, a Florida Trust Company, as escrow agent in substantially the form attached hereto as Exhibit B (the "Escrow Agreement," and together with the Lease Agreement, the "Financing Documents"); and

**WHEREAS**, the transaction costs to the City associated with execution and delivery of the Financing Documents include legal and financial advisory fees and expenses and such other expenses as may be necessary or incidental.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA AS FOLLOWS:**

**Section 1: Authority for this Resolution.** This Resolution is adopted pursuant to the provisions of Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the City of Marco Island, Florida, and other applicable provisions of law.

**Section 2: Recitals.**

(A) The findings and declarations of the City contained in the above WHEREAS clauses are hereby incorporated as a part of this Resolution.

(B) It serves a public purpose and is in the best interests of the City and its inhabitants to lease-purchase finance the acquisition of the Equipment as contemplated hereunder.

(C) It is hereby ascertained, determined and declared that, in light of prevailing and anticipated market conditions, it is in the best interest of the City to enter into the Financing Documents upon the satisfaction of the conditions set forth in Section 3(A) hereof.

**Section 3: Authorization of the Financing Documents.**

(A) The City is hereby authorized to execute and deliver the Financing Documents in a principal amount not to exceed \$7,700,000, with a final principal payment date on or before August 1, 2040, at an initial interest rate of not to exceed 4.019% (subject to adjustment as provided in the Lease Agreement). Subject to compliance with the parameters in the immediately preceding sentence, the Financing Documents substantially in the forms attached hereto as Exhibit A and Exhibit B, are hereby approved and shall be executed on behalf of the City with the manual signature of the Chairman or in his or her absence or inability to act, the Vice Chairman or such other person as may be duly authorized by the City Council to act on his or her behalf. (the "Chairman") and shall have impressed thereon the official seal of the City, shall be attested with the manual signature of the City Clerk or assistant or deputy City Clerk, or such other person as may be duly authorized by the City Council of the City to act on his or her behalf (the "City Clerk") and the approved as to form by the manual signature of the City Attorney or assistant City Attorney, or any special counsel appointed by the City Council of the City (the "City Attorney"), and the Chairman, the City Clerk, the City Manager or assistant, deputy, interim or acting City Manager, the Finance Director or such other person as may be duly authorized by the City Manager to act on his or her behalf, and the City Attorney

are hereby authorized to so execute, attest and approve and deliver the Financing Documents.

(B) Because of the characteristics of the Financing Documents, prevailing market conditions, and additional savings to be realized from an expeditious execution and delivery of the Financing Documents, it is in the best interest of the City to execute and deliver the Financing Documents in a private negotiated financing transaction. Prior to the execution and delivery of the Financing Documents, the City shall receive a Disclosure Letter from the Lessor containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

**Section 4: Tax Covenants.** The City covenants with the Lessor that it shall not use the Equipment in any manner which would cause the portion of the lease payments designated and paid as interest to the Lessor under the Lease Agreement to be or become includable in the gross income of the Lessor for federal income tax purposes. The City covenants with the Lessor that neither the City nor any person under its control or direction will make any use the Equipment (or amounts deemed to be proceeds under the hereinafter defined Code) in any manner which would cause the Lease Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations and rules thereunder in effect or proposed (the "Code") and neither the City nor any other person shall do any act or fail to do any act which would cause the portion of the lease payments designated and paid as interest to the Lessor under the Lease Agreement to become includable in the gross income of the Lessor for federal income tax purposes. The City hereby covenants with the Lessor that it will comply with all provisions of the Code necessary to maintain the exclusion of the interest payment under the Lease Agreement from the gross income of the Lessor for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

**Section 5: Additional Authorizations; No Personal Liability.** The Chairman, the City Clerk, the City Manager, the City Attorney, and the Finance Director are hereby authorized and directed to do all acts and things required by them by the provisions of the Financing Documents in connection with the lease-purchase financing of the acquisition of the Equipment, to the extent that full compliance with the terms thereof shall be effected. No covenant, stipulation, obligation or agreement contained in this Resolution or the Financing Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the City in his or her individual capacity, and neither the members of the City Council, nor any person executing the Financing Documents and any related documents shall be liable personally on the Financing Documents or shall be subject to any personal liability or accountability by reason of the execution and delivery of the Financing Documents.

**Section 6: Intent To Reimburse.** The City hereby expresses its intention that the City be reimbursed from the proceeds of the financing for any costs incurred in connection with the Equipment prior to the execution and delivery of the Financing Documents, all in compliance with the applicable provisions of the Code.

**Section 7: Severability.** If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Resolution.

**Section 8: Rules of Interpretation.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**Section 9: Captions.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**Section 10: Repeal of Inconsistent Instruments.** All resolutions or parts or resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**Section 11: Effective Date.** This Resolution shall take effect immediately upon its adoption

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 21<sup>st</sup> day of July, 2025.

**ATTEST:**

**CITY OF MARCO ISLAND, FLORIDA**

\_\_\_\_\_  
Joan Taylor, City Clerk

By:  
Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Alan L. Gabriel, City Attorney

## **EXHIBIT A**

### **FORM OF MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**

**EXHIBIT B**  
**FORM OF ESCROW AGREEMENT**

## **EXHIBIT C**

### **FORM OF DISCLOSURE LETTER**

The undersigned, as lessor, proposes to negotiate with the City of Marco Island, Florida (the "City") for the execution and delivery of the Lease Agreement, as such term is defined in a resolution adopted by the City Council of the City on July 21, 2025 (the "Resolution"). Prior to the execution and delivery of the Lease Agreement, the following information is hereby furnished to the City:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Lessor") in connection with the execution and delivery of the Lease Agreement (any such fees and expenses to be paid by the City):

None

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Lessor in connection with the execution and delivery of the Lease Agreement to any person not regularly employed or retained by the Lessor (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes, as amended), except as specifically enumerated as expenses to be incurred by the Lessor, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Lessor, or to the knowledge of the Lessor, with the City, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the City and the Lessor or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Lessor.

3. The amount of the upfront fee or spread expected to be realized by the Lessor is \$0.

4. The management fee to be charged by the Lessor is \$0.

5. Truth-in-Bonding Statement:

The Lease Agreement is being executed and delivered to lease-purchase finance the acquisition of the Equipment, as such term is defined in the Resolution.

The City obligation under the Lease Agreement is payable from lawful funds of the City, subject to annual appropriation, in the manner and to the extent described in the Lease Agreement. Execution and delivery of the Lease Agreement is estimated to result in a maximum of \$682,157.55 of revenues of the City not being available to finance the other services of the City in each year for approximately 15 years.

6. The name and address of the Lessor is as follows:

Banc of America Public Capital Corp  
11333 McCormick Road  
Hunt Valley II  
Mail Code: MD5-03-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Lessor this 1<sup>st</sup> day of August, 2025.

BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_  
Name:  
Title: