



Legislation Text

File #: 20-594, **Version:** 1

RESOLUTION of the City of San Leandro City Council Authorizing the Execution and Delivery of an Equipment Lease/Purchase Agreement with Respect to the Acquisition, Financing and Leasing of Certain Equipment for the Public Benefit; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution (approval to finance energy conservation and resiliency equipment to be installed at the City's Water Pollution Control Plant for \$8,893,876.20)

WHEREAS, the City of San Leandro (the "City"), a charter city duly organized and existing under the Constitution and laws of the State of California, is authorized by the laws of the State of California to purchase, acquire and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City desires to acquire and lease certain equipment constituting personal property necessary for the City to perform essential governmental functions and/or functions incidental thereto at the Water Pollution Control Plant in the estimated amount of \$8,045,781 (the "Equipment"); and

WHEREAS, in order to finance the acquisition and installation of the Equipment, the City proposes to enter into an Equipment Lease/Purchase Agreement (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates), as lessor (the "Lessor"), an Escrow and Account Control Agreement (the "Escrow Agreement") with the Lessor and Bank of America, National Association (or one of its affiliates), as escrow agent, and a Memorandum of Understanding (the "MOU") with the Lessor and Climatec LLC, the forms of which have been presented to this City Council at this meeting; and

WHEREAS, this City Council deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the Escrow Agreement, and the other documentation related to the financing of the Equipment for the acquisition and leasing of the Equipment on the terms and conditions therein provided;

WHEREAS, the information required to be obtained and disclosed by the City Council with respect to the Agreement by Government Code Section 5852.1 is set forth in the staff report accompanying this Resolution.

NOW, Therefore, Be It and It Is Hereby RESOLVED by the City Council of the City of San Leandro as follows:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Agreement, in the form presented to the City Council at this meeting, are in the

best interests of the City for the acquisition, financing and leasing of the Equipment.

Section 2. Approval of Documents. The form, terms and provisions of the Agreement, the MOU and the Escrow Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Manager, Assistant City Manager, Finance Director or any of them (each, an “Authorized Officer”), the execution of the Agreement, the MOU and the Escrow Agreement being conclusive evidence of such approval; and each of the Authorized Officers is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the Agreement, the MOU and the Escrow Agreement.

Section 3. Other Actions Authorized. Each of the Authorized Officers and each of the other officers and employees of the City shall take all actions necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of certificates and disbursement requests and any other tax certificates and agreements, as contemplated in the Agreement) and to take all actions necessary in conformity therewith, including, without limitation, the execution and delivery of any tax certificates and other documents required to be delivered in connection with the Agreement, the MOU and the Escrow Agreement. Whenever in this Resolution any officer of the City is authorized to execute or attest any document or take any action, such execution, attestation or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable, and any references to any officer of the City shall include any person holding such office in an “interim” or “acting” capacity.

Section 4 No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement, the MOU nor any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power of the City, nor shall the breach of any agreement or covenant contained in the Agreement, the Escrow Agreement, the MOU or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the City, subject to annual appropriation by this City Council, as provided in the Agreement.

Section 5. Appointment of Authorized City Representatives. Each of the Authorized Officers is hereby designated to act as authorized representatives of the City for purposes of the Agreement, the MOU and the Escrow Agreement until such time as the City Council shall designate any other or different authorized representative for purposes of the Agreement, the MOU and/or the Escrow Agreement.

Section 6. Professional Services. Jones Hall, A Professional Law Corporation, is hereby appointed as special counsel to the City in connection with the financing contemplated by this Resolution, and any legal services agreement with said firm previously executed is hereby ratified and confirmed.

Section 7. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 8. Repealer. All resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any resolution or part thereof.

Section 9. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.