

RESOLUTION NO. _____-2024

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF
AN EQUIPMENT LEASE/PURCHASE AGREEMENT AND ESCROW
AGREEMENT WITH BANK OF AMERICA, NATIONAL ASSOCIATION
RELATING TO THE FINANCING OF ENERGY EFFICIENCY
PROJECTS TO BE UNDERTAKEN PURSUANT TO AN AGREEMENT
WITH SYSERCO ENERGY SOLUTIONS, INC., AND APPROVING
RELATED DOCUMENTS AND ACTIONS**

RESOLVED, by the City Council (the “Council”) of the City of Fort Bragg (the “City”), that:

WHEREAS, the City is authorized by the laws of the State of California to acquire, finance and lease real and personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto, including pursuant to California Government Code Section 37350; and

WHEREAS, on June 10, 2024, the City Council approved entering into an Energy Services Agreement with Syserco Energy Solutions, Inc. for the installation of solar photovoltaic improvements at various sites, and in connection with the installation of the solar improvements, the roof of the police station will be replaced before the solar panels are installed; and

WHEREAS, the City desires to acquire, finance and lease certain property described in said Energy Services Agreement having a project cost of approximately \$7.5 million (collectively, the “*Equipment*”) pursuant to an Equipment Lease/Purchase Agreement (the “*Agreement*”) with Bank of America, National Association (or one of its affiliates), as lessor (the “*Lessor*”), the form of which has been presented to the City Council of the City at this meeting; and

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

WHEREAS, the information required to be obtained and disclosed by the City Council pursuant to Section 5852.1 of the California Government Code with respect to the financing of the Equipment is set forth in the staff report accompanying this Resolution; and

NOW, THEREFORE, IT IS HEREBY ORDERED AND DETERMINED 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 governing body of City 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 Agreement and the related Escrow and Account Control Agreement by and among Bank of America, National Association, the City and Wilmington Trust, National Association are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Attorney, working with special legal counsel Jones Hall, to put the Agreement and the Escrow Agreement in final form, the execution and delivery of such documents by the City being conclusive evidence of such approval; provided, that the par amount of the Agreement shall not exceed \$7,975,000 and the initial, tax-exempt interest rate shall not exceed 4.71% (exclusive of adjustments to the rate upon an event of default or event of taxability). Subject to the foregoing, the City Manager of the City, or his or her designee, is hereby authorized and directed to execute (in writing or electronically), and the City Clerk of the City is hereby authorized and directed to attest (if necessary), the Agreement, the Escrow Agreement and any other related exhibits attached thereto and to deliver the Agreement, the Escrow Agreement (including such other exhibits) to the respective parties thereto, and the City Clerk of the City is hereby authorized to affix the seal of the City to such documents, to the extent deemed necessary.

Section 3. Other Actions Authorized. The City Manager and the other officers and employees of the City shall 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 (in writing or electronically) and delivery of a final acceptance certificate, the Escrow Agreement, disbursement requests and any tax certificates, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution (in writing or electronically) and delivery of any closing and other documents required to be delivered in connection with the Agreement or the Escrow Agreement, including without limitation any memorandum of understanding regarding the vendor contract..

Section 4. No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement 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, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement 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, as provided in the Agreement.

Section 5. Appointment of Authorized City Representatives. The City Manager, Director of Public Works, and City Clerk are each hereby designated to act as authorized representatives of the City for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the City shall designate any other or different authorized representative for purposes of the Agreement or the Escrow Agreement. Whenever in this Resolution any officer of the City is authorized to execute or attest to any document or take any other action, such execution, attestation, or other 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 is absent or unavailable.

Section 6. Appointment of Financing Team. In connection with the transactions described in this Resolution, the City Council hereby authorizes, ratifies and confirms the appointment of NHA Advisors, LLC to serve as municipal advisor, Jones Hall,

A Professional Law Corporation, to serve as special legal counsel, and Oppenheimer & Co. Inc., to serve as placement agent, with the fees and expenses of each such firm payable from the proceeds of the financing. The City Manager, or his or her designee, is authorized to execute professional services agreements or a placement agent agreement, as applicable, with each such firm, as and to the extent deemed necessary.

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 bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

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

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The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember ____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22nd day of July, 2024, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSED:

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk