

ORDINANCE NO. 2018-052

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT WITH BANC OF AMERICA PUBLIC CAPITAL CORP, AS LESSOR, AND THE CITY, AS LESSEE, AND SEPARATE SCHEDULES THERETO, FOR THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT AS DESCRIBED HEREIN; AUTHORIZING CERTAIN OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; AUTHORIZING THE MAYOR AND CITY CLERK, AS ATTESTING WITNESS, TO EXECUTE THE MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT AND ALL NECESSARY DOCUMENTS ON BEHALF OF THE CITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PENALTIES FOR VIOLATIONS HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Hialeah, Florida (the "City") a municipal corporation duly organized and validly existing under the laws of the State of Florida (the "State") is authorized by the laws of the State to purchase, acquire and lease personal property (tangible and intangible) for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City Council of the City (the "City Council") has determined that a need exists for the acquisition, purchase and financing of certain property consisting of UHF radio equipment (collectively, the "Equipment") as described herein; and

WHEREAS, in order to acquire such Equipment, the City proposes to enter into that certain Master Equipment Lease/Purchase Agreement (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates), as Lessor (the "Lessor"), substantially in the proposed form attached hereto as Exhibit A, and separate Schedules thereto; and

WHEREAS, the City Council deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and separate Schedules relating thereto from time to time as provided in the Agreement for the purchase, acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA:

Section 1: Authority for ordinance.

This Ordinance is enacted pursuant to the provisions of Chapter 166, Florida Statutes, the City Charter and other applicable provisions of law (collectively, the "Act"). The City has ascertained and hereby determined that enactment of this Ordinance is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the City in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the City herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the City.

Section 2: Findings.

It is hereby ascertained, determined and declared that:

A. The WHEREAS clauses recited above are hereby incorporated herein as a part of this Ordinance.

B. The City solicited proposal from qualified financial institutions pursuant to a Request for Proposal for Radio Infrastructure Financing (RFP No. 2017-2018-8500-00-008) and received eight proposals in response.

C. The Lessor's offer, at the terms set forth in its proposal dated May 17, 2018 is the highest ranked proposal providing the best overall value to the City.

D. The terms of the Agreement (including the form of Schedule attached thereto), are in the best interests of the City for the acquisition, purchase, financing and leasing of the Equipment.

E. The costs associated with the execution and delivery of the Agreement shall be deemed to include legal fees and expenses, financial advisory fees and expenses, and such other expenses as may be necessary or incidental for the lease-purchase financing herein authorized.

Section 3: Approval of financing documents.

A. The form, terms and provisions of the Agreement (including the form of Schedule attached thereto) are hereby approved in substantially the forms attached hereto as Exhibit A, with such insertions, omissions and changes as shall be approved by the Mayor executing the same, the execution of such documents being conclusive evidence of such approval. The Mayor, and the City Clerk, as attesting witness, are hereby authorized and directed to sign and deliver on behalf of the City the Agreement, each Schedule thereto under which a separate Lease (as hereinafter described, and as defined in the Agreement) is created, the Escrow Agreement by and among the City, the Lessor and Bank of America, National Association, as escrow agent (the "Escrow Agreement"), and any related exhibits attached to the Agreement, if and when required (collectively, the "Financing Documents"); *provided, however,* that, without further authorization from the City, (a) the aggregate principal component of Rental Payments under the Lease related to the Equipment (the "Lease") entered into pursuant to the Agreement shall not exceed \$3,600,000; (b) the maximum term under the Lease shall not exceed ten years; and (c) the maximum interest rate used to determine the interest component of Rental Payments under the Lease shall not exceed 3.22% per annum. The Mayor may sign and deliver the Lease, to the Lessor, on behalf of the City, pursuant to the Agreement on such terms and conditions as they

shall determine are in the best interests of the City up to the maximum aggregate principal component, maximum term and maximum interest rate provided above. The foregoing authorization shall remain in effect for a period of ten (10) years from the date hereof during which the Mayor is authorized to sign and deliver the Lease pursuant to the Agreement on the terms and conditions herein provided and to be provided in the Lease.

B. Prior to the execution and delivery of the Agreement, the City shall receive a Disclosure Letter from the Lessor containing the information required by Section 218.385, Florida Statutes, as amended, a form of which is attached hereto as Exhibit B.

Section 4: Authorizations.

The Mayor, the City Clerk, the City Attorney or the Finance Director, and such other officials and employees of the City as may be designated by the City, are each designated as agents of the City in connection with the issuance and delivery of the Financing Documents and are authorized and empowered, collectively or individually, to take all actions and steps and to execute all instruments, documents, and contracts on behalf of the City that are necessary or desirable in connection with the execution and delivery of the Financing Documents, and which are specifically authorized or are not inconsistent with the terms and provisions of this Ordinance.

Section 5: City Officials Exempt from Personal Liability.

No recourse under or upon any obligation, covenant or agreement of this Ordinance or the Financing Documents or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the City Council, the Mayor, the City Clerk, the City Attorney or the Finance Director of the City, as such, past, present or future, either directly or through the City, it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall

be incurred by, the members of the City Council, the Mayor, the City Clerk, the City Attorney or the Finance Director of the City, as such, under or by reason of the obligations, covenants or agreements contained in this Ordinance or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the City Council, the Mayor, the City Clerk, the City Attorney or the Finance Director of the City, as such, are waived and released as a condition of, and as a consideration for, the execution of this Ordinance and the Financing Documents on the part of the City.

Section 6: Applicable Provisions of Law.

This Ordinance shall be governed by and construed in accordance with the laws of the State.

Section 7: 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 Ordinance and not solely to the particular portion in which any such word is used.

Section 8: Impairment of Contract.

The City covenants with the Lessor that the City will not, without the written consent of the Lessor, enact any ordinance or adopt any resolution which repeals, impairs or amends, in any manner adverse to the Lessor, the rights granted to the Lessor hereunder.

Section 9: Captions.

The captions and headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

Section 10: No Third Party Beneficiaries.

Except such other persons as may be expressly described in this Ordinance or in the Financing Documents, nothing in this Ordinance, in the Financing Documents, expressed or implied, is intended or shall be construed to confer upon any person, other than the City and the Lessor, any right, remedy or claim, legal or equitable, under and by reason of this Ordinance, or any provision thereof, of the Financing Documents, all provisions thereof, being intended to be and being for the sole and exclusive benefit of the City and the Lessor.

Section 11: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 12: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 13: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such

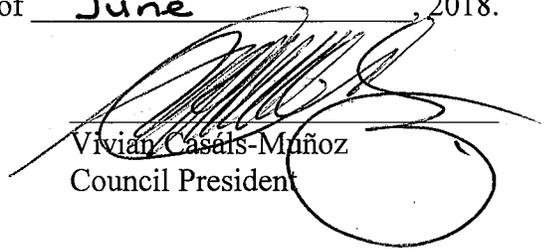
invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 14: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

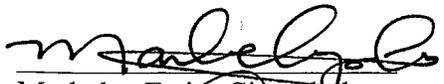
PASSED and ADOPTED this 24 day of June, 2018.

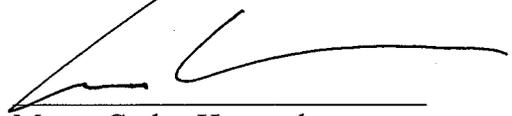
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Vivian Casals-Munoz
Council President

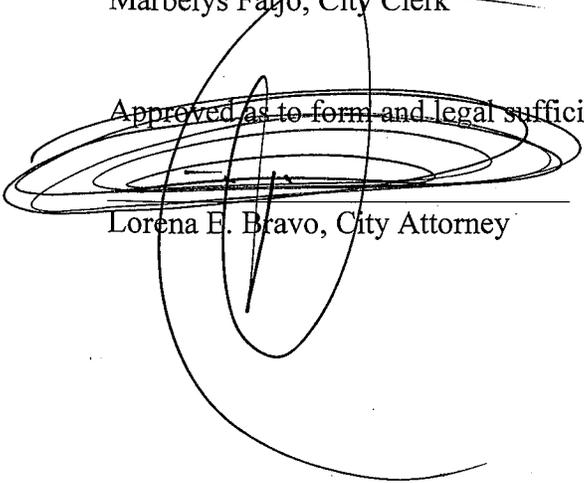
Attest:

Approved on this 27 day of June, 2018.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena E. Bravo, City Attorney

Ordinance was adopted by a 7-0 vote with Councilmembers, Caragol, Zogby, Lozano, Casals-Munoz, Garcia-Martinez, Hernandez and Cue-Fuente voting "Yes".