



August 15, 2016

## MEMORANDUM

**TO:** District Board of Trustees

**FROM:** Jim Murdaugh, President 

**SUBJECT:** Resolution Authorizing a Lease/Purchase Financing Agreement for Energy Performance Contract

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### Item Description

Presented is a resolution authorizing a lease/purchase agreement with Bank of America, not to exceed \$7,100,000, for the purpose of financing an energy performance contract with Siemens Industry, Inc.

### Overview and Background

The purpose of this transaction is to provide financing to the College for the acquisition, construction and installment of water and energy conservation measures under a guaranteed savings energy performance contract. A more detailed scope of work is provided in the contract also being presented to the Board for consideration and approval.

On April 25, 2016, the College issued RFP 2016-02, Financing of an Energy Performance Contract. On May 13, 2016, Bank of America submitted the most favorable response. The initial proposal was for a 16.5-year loan at a rate of 2.188%. But in an effort to maintain positive cash flows for the life of this contract, the final negotiated rate was revised to 2.21% for a 16.5-year lease/purchase agreement.

### Past Actions by the Board

The Board has not taken past action related to this contract or financing request.

### Funding/Financial Implications

This lease agreement will allow the College to enter into a contract with Siemens to complete several capital projects, with a projected annual average net savings of \$49,383 over the lease/purchase agreement expenses.

### Staff Resource

Barbara Wills

### Recommended Action

Approve the resolution authorizing a lease/purchase agreement, not to exceed \$7,100,000.



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE, FLORIDA AUTHORIZING THE LEASE PURCHASE FINANCING OF ENERGY CONSERVATION MEASURES IN AN AMOUNT NOT TO EXCEED \$7,100,000; AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER LEASE PURCHASE AGREEMENT, ONE OR MORE EQUIPMENT SCHEDULES, AND RELATED INSTRUMENTS; DETERMINING OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, following a competitive selection process, The District Board of Trustees of Tallahassee Community College, Florida (the "Board of Trustees"), as the governing board of Tallahassee Community College (the "College"), authorized College staff to negotiate with Siemens Industry, Inc. ("Energy Performance Contractor") to enter into an energy performance-based contract; and

**WHEREAS**, separately from this action, the Board of Trustees will consider an energy performance-based contract with the Energy Performance Contractor (the "Energy Performance-Based Contract"), which includes a scope of work for approximately \$7,100,000 in energy conservation measures; and

**WHEREAS**, the Board of Trustees desires to first provide authority to finance the costs of implementing the Energy Performance-Based Contract, including the acquisition, construction, and installation of certain water and energy conservation measures (collectively, the "Equipment"), as more fully described in one or more equipment schedules to the Lease Agreement (as defined herein); and

**WHEREAS**, the Equipment is essential for the Board of Trustees to perform its governmental functions; and

**WHEREAS**, pursuant to a Request for Proposals, Banc of America Public Capital Corp (the "Lessor") submitted a proposal to the Board of Trustees for the financing of the acquisition, construction, and installation of the Equipment, and such proposal contained the terms most advantageous to the College; and

**WHEREAS**, the funds made available under a master lease purchase agreement by and between the Board of Trustees and the Lessor (the "Lease Agreement") will be deposited with the Escrow Agent named in the Financing Documents and applied to the acquisition, construction, and installation of the Equipment in accordance with the terms thereof; and

**WHEREAS**, the Board of Trustees has taken, or will take, the necessary steps to arrange for the financing of the Equipment, including but not limited to: (i) selecting the Energy Performance Contractor in compliance with the legal bidding requirements of Section 287.055, Florida Statutes, (ii) publishing notice of the meeting in which the Board of Trustees awards the Energy Performance-Based Contract, the names of the parties to the Energy Performance-Based Contract, and the purpose of the Energy Performance-Based Contract, (iii) obtaining a report reviewed by either the Department of Education or the Department of Management Services, or signed and sealed by a registered professional engineer, disclosing all costs associated with the Equipment and providing an estimate of the amount of energy cost savings (the "Report"), (iv) finding the amount the Board of Trustees will spend on the Equipment recommended in the Report will not exceed the amount to be saved in energy and operation costs over 20 years from the date of installation, based on life-cycle costing calculations, if the recommendation in the Report were followed and if the Energy Performance Contractor provides a written guarantee that the energy or operating cost savings will meet or exceed the costs of the system, and (v) receiving a 100-percent public construction bond from the Energy Performance Contractor for its faithful performance as required by Section 255.05, Florida Statutes; and

**WHEREAS**, all obligations of the Board of Trustees under the Lease Agreement shall be payable solely from legally available non-ad valorem revenues of the Board of Trustees lawfully appropriated in each fiscal year, and the obligation of the Board of Trustees to continue such Lease Agreement for each fiscal year shall be subject to appropriation of legally available non-ad valorem revenues for the payment of obligations under the Lease Agreement in such fiscal year; and

**WHEREAS**, the Board of Trustees now desires to (i) authorize and approve the form of the Lease Agreement, one or more equipment schedules to the Lease Agreement, any additional exhibits attached to the Lease Agreement, and any other related documents (collectively, the "Financing Documents"), (ii) authorize the execution and delivery of the Financing Documents, and (iii) provide additional authority in connection therewith.

**NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE, FLORIDA:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the laws of the State of Florida, Section 1013.23, Florida Statutes, as amended, and other provisions of law.

**SECTION 2. FINDINGS.** It is hereby found, ascertained, determined and declared that:

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

B. The College is a duly constituted and validly existing Florida College System institution and its Board of Trustees is a body corporate under the laws of the State of Florida pursuant to Sections 1000.21(3)(aa) and 1001.63, Florida Statutes, each as amended.

C. The Board of Trustees is without adequate, currently available funds to finance the acquisition, construction, and installation of the Equipment and it is necessary and desirable and in the best interests of the Board of Trustees that it borrow the moneys necessary to finance the acquisition, construction, and installation of the Equipment. The Board of Trustees is authorized pursuant to the provisions of the Section 1013.23, Florida Statutes, to borrow moneys to finance the acquisition, construction, and installation of the Equipment.

D. The terms of the Financing Documents in the forms attached hereto as Exhibit A are in the best interest of the Board of Trustees for the acquisition, construction, and installation of the Equipment.

E. The amount the Board of Trustees would spend on the acquisition, construction, and installation of the Equipment recommended in the Report will not exceed the amount to be saved in energy and operation costs over 20 years from the date of installation, based on life-cycle costing calculations, if the recommendation in the Report were followed and if the Energy Performance Contractor provides a written guarantee that the energy or operating cost savings will meet or exceed the costs of the system.

**SECTION 3. AUTHORIZATION OF THE ENERGY PERFORMANCE-BASED CONTRACT; AUTHORIZATION OF FINANCING AND FINANCING DOCUMENTS.**

A. The Financing Documents, and the acquisition, construction, installation, and financing of the Equipment under the terms and conditions as described in the Financing Documents are hereby approved.

B. The Board of Trustees is hereby authorized to execute and deliver the Financing Documents in the aggregate principal amount of not to exceed \$7,100,000 for a term of not to exceed 20 years, at an interest rate of not to exceed 2.21%. The Financing Documents shall provide for payments of not less than one-twentieth of the price to be paid within two years from the date of the complete installation and acceptance by the Board of Trustee of the Equipment, and the remaining costs to be paid at least quarterly, not to exceed a 20-year term based on life-cycle costing calculations. The Financing Documents shall contain all provisions required by, and otherwise comply with, Section 1013.23, Florida Statutes.

C. The Board of Trustees hereby authorizes the execution and delivery, on behalf of the Board of Trustees, by the Chair or Vice-Chair of the Board of Trustees, under the seal of the Board of Trustees, attested by the Secretary of the Board of Trustees, the Financing Documents. The Financing Documents shall be substantially in the forms attached hereto as Exhibit A, with such changes, amendments, modifications, deletions, and additions as may be approved by the Chair or Vice-Chair, delivery thereof to be conclusive evidence of such approval. Prior to the execution and delivery of the Financing Documents, the Board of Trustees 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 B.

D. Because of the unique characteristics of financing energy performance-based contracts, the current volatility of the credit markets, and the fact that the Lease Agreement is not expected to be rated or insured, it is in the best interests of the Board of Trustees to enter into the Financing Documents with the Lessor pursuant to a negotiated placement.

**SECTION 4. INSTALLMENT PAYMENTS; LIMITED OBLIGATION.** The Board of Trustees promises that it will promptly pay installment payments, consisting of principal and interest components, as described in the Financing Documents, and all other amounts due under the Financing Documents at the place, on the dates, and in the manner provided in the Financing Documents according to the true intent and meaning hereof and thereof. Amounts due under the Financing Documents shall be payable solely from legally available non-ad valorem revenues of the Board of Trustees lawfully appropriated in each fiscal year, and the obligation of the Board of Trustees to continue such Lease Agreement for each fiscal year shall be subject to appropriation of legally available non-ad valorem revenues for the payment of obligations under the Lease Agreement in such fiscal year, all in accordance with the terms hereof and of the Lease Agreement. The Lessor shall never be entitled to payment of the installment payments from any funds of the Board of Trustees except from legally available non-ad valorem revenues of the Board of Trustees lawfully appropriated in each fiscal year, as described herein and in the Lease Agreement. The Lease Agreement does not and will not constitute a debt, liability, or obligation of the State of Florida or the Board of Trustees, or a pledge of the faith and credit of the State or the Board of Trustees.

**SECTION 5. USE OF PROCEEDS.** The proceeds of the lease purchase financing shall be used to (i) finance the acquisition, construction, installation, and financing of the Equipment, and (ii) pay the costs and expenses associated with making the financing.

**SECTION 6. GENERAL AUTHORIZATION.** The Chair and Vice-Chair and the Secretary of the Board of Trustees, the President, and such other officials and employees of the College as may be designated by the Board of Trustees are each designated as agents of the Board of Trustees in connection with the making of the lease purchase and entering into 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 Board of Trustees 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 Resolution.

**SECTION 7. PREREQUISITES PERFORMED.** The Board of Trustees has performed all acts, conditions, and things relating to the passage of this Resolution as are required by the laws of the State of Florida.

**SECTION 8. SEVERABILITY.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**SECTION 9. APPLICABLE PROVISIONS OF LAW.** This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION 10. 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 are used.

**SECTION 11. 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 12. MEMBERS OF THE BOARD OF TRUSTEES EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution, the Financing Documents or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Board of Trustees, as such, past, present or future, either directly or through the College it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the Board of Trustees, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution, or the Financing Documents 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 Board of Trustees, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution, the Financing Documents, on the part of the Board of Trustees.

**SECTION 13. REPEALER.** All ordinances and/or resolutions or parts thereof in conflict herewith, if any, are hereby repealed.

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**SECTION 14. NO THIRD PARTY BENEFICIARIES.** Except such other persons as may be expressly described in this Resolution, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, other than the Board of Trustees and the Lessor, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Board of Trustees and the Lessor.

**SECTION 15. EFFECTIVE DATE.** The provisions of this Resolution shall take effect immediately upon their adoption.

The foregoing Resolution No. \_\_\_\_\_ was passed and adopted by The District Board of Trustees of Tallahassee Community College, Florida on the 15th day of August, 2016.

THE DISTRICT BOARD OF TRUSTEES OF  
TALLAHASSEE COMMUNITY COLLEGE,  
FLORIDA

(SEAL)

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Dr. Jim Murdaugh, President and Secretary

EXHIBIT A

Form of Financing Documents

## EXHIBIT B

### FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with The District Board of Trustees of Tallahassee Community College, Florida (the "Board of Trustees") Tallahassee Community College (the "College"), as governing body of the Tallahassee Community College (the "College") for the execution and delivery of the Financing Documents, as such term is defined in a resolution adopted by the Board of Trustees on August 15, 2016 (the "Resolution"). Prior to the execution and delivery of the Lease Agreement, the following information is hereby furnished to the College:

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 (such fees and expenses to be paid by the College):

Foley & Lardner, P.A. - \$7,500.00

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), 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 College, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the College 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 \$0.00.

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

5. Truth-in-Bonding Statement:

The Financing Documents are being executed and delivered to fund the cost of acquiring the Equipment, as such term is defined in the Resolution. The College is proposing to issue not to exceed \$7,100,000 of debt or obligation for the purpose of acquiring and constructing certain equipment. This debt or obligation is expected to be repaid over a period of fifteen (15) years. At a net interest cost of 2.21% total interest paid over the life of the debt or obligation will be \$1,490,286.

The source of repayment or security for this proposal is the legally available funds of the College, subject to annual appropriation by the College. Authorizing this debt or obligation will result in a maximum of \$681,068 of the College's legally available funds not being available to finance the other services of the College each year for 15 years.

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

Banc of America Public Capital Corp  
555 California Street, 4<sup>th</sup> Floor  
San Francisco, California 94104  
Attention: Contract Administration

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Statement on behalf of the Lessor this 18th day of August, 2016.

BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_

Name:

Title: