

RESOLUTION NO. 14-R15

A RESOLUTION OF THE CITY OF FORT PIERCE, FLORIDA ACCEPTING THE PROPOSAL OF **BANK OF AMERICA N.A.** TO PURCHASE THE CITY'S NOT TO EXCEED \$6.15 MILLION CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2014 TO FINANCE THE CITY'S COST OF **ACQUIRING AND INSTALLING ENERGY CONSERVATION EQUIPMENT** UNDER A GUARANTEED ENERGY, WATER AND WASTEWATER PERFORMANCE SAVINGS CONTRACT AND RELATED COSTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT WITH SAID BANK TO SECURE THE REPAYMENT OF SAID LOAN; PROVIDING FOR THE PAYMENT OF SUCH NOTE FROM THE CITY'S COVENANT TO BUDGET AND APPROPRIATE NON AD VALOREM REVENUES ALL AS PROVIDED IN THE FINANCING AGREEMENT; AUTHORIZING THE PROPER OFFICIALS OF THE CITY TO DO ANY OTHER ADDITIONAL THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE EXECUTION OF THE FINANCING AGREEMENT, THE NOTE, AND THE SECURITY THEREFORE; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION WITH SAID LOAN; DESIGNATING SUCH 2014 NOTE AS "BANK QUALIFIED"; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 166, Florida Statutes, the Florida Constitution, and other applicable provisions of law.

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

(A) The City of Fort Pierce, Florida (the "City") deems it necessary, desirable and in the best interests of the City that the City finance its costs of acquiring and installing energy conservation equipment under a guaranteed energy, water and wastewater performance savings contract with BGA, Inc. (the "Project"), all as more particularly described in the Financing Agreement (as defined herein).

(B) Pursuant to Section 2(b), Article VIII of the State Constitution, and Section 166.021, Florida Statutes, municipalities have the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal

functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. The issuance of the 2014 Note (hereinafter defined) and the execution and delivery of the Financing Agreement for the purposes of financing the cost of the Project is not prohibited by law.

(C) The City staff in connection with RBC Capital Markets, LLC ("RBC") have reviewed the proposal of Bank of America N.A. (the "Bank") regarding a loan in an amount of not to exceed \$6.15 million as provided in the 2014 Note (the "Loan") to the City, the proceeds of which will be applied to finance costs of the Project and to pay costs of issuing the 2014 Note.

(D) The Loan will be secured by the Pledged Revenues as provided in the Financing Agreement pursuant to which the City will issue its Capital Improvement Revenue Note, Series 2014 (the "2014 Note") to secure the repayment of the Loan.

(E) The City is advised by RBC that due to the present volatility of the market for municipal debt, it is in the best interest of the City to issue the 2014 Note pursuant to the Financing Agreement by negotiated sale, allowing the City to issue the 2014 Note at the most advantageous time, rather than a specified advertised future date, thereby allowing the City to obtain the best possible price, interest rate and other terms for the 2014 Note and, accordingly, the City Commission of the City hereby finds and determines that it is in the best financial interest of the City that a negotiated private placement of the 2014 Note to the Bank be authorized.

SECTION 3. AUTHORIZATION OF FINANCING OF PROJECT. The City hereby authorizes the refinancing of the Project as more particularly described in the Financing Agreement.

SECTION 4. ACCEPTANCE OF COMMITMENT LETTER WITH BANK. Based on a recommendation from the City's selection team, the City hereby accepts the commitment letter of the Bank dated January 31, 2014 to provide the City with the Loan.

SECTION 5. APPROVAL OF FORM OF AND AUTHORIZATION OF FINANCING AGREEMENT AND EXECUTION OF FINANCING AGREEMENT AND 2014 NOTE. The Loan and the repayment of the Loan as evidenced by the 2014 Note shall be pursuant to the terms and provisions of the Financing Agreement and the 2014 Note. The City hereby approves the Financing Agreement in substantially the form attached hereto as **Exhibit A** and authorizes the Mayor or the Mayor Pro-Tem of the City (collectively, the "Mayor") and the City Clerk or any deputy or assistant City Clerk of the City (collectively, the "City Clerk") to execute and deliver on behalf of the City the Financing Agreement by and between the City and the Bank substantially in the form attached hereto as **Exhibit A** (the "Financing Agreement") and the 2014 Note in substantially the form attached to the Financing Agreement, with such changes, insertions and additions as they may approve, their execution thereof being evidence of such approval.

SECTION 6. PAYMENT OF DEBT SERVICE ON 2014 Note. Pursuant to the Financing Agreement, the 2014 Note will be secured a City covenant to budget and appropriate Non Ad Valorem Revenues, all as more particularly described in the Financing Agreement.

SECTION 7. AUTHORIZATION OF OTHER DOCUMENTS TO EFFECT TRANSACTION. To the extent that other documents, certificates, opinions, or items are needed to effect any of the transactions referenced in this Resolution, the Financing Agreement or the 2014 Note and the security therefore, the Mayor, the City Clerk, the City Manager the Director of Finance and the City Attorney are hereby authorized to execute and deliver such documents, certificates, opinions, or other items and to take such other actions as are necessary for the full, punctual, and complete performance of the covenants, agreements, provisions, and other terms as are contained herein and in the documents included herein by reference.

SECTION 8. PAYING AGENT AND REGISTRAR. The City hereby accepts the duties to serve as Registrar and Paying Agent for the 2014 Note.

SECTION 9. LIMITED OBLIGATION. The obligation of the City to repay amounts under the Financing Agreement and the 2014 Note are limited and special obligations, payable solely from the sources and in the manner set forth in the Financing Agreement and shall not be deemed a pledge of the faith and credit or taxing power of the City.

SECTION 10. EFFECT OF PARTIAL INVALIDITY. If any one or more provisions of this Resolution, the Financing Agreement or the 2014 Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not effect any other provision of this Resolution or the 2014 Note, but this Resolution, the Financing Agreement and the 2014 Note shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The 2014 Note and Financing Agreement shall be issued and this Resolution is adopted with the intent that the laws of the State of Florida shall govern their construction.

SECTION 11. DESIGNATION OF 2014 NOTE AS BANK QUALIFIED. The City designates the 2014 Note as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The City does not reasonably anticipate that the City, any subordinate entities of the City, and issuers of debt that issue “on behalf” of the City, will during the calendar year 2014 issue more than \$10,000,000 of “tax-exempt” obligations, exclusive of those obligations described in Section 265(b)(3)(C)(ii) of the Code.

SECTION 12. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

IN WITNESS WHEREOF, this Resolution has been duly adopted this 3rd day of March, 2014.

LINDA HUDSON, MAYOR COMMISSIONER

ATTEST:

LINDA W. COX, CITY CLERK

(CITY SEAL)

APPROVED AS TO FORM
AND CORRECTNESS:

Robert V. Schwerer, City Attorney

EXHIBIT A

FINANCING AGREEMENT

(See Attached)