



Gaston County

Gaston County
Board of Commissioners
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Finance Board Action

File #: 24-021

Commissioner Hovis - Finance - Resolution Approving Schedule No. 10 for Financing Up to \$4,634,989.65 with Debt Payment Obligations Through January 25, 2027 for Rolling Stock (Vehicles & Ambulances) and Equipment (SAN Replacement) to Master Equipment Financing Agreement with Banc of America Public Capital Corp

STAFF CONTACT

Kyle Sutherland, Interim Director - Finance Department - 704-866-3032

BUDGET IMPACT

The County is obligated to make payments on this debt through January 25, 2027 (Per Schedule No. 10, Exhibit B-1).

BUDGET ORDINANCE IMPACT

N/A

BACKGROUND

By approval of this action, the Gaston County Board of Commissioners finds that the financing of the acquisition of the vehicles and other items costing up to \$4,634,989.65 pursuant to the terms of the installment purchase contract with Banc of America Public Capital Corp is in the best interest of Gaston County and hereby authorizes the execution of such contract and delivery of documents in connection therewith, and Approves the County's debt obligation through January 25, 2027 per the attached Schedule No. 10, Exhibit B-1.

On December 12, 2023, the Board approved Resolution 2023-415 appropriating loan proceeds into the General Government Capital Fund and awarded Banc of America Public Capital Corp as the lowest responsible bidder at a rate of 4.2946% for the 36 months' term.

POLICY IMPACT

N/A

ATTACHMENTS

Resolution; Schedule of Property No. 10

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	CCloninger	AFraley	BHovis	KJohnson	TKeigher	RWorley	Vote
2024-027	01/23/2024	AF	BH	A	A	A	A	AB	A	A	U

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EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

A meeting of the Board of Commissioners for the County of Gaston, North Carolina, was held at the Harley B. Gaston, Jr. Public Forum on the second floor of the Gaston County Courthouse located at 325 Dr. Martin Luther King, Jr. Way, in Gastonia, North Carolina, at 6:00 P.M. on January 23, 2024.

Present: Chairman Chad Brown, Commissioners Bob Hovis, Vice-Chairman; Cathy Cloninger, Allen R. Fraley, Tom Keigher and Ronnie Worley.

Absent: Commissioner Kim Johnson

Commissioner Fraley introduced the following Resolution which was read by title, and moved it be adopted:

RESOLUTION AUTHORIZING AND APPROVING AN INSTALLMENT FINANCING CONTRACT WITH BANC OF AMERICA PUBLIC CAPITAL CORP AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH

WHEREAS, the County of Gaston, North Carolina (the “County”), is a political subdivision organized and existing under the laws of the State of North Carolina; and

WHEREAS, the Board of Commissioners for the County (the “Board”) has determined to finance a portion of the cost of acquiring various motor vehicles and equipment (the “Project”); and

WHEREAS, in order to finance a portion of the cost of the Project, the Board has determined that it is in the best interests of the County to enter into Schedule of Property No. 10 (the “Purchase Agreement”), between Banc of America Public Capital Corp (the “Lender”) and the County, which supplements the Master Equipment Financing Agreement dated as of February 14, 2013, pursuant to the authority granted to the County under Section 160A-20 of the General Statutes of North Carolina, whereby the Lender will advance funds, in an amount not to exceed \$4,634,989.65, for such purpose and the County will make installment payments in consideration thereof; and

WHEREAS, there has been made available at this meeting, the form of the Purchase Agreement between the County and the Lender; and

WHEREAS, the Board wants to approve the Purchase Agreement and to authorize other actions in connection therewith.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Gaston, North Carolina as follows:

Section 1. The Purchase Agreement, in the form submitted to this meeting, is hereby approved, and the Chair of the Board, the County Manager, the Interim Finance Director for the

County and the Clerk to the Board are each hereby authorized and directed to execute and deliver the Purchase Agreement, with such changes, insertions or omissions as each may approve, the execution thereof by any of them to constitute conclusive evidence of such approval.

Section 2. The Chair of the Board, the County Manager, the Interim Finance Director for the County, the Clerk to the Board and the County Attorney are each hereby authorized to take any and all such further action and to execute and deliver such other documents as may be necessary or advisable to carry out the intent of this Resolution and to effect the installment financing pursuant to the Purchase Agreement. Without limiting the generality of the foregoing, the Interim Finance Director is authorized to approve all details of the financing, including without limitation, the amount advanced under the Purchase Agreement (which shall not exceed \$4,634,989.65), the principal payments under the Purchase Agreement, the term of the Purchase Agreement and the interest rate thereunder. Execution of the Purchase Agreement by the Chair of the Board, the County Manager or the Interim Finance Director, shall conclusively evidence approval of all such details of the financing.

Section 3. All actions of the County effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the documents referred to above.

Section 4. This resolution shall take effect immediately upon its passage.

Commissioner Hovis seconded the motion and the motion was adopted by the following vote:

AYES: Commissioners Brown, Cloninger, Fraley, Hovis Keigher and Worley

NAYS: None

* * *

I, Donna S. Buff, County Clerk for the County of Gaston, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a regular meeting held on January 23, 2024 as relates in any way to the matters described therein and that said proceedings are recorded in Minute Book ____ of the minutes of said Board, beginning on page ____ and ending on page ____.

I HEREBY FURTHER CERTIFY that notice of said meeting was duly given in accordance with G.S. § 143-318.12.

WITNESS my hand and the corporate seal of said County, this 23rd day of January 2024.



Clerk to the Board of Commissioners

SCHEDULE OF PROPERTY NO. 10

Re: Schedule of Property No. 10 dated January 25, 2024 to Master Equipment Financing Agreement, dated as of February 14, 2013, between Banc of America Public Capital Corp, as Lender, and the County of Gaston, North Carolina, as Purchaser

1. Defined Terms. All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Financing Agreement (the “Master Agreement”).

2. Equipment; Maximum Equipment Cost. The following items of Equipment, or items similar in make and model as approved by the Lender, are hereby included under this Schedule of the Master Agreement:

Quantity	Description of Equipment
21	Dodge Chargers
1	Ford F-450 Crew Cab
4	Ford F-250 Super Cab
1	Toyota Camry
1	Ford Edge SUV
1	Chevrolet Suburban SUV
3	350 Transit Van
2	Ford F-150 4x4
3	Ford F-150 Super Cab
4	ALS Ambulances
	SAN Storage Equipment

The Equipment to be purchased under this Schedule consists of vehicles to be used by the County. The model numbers and VIN numbers of such Equipment shall be provided to the Lender upon purchase. All references in the Master Agreement to “install” shall be deemed deleted with respect to the Equipment under this Schedule since vehicles are not equipment capable of being installed.

The “Maximum Equipment Cost” of Equipment subject to this Schedule is \$4,634,989.65

3. Payment Schedule.

(a) Installment Payment Schedule. The Purchase Price for the Equipment is \$4,634,989.65. The Installment Payments shall be in such amounts and payable on such dates as set forth in the Installment Payment Schedule attached to this Schedule as Schedule B-1. Installment Payments shall commence on the Commencement Date (defined below), which is the

date on which the Purchase Price is delivered to the Purchaser for deposit into a separate account of the Purchaser designated the 2024 Project Fund.

(b) Purchase Price Schedule. The Purchase Price on each Installment Payment date for the Equipment listed in this Schedule shall be the amount set forth for such Installment Payment date in the "Purchase Price" column of the Installment Payment Schedule attached to this Schedule (including the Installment Payment shown on the same line in the Installment Payment Schedule).

4. Representations, Warranties and Covenants. Purchaser hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Agreement are true and correct as though made on the date of commencement of Installment Payments on this Schedule. Purchaser further represents and warrants that (a) no material adverse change in Purchaser's financial condition has occurred since the date of the Master Agreement, (b) the governing body of Purchaser has authorized the execution and delivery of this Schedule pursuant to a resolution adopted by the governing board of the Purchaser on December 12, 2023 (c) the Equipment described above is essential to the functions of Purchaser or to the services Purchaser provides its citizens; (d) Purchaser has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by Purchaser only for the purpose of performing one or more of Purchaser's governmental or proprietary functions consistent with the permissible scope of its authority; and (e) Purchaser expects and anticipates adequate funds to be available for all future payments due hereunder after the current budgetary period.

5. The Purchase Agreement. The terms and provisions of the Master Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

6. Purchase Agreement Proceeds. The Purchase Agreement Proceeds which Lender shall pay to the Purchaser in connection with this Schedule is \$4,634,989.65, all of which will be deposited in the Project Fund for this Schedule, which shall be designated the "Gaston County 2024 Equipment Project Fund". It is expected that by eighteen (18) months from the date of this Schedule No. 10, Purchaser will have taken possession of all items of Equipment shown above and that a Purchaser's Acceptance Certificate, or Acceptance Certificates, will be signed by Purchaser and delivered to Lender on or before eighteen (18) months from the date of this Schedule No. 10.

7. Acquisition Period. The Acquisition Period applicable to this Schedule shall end at the conclusion of the 18th month following the date hereof.

8. Term. The Term shall begin on January 25, 2024 (the "Commencement Date") and end on January 25, 2027.

9. Optional Prepayment Date. For purposes of Section 4.01(b) of the Agreement, the Optional Prepayment Commencement Date is July 25, 2025, which is the first Payment Date occurring after half of the term of this Schedule has elapsed.

10. Maximum Equipment Cost. The Maximum Equipment Cost approved under the

Purchase Agreement for this Schedule is \$4,634,989.65.

11. Registration. Any Equipment that is a motor vehicle is to be registered and titled as follows:

(a) Registered Owner: County of Gaston, North Carolina

(b) Lienholder: Banc of America Public Capital Corp
Bank of America Plaza
600 Peachtree Street NE, 11th Floor
Atlanta, GA 30308-2265

Purchaser shall be responsible for the correct titling of all Equipment purchased hereunder. Purchaser will cause the original Certificates of Title to be delivered to Lender for retention in Lender's files throughout the Term.

12. Notwithstanding anything in the Agreement to the contrary, Lender and Purchaser agree that for purposes of this Purchase Agreement only, the following amendments to the Agreement are effective:

(a) Section 7.02 of the Agreement is hereby deleted in its entirety and the following Section 7.02 is substituted in lieu thereof:

Section 7.02. Insurance. Purchaser shall, during the Lease Term under each Lease, maintain or cause to be maintained (a) casualty insurance naming Lender and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lender, in an amount at least equal to the greater of (i) the then applicable Prepayment Price under such Lease or (ii) the replacement cost of the Equipment under such Lease; (b) liability insurance naming Lender and its assigns as additional insured that protects Lender from liability with limits of at least \$10,000,000 for bodily injury and property damage coverage, or such other minimum coverage amount as may be agreed upon between Lender and Purchaser in connection with the execution and delivery of a Lease, in all events under clauses (a) and (b) issued in form and amount satisfactory to Lender and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Purchaser may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lender's prior written consent (which Lender may grant, withhold or deny in its sole discretion) and provided that Purchaser has delivered to Lender such information as Lender may request with respect to

the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lender. In the event Purchaser is permitted, at Lender's sole discretion, to self-insure as provided in this Section, Purchaser shall provide to Lender a self-insurance letter in substantially the form attached hereto as Exhibit G. Purchaser shall furnish to Lender evidence of such insurance or self-insurance coverage throughout the Lease Term under each Lease. Purchaser shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lender without first giving written notice thereof to Lender at least 30 days in advance of such cancellation or modification.

(b) Section 7.04 of the Agreement is hereby deleted in its entirety and the following Section 7.04 is substituted in lieu thereof:

Section 7.04. Advances. In the event Purchaser shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lender may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. Purchaser covenants and agrees to pay such amounts so advanced by Lender with interest thereon from the due date until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) *plus* 5% per annum or the maximum amount permitted by law, whichever is less.

(c) Section 11.01(a) of the Agreement is hereby deleted in its entirety and the following Section 11.01(a) is substituted in lieu thereof:

(a) Failure by Purchaser to (i) pay any Installment Payment or other payment required to be paid under any Purchase Agreement within 10 days after the date when due as specified therein or (ii) maintain insurance as required under such Purchase Agreement (including Section 7.02 incorporated therein);

(d) The attached Exhibit G is hereby attached to the Agreement.

(e) A new Section 12.08 and 12.09 are hereby added to the Agreement, which shall read as follows:

Section 12.08. E-Verify. Lender understands the "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Lender shall require any subcontractor that it uses in connection with the performance of its obligations under this Agreement to certify to such subcontractor's compliance with E-Verify.

Section 12.09. Iran Divestment Act Certification. The Lender does hereby represent and certify that the Lender is not currently listed on a list created and maintained by the North Carolina Department of State Treasurer pursuant to Section 147-86.58 of the Iran Divestment Act of 2016, Article 6E, as amended, of Chapter 147 of the General Statutes of North Carolina. The Lender will not utilize any subcontractor that is listed on any such list on the date hereof in connection with the transactions contemplated by this Agreement.

Dated: January 25, 2024

LENDER:

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

PURCHASER:

County of Gaston, North Carolina
Post Office Box 1578
Gastonia, North Carolina 28053-1578
Attention: Finance Director

By: _____
Name: _____
Title: _____

By: _____
Kyle Sutherland, Interim Finance Director

(Seal)

Attest:

By: _____
Donna S. Buff, Clerk to the Board

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Counterpart No. ____ of ____ manually executed and serially numbered counterparts. To the extent that this Purchase Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

Exhibit B-1
INSTALLMENT PAYMENT SCHEDULE

Re: Schedule No. 10 dated January 25, 2024, to Master Equipment Financing Agreement, dated as of February 14, 2013, between Banc of America Public Capital Corp, as Lender, and the County of Gaston, North Carolina, as Purchaser

Purchaser: County of Gaston, North Carolina
 Term: Three (3) years
 Acquisition Amount: \$4,634,989.65
 Contract Rate: 4.2946%

Installment Payment Date	Installment Payment Amount	Interest Portion	Principal Portion	Purchase Price
1/25/2024	\$0.00	\$0.00	\$0.00	N/A
4/25/2024	\$413,732.01	\$49,763.57	\$363,968.44	N/A
7/25/2024	\$413,732.01	\$45,855.83	\$367,876.18	N/A
10/25/2024	\$413,732.01	\$41,906.12	\$371,825.89	N/A
1/25/2025	\$413,732.01	\$37,914.01	\$375,818.00	N/A
4/25/2025	\$413,732.01	\$33,879.04	\$379,852.97	N/A
7/25/2025	\$413,732.01	\$29,800.75	\$383,931.26	\$2,391,716.92
10/25/2025	\$413,732.01	\$25,678.67	\$388,053.34	\$2,003,663.59
1/25/2026	\$413,732.01	\$21,512.34	\$392,219.67	\$1,611,443.92
4/25/2026	\$413,732.01	\$17,301.27	\$396,430.74	\$1,215,013.18
7/25/2026	\$413,732.01	\$13,044.99	\$400,687.02	\$814,326.16
10/25/2026	\$413,732.01	\$8,743.01	\$404,989.00	\$409,337.16
1/25/2027	\$413,732.01	\$4,394.85	\$409,337.16	\$0.00
Totals	\$4,964,784.12	\$329,794.47	\$4,634,989.65	

Prepayment of the Principal Portion of the Installment Payments is permitted on and after the Optional Prepayment Commencement Date, without Prepayment Premium.

For purposes of this Purchase Agreement, "Taxable Rate," with respect to the interest component of Installment Payments, means an annual rate of interest equal to 5.4813%.

PURCHASER:
 COUNTY OF GASTON, NORTH CAROLINA

By: _____
 Kyle Sutherland, Interim Finance Director

EXHIBIT G
FORM OF SELF-INSURANCE CERTIFICATE

Banc of America Public Capital Corp
555 California Street, 4th Floor
San Francisco, California 94104

Re: Schedule of Property No. 10, dated January 25, 2024, to Master Equipment Financing Agreement, dated as of February 14, 2013, between Banc of America Public Capital Corp, as Lender, and County of Gaston, North Carolina, as Purchaser

In connection with the above-referenced Schedule of Property (the "*Schedule*"), County of Gaston, North Carolina (the "*Purchaser*") hereby warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement incorporated in the Schedule by reference.

1. The Purchaser is self-insured for damage or destruction to the Equipment listed in the Schedule (herein, the "*Equipment*"). The dollar amount limit for property damage to the Equipment under such self-insurance program is \$_____. [The Purchaser maintains an umbrella insurance policy for claims in excess of Purchaser's self-insurance limits for property damage to the Equipment which policy has a dollar limit for property damage to the Equipment under such policy of \$_____.]

2. The Purchaser is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Equipment. The dollar limit for such liability claims under the Purchaser's self-insurance program is \$_____. [The Purchaser maintains an umbrella insurance policy for claims in excess of Purchaser's self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment in the amount of \$_____.

[3]. The Purchaser maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Purchaser's self-insurance liabilities is \$_____. [Amounts paid from the Purchaser's self-insurance fund are subject to a dollar per claim of \$_____.]

[3]. The Purchaser does not maintain a self-insurance fund. The Purchaser obtains funds to pay claims for which it has self-insured from the following sources: _____ . Amounts payable for claims from the such sources are limited as follows: _____ .

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Purchaser.

PURCHASER:
COUNTY OF GASTON, NORTH CAROLINA

By: _____
Name: Kyle Sutherland
Title: Interim Finance Director