RESOLUTION 17 - 41

TO APPROVE AN EQUIPMENT LEASE PURCHASE AGREEMENT AND OTHER RELATED MATTERS -
Re: Installation of Solar Panels by Energy Systems Group, LLC

WHEREAS, Indiana Code 36-1-12.5, as amended (the "Act") authorizes the Common Council (the "Council") of the City of Bloomington, Indiana (the "City"), to enter into guaranteed savings contracts (as defined in the Act) with qualified providers (as defined in the Act) in order to reduce the City's energy or water consumption or operating costs; and

WHEREAS, in accordance with the Act and pursuant to Resolution 17-34, adopted by the Council on August 9, 2017, the Council has authorized the City to enter into a Guaranteed Savings Contract, together with all exhibits, schedules and attachments thereto (the "Contract), in a form and substance acceptable to the Council President and the Mayor of the City (the "Mayor"), by and between the City and Energy Systems Group, LLC, for the purpose of providing for the acquisition, construction and installation of solar photovoltaic equipment at thirty sites across the City, all as more particularly described in Exhibit A to Resolution 17-34 (collectively, the "Project"); and

WHEREAS, in order to provide financing for the Contract, the City intends to execute and deliver an Equipment Lease Purchase Agreement, together with all exhibits, schedules and attachments thereto, to be dated as of the date of its execution and delivery (the "Lease Purchase Agreement"), by and between the City, as lessee, and Banc of America Public Capital Corp, or its affiliate or designee, as lessor (the "Lessor"), in the aggregate principal amount not to exceed $14,000,000, the proceeds of which will be used to pay for the costs of (a) the Project, and (b) executing and delivering the Lease Purchase Agreement, the Contract and other documents and costs related thereto (clauses (a) through and including (b), collectively, the "Expenditures"); and

WHEREAS, the City will deposit the proceeds derived from the Lease Purchase Agreement into an escrow fund established under the terms of an Escrow Agreement, to be dated as of the date of its execution and delivery (the "Escrow Agreement"), by and among the City, the Lessor and Bank of America, National Association, as the escrow agent (or such different escrow agent as shall be selected by the City and acceptable to the Lessor) (the "Escrow Agent"), and disbursed to pay the Expenditures in the manner set forth in the Escrow Agreement; and

WHEREAS, the Council, being duly advised, finds that it is in the best interests of the City and its citizens for the purpose of financing all or any portion of the Project to enter into the Lease Purchase Agreement and the Escrow Agreement in order to better serve the residents of the City; and

WHEREAS, the City expects to pay for certain of the Expenditures prior to the execution and delivery of the Contract, and to reimburse the Expenditures with proceeds received by the City upon the execution and delivery of the Lease Purchase Agreement and the Escrow Agreement; and

WHEREAS, the City desires to declare its intent to reimburse the Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

WHEREAS, the Council now desires to (i) approve the execution and delivery of the Lease Purchase Agreement and the Escrow Agreement and documents related to any of these foregoing documents, and (ii) authorize certain actions in connection therewith, subject to the conditions set forth herein.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The Council hereby determines that all or a portion of the Project will be financed from the Lease Purchase Agreement, which will provide for semi-annual or annual payments from money on deposit in the City's General Fund or any other legally available funds of the City, subject in all respects to annual appropriation by the Council.

SECTION 2. Each of the Mayor or the Controller of the City is authorized and directed to execute and deliver the Lease Purchase Agreement and the Escrow Agreement, in such form and substance as such officer deems necessary or advisable, subject in all respects, however, to the terms and conditions of this resolution, in the name and on behalf of the City. The Mayor and Controller of the City are each hereby designated to act as authorized representatives of the City for purposes of the Lease Purchase Agreement and the Escrow Agreement, until such time as the Council shall designate any other or different authorized representative for purposes of the Lease Purchase Agreement, in which event the Council shall notify the Lessor in writing of any new authorized representatives designated by the Council.

SECTION 3. The Lease Purchase Agreement shall have a term not to exceed twenty (20) years commencing from the date the City begins to make lease rental payments thereunder. The maximum principal amount financed under the Lease Purchase Agreement shall not exceed $14,000,000, and the interest rate under the terms of the Lease Purchase Agreement shall not exceed 3.50% per annum.

SECTION 4. The City hereby declares its official intent to execute the Lease Purchase Agreement which will not exceed an original aggregate principal amount of approximately $14,000,000, and to reimburse the Expenditures from proceeds received by the City from the execution and delivery of the Lease Purchase Agreement.

SECTION 5. Any officer of the City be, and hereby is, authorized and directed to execute and deliver such documents and take such other actions as such officer deems necessary or desirable to effect the foregoing resolutions, and any such documents heretofore executed and delivered and any such other actions heretofore taken be, and hereby are, ratified and approved.

SECTION 6. Nothing contained in this Resolution, the Lease Purchase 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 the Lease Purchase 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.

SECTION 7. In connection with the execution and delivery of the Lease Purchase Agreement, the Council hereby engages Barnes & Thornburg LLP to serve as special tax counsel to the City.

SECTION 8. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity of unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 9. This Resolution shall be effective immediately upon its passage and adoption in accordance with Indiana law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana this 1 day of November, 2017.

Susan Sandberg

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

NBolden

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 2nd day of November, 2017.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 6th day of November, 2017.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This resolution approves the City entering into an equipment lease purchase agreement with Banc of America Public Capital Corp, or its affiliate or designee, in order to provide financing for the Guaranteed Savings Contract to be entered into between the City and Energy Systems Group, LLC ("ESG"), which was approved by the Council on August 9, 2017.

Distributed to: Mayor, Clerk, Council Administrator, Legal, Controller