

Financial Services
Richard H. Hinds, Chief Financial Officer

SUBJECT: APPROVE AMENDMENT TO \$85.4 MILLION BANC OF AMERICA PUBLIC CAPITAL CORP LEASE SCHEDULE NUMBER 7, ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

LINK TO DISTRICT STRATEGIC PLAN: IMPROVE FINANCIAL SERVICES

Authorization is being requested to approve amendment to \$85.4 Million Banc of America Public Capital Corp Lease (BAPCC) Schedule Number 7, Enterprise Resource Planning (ERP) System, as delineated in Attachment A – Summary of Revised Terms and Conditions. On January 14, 2009, under Agenda Item E-46, the School Board approved the termination of the contract with Deloitte Consulting, LLP necessitating the approval of an amendment to the BAPCC ERP lease.

The amended lease schedule revises the lease terms, including fully funding the remaining \$77 million. To date only \$8.4 million has been funded. The \$77 million will be deposited in an escrow account and drawn on a monthly basis under the revised terms outlined in Attachment A. It is anticipated that the initial draw will occur on or about June 1, 2009, totaling over \$51 million.

The agreed upon rate of 3.8639% was determined based on the index as of May 2, 2007, the date bids were accepted for the original ERP lease. Ms DeLara, the district's Financial Advisor provided a memorandum dated April 23, 2009 indicating the impact of the cost of financing and lack of alternative financing options, see Attachment B. The rate is comparable to other higher rated Florida school districts recent equipment lease transactions.

The revised lease terms have been crafted to reduce risks to the district after Phase 1, the Finance Module is implemented. Penalty pricing will be incurred if implementation of Phase 1 were to occur past May 31, 2010. The Finance Module is expected to be implemented by the end of January 2010. Staff considers the possibility of a delay past May 31, 2010 to be remote.

E-25

Revisions to the lease terms include cross-default provisions with other BAPCC leases totaling approximately \$16 million, and a \$15 million holdback provisions with releases tied to implementation of each module (Finance, Human Resources, & Payroll). In addition, there is a requirement for ongoing oversight by an independent consultant to be completed on a semi-annual basis. Addendum to the current contract with KPMG approved by the Board on July 15, 2008 under Agenda Item E-147 was provided for an update on current Project status. Additional semi-annual reviews by a consultant will need to be provided under the revised terms and conditions. The funding and initial disbursement by BAPCC will be subject to a credit review of the district and a review of the KPMG update.

The Treasury Advisory Committee at the May 6, 2009 Committee Meeting reviewed the Banc of America Public Capital Corp, Summary of Revised Terms and Conditions and has recommended that the School Board approve the Amendment to the Banc of America Public Capital Corp Lease Schedule Number 7, Enterprise Resource Planning (ERP) System. In addition, the extension and amendment to the KPMG engagement contract is also recommended to comply with the BAPCC Revised Terms and Conditions.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, approve Amendment to the \$85.4 million Banc of America Public Capital Corp Lease Schedule Number 7, Enterprise Resource Planning (ERP) System.

**BANC OF AMERICA PUBLIC CAPITAL CORP
SUMMARY OF REVISED TERMS AND CONDITIONS**

Date: April 16, 2009

Lessee: The School Board of Miami-Dade County, Florida (School Board)

Amount: \$85,400,000 (\$8,282,686 of which has been advanced to the School Board prior to the date hereof).

Project: Enterprise Resource System

Construction Period: Expiration 9/30/11

Amortization Period: 84 months from the Funding date.

Funding: \$77,177,314 (as reduced by disbursements from time to time, the "Escrow Amount") will be funded into an escrow account. \$15,000,000 (the "Holdback"), representing an approximation of the aggregate internal costs of the Project as such internal costs are specified in a line item on each Requisition (the "Internal Costs"), will remain in the escrow account to be disbursed to the School Board as follows:

- 50% of Internal Costs incurred prior to the completion of phase 1 of the Project will be disbursed to the School Board from the Holdback upon completion and acceptance of phase 1 of the Project;
- 50% of Internal Costs incurred after completion of phase 1 of the Project will be disbursed to the School Board from the Holdback upon completion and acceptance of phase 2 of the Project; and
- The remainder of the Holdback will be disbursed to the School Board upon completion and acceptance of phase 3 of the Project.

Escrow disbursements will occur on a monthly basis, subject to disbursement requirements. BAPCC will have security interest in the escrow account.

Cross-Default: The Master Equipment Lease/Purchase Agreement (the "Agreement") dated as of March 3, 2006, between BAPCC and the School Board, will be amended to clarify current provisions regarding BAPCC's ability to declare an event of default for all BAPCC lease schedules when an event of default under any BAPCC lease schedule has occurred.

Cross-Non-Appropriation: The Agreement will be amended to provide for cross-nonappropriation to apply to all BAPCC lease schedules under the Agreement (e.g., School Board must appropriate for all BAPCC lease schedules as a whole).

Pricing: Fixed interest rate of 3.8639% (which equals the effective rate as of May 2, 2007) will apply to the Escrow Amount; provided, however, the interest rate on the Escrow Amount will be subject to the following indexing if Funding occurs after June 15, 2009: average life SWAPS (4 years) x 65%, plus 253.05 bps.

Penalty Pricing:

In the event the finance module of the Project (the "Finance Module") is not installed, accepted and placed into service by the School Board by January 31, 2010, BAPCC will require KPMG or such other external consultant reasonably satisfactory to BAPCC (a "Consultant") to provide an updated assessment of the Project; in the event the Finance Module is not installed, accepted and placed into service by the School Board by May 30, 2010 the interest rate on funds disbursed from the escrow account will increase by 75 basis points commencing on May 31, 2010; and if the Finance Module is not installed, accepted and placed into service by the School Board by July 1, 2010 the interest rate on funds disbursed from the escrow account will increase an additional 100 basis points commencing on July 2, 2010. The foregoing shall not apply if the installation, acceptance and placement into service of the Finance Module is delayed by reason of force majeure; provided, School Board shall remain obligated to pay rental payments due under the Lease.

**Prior to Initial Funding/
Disbursement:**

- a) Project timeline and budget approved by BAPCC;
- b) Installation/implementation plan approved by BAPCC; and
- c) Satisfactory review by BAPCC (and a BAPCC-appointed external consultant at the expense of BAPCC) of Consultant's report on the current Project status, including project plan and staffing and budget.

**Funding Requirements
for each disbursement:**

- a) Agreements are in full force and effect;
- b) No event of default or non-appropriation;
- c) No downgrade in general obligation rating to BBB+ or lower by S&P or Baa1 or lower by Moody's before funding of the escrow account and acceptance and installation of the Finance Module;
- d) Project members / team leadership in place;
- e) Installation / implementation plan for Finance Module approved by BAPCC is in place and no modifications which would require an additional expenditures in excess of \$2 million and/or a delay of more than sixty days has been made, each on a cumulative basis, without the prior written consent of BAPCC;
- f) Project timeline and budget for Finance Module approved by BAPCC is in place and no modifications which would require an additional expenditures in excess of \$2 million and/or a delay of more than sixty days has been made, each on a cumulative basis, without the prior written consent of BAPCC;
- g) Compliance with SAP maintenance schedule;
- h) Semi-annual oversight and/or reporting by a Consultant (including written affirmation of projected status within approved budget and timeline); next oversight date is Nov 15, 2009;
- i) BAPCC receipt and review of appropriate report/ oversight by BAPCC;
- j) BAPCC verification of Consultant's reports/findings; and
- k) Any remaining monies in the escrow account will be distributed in the following manner: to pay outstanding expenses, accrued interest due, and then principal reduction.

Additional representations, warranties and covenants of the School Board:

- a) Installation/ implementation plan approved by BAPCC will stay in place until the project is completed and will not be revised without the prior written consent of BAPCC unless such consent is not required pursuant to clause (e) under "Funding Requirements for Each Disbursement";
- b) Project timeline and budget approved by BAPCC will not be modified without the prior written consent of BAPCC unless such consent is not required pursuant to clause (f) under "Funding Requirements for Each Disbursement";
- c) BAPCC receipt of monthly Board of Directors reports pertaining to the ERP project; and
- d) The ERP Project will be listed on the Five-Year Educational Facilities Plan adopted pursuant to Section 1013.35, Florida Statutes, currently in effect and will continue to be listed on the Five-Year Educational Facilities Plan through completion of the ERP Project. The Superintendent of the District shall include in the Superintendent's tentative budget proposal for each Fiscal Year in which repayment of draws for the ERP Project under the Master Lease are due (the "Repayment Period") sufficient funding for financing of the ERP Project from legally available funds, subject to appropriation being made by the Board in the final official budget for each Fiscal Year during the Repayment Period, adopted in accordance with Florida law, including in particular Chapter 1011, Florida Statutes.

The foregoing proposed terms and conditions are subject to certain events, including (a) absence of any material adverse change in the financial condition, operations or prospects of the School Board or in any law, rule or regulation (or their interpretation or administration), that, in each case, may adversely affect the consummation of the transaction, to be determined in BAPCC's sole discretion, (b) such additional due diligence as BAPCC may require, (c) formal credit approval within BAPCC, including approval of all final terms and conditions and (d) satisfactory documentation thereof (including satisfactory legal opinions). With respect to clause (a) in the preceding sentence, BAPCC acknowledges that the School Board has advised it of a proposal currently under consideration by the Florida Legislature which would lower the millage available for capital projects from 1.75 mills to 1.50 mills and the District's general obligation debt currently has a negative outlook by Moody's Investor Service ("Moody's"), and that a downgrade in the School Board's general obligation rating by S&P or Moody's before funding will not constitute a material adverse change for purposes of this paragraph, except to the extent such downgrade(s) cause the applicable rating(s) to fall below the rating requirements for initial funding.

The undersigned, by its authorized representative below, accepts the above proposal subject to final approval by the Treasury Advisory Committee and the School Board, agrees to furnish BAPCC, its successors and assigns, any information relating to the business or financial condition of Borrower or its affiliates, and authorizes BAPCC, Bank of America N.A. and their affiliates to disclose to, discuss with and distribute such information (and any information they may already have) to any other affiliates or proposed assignees or successors of Lender.

Please indicate your acceptance of this proposal by executing the enclosed copy of this letter, and returning it to my attention no later than close of business on May 4, 2009. This proposal letter shall not survive closing. This proposal letter is not assignable, and no party other than Lessee shall be entitled to rely on this proposal letter.

Thank you for allowing Banc of America Public Capital Corp to be of service to you. Please do not hesitate to give me a call at (804) 788-3345 if I can be of further assistance.

Sincerely,

BANC OF AMERICA PUBLIC
CAPITAL CORP

By: 

Charles Maguire, Senior Vice
President

ACCEPTED AND AGREED:

Miami-Dade Public Schools

By: 

Name/Title Alberto M. Carvalho / Superintendent

Date: _____

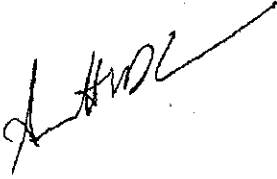
De Lara Associates

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TO: Dr. Richard H. Hinds
Chief Financial Officer

Silvia R. Rojas
Treasurer

FROM: Annette L. DeLara 
Financial Advisor
DeLara Associates

SUBJECT: ERP Financing Revised Terms and Conditions

DATE: April 23, 2009

The termination of Deloitte as the ERP Implementer has required the renegotiation of the loan terms and conditions for the equipment financing for the ERP project between Banc of America Public Capital Corp. and the Miami Dade School Board. Other factors impacting negotiations include changes in the project timeline and project team leadership. The revised terms impact timing of draws and cost of financing as follows:

- The funding of an escrow account for the total amount of the remaining funds against which draws by the District will be reimbursed on a monthly basis, subject to fulfillment of disbursement requirements as opposed to the draw down of funds held by Banc of America.
- The fixed rate of 3.8639% is based upon the proposed index rate submitted by Banc of America in the proposal of 5/2/2007.
- The interest rate will be changed to a fixed rate from the variable rate that had been applied to the reimbursement draw-down lease agreement.

Prior to reaching the recommended agreement with Banc of America, financing alternatives for the Enterprise Resource System were explored. In the current financing environment, there is no interest in providing funding for a project of this type. A comparison was made to similar Florida school district financing recently executed and the interest rate proposed on the ERP is competitive. To determine the possibility of funding the project with publicly offered certificates of participation, the viability of obtaining municipal bond insurance was discussed with Assured Guaranty and there was no interest in insuring a project of this nature. In the recent credit climate, financing for ERP type systems has not been available.