

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

**A RESOLUTION OF THE CITY OF ALLEN, TEXAS, AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT WITH GOVERNMENT CAPITAL CORPORATION AND RELATED DOCUMENTS WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; RESOLVING OTHER MATTERS RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Allen, Texas (the “City”), a body corporate and politic existing under the laws of the State of Texas, is authorized by the laws of the State of Texas to purchase, acquire and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and,

**WHEREAS**, the City desires to purchase, acquire and lease certain equipment constituting personal property necessary for the City to perform essential governmental functions (the “Equipment”); and,

**WHEREAS**, in order to acquire the Equipment, the City proposes to enter into that certain Texas Municipal Lease-Purchase Agreement (the “*Lease Agreement*”) by and between the City and Government Capital Corporation, a Texas corporation (or one of its affiliates) (the “*Lessor*”), substantially in the form and content attached hereto as **Exhibit A** and incorporated herein by reference as a part of this resolution for all purposes; and,

**WHEREAS**, the City Council of the City hereby finds and determines that the Lease Agreement should be approved and authorized to be executed at this time, together with any related agreements and documents; now, therefore.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1. Approval of Documents.** The Lease Agreement attached hereto as Exhibit A, is hereby approved as to form and content, and such Agreement in substantially the form and substance attached hereto, together with such changes or revisions as may be necessary to benefit the City, and any related agreements and documents, are hereby authorized to be executed by the City Manager for and on behalf of the City and as the act and deed of this City Council; and such Agreement and related agreements and documents, as executed by said official shall be deemed approved by the City Council.

**SECTION 2. Other Actions Authorized.** The City Manager, the Chief Financial Officer, the City Secretary and other officers and employees of the City are hereby authorized to take all action necessary or reasonably required by the parties to the Lease Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of the Lease Agreement and any related documents and agreements, as contemplated in the Lease Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease Agreement.

**SECTION 3. Tax Levy.** To provide for the payment of the "Debt Service Requirements" of the Lease, being (i) the interest on the Lease and (ii) a debt service account fund for their redemption at maturity or a debt service account of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations prescribed by law, sufficient to pay the Debt Service Requirements of the Lease as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the payment of the Debt Service Requirements shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Lease while Outstanding; full allowance

being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Lease shall be accounted for separate and apart from all other funds of the City and shall be deposited to the credit of the "Special Series 2018 Lease Payment Account" (the "Debt Service Account") to be maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Lease.

**SECTION 4. Covenants to Maintain Tax-Exempt Status.** The City represents the acquisition of the equipment under the Lease Agreement is an exercise of the City's borrowing power and constitutes the financing of equipment to be used by the City for its government purposes. As provided in the Lease Agreement, the total amount of lease payments (the "Lease Payments") due Lessor under the Lease Agreement represent in part principal and interest as reflected in the schedule to the Lease Agreement (collectively the principal portion and interest portion of the Lease Payments being the "Payment Obligations") and with respect to such Lease Payments, the interest portion is to be excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended. Therefore, the City Council hereby covenants and agrees as follows:

(a) Definitions. When used in this Section 4, the following terms have the following meanings:

*"Closing Date"* means the date on which the Lease Agreement is executed and delivered to Lessor and funds are advanced for the Equipment.

*"Code"* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

*"Computation Date"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Gross Proceeds"* means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Lease Agreement.

*"Investment"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Lease Agreement are invested and which is not acquired to carry out the governmental purposes of the Lease Agreement.

*"Rebate Amount"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Regulations"* means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*"Yield"* of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Payment Obligations has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Payment Obligation to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income

tax of the interest on any Payment Obligation, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder and as provided in the Lease Agreement, the City shall at all times prior to the last date a Payment Obligation under the Lease Agreement is due and payable:

- (1) exclusively own, operate and possess all property the acquisition of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Lease Agreement, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and
- (2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Lease Agreement or any property the acquisition of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Lease Agreement to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the termination of the Lease Agreement directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Payment Obligations.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Payment Obligations to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder with respect to the Bonds:

- (1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of

accounting for at least six years after the day on which the last Payment Obligation under the Lease Agreement is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Lease Agreement with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

- (2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official record of proceedings relating to the approval and execution of the Lease Agreement until six years after the final Computation Date.
- (3) As additional consideration for the execution and delivery of the Lease Agreement by Lessor and the loan of the money represented thereby and in order to induce such loan by measures designed to insure the excludability of the interest on the Payment Obligations from the gross income for federal income tax purposes, the City shall pay to the United States out of available funds, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Lease Agreement equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.
- (4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the final Payment Obligation under the Lease Agreement is due and payable, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Payment Obligations not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the City Manager or Chief Financial Officer to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Lease Agreement, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

**SECTION 5. Severability.** If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and the City Council of the City hereby declares that this Resolution would have been enacted without such invalid provision.

**SECTION 6. Incorporation of Findings and Determinations.** The findings and determinations of the City Council of the City contained in the preamble hereof are hereby incorporated by reference and made a part of this Resolution for all purposes as if the same were restated in full in this Section.

**SECTION 7. Public Meeting.** It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551 of the Texas Government Code, as amended.

**SECTION 8. Effective Date.** This Resolution shall be effective immediately upon its approval and adoption.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 23<sup>RD</sup> DAY OF APRIL 2019.**

**APPROVED:**

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**Stephen Terrell, MAYOR**

**ATTEST:**

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**Shelley B. George, TRMC, CITY SECRETARY**

(CITY SEAL)

## **EXHIBIT A**

*(See attachment)*