This agenda item was published on November 13, 2019. As noted in that Staff Memo, Bond Counsel was in the process of drafting the debt refinancing resolution and County staff would furnish it as a supplement to agenda item 8f. All the professionals involved in drafting this debt refinancing resolution, including the Financial Services Director and the County Attorney worked on an expedited basis to finalize this resolution.

*See attached final resolution.
RESOLUTION 2019- [___]

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA DELEGATING AUTHORITY TO EXECUTE AND DELIVERY OF CERTAIN ADDITIONAL SCHEDULES TO THAT CERTAIN MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT WITH BANC OF AMERICA PUBLIC CAPITAL CORP, AS LESSOR, AND THE COUNTY AS LESSEE FOR THE REFINANCING OF CERTAIN LEASE EQUIPMENT FINANCED IN 2018 AS DESCRIBED HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ENGAGEMENT LETTER WITH PFM FINANCIAL ADVISORS LLC; AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS RESOLUTION.

WHEREAS, Flagler County, Florida (the “County”) a political subdivision duly organized and existing under the laws of the State of Florida (the “State”) is authorized by the laws of the State to purchase, acquire and lease personal property (tangible and intangible) for the benefit of the County and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Board of County Commissioners of the County (the “Board”) previously financed through a lease purchase agreement, including two separate schedules (the “2018 Schedules”), a new Public Safety Communications Network consisting of six (6) new towers which implemented a P25 open standard architecture communications system requiring new radio hardware and software (collectively, the “Equipment”); and

WHEREAS, in order to achieve savings, the County now desires to refinance the 2018 Schedules; and

WHEREAS, the County’s financial advisor, PFM Financial Advisors LLC (“PFM”) at the direction of the County contacted multiple financial institutions to request a tax-exempt rate for refinancing the 2018 Schedules; and

WHEREAS, the County previously entered into that certain Master Equipment Lease/Purchase Agreement, including the schedules attached thereto (the “Agreement”) with Banc of America Public Capital Corp (or one of its affiliates), as lessor (the “Bank”) to finance certain equipment as described therein; and

WHEREAS, the Agreement contemplates additional schedules (as described therein) from time to time; and
WHEREAS, the Bank provided the most favorable interest rates for refinancing the 2018 Schedules; and

WHEREAS, the Board deems it for the benefit of the County and for the efficient and effective administration thereof to refinance the 2018 Schedules with the Bank; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 125, Florida Statutes, and other applicable provisions of law (the “Act”). The County has ascertained and hereby determined that adoption of this Resolution is necessary to carry out the purposes, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the County in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the County herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the County.

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

A. The WHEREAS clauses recited above are hereby incorporated herein as a part of this Resolution.

B. The County received seven (7) indications of interest from financial institutions.

C. The Bank’s indication of interest provides the best overall net present value savings.

D. Refinancing the 2018 Schedules is in the best interests of the County.

SECTION 3. DELEGATION OF AUTHORITY. The County hereby delegates authority to the Chair, the County Administrator and the Chief Financial Officer in consultation with the County Attorney, PFM and the County’s Bond Counsel to negotiate the terms of two new schedules with the Bank (the “2019 Schedules”) and any related documents not inconsistent with this Resolution. Pursuant to the Bank’s indication, the County will initially enter into two separate 2019 Schedules creating two separate Leases on the date of the Closing (“Lease B” and “Lease C” each as described herein). Without further authorization from the County, (a) the aggregate principal component of Rental Payments under the Lease B related to the Equipment shall not exceed $5,300,000, (b) the final maturity under the Lease B shall be no later than December 1, 2029; (c) the maximum interest rate used to determine the interest component of Rental Payments under the Lease B shall not exceed 1.9857% per annum; (d) the aggregate principal component of Rental Payments under the Lease C related to the Equipment shall not exceed $8,600,000, (e) the final maturity under the Lease C shall be no later than December 1, 2035; (f) the maximum interest rate used to determine the interest component of Rental Payments
under the Lease D shall not exceed 2.3843% per annum; and (g) an overall net present value savings of no less than $1,000,000 shall be achieved. The foregoing authorization shall remain in effect for a period of five years from the date hereof during which the Authorized Officials are authorized to sign and deliver the Lease pursuant to the Agreement on the terms and conditions herein provided and to be provided in the Lease.

**SECTION 4. EXECUTION AND DELIVERY OF ENGAGEMENT LETTER.** The Board hereby approves the execution and delivery of an engagement letter between the County and PFM Financial Advisors LLC (“PFM”) authorizing PFM to provide financial advisory services with respect to the acquisition, purchase, financing and leasing of the Equipment, and authorizing the payment of PFM’s fees related thereto.

**SECTION 5. BOARD OF COUNTY COMMISSIONERS, COUNTY ADMINISTRATOR AND CHIEF FINANCIAL OFFICER EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution or the Agreement or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Board, the County Administrator, the County Attorney or the Chief Financial Officer of the County, as such, of the County, past, present or future, either directly or through the County it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the Board, the County Administrator, the County Attorney or the Chief Financial Officer of the County, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Board, the County Administrator, the County Attorney or Chief Financial Officer of the County, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the Agreement and related Schedules thereto, on the part of the County.

**SECTION 6. AUTHORIZATIONS.** The Chair and any member of the Board, the County Administrator, the County Attorney, the Clerk, the Chief Financial Officer and such other officials and employees of the County as may be designated by the County are each designated as agents of the County in connection with the issuance and delivery of the 2019 Schedules and are authorized and empowered, collectively or individually, to take all actions and steps and to execute all instruments, documents, and contracts on behalf of the County that are necessary or desirable in connection with the execution and delivery of the 2019 Schedules and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**SECTION 7. APPLICABLE PROVISIONS OF LAW.** This Resolution shall be governed by and construed in accordance with the laws of the State.

**SECTION 8. RULES OF INTERPRETATION.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words “herein,” “hereby,” “hereunder,” “hereof,”
"hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

SECTION 9. IMPAIRMENT OF CONTRACT. The County covenants with the Bank that it will not, without the written consent of the Bank, enact any ordinance or adopt any resolution which repeals, impairs or amends, in any manner adverse to the Bank, the rights granted to the Bank hereunder.

SECTION 10. CAPTIONS. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

SECTION 11. REPEALER. All ordinances, resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 12. NO THIRD PARTY BENEFICIARIES. Except such other persons as may be expressly described in this Resolution or in the Agreement and the related Schedules thereto, nothing in this Resolution or in the Agreement and the related Schedules thereto, expressed or implied, is intended or shall be construed to confer upon any person, other than the County and the Bank, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Agreement and the related Schedules thereto, all provisions thereof being intended to be and being for the sole and exclusive benefit of the County and the Bank.

SECTION 13. EFFECTIVE DATE. This Resolution shall be in full force and take effect immediately upon its adoption.

[Remainder of page intentionally left blank]
DULY ADOPTED this 18th day of November, 2019.

BOARD OF COUNTY COMMISSIONERS
FLAGLER COUNTY, FLORIDA

(SEAL)

________________________________________
Donald T. O'Brien, Jr., Chair

ATTEST:

________________________________________
Tom Bexley
Clerk of the Circuit Court and Comptroller

Approved as to form:

By: ________________________________
   Albert Hadeed, Esquire
   County Attorney