

ORDINANCE NO. 2020-275

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH, FLORIDA, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT WITH TRUIST BANK SPONSORED BY THE FLORIDA LEAGUE OF CITIES INC; AUTHORIZING THE LEASE PURCHASE FINANCING OF THE ACQUISITION AND INSTALLATION OF CERTAIN EQUIPMENT HEREIN DESCRIBED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION FUND AGREEMENT; AUTHORIZING THE EXECUTION OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO COMPLETE THE TRANSACTIONS CONTEMPLATED HEREBY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, by Resolution No. 2020-240, the City Commission authorized the purchase of Dell Computing and Data Storage System from Computers at Work!, Inc. d/b/a vTechio, pursuant to the State of Florida Department of Management Services Participating Addendum Alternate Source Contract No. 43211500-WSCA-15-ACS to the NASPO ValuePoint Cooperative Procurement Program Computer Equipment Master Agreement No. MNWNC-108; and

WHEREAS, as referenced in the Resolution, the City Commission declared its intention to issue debt to pay for the purchase; and

WHEREAS, the Florida League of Cities, Inc. (the "Sponsor") is a Florida not-profit corporation; and

WHEREAS, the Sponsor has determined that there is substantial need within the State for a lease-purchase financing program (the "Program") which will provide or otherwise arrange for the lease-purchase financing of qualifying equipment for participating local governments; and

WHEREAS, the Sponsor has determined that the public interest will best be served and can be more advantageously obtained by the Sponsor's administering the Program; and

WHEREAS, the City of Daytona Beach, Florida (the "Lessee") is authorized pursuant to the hereinafter defined Act to lease, acquire and install personal property, and to finance the same, in order to minimize the costs of the Lessee's operations; and

WHEREAS, the Lessee desires the Sponsor facilitate the lease-purchase financing of the Equipment; and

WHEREAS, the Lessee deems it necessary, desirable and in the best financial interest of the Lessee and its inhabitants that it enter into, a Master Equipment Lease/Purchase Agreement by and among the Lessee, Truist Bank, (the "Lender") and the Sponsor (the "Agreement"), subject to the terms and conditions thereof and for the purposes set forth therein, to provide for the lease and purchase from time to time of equipment essential to the governmental, municipal or public purposes or functions of the Lessee or to the services the Lessee provides its inhabitants; and

WHEREAS, the Lessee has an immediate need for Computer Servers, Data Storage, Networking Components, Installation and Post-Installation Support, Software , and Five-Years of Hardware and Software Support (the "Equipment") for the welfare of its citizens, and it is in the best financial interest of the Lessee that the Equipment be leased pursuant to the Agreement; and

WHEREAS, obligations of Lessee will be subject to annual appropriation; and

WHEREAS, the Lessee is authorized and empowered by the Act to enter into transactions such as those contemplated by the Agreement and to fully perform its obligations thereunder in order to lease purchase the Equipment; and

WHEREAS, the small size of the lease financing, current market conditions and other circumstances require that the Agreement and the leases of equipment thereunder be entered into pursuant to a private negotiated transaction rather than offered by competitive bid; and

WHEREAS, the Chief Financial Officer recommends that the City accept the proposal from Truist Bank which proposes to finance the needed equipment for a term of five years at an interest rate not to exceed 1.8 percent per annum; and

WHEREAS, the Lessee now desires to (i) authorize and approve the form of the Agreement, any exhibits attached thereto, and any other related documents, including without limitation an Acquisition Fund Agreement related thereto (collectively, the “Financing Documents”), (ii) the execution and delivery of the Financing Documents and (iii) provide additional limited general authority; and

WHEREAS, the Chief Financial Officer recommends approval of the agreement, and related documents needed to complete the financing of the equipment, and certified availability of funds for repayment of the first fiscal year’s loan repayment costs.

NOW THEREFORE BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTONA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Authority for Ordinance. This Ordinance is adopted pursuant to the Constitution of the State of Florida, Chapter 166, Florida Statutes, the charter of the Lessee, and other applicable provisions of law (collectively, the “Act”).

SECTION 2. Definitions. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Agreement.

SECTION 3. Findings. It is hereby ascertained, determined and declared that:

(a) Pursuant to Article VII, Section 12 of the Constitution of the State of Florida the Lessee may execute and deliver lease/purchase agreements payable

from legally available sources (including ad valorem taxation) without approval by a vote of the electors if the Lessee is not legally obligated beyond 12 months.

(b) The Agreement does not legally obligate the Lessee beyond 12 months, because it is subject to annual appropriation in the manner and to the extent described therein, and the Lessee's obligation under the Agreement constitutes a current expense and shall in no way be construed to be a debt of the Lessee.

(c) The Lessee deems it a public purpose and deems it necessary, beneficial and in its best interest to provide for the execution and delivery of the Financing Documents to finance the lease purchase of the Equipment.

(d) The costs associated with the execution and delivery of the Agreement shall be deemed to include legal fees and expenses, financial advisory fees and expenses, and such other expenses as may be necessary or incidental for the lease-purchase financing herein authorized.

SECTION 4. Authorization of Lease-Purchase Financing and Financing Documents.

(a) The Lessee is hereby authorized to execute and deliver the Financing Documents, provided that the aggregate principal amount of all lease payments shall not to exceed \$354,030.48; the term of the Lease shall end on or before October 1, 2025 and the interest rate component of the lease payments shall not exceed 1.80%.

(b) Because of the characteristics of the Agreement, prevailing market conditions, and additional savings to be realized from an expeditious execution and delivery of the Agreement, it is in the best interest of the Lessee to execute and deliver the Agreement in a private negotiated transaction. Prior to the execution and delivery of the Agreement, only to the extent required by the Act, the Lessee shall receive a Disclosure Letter from the Lender containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit A.

(c) The Financing Documents, substantially in the forms attached hereto as composite Exhibit B, are hereby approved, with such omissions, insertions and variations as may be approved on behalf of the Lessee by the Mayor, after consultation with the Chief Financial Officer, and the Lessee Attorney, such approval to be evidenced conclusively by the Mayor's execution thereof. The Mayor is hereby authorized to execute and deliver the Agreement substantially in the form attached hereto as composite Exhibit B, to be attested under seal by the Clerk, approved as to substance by the Chief Financial Officer, and for the Lessee Attorney to designate such Financing Documents legal in form and valid as drawn.

(d) The Lessee hereby designates the Lease as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code.

SECTION 5. Additional Authorizations; No Personal Liability. The Mayor, City Manager, Lessee Attorney, the Clerk, the Chief Financial Officer, and such other officers, employees and agents of the Lessee as may be designated by the Lessee, are each designated as agents of the Lessee and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents and contracts on behalf of the Lessee that are necessary or desirable in connection with the requirements hereof or with the execution and delivery of the Financing Documents and which are specifically authorized or are not inconsistent with the terms and provisions of this Ordinance or any action relating to the transaction contemplated hereunder. Such officers and those so designated are hereby charged with the responsibility for executing the Financing Documents and financing the lease purchase of the Equipment.

No covenant, stipulation, obligation or agreement contained in this Ordinance or the Financing Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the Lessee in his or her individual capacity, and neither the members of the City Commission nor any person executing the Financing Documents shall be liable personally on the Agreement or shall be subject to any personal liability or accountability by reason of the execution and delivery of the Financing Documents.

SECTION 6. Prerequisites Performed. The Lessee has performed all acts, conditions, and things relating to the lease purchase of the Equipment as are required by the Act.

SECTION 7. Prior Actions. The prior actions of the Lessee relating to the transactions contemplated hereunder, as well as all related subject matters and processes, are hereby ratified and affirmed.

SECTION 8. The City intends that the adoption of this Ordinance will be a declaration of the City's official intent to reimburse expenditures for the acquisition of the computer equipment to be financed from the proceeds of the Truist financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City's general fund or any other City fund related to the Acquisition, for acquisition costs prior to closing on the financing authorized herein, may be reimbursed from the financing proceeds.

SECTION 9. The Budget Officer is hereby authorized to amend the applicable fiscal year Revenue and Expense Budget in accordance with the Agreement, including transfer of funds advanced for the purchase of the computer equipment.

SECTION 10. Severability. If any provision of this Ordinance shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

SECTION 11. Conflicts. All resolutions or ordinances of the Lessee or parts thereof in conflict herewith, if any, are hereby repealed to the extent of such conflict.

EXHIBIT A

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with The City of Daytona Beach, Florida (the "Lessee") for the execution and delivery of the Agreement, as such term is defined in a resolution adopted by Lessee on _____, 2020 (the "Resolution"). Prior to the execution and delivery of the Agreement, the following information is hereby furnished to the Lessee:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Lender") in connection with the execution and delivery of the Agreement (such fees and expenses to be paid by the Lender): \$0

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Lender in connection with the execution and delivery of the Agreement to any person not regularly employed or retained by the Lender (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Lender, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Lender, or to the knowledge of the Lender, with the Lessee, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Lessee and the Lender or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Lender.

3. The amount of the upfront fee or spread expected to be realized by the Lender is \$0.00.


4. The management fee to be charged by the Lender is \$0.00.

5. Truth-in-Bonding Statement:


The Agreement is being executed and delivered to fund the cost of the lease purchase of the Equipment, as such term is defined in the Resolution.

The Agreement is payable from lawful funds of the Lessee, subject to annual appropriation, in the manner and to the extent described in the Agreement. Execution and delivery of the Agreement is estimated to result in a maximum of \$_____ of revenues of the Lessee not being available to finance other services of the Lessee in each year during the life of the Agreement.

SECTION 12. Effective Date. This Ordinance shall take effect immediately upon its adoption.


DERRICK L. HENRY
Mayor

ATTEST:


LETITIA LAMAGNA
City Clerk

Passed: August 19, 2020
Adopted: September 9, 2020

6. The name and address of the Lender is as follows:

Truist Bank
5130 Parkway Plaza Blvd.
Charlotte, NC 28217

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Statement on behalf of the Lender this _____ day of _____, 2020.

By: _____

Name: _____

Title: _____

EXHIBIT B

**FORM OF FINANCING DOCUMENTS, INCLUDING
LEASE AGREEMENT AND ACQUISITION FUND AGREEMENT**