

ORDINANCE NO. 2009-050

AUTHORIZING THE CITY OF COLUMBIA, SOUTH CAROLINA, TO EXECUTE AND DELIVER AN EQUIPMENT LEASE PURCHASE AGREEMENT, 2009, IN THE AMOUNT OF NOT EXCEEDING \$900,000 BETWEEN THE CITY AND THE LESSOR THEREOF TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Findings and Determinations. The City Council (the "Council") of the City of Columbia, South Carolina (the "City"), hereby finds and determines:

(a) The City is an incorporated municipality located in Lexington County and Richland County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and laws of this State.

(b) Section 5-7-40 of the *Code of Laws of South Carolina* 1976, as amended (the "S.C. Code"), empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property.

(c) The City desires to enter into a lease-purchase agreement (the "Lease Agreement") with a bank or other financial institution selected by the Interim City Manager and Deputy Finance Director for the purpose of financing the acquisition of the equipment set forth on Exhibit A hereto (the "Equipment").

(d) The Lease Agreement will not constitute a "financing agreement" and the Equipment will not constitute an "asset" as such terms are defined in Section 11-27-110 of the *S.C. Code*. Thus, the amount of the Lease Agreement will not be included when calculating the City's constitutional debt limit under Article X, Section 14 of the Constitution of the State of South Carolina.

(e) The Lease Agreement will be subject to annual appropriation by the Council.

(f) It is in the best interest of the City to acquire the Equipment by entering in to the Lease Agreement. The Lease Agreement will enable the City to purchase the Equipment which will provide service necessary and essential to the operations of the City government.

Section 2. Approval of Lease/Purchase Financing; Delegation of Authority to Determine Certain Matters Relating to the Lease/Purchase Financing. The Equipment described in Exhibit A shall be acquired pursuant to a lease purchase financing which is hereby approved in a principal amount of not exceeding \$900,000. A Request for Proposals in substantially the form set forth as Exhibit B hereto shall be distributed to various banks and other financial institutions in the City and other areas as the Deputy Finance Director determines. Without further authorization, the City Council hereby delegates to the Interim City Manager and Deputy Finance Director the authority to: (a) determine the payment schedule under the Lease Agreement; (b) determine the date and time for receipt of bids under the Request for Proposals; and (c) award the sale of the lease-purchase financing to the lowest responsible bidder (the "Bidder") therefor in accordance with the terms of the Request for Proposals.

Section 3. Approval of Lease Agreement. Without further authorization, the Interim City Manager is authorized to approve the form, terms and provisions of the Lease Agreement proposed by the bidder. The Interim City Manager is hereby authorized, empowered and directed to execute, acknowledge and deliver the Lease Agreement in the name and on behalf of the City. The Lease Agreement is to be in the form as shall be approved by the Interim City Manager, the Interim City Manager's execution thereof to constitute conclusive evidence of such approval.

Section 4. Execution of Documents; Ratification of Certain Actions. The Mayor, Interim City Manager, Deputy Finance Director, City Clerk and City Attorney are fully empowered and authorized to take such further actions and to execute and deliver such additional documents as may be reasonably requested by the Bidder to effect the delivery of the Lease Agreement in accordance with the terms and conditions therein set forth and the transactions contemplated hereby and thereby. The actions of such officers in executing and delivering any of such documents, in such form as the Mayor or the Interim City Manager shall approve, is hereby fully authorized. The Council hereby ratifies and confirms the action taken by the Deputy Finance Director in executing a certificate with respect to the City's intent to be reimbursed from the proceeds of the Lease Agreement for a prior expenditure of City funds for the purchase of the Equipment.

Section 5. Federal Tax Covenant. The City, as lessee, agrees and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest components of the payments to be made under the Lease Agreement to become includable in the gross income of the Bidder or its successors or assignees for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended ("IRC") and regulations promulgated thereunder in effect on the date of the execution and delivery of the Lease Agreement, and that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the IRC, and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest portion of the payments to be made under the Lease Agreement; and to that end the City shall:

- (a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the IRC and any regulations promulgated thereunder so long as the Lease Agreement is outstanding;
- (b) establish such funds, make such calculations and pay such amounts in the manner and at the times required in order to comply with the requirements of the IRC relating

to required rebates of certain amounts to the United States; and

- (c) make such reports of such information at the times and places required by the IRC.

The City will timely file Form 8038-G in accordance with the applicable regulations of the Internal Revenue Service.

Section 6. Filings with Central Repository. In compliance with Section 11-1-85 of the *S.C. Code*, the City covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested; (a) a copy of the annual audit of the City within thirty (30) days of the City's receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the City, adversely affects more than five percent (5%) of the City's revenue or its tax base.

Section 7. Severability. All orders, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the execution of the respective Lease Agreements are, to the extent of such conflict, hereby repealed.

Section 8. Effective Date. This Ordinance shall be effective upon its enactment by the City Council for the City of Columbia, South Carolina.

[Execution page follows]

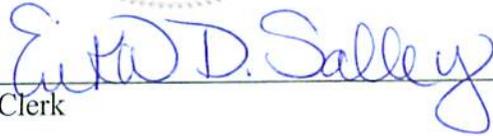
This Ordinance shall be forthwith codified in the Code of City Ordinances in the manner required by law.

ENACTED this 13th day of May, 2009.

CITY OF COLUMBIA, SOUTH CAROLINA



Mayor



Clerk

Date of First Reading: May 6, 2009
Date of Second Reading: May 13, 2009

[Signature page]

THE CITY OF COLIMBA

OFFICE OF THE CITY ENGINEER

1. [Illegible text]



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10/10/2020

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EXHIBIT A

Equipment

Fire Truck

EXHIBIT B

Form of Request for Proposals

REQUEST FOR PROPOSALS

City of Columbia, South Carolina
Equipment Lease-Purchase Financing, 2009

NOT BANK QUALIFIED

**Response Due: _____, 2009
12:00 noon, South Carolina Time**

The City of Columbia, South Carolina (the "City"), is requesting proposals from various banks and financial institutions for not exceeding \$_____ tax-exempt lease-purchase financing to defray the costs of certain equipment as described herein. The City invites interested parties to submit a proposal to finance the equipment by specifying a rate of interest and other conditions for such financing.

Mailed or Hand-Delivered Proposals: Each mailed or hand delivered proposal should be enclosed in an envelope marked "Proposal for 2009 Equipment Lease Purchase" and should be mailed or delivered to:

William H. Ellis, Deputy Finance Director
1136 Washington Street
Post Office Box 147
Columbia, SC 29217

Facsimile Proposals: The City will accept the facsimile transmission of a proposal at the risk of the bidder. The City shall not be responsible for the confidentiality of bids submitted by facsimile transmission. Any delay in receipt of a facsimile bid and any incompleteness or illegible portions of such bid are the responsibility of the bidder. Bids by facsimile should be transmitted to the attention of William H. Ellis, Deputy Finance Director; fax number 803. _____

E-mail Bids: Electronic proposals may be e-mailed to the attention of William H. Ellis at e-mail address:

PROPOSALS MAY BE DELIVERED BY HAND, BY MAIL, BY FACSIMILE TRANSMISSION OR BY E-MAIL, BUT NO PROPOSAL SHALL BE CONSIDERED WHICH IS NOT ACTUALLY RECEIVED BY THE CITY AT THE PLACE, DATE AND TIME APPOINTED, AND THE CITY SHALL NOT BE RESPONSIBLE FOR ANY FAILURE, MISDIRECTION, DELAY OR ERROR RESULTING FROM THE SELECTION BY ANY BIDDER OF ANY PARTICULAR MEANS OF DELIVERY OF BIDS.

Please note that this solicitation is also being sent to a number of other institutions as well and that the City reserves the right to select the proposal determined to be the most advantageous to the City. The selection process will be heavily weighted toward lowest financing costs. The City reserves the right to reject any or all bid proposals as well as negotiate with the lowest responsible bidder.

I. Structure of Lease

- (a) Amount to be Financed: Not exceeding \$_____ [The City retains the option to reduce the total amount to be financed by up to 10%.]
- (b) Payments: _____ () approximately equal annual payments payable _____ 1, 2010 to _____ 1, 20___. Unless otherwise designated by a bidder, interest on the lease will be calculated based on a 360-day year comprised of twelve 30-day months.
- (c) Guarantee of Rates: The interest rate, costs and other terms of the proposal submitted must be guaranteed from the date of the proposal to the closing date (expected to be _____, 2009).
- (d) Equipment: See Exhibit A.
- (e) Form of Equipment Lease-Purchase Agreement: The selected bidder's proposed form of Equipment Lease-Purchase Agreement ("Lease Agreement") should be provided within three (3) days of the award of the successful proposal.
- (f) Annual Appropriation: Payments under the Lease Agreement will be subject to annual appropriation by the City Council.
- (g) Non-substitution: A bidder is precluded from requiring a non-substitution provision in the Lease Agreement.
- (h) Deficiency Judgment: No deficiency judgment can be assessed or imposed against the City nor can the full faith, credit and taxing power of the City be pledged.
- (i) Security Interest and Title: Title to the equipment will be in the name of the City subject to the lessor's rights under the Lease Agreement.
- (j) Acquisition Account: The City will require the successful bidder to transfer by Federal funds the full amount of the financing on the date of closing. If a bidder requires that the Acquisition/Escrow Account be held by the lessor or its designee, the bidder must so indicate in its proposal. This account will be structured to allow payments therefrom to be made: (1) to the City to reimburse it for amounts previously expended on the equipment; and (2) to the equipment vendor for payment of the equipment as directed by the City.

- (k) Costs of Issuance: All such costs relating to the preparation of the Lease Agreement and fees of special counsel will be paid by the City. Any fees and costs of the bidder to be paid by the City must be stated in the response to the Request for Proposals.
- (l) Insurance: The City provides self-insurance for equipment and personal property. The Equipment will be insured in a similar manner at face value.
- (m) Lease Agreement Is Not Designated as Qualified Tax-Exempt Obligation: Because the City will be issuing more than \$30,000,000 in tax-exempt bonds in 2009, the Lease Agreement will not be a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986.
- (n) Closing: The City expects to accept the successful proposal on _____, 2009, and close the transaction on or about _____, 2009.

II. Form of Proposal

- (a) The proposal must be in writing.
- (b) No response may be modified by the bidder after it has been submitted.
- (c) Proposals should include: the name, address, telephone number of your institution; the primary contact; and identity of legal counsel, if any.
- (d) Any proposal must be accompanied with a list of all requirements and conditions associated with the proposal.
- (e) All proposals should indicate a single interest rate for the lease term and include an amortization schedule showing annual payment amounts for the term of the financing.
- (f) All proposals must provide full financing disclosure of all financing costs including any closing, legal, and tax opinion charges.
- (g) Any prepayment penalty or other fee requirements should be detailed in the proposal.

III. Evaluation of Proposals and Award

After the proposals are received, they will be evaluated by the officials of the City based on various factors, including the interest rate, additional covenants and terms, if any, and other conditions set forth therein. The City reserves the right to reject any and all proposals or to waive irregularities in any proposal. The City expects to accept the successful proposal by ____ p.m., on _____, 2009. If a bidder's proposal requires that any fees, costs or expenses be paid by the City, such fees, costs or expenses shall be treated as additional interest in determining which proposal is most advantageous to the City.

IV. Legal Opinion. The execution and delivery of the Lease Agreement is subject to the approving opinion of the McNair Law Firm, P.A., Special Counsel., and the City Attorney, Kenneth Gaines, Esquire.

V. Tax Exemption and Other Tax Matters. The Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder, imposes various restrictions, conditions and requirements relating to the excludability from gross income for federal income tax purposes of interest paid on obligations such as the Lease Agreement. The City will covenant to comply with certain covenants, restrictions, conditions and requirements designed to ensure that interest paid under the Lease Agreement will not become includable in gross income of the recipients thereof for federal income tax purposes. Failure to comply with these covenants could cause interest paid under the Lease Agreement to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Lease Agreement.

The Code imposes an alternative minimum tax on a taxpayer's "alternative minimum taxable income" if the amount of such alternative minimum tax is greater than the amount of such taxpayer's regular income tax. The interest component of the Lease Agreement is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individual and corporations nor is such interest taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax of certain corporations.

The accrual or receipt of interest on the Lease Agreement may affect the federal income tax liability of the lessor. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. Purchasers of the Lease Agreement are advised to consult their tax advisors as to the tax consequences of purchasing or holding the Lease Agreement.

VI. Investment Letter. The lessor will be requested to execute a letter to the City in substantially the form submitted with this Request for Proposals.

VII. Additional Information

If you should have any questions regarding this Request for Proposals, you should contact:

William H. Ellis
Deputy Finance Director
City of Columbia
1136 Washington Street
P.O. Box 147
Columbia, SC 29217
Telephone: 803.545.3201
Fax: 803.545.3147
E-Mail: _____@columbiasc.net

Brenton J. Robertson, Esq.
Senior Vice President
Merchant Capital, L.L.C.
One Buckhead Plaza
3060 Peachtree Rd., N.W.
Suite 1700
Atlanta, GA 30305
Telephone: 404.504.2762 (direct)
E-Mail: brentr@merchantcapital.com

Daniel R. McLeod, Jr.
McNair Law Firm, P.A.
Special Counsel
Phone (864) 271-4940
E-mail Address: dmcleod@mcnair.net

City of Columbia, South Carolina

Dated: _____, 2009

EXHIBIT A

Equipment

Two (2) Fire Trucks