

ORDINANCE NO. 2004-006

AUTHORIZING THE CITY OF COLUMBIA, SOUTH CAROLINA, TO EXECUTE AND DELIVER AN EQUIPMENT LEASE PURCHASE AGREEMENT IN THE AMOUNT OF NOT EXCEEDING \$4,300,000 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, IN COUNCIL ASSEMBLED, AS FOLLOWS:

SECTION 1. The City Council of the City of Columbia, South Carolina, hereby finds and determines:

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

(b) Section 5-7-40 of the Code of Laws of South Carolina, 1976, as amended, 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 Mayor of the City and the City Manager for the purpose of financing the acquisition of the equipment set forth on Exhibit A hereto (the "Equipment").

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

(e) It is in the best interest of the City to acquire the Equipment by entering into the Lease Agreement. The Lease Agreement will enable the City to purchase the Equipment for use by various departments within City government, which is necessary to the proper functioning 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 \$4,300,000. 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 Finance Director determines. Without further authorization, the City Council hereby delegates to the Mayor and City Manager the authority to (a) determine the date and time for receipt of bids under the Request for Proposals; and (b) 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, provided the net interest cost does not exceed 5% per annum.

SECTION 3. Approval of Lease Agreement. Without further authorization, the City Manager is authorized to approve the form, terms and provisions of the Lease Agreement proposed by the Bidder. The 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 City Manager, the City Manager's execution thereof to constitute conclusive evidence of such approval.

SECTION 4. Execution of Documents. The Mayor, the City Manager, Finance Director and the City Clerk, for and on behalf of the City, are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effect the execution and delivery of the Lease Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the City Manager shall approve, is hereby fully authorized.

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 for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Lease Agreement, and that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), 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 Code 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 Code 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 Code.

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 South Carolina 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 (5%) of the City's revenue or its tax base.

SECTION 7. Effective Date.

This Ordinance shall become effective upon its enactment.

Enacted by the City Council of the City of Columbia, South Carolina, this 14 th day of January, 2004.

CITY COUNCIL OF THE CITY OF COLUMBIA,  
SOUTH CAROLINA

By: \_\_\_\_\_

Mayor

(SEAL)

ATTEST:

Luka D. Moore

Clerk

Date of First Reading: January 14, 2004

Date of Second Reading: January 21, 2004

**EXHIBIT A**

Equipment

1. Parking Meters, including mechanisms and cases.
2. Fire Department Equipment.
3. Software and servers for the Court and Business License System.

**EXHIBIT B**

Form of Request for Proposals

REQUEST FOR PROPOSALS

City of Columbia, South Carolina  
Equipment Lease-Purchase Financing, 2004

Response Due: \_\_\_\_\_, \_\_\_\_\_, 2004  
12:00 Noon

The City of Columbia, South Carolina (the "City"), is requesting proposals from various banks and financial institutions for a not exceeding \$4,300,000 tax-exempt equipment lease-purchase financing to defray the costs of various equipment as described herein. The City invites interested parties to submit a proposal to finance the equipment giving your lowest available rate of interest and other conditions for such financing.

Proposals may be delivered by hand or by mail or by facsimile transmission, 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 or any particular means of delivery of bids. The City will take reasonable steps to ensure the confidentiality of all bids transmitted to it by facsimile transmission but cannot guarantee the confidentiality of information transmitted by such means. Bids by facsimile transmission should be transmitted to the attention of Catherine G. Alexander, Finance Director, Fax No. \_\_\_\_\_. Proposals may be mailed or delivered to:

Catherine G. Alexander  
Finance Director  
City of Columbia  
1225 Laurel Street  
Columbia, SC 29217  
Telephone: (803) 545-3399  
Fax: (803) 733-8237  
Email: [calexander@columbiasc.net](mailto:calexander@columbiasc.net)

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 it feels best meets its needs. 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. Terms and Conditions

- (a) Amount to be Financed: \$4,300,000. The City retains the option to [increase or] reduce the total amount to be financed by up to [10%.]
- (b) Payments: \_\_\_\_ ( ) approximately equal annual payments to the lessor payable \_\_\_\_ 1, 200\_ to \_\_\_\_ 1, 200\_. Interest only will be paid \_\_\_\_ 1, 2004.
- (c) Redemption Provisions: The City is also seeking financing that can be prepaid after \_\_\_\_ years at no premium.

- (d) Guarantee of rates: All rates, costs and other bid proposal must be guaranteed from the date of your proposal to the closing date (on or before \_\_\_\_\_, 2004).
- (e) Equipment: See Exhibit A.
- (f) Form of Equipment Lease-Purchase Agreement: Your proposed form of Equipment Lease-Purchase Agreement ("Lease Agreement") should be submitted with your bid.
- (g) Nonappropriation: The lease purchase financing agreement must include a non-appropriation clause.
- (h) Nonsubstitution: If a nonsubstitution provision is proposed to be included in the Lease Agreement, no opinion as to the enforceability thereof will be given by the City Attorney or the City's Bond Counsel.
- (i) Deficiency Judgment: There can be no deficiency judgment against the City nor can the taxing power of the City be pledge.
- (j) Title: Title to the equipment will be in the name of the City subject to the lessor's rights under the Lease Agreement.
- (k) Acquisition Account: The lessor must transfer by Federal funds wire the full amount of the financing ( \$4,300,000) to the City on the day of closing.
- (l) Costs of Issuance: All such costs relating to the preparation of the Lease Agreement and fees of bond counsel will be paid by the City. Any fees and costs of the lessor to be paid by the City must be stated in the response to the Request for Proposals.
- (n) Insurance: The City provides self-insurance for equipment and personal property. The Equipment will be insured in a similar manner at face value.
- (o) Closing: The City expects to accept the successful proposal on \_\_\_\_\_, 2004, and close the transaction on or about \_\_\_\_\_, 2004.

## II. Proposal Requirements

- (a) No response may be modified by the bidder after it has been submitted.
- (b) Proposals should include: the name, address, telephone number of your institution; the primary contact; and identity of legal counsel, if any.
  - (c) Any proposal must be accompanied with a list of all requirements and conditions associated with its bid.

(d) All proposals should indicate interest rate of lease term and include an amortization schedule showing annual payment amounts for the term of the financing.

(e) All proposals must provide full financial disclosure of all financing costs including any closing, legal, and tax opinion charges.

(f) Any prepayment penalty or other fee requirements should be detailed in the proposal. Again, the City prefers a financing arrangement that can be prepaid after \_\_\_ years at no premium.

### 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, comments to the form of Lease Agreement, additional covenants and terms, if any, and other conditions set forth therein. It is expected that the Ordinance of City Council approving the transaction will be enacted on \_\_\_\_\_, 2004. The City reserves the right to reject any and all bids or to waive irregularities in any proposal.

IV. Legal Opinions. James S. Meggs, City Attorney, and McNair Law Firm, P.A., Bond Counsel, will deliver respective opinions relating to this transaction.

V. Tax Exemption and Other Tax Matters. The Internal Revenue Code of 1986, as amended (the "Code"), includes provisions that relate to tax-exempt obligations, such as the Lease Agreement, including, among other things, permitted uses and investment of the proceeds of the Lease Agreement and the rebate of certain net arbitrage earnings from the investment of such proceeds to the United States Treasury. Noncompliance with these requirements may result in the interest component of the Lease Agreement becoming subject to federal income taxation retroactive to the date of the Lease Agreement. The City will covenant to comply with the requirements of the Code to the extent required to maintain the exclusion of the interest component of the Lease Agreement from gross income for federal tax purposes. Failure of the City to comply with the covenant could cause the interest component of the Lease Agreement to be taxable retroactively to the date of issuance.

The Code imposes an alternative minimum tax on a taxpayer's alternative minimum taxable income. The interest component of the Lease Agreement is not an item for tax preference for purposes of the individual and corporate alternative minimum tax. However, the interest component of on the Lease Agreement will be includable in the adjusted net book income or adjusted current earnings of a corporation for purposes of computing the alternative minimum tax imposed on corporations.

Purchasers of the Lease Agreement should consult their tax advisors with respect to collateral tax consequences of ownership of the Lease Agreement, such as the calculation of alternative minimum tax, environmental tax or foreign branch profits tax liability, the tax on passive income of S corporations, the inclusion of Social Security or other retirement payments in taxable income, or the portion of interest expense of a financial institution which is allocable to tax-exempt interest.

Lease Agreement is Not Bank Qualified: Because the City expects to issue more than \$10,000,000 of tax-exempt obligations in 2004, the Lease Agreement will not qualify as "qualified tax-exempt obligation" for purposes of Section 265 of the Code relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

South Carolina Taxation. The interest component of the Lease Agreement is exempt from all State taxation except estate or other transfer taxes. Section 12-11-20 of the South Carolina Code of Laws 1976, as amended, imposes upon every bank engaged in business in the State a fee or franchise tax computed at the rate of 4-1/2% of the entire net income of such bank. Regulations of the South Carolina Tax Commission require that the term "entire net income" includes income derived from any source whatsoever including interest on obligations of any state and any political subdivision thereof. Interest on the Lease Agreement will be included in such computation.

VI. Investment Letter. The lessor will be requested to execute a letter to the City acknowledging, among other things, that (1) no official statement or other offering material has been furnished other than the Request for Proposals and other information provided by the City; (2) the lessor had an opportunity to make appropriate inquiries of and receive answers from such officials, employees, agents and attorneys of the City; (3) the lessor has knowledge and experience in financial and business matters and that it is capable of evaluating the merits and risks of the purchase of the Lease Agreement; (4) the lessor is acquiring the Lease Agreement as a vehicle for making a commercial loan and without a present view to the distribution thereof (subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be under its control) within the meaning of the federal securities laws; and (5) the lessor is acquiring the Lease Agreement solely for its own account and no other person now has any direct or indirect beneficial ownership or interest therein.

VII. Submission Information

A sealed proposal clearly marked "Proposal for 2004 Equipment Lease Purchase" should be submitted by 12:00 Noon, \_\_\_\_\_, 2004 to:

Catherine G. Alexander  
Finance Director  
City of Columbia  
1225 Laurel Street  
Columbia, SC 29217  
Telephone: (803) 545-3399  
Fax: (803) 733-8237  
Email: [calexander@columbiasc.net](mailto:calexander@columbiasc.net)

Proposals may be delivered by hand or by mail or by facsimile transmission, 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. The City will take reasonable steps to ensure the confidentiality of all bids transmitted to it by facsimile transmission, but cannot guarantee the confidentiality of information transmitted by such means. Bids by facsimile transmission should be transmitted to the attention of Catherine G. Alexander, Finance Director, Fax (803) \_\_\_\_\_.

If you should have any questions regarding this Request for Proposals, you should contact Catherine G. Alexander, Finance Director, at the above number.

s/Robert D. Coble  
Mayor, Columbia, South Carolina

Dated: \_\_\_\_\_, 2004

EXHIBIT A

Description of Equipment

Parking Meters, including meter mechanisms and cases.  
Fire Department Equipment  
Software and Servers for Court and Business License System