

04/19/12

ORDINANCE NO. 76-2012

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BARBERTON AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT WITH PNC EQUIPMENT FINANCE, LLC, AS LESSOR, AND SEPARATE LEASE SCHEDULES THERETO AND ESCROW AGREEMENT FOR THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT WITHIN THE TERMS HEREIN PROVIDED; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE, AND DECLARING AN EMERGENCY.

WHEREAS, City of Barberton (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Ohio is authorized by the laws of the State of Ohio to purchase, acquire and lease certain equipment and other property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the governing body of the Lessee (the "*Council*") has determined that a true and very real need exists for the acquisition, purchase and financing of certain property consisting of public works equipment (collectively, the "*Equipment*") on the terms herein provided; and

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into that certain Master Equipment Lease-Purchase Agreement (the "*Master Lease*") with PNC Equipment Finance, LLC as lessor (the "*Lessor*"), substantially in the proposed form presented to City Council at this meeting, and separate Lease Schedules thereto substantially in the form attached to the Master Lease and a separate Escrow Agreement substantially in the proposed form presented to City Council at this meeting; and

WHEREAS, CITY COUNCIL deems it for the benefit of the Lessee and the efficient and effective administration thereof to enter into the Master Lease and the separate Lease Schedules relating thereto from time to time as provided in the Master Lease and an Escrow Agreement for the purchase, acquisition, financing and leasing of the Equipment to be therein more specifically described on the terms and conditions provided therein and herein;

NOW, THEREFORE, BE IT AND IT IS HERBY ORDAINED BY THE CITY COUNCIL OF THE LESSEE, STATE OF OHIO AS FOLLOWS:

Section 1. It is hereby found and determined that the terms of the Master Lease (including the form of Lease Schedule, Payment Schedule and Escrow Agreement attached thereto), in the form presented to this meeting, are in the best interests of the Lessee for the acquisition, purchase, financing and leasing of the Equipment.

Section 2. The form, terms and provisions of the Master Lease (including the form of Lease Schedule, Payment Schedule and Escrow Agreement attached thereto) are hereby approved in the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the Finance Director of the Lessee (the "*Authorized Officers*") executing the same, the execution of such documents being conclusive evidence of such approval. The Authorized Officers of the Lessee are each hereby authorized and directed to sign and deliver the Master Lease, each Lease Schedule thereto, each Payment Schedule relating thereto, each Escrow Agreement relating thereto and any related exhibits attached thereto if and when required; *provided, however*, that, without further authorization from the governing body of the Lessee, (a) the aggregate principal component of Rent Payments under all Leases entered into pursuant to the Master Lease shall not exceed \$546,145.92; (b) the maximum term under any Lease entered into pursuant to the Master Lease shall not exceed 5 years; and (c) the maximum interest rate used to determine the interest component of Rent Payments under each Lease shall not exceed the lesser of the maximum rate permitted by law or ten percent (10%) per annum. The Authorized Officers may sign and deliver Leases to the Lessor on behalf of the Lessee

pursuant to the Master Lease on such terms and conditions as they shall determine are in the best interests of the Lessee up to the maximum aggregate principal component, maximum term and maximum interest rate provided above. The foregoing authorization shall remain in effect for a period of two years from the date hereof during which the Authorized Officers are authorized to sign and deliver Leases pursuant to the Master Lease and related Escrow Agreements on the terms and conditions herein provided and to be provided in each such Lease.

Section 3. The Authorized Officers and other officers and employees of the Lessee shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated by the Master Lease and each Lease Schedule (including, but not limited to, the execution and delivery of the certificates contemplated therein, including appropriate arbitration certifications) 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 Master Lease, each Lease Schedule and each Escrow Agreement.

Section 4. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 5. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, for the reason that the property is needed as soon as possible, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Section 6. Effective Date. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, for the transaction to commence as soon as possible, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Section 7. Reserved

Passed _____ 2012

Clerk of Council

President of Council

Approved _____ 2012

Mayor

The undersigned further certifies that the above Ordinance has not been repealed or amended and remains in full force and effect and further certifies that the Master Lease (including the form of Lease Schedule, Payment Schedule and Escrow Agreement attached thereto) are the same as presented at said meeting of the governing body of Lessee, excepting only such changes, insertions and omissions as shall have been approved by the officers who executed the same.

Date: _____, 2012

[SEAL]

(Clerk of Council)

