

Proposed: 12/06/2021

ORDINANCE NO. 157-2021 (F), *First Reading*

By Council Member

An Ordinance authorizing the execution of a Property Schedule to a Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc., as lessor, and the City, as lessee, for the purpose of acquiring an aerial ladder fire truck including related equipment and appurtenances, and declaring an emergency.

WHEREAS, this Council has determined that it is in the best interest of the City to acquire an aerial ladder fire truck including related equipment and appurtenances (the Equipment) pursuant to a Master Tax-Exempt Lease/Purchase Agreement (the Lease-Purchase Agreement) and an Addendum to Tax-Exempt Lease/Purchase Agreement (the Addendum), each dated November 3, 2014, between U.S. Bancorp Government Leasing and Finance, Inc., as lessor (the Lessor), and the City, as lessee, by entering into an additional property schedule, as modified and supplemented by an Addendum (Ohio) to Master Tax-Exempt Lease/Purchase Agreement (the Schedule, and, together with the Lease-Purchase Agreement and the Addendum, the Lease) pursuant to the Lease-Purchase Agreement and the Addendum, a copy of which Lease has been presented to this Council; and

WHEREAS, the obligations of the City under the Lease will be subject to annual appropriations by this Council;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, Ohio, that:

SECTION 1. Declaration of Necessity of Lease. It is hereby declared necessary and advantageous to the City for the City to enter into the Lease with the Lessor for the purpose of acquiring an aerial ladder fire truck including related equipment and appurtenances.

SECTION 2. Authorization of Schedule; Authorized Aggregate Principal Component; Interest Rate; Term. The City Manager and the Director of Finance are authorized and directed to sign, acknowledge and deliver, in the name and on behalf of the City, the Schedule in substantially the form on file with the Clerk of Council, provided that the aggregate principal components of the rental payments due under the Lease shall not exceed **\$1,200,000**, the interest component of those rental payments shall accrue at an annual rate not in excess of **2.5%**, and the final renewal term of the Lease shall end not later than **10% years** from the commencement date of the Lease. The form of the Schedule is approved with changes therein not inconsistent with this Ordinance and not substantially adverse to the City that are permitted by law and shall be approved by the City Manager and the Director of Finance, as signing the same on behalf of the City, provided that the approval of those changes by the City Manager and the Director of Finance, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the signing of the Lease.

SECTION 3. Approval and Execution of Related Documents. The President of Council, the City Manager, the Director of Finance, the Director of Law and the Clerk of Council, as appropriate, are further authorized and directed to sign any certifications, financing statements, documents (including an escrow agreement, if applicable, in substantially the form now on file with the Clerk of Council), addendums and instruments and to take such actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this Ordinance and the Lease.

SECTION 4. Application of Lease Proceeds. The proceeds of the Lease shall be credited to the proper fund or funds as provided in the Lease, and those proceeds are appropriated and shall be used for the purpose for which the Lease is authorized and are hereby appropriated for that purpose.

SECTION 5. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease so that (a) the obligations of the City under the Lease will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code), or (ii) be treated other than as obligations the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest components of the Lease payments (Interest) will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants that (a) the City will take or cause to be taken such actions which may be required of it for the Interest to be and to remain excluded from gross income for federal income tax purposes, (b) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the Lease proceeds to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with the Lease proceeds, (iii) make timely and adequate payments to the federal government if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with those proceeds, all in such manner and to the extent necessary to assure such exclusion of the Interest under the Code.

The Director of Finance, as the fiscal officer, or the City Manager is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Lease as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease or Interest or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of Interest from gross income and the intended tax status of the Lease, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Lease, the facts,

circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the Interest and the tax status of the Lease. Either of those officers is specifically authorized to designate or otherwise determine the obligations of the City under the Lease to be “qualified tax-exempt obligations” for purposes of Section 265 of the Code if such designation or determination is applicable and desirable, and to make any related necessary representations and covenants.

SECTION 6. Appropriation of Funds. The funds necessary to make the Lease Payments due under the Lease during the current fiscal year, if any, have been appropriated and shall be used for that purpose.

SECTION 7. Prior Acts Ratified and Confirmed. Any actions previously taken by City officials or agents of the City in furtherance of the matters set forth in this Ordinance are hereby approved, ratified and confirmed.

SECTION 8. Retention of Counsel. The legal services of Squire Patton Boggs (US) LLP, as counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the execution and delivery of the Lease and the rendering of the necessary legal opinion upon the delivery of the Lease. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

SECTION 9. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

SECTION 10. Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 11. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to enable the City to enter into the Lease at the earliest possible date, which is necessary to enable the City to enter into contract(s) for the acquisition of the aerial ladder fire truck and related equipment and appurtenances which is needed to enhance the fire protection services provided by

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the City and thereby better protect the health and safety of the citizens of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto; otherwise, it shall be in full force and effect from and after the earliest period allowed by law.

JASON S. STEIN
President of Council

AMY HIMMELEIN
Clerk of Council

PASSED: