



RESOLUTION

Number 2023-046

To Approve a Supplemental Appropriation to Purchase Capital Equipment
and to Authorize the Execution and Delivery of a Master Lease Purchase
Agreement Therefore

WHEREAS, the Town Charter establishes the Town Council as the appropriating authority of the Town and as such it is empowered by Section 9.6 of the Charter to make supplemental appropriations after the annual budget is adopted; and

WHEREAS, the Town Council approved the purchase of Capital Equipment as part of the FY24 budget adoption; and

WHEREAS, current economic conditions require a Supplemental Appropriation to complete the purchases; and

WHEREAS, the Town customarily finances these acquisitions through a lease purchase program; and

WHEREAS, these excess costs will be absorbed through multi-year lease purchase payments from the Town's Capital Reserve Funds; and

WHEREAS the Town of Derry, a body politic and corporate duly organized and existing as a political subdivision of the State ("Lessee"), is authorized by the laws of the State of New Hampshire to purchase, acquire and lease personal property for the benefit of Lessee and to enter into contracts with respect thereto; and

WHEREAS Lessee desires to purchase, acquire, finance and lease certain equipment with a cost not to exceed \$1,602,289 constituting personal property necessary for Lessee to perform essential governmental functions (the "Equipment"); and

WHEREAS Lessee proposes to enter into that certain Master Lease Purchase Agreement (the "Agreement"), with TD Equipment Finance, Inc. ("Lessor"), the form of which has been available for review by the governing body of Lessee prior to this meeting; and

WHEREAS the funds made available by Lessor under the Agreement will be deposited into an account designated in writing by Lessee for the purpose of administering the Funding Amount pursuant to this Lease (the "Funding Account") or pay to Lessee an amount equal to the Funding Amount.

WHEREAS the Equipment is essential for Lessee to perform its governmental functions; and

WHEREAS, Lessee has taken the necessary steps, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment; and

WHEREAS the governing body of Lessee deems it for the benefit of Lessee and for the efficient and effective administration thereof to enter into the Financing Documents and any other documentation necessary, convenient or appropriate for the purpose of the financing the Equipment on the terms and conditions described therein;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the sum of Three Hundred Ninety-Three Thousand Three Hundred Eighty-Four Dollars (\$393,384) is hereby raised to complete the purchase of Capital Equipment, to be allocated to the following funds:

General Fund	\$ 373,432
Water Fund	\$ 18,858
Wastewater Fund	\$ 2,094

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF LESSEE, that Lessee is hereby authorized to execute and deliver the Agreement with principal components of rental payments in an aggregate amount not to exceed \$1,602,289.

BE IT FURTHER RESOLVED that the Financing Documents and the acquisition and financing of the Equipment under the terms and conditions as described in the Financing Documents are hereby approved. The Town Administrator of Lessee and any other officer of Lessee with the power to execute contracts on behalf of Lessee be, and each of them hereby is, authorized to execute, acknowledge and deliver the Financing Documents and any and all instruments, documents and certificates which may be required by or provided for in the Financing Documents or as may otherwise be required for or necessary, convenient or appropriate to the financing described in this resolution together with any changes, insertions and omissions therein as may be approved by the officer(s) who execute the Financing Documents, such approval to be conclusively evidenced by such execution and delivery of the Financing Documents. The Town Administrator of Lessee and any other officer of Lessee with the power to do so be, and each of them hereby is, authorized to affix the official seal of Lessee to the Financing Documents and attest the same.

BE IT FURTHER RESOLVED that the proper officers of Lessee be, and each of them hereby is, authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and the Financing Documents.

BE IT FURTHER RESOLVED, that pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"), Lessee hereby specifically designates the Agreement as a "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

BE IT FURTHER RESOLVED, that nothing contained in this Resolution, the Agreement nor any other instrument shall be construed with respect to Lessee as incurring a pecuniary liability or charge upon the general credit of Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Agreement are special limited obligations of Lessee as provided in the Agreement.

BE IT FURTHER RESOLVED, that if any section, paragraph, clause or provision of this Resolution 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 Resolution.

This Resolution has been adopted by a two-thirds majority of the entire Council as required by Charter and shall take effect immediately upon its passage.

Adopted: July 11, 2023

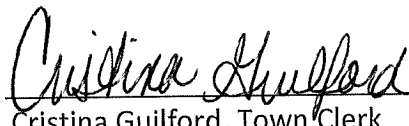
Attest:



Charles Foote, Council Chair

Date: July 11, 2023

Archival Ref: TC Agenda Item #23-73



Cristina Guilford, Town Clerk

Date: July 11, 2023