

Order 97-18/19

Motion to postpone to December 17, 2018: 9-0 on 11/19/2018

Passage: 8-0 (Batson absent) on 12/17/2018

Effective 12/27/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AUTHORIZING LEASE-PURCHASE AGREEMENT
FOR CONVERSION TO LED STREET LIGHTS**

WHEREAS, pursuant to Order 73-17/18 adopted on October 16, 2017, the City Council approved an agreement with TEN Connected Solutions, Inc. for assistance with the conversion of city street lights to Light-emitting Diode (LED) technology (the “Project”), in an amount not to exceed \$8,000,000; and

WHEREAS, pursuant to Order 74-17/18, also adopted on October 16, 2017, the City Council approved a lease purchase agreement with Banc of America Public Capital Group to finance \$4,000,000 of the costs of the Project; and

WHEREAS, pursuant to Section 2-314 of Chapter 2 of the Portland Code of Ordinances, the City Council now desires to authorize a second lease purchase agreement to finance the remaining \$4,000,000 of the costs of the Project;

NOW, THEREFORE, IT IS HEREBY ORDERED, by the City Council of the City of Portland, Maine:

1. That the City is authorized to enter into a municipal lease purchase agreement in an amount not to exceed \$4,000,000 and a term not to exceed 11 years, to lease finance the remaining costs of the Project (the “Lease Agreement”);
2. That the Lease Agreement shall be executed and delivered, in the name of and on behalf of the City, by the City Manager under the seal of the City, attested by its Clerk, and shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the City Manager, such approval and the approval of the City to be conclusively evidenced by his execution thereof; provided that any obligation of the City to make lease payments pursuant to such Lease Agreement shall be subject to annual appropriation by the City Council;
3. That such Lease Agreement shall **not** constitute a general obligation of the City nor be backed by a pledge of the faith and credit of the City or its taxing power, but shall be payable solely from annual appropriations therefore approved by the City Council;

4. That lease financing proposals to finance the Project shall be solicited and awarded pursuant to Chapter 2, Article VII, of the Portland Code of Ordinances;
5. That the Director of Finance be and hereby is authorized and directed to covenant and certify in the name of and on behalf of the City that no part of the proceeds of the Lease Agreement or the Project shall be used directly or indirectly in a manner that would cause the Lease Agreement to be a “private activity bond” or an “arbitrage bond” within the meaning of Sections 141 and 148 of the Internal Revenue Code of 1986, as amended;
6. That the Lease Agreement authorized by this Order are in addition to any lease agreement or other financing arrangement previously authorized or to be authorized for the same or similar purposes;
7. That the Director of Finance be and hereby is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such other contracts, agreements, documents and certificates, including an escrow agreement, as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the execution and delivery of the Lease Agreement (the “Other Financing Documents”), which Other Financing Documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval and the approval of the City to be conclusively evidenced by his execution thereof;
8. That the Director of Finance, City Manager, Clerk and other proper officials of the City (the “Authorized Officials”) be and hereby are authorized and empowered in the name of and on behalf of the City to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the execution and delivery of the Lease Agreement;
9. That if any Authorized Official who has signed or sealed the Lease Agreement or Other Financing Documents shall cease to be an Authorized Official before the Lease Agreement so signed and sealed shall have been actually delivered by the City, such Lease Agreement nevertheless may be delivered with the same force and effect as though the person or persons who signed or sealed such Lease Agreement had not ceased to be such officer or official;
10. That if any Authorized Official is for any reason unavailable to approve and execute the Lease Agreement or any Other Financing Documents, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such Authorized Official with the same force and effect as if such Authorized Official had performed such act; and
11. That the investment earnings on the proceeds of the Lease Agreement, if any, be and hereby are authorized to be used to pay a portion of the costs of the Project or may be deposited into the City’s General Fund, at the discretion of the City Manager.