

ORDINANCE NO. 97-24

AN ORDINANCE OF NASSAU COUNTY, FLORIDA; AUTHORIZING THE LEASING AND ACQUISITION OF NEW OR PREVIOUSLY PURCHASED OR LEASED REAL AND PERSONAL PROPERTY FOR COUNTY PURPOSES; AUTHORIZING THE COUNTY TO TRANSFER TITLE TO CERTAIN PROPERTY OF THE COUNTY TO A LESSOR; AUTHORIZING LEASE-PURCHASE AGREEMENTS WITH LESSORS; PROVIDING CERTAIN REQUIREMENTS RELATING TO SUCH LEASE-PURCHASE AGREEMENTS; PROVIDING THAT THE OBLIGATION OF THE COUNTY UNDER SUCH LEASE-PURCHASE AGREEMENTS DOES NOT CREATE A GENERAL DEBT OR OBLIGATION OF THE COUNTY OR THE STATE BUT SHALL BE PAYABLE FROM LEGALLY AVAILABLE REVENUES APPROPRIATED FOR SUCH PURPOSE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS,** the Board of County Commissioners (the "Board") of Nassau County, Florida (the "County") desires to consider a financing plan to provide for the acquisition of certain capital equipment and real property for the governmental purposes of the County; and

**WHEREAS,** the Board has been considering the establishment of a master lease-purchase program to provide for the financing of such capital needs; and

**WHEREAS,** the Board has received a commitment from a bond insurance company to insure a series of certificates of participation in a lease-purchase program; and

**WHEREAS,** the Board desires to implement a lease-purchase program as soon as possible to take advantage of favorable rates of interest.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA:**

**SECTION 1. DEFINITIONS.** When used in this Ordinance, the following terms shall have the following meanings, unless the context clearly otherwise requires:

**"Available Revenues"** shall mean (1) legally available non-ad valorem revenues of the County, and (2) the ad valorem revenues of the County which are legally available to make lease payments.

**"Board of County Commissioners"** shall mean the Board of County Commissioners of Nassau County, Florida.

**"Certificates"** shall mean certificates of participation issued by a Trustee pursuant to a Trust Agreement, the proceeds from the sale of which shall be used to finance the acquisition, construction and installation of a Project. The Certificates shall represent an interest in the obligation of the County to make payments under a Lease.

"County" shall mean Nassau County, Florida, a political subdivision of the State of Florida.

"Lease" shall mean a lease-purchase agreement which may be entered into between the County and a Lessor in accordance with the terms hereof and of the resolution of the Board of County Commissioners approving the same.

"Lease Revenue Bonds" shall mean obligations issued by a Lessor pursuant to a Trust Agreement to finance the acquisition, construction and installation of a Project.

"Lessor" shall mean an entity which acts as lessor of a Project or Projects pursuant to the terms of a Lease.

"Obligations" shall mean the Certificates and Lease Revenue Bonds.

"Prior Use Property" shall mean property owned or leased by the County which is leased or purchased by a Lessor and leased to the County pursuant to the terms and provisions of a Lease.

"Project" shall mean any land, interests in land, equipment, buildings and other property, including any Prior Use Property, to be purchased or leased by, or on behalf of, a Lessor with proceeds from the sale of Obligations and leased to the County pursuant to the terms of a Lease.

"Trust Agreement" shall mean a trust agreement relating to a lease program which may be entered into among a Trustee and a Lessor (and the County in the case of Certificates) in accordance with the terms hereof and of the resolution of the Board of County Commissioners approving the same.

"Trustee" shall mean an entity which shall be hereafter designated by resolution of the Board of County Commissioners to act as a trustee pursuant to the terms of a Trust Agreement.

The words "herein", "hereunder", "hereby", "hereto", "hereof", and any similar terms shall refer to this Ordinance.

Words importing the singular number include the plural number, and vice-versa.

**SECTION 2. FINDINGS.** The Board of County Commissioners hereby finds and determines that:

(a) The County, from time to time, enters into lease-purchase agreements for various equipment, land, motor vehicles, buildings, furnishings and other property for use by the County.

(b) The most efficient and cost effective method of funding such lease-purchase agreements is by the issuance of Obligations which result in interest payable as part of the lease payments

thereunder being treated as tax-exempt for federal income taxation purposes, and, therefor, result in a reduction in the amount of such lease payments.

(c) Lease payments shall be payable from Available Revenues of the County during such time as a Lease is in effect. The County may, at its option, terminate a Lease prior to each fiscal year. The County shall never be required to use any ad valorem taxes for the payment of Lease obligations, except as otherwise provided herein.

**SECTION 3. PURCHASING AND LEASING OF PROPERTY.** The Board of County Commissioners is hereby authorized and empowered:

(a) to acquire by lease-purchase, whenever it shall deem such lease-purchase beneficial, any Project, upon such terms and for such lease payments as can be agreed upon between the Board of County Commissioners and a Lessor;

(b) to establish, organize and appoint members or directors of Lessors for the purpose of acquiring, constructing and installing Projects from such contractors or vendors as may be designated by the County, and to lease-purchase such Projects pursuant to the terms and provisions of a Lease or Leases;

(c) to sell or otherwise transfer title to Prior Use Property to a Lessor for such consideration as shall be deemed appropriate by the County and in accordance with applicable law, and to lease-purchase such Prior Use Property from such Lessor pursuant to the terms and provisions of a Project or Projects Lease or Leases;

(d) to permit a Lessor or its assigns to enter upon the property of the County for the purpose of taking and selling, re-letting or otherwise disposing the same in the event the County fails to appropriate sufficient Available Revenues to make the lease payments or otherwise defaults under the corresponding Lease;

(e) to enter into one or more ground leases with a Lessor or Lessors for property owned by the County which shall be part of a Project or Projects;

(f) to enter into such arrangement as it deems appropriate with a Lessor in order that Lease Revenue Bonds issued by such Lessor shall be deemed issued on behalf of the County pursuant to applicable rulings and regulations of the Internal Revenue Code of 1986, as amended, and the United States Treasury;

(g) to enter into agreements with credit enhancers for Obligations; and

(h) to enter into a master Lease with a Lessor whereby various Projects may be lease-purchased under one Lease over a period of time and the County shall agree to appropriate moneys for lease payments for either all of the Projects or none of them.

**SECTION 4. LEASES.** The Board of County Commissioners is hereby authorized and empowered to prepare, execute and deliver a

Lease or Leases, pursuant to the terms and provisions of which the County shall lease-purchase a Project or Projects from one or more Lessors. Any Lease entered into between the County and a Lessor:

(a) shall provide that payments due under such Lease as rent or otherwise shall be made from Available Revenues of the County budgeted and appropriated by the Board of County Commissioners for such purpose and shall not constitute an indebtedness of the County within the meaning of any constitutional, statutory or charter provision or limitation;

(b) shall set forth the term of the lease-purchase of the Project (which term shall not exceed the average useful life of the Project subject thereto), the amount of lease payments to be made by the County in respect thereof, the due dates for such lease payments, and such other terms and provisions as may be approved by the Board of County Commissioners;

(c) shall set forth the term or renewal terms, if applicable, of such Lease, provided such Lease may be terminated at the end of each fiscal year by the County in the event the Board of County Commissioners does not appropriate sufficient Available Revenues to make the lease payments for the next succeeding fiscal year;

(d) shall provide that the failure of the Board of County Commissioners to make annual appropriations for or otherwise renew or extend the initial term or any renewal term of such Lease shall not require the payment of any penalty nor constitute a default by the County under such Lease;

(e) may provide that the title to the Project leased pursuant to such Lease shall remain in the Lessor until such time as the Project is acquired by the County or is otherwise disposed of in accordance with the terms of such Lease;

(f) may provide that the lease payments to be made by the County shall not be subject to set-off or abatement;

(g) may provide that the County may act as agent of the Lessor in acquiring, constructing and installing the Project;

(h) may provide such remedies to the Lessor or the Trustee as may be available under Florida law in the event of non-appropriation or default under such Lease, including the ability of the Lessor to reclaim possession of the Project and sell, re-let or otherwise dispose of it; and

(i) may set forth such other terms and provisions as the County and Lessor shall deem appropriate.

**SECTION 5. ISSUANCE OF OBLIGATIONS.** (a) The Board of County Commissioners shall have the power, and it is hereby authorized to provide by resolution, for the appointment of a Trustee, which Trustee may have the right, power and authority to provide for the issuance of Certificates. The Lessor may also issue its Lease Revenue Bonds in order to finance the acquisition, construction and installation of the Projects. The proceeds from

the Obligations may be deposited with the Trustee and may be used to finance the acquisition, construction and installation of Projects, establish a debt service reserve fund, pay interest on the Certificates and pay costs of issuance.

(b) The Obligations shall be payable from payments made under a Lease, proceeds of the Obligations held by the Trustee, moneys in the funds and accounts held by the Trustee, moneys derived from credit enhancement of the Obligations and moneys derived from the remedies exercised by the Trustee in the event of non-appropriation or default. The Obligations shall not constitute a direct obligation of the County and shall be payable solely from the moneys provided therefor in the Trust Agreement, as provided in Section 6 hereof.

(c) In conjunction with the appointment of a Trustee and the issuance of Obligations, the Board of County Commissioners is authorized to prepare, execute and deliver a Trust Agreement or Trust Agreements. Any such Trust Agreement shall, among other things, set forth the conditions upon which Obligations may be issued, the form and details of the Obligations, the duties of the Trustee with regard to application of the proceeds of the Obligations, provisions for the payment of the principal of, redemption premium, if any, and interest on the Obligations, and such other terms and provisions as shall be approved by the parties thereto.

**SECTION 6. OBLIGATIONS NOT DEBT OF COUNTY.** Obligations issued under the provisions of any Trust Agreement shall not be deemed to constitute a debt of the County or a pledge of the faith and credit of the County, but such Obligations shall be payable solely from sources provided in such Trust Agreement and the Lease relating thereto. The obligation of the County to make payments under a Lease is a limited and special obligation, subject to annual appropriation of the County from Available Revenues.

**SECTION 7. REMEDIES OF OBLIGATION HOLDERS.** Any holder of Obligations, except to the extent the rights herein given may be restricted by the Trust Agreement authorizing the issuance of such Obligations, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the Trust Agreement, and may enforce and compel the performance of all duties required by such Trust Agreement or Lease relating thereto to be performed by the County or by any officer thereof, including the right of a Lessor to enter upon County property, reclaim a Project or Projects and sell, re-let or otherwise dispose of such Project or Projects in the event the County defaults under such Lease or fails to appropriate sufficient moneys therefor.

**SECTION 8. ALTERNATIVE METHOD.** This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being

necessary for the welfare of the inhabitants of the County, shall be liberally construed to effect the purposes thereof.

**SECTION 9. EFFECTIVE DATE.** A certified copy of this Ordinance shall be filed in the Department of State by the Clerk of the Board of County Commissioners immediately after enactment by the Board of County Commissioners and shall take effect when accepted by the postal authorities of the United States for special delivery by registered mail to the Department of State.

**DONE AND ADOPTED** this 22nd day of September, 1997.

ATTEST:

By   
J. M. "Chip" Oxley, Jr.  
Clerk

(SEAL)

**BOARD OF COUNTY COMMISSIONERS  
OF NASSAU COUNTY, FLORIDA**

By:   
John A. Crawford  
Chairman

Approved as to form by the  
Nassau County Attorney:

  
Michael S. Mullin