

## AN ORDINANCE

**AUTHORIZING THE EXECUTION, DELIVERY, AND PERFORMANCE OF A LEASE-PURCHASE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE LEASE-PURCHASE FINANCING OF CERTAIN VEHICLES AND EQUIPMENT IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$1,407,000, AND OTHER MATTERS RELATING THERETO.**

**WHEREAS**, the City of Sumter, South Carolina (the "City"), is a municipal corporation and political subdivision of the State of South Carolina;

**WHEREAS**, the City Council of the City of Sumter (the "City Council") is the governing body of the City;

**WHEREAS**, the City has determined to acquire certain equipment and rolling stock more fully described on Exhibit A hereto (collectively, the "Equipment");

**WHEREAS**, the cost of the Equipment is estimated to be approximately \$1,401,043.27 as more fully detailed on the attached Exhibit A;

**WHEREAS**, the City Council desires to defray the cost of the Equipment as well as issuance costs through the issuance of a lease-purchase obligation of the City;

**WHEREAS**, in order to provide for the payment of costs of issuance, contingencies, or unexpected price increases, the City Council has determined to establish a maximum principal amount of \$1,407,000 for the lease-purchase obligation;

**NOW, THEREFORE, BE IT ORDAINED** by City Council of the City of Sumter as follows:

### **ARTICLE I** **DEFINITIONS**

The terms defined in this Article I (except as otherwise expressly provided for or unless the context otherwise requires) for all purposes of this Ordinance shall have the respective meanings set forth in this Article I.

"City" means the City of Sumter, South Carolina, its successors and assigns.

"City Council" means the City Council of the City of Sumter, the governing body of the City, and any successor body.

"City Manager" shall mean the City Manager of the City.

"Clerk" means the City Clerk of the City, or in her absence for any reason, the acting or deputy City Clerk of the City.

"Code" means the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations thereunder.

“Equipment” means the Equipment the acquisition of which is to be financed through the transactions contemplated by this Ordinance, as set forth on the attached Exhibit A.

“Lease” means the Lease Agreement to be entered into between the Lessor and the City, whereby Lessor will lease the Equipment to the City for a term as determined by the City Manager, but not exceeding six (6) years (plus such additional number of days as may be required to allow payments to be made on a given day of the month), subject to annual appropriation by the City Council.

“Lessor” means \_\_\_\_\_.

“Ordinance” means this Ordinance of the City Council.

**ARTICLE II**  
**AUTHORIZATION OF AND CONSENT TO LEASE**

**Section 2.01**    **Authorization to Acquire Equipment.**

The City Council hereby approves the acquisition of the Equipment as specified on the attached Exhibit A. The City Manager is authorized to make such changes as he deems necessary or advisable to such Exhibit A (including with respect to the description of the Equipment, the quantities to be purchased, or the price to be paid), provided that the aggregate purchase price to be paid does not exceed \$1,407,000.

**Section 2.02**    **Lease.**

The City Manager is hereby authorized to negotiate and determine the form, terms, and provisions of the Lease. The City Manager and the Clerk, individually and collectively, are hereby authorized, empowered, and directed to execute, acknowledge, and deliver the Lease to Lessor. The principal amount of the financing represented by the Lease shall not exceed \$1,407,000, the exact amount to be determined by the City Manager. The term of the Lease shall not exceed six (6) years (plus such additional number of days as may be required to allow payments to be made on a given day of the month). The proceeds of the Lease shall be applied to finance the costs of the acquisition of the Equipment and, if so elected by the City Manager, to pay costs of issuance.

The City Manager and the Clerk, or any one of them, are hereby authorized to execute any and all other documents, instruments, certificates, or other papers as they deem necessary and appropriate, with the advice of counsel, to accomplish the transactions contemplated by this Ordinance.

**Section 2.03**    **Award of Lease.**

The City Manager has heretofore requested proposals from financial institutions to provide the Lease, and has determined that a proposal submitted by Lessor to enter into the Lease at an interest rate of \_\_\_\_\_% per annum is in the best interests of the City. The City Council ratifies all action taken by the City Manager and confirms the award of the Lease to Lessor.

**ARTICLE III**  
**COMPLIANCE WITH REQUIREMENTS OF THE CODE**

**Section 3.01 Tax Representations and Covenants.**

The City reasonably expects that it will not issue tax-exempt obligations, including the Lease, in calendar year 2018 in an aggregate principal amount in excess of \$10,000,000. The Lease is hereby designated as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3)(B) of the Code. Such designation may be countered at the time of the delivery of the Lease if the City Manager determines that the reasonable expectation of the City is at such time contrary to the first sentence of this Section 3.01. The City hereby covenants to timely file Form 8038-G with the Internal Revenue Service.

The City hereby represents and covenants that it will not take any action that will, or fail to take any action which failure will, cause interest on the Lease to become includable in the gross income of the holder thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Lease. In this connection, the City covenants to execute any and all agreements or other documentation as it may be advised by its bond counsel as will enable it to comply with this Section. Without limiting the generality of the foregoing, the City represents and covenants that:

(A) All property provided by the net proceeds of the Lease will be leased by the City pursuant to the Lease or owned by the City in accordance with the rules governing the ownership of property for federal income tax purposes.

(B) The City shall not permit the proceeds of the Lease or any facility financed with the proceeds of the Lease to be used in any manner that would result in (a) ten percent (10%) or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any natural person or in any activity carried on by a person other than a natural person other than a governmental unit as provided in Section 141(b) of the Code, or five percent (5%) or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit as provided in Section 141(c) of the Code.

(C) The City is not a party to nor will it enter into any contracts with any person for the use or management of any facility provided with the proceeds of the Lease or by notes paid by the Lease that do not conform to the guidelines set forth in Revenue Procedure 2017-13.

(D) The City will not sell or lease the Equipment or any property obtained with proceeds of the sale thereof to any person unless it obtains the opinion of nationally recognized bond counsel that such lease or sale will not affect the tax exemption of the Lease.

(E) The Lease will not be federally guaranteed within the meaning of Section 149(b) of the Code. The City has not entered into any leases or sales or service contract with any federal government agency with respect to any facility financed with the proceeds of the Lease and will not enter into any such leases or contracts unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax exemption of the Lease.

Section 3.02    Taxable Portion of Lease.

The City Manager may determine, in his discretion that a portion of the Lease shall be offered such that the interest thereon is not exempt from federal income taxes. In such event, the undertaking contained in Section 3.01 of this Ordinance shall not apply to such portion of the Lease.

**ARTICLE IV**  
**EFFECTIVE DATE**

Section 4.01    Effective Date of Ordinance.

The provisions of this Ordinance shall become effective upon its adoption.

\* \* \* \*

**DONE, RATIFIED, AND ENACTED THIS** \_\_\_ day of May, 2018.

**CITY OF SUMTER, SOUTH CAROLINA**

\_\_\_\_\_  
Joseph T. McElveen, Jr., Mayor

\_\_\_\_\_  
Thomas J. Lowery, Mayor Pro Tempore

\_\_\_\_\_  
David P. Merchant, Councilman

\_\_\_\_\_  
Ione J. Dwyer, Councilman

\_\_\_\_\_  
Robert A. Galiano, Jr., Councilman

\_\_\_\_\_  
Steven H. Corley

\_\_\_\_\_  
Calvin K. Hastie, Sr., Councilman

ATTEST:

\_\_\_\_\_  
Linda D. Hammett, City Clerk

First Reading:        May 15, 2018  
Second Reading:     June 5, 2018

**Exhibit A**

<u>Description</u>	<u>Estimated Cost</u>
Street Sweeper	\$277,052.31
Fire (Pumper) Truck	426,949.32
Front Load Garbage Truck	261,557.00
Recycling Truck	190,487.00
Trash Trailers	64,726.64
Rear Load Garbage Truck	<u>180,271.00</u>
Total Estimated Cost	\$1,401,043.27

**STATE OF SOUTH CAROLINA**

**COUNTY OF SUMTER**

I, the undersigned, City Clerk of the City of Sumter, South Carolina (the "City"), **DO HEREBY CERTIFY:**

That the foregoing constitutes a true, correct, and verbatim copy of an ordinance (the "Ordinance") enacted by the City Council of the City (the "City Council") on June 5, 2018. The Ordinance was read at two public meetings of the City Council on two separate days, May 15, 2016 and June 5, 2018. An interval of at least six days occurred between each reading of the Ordinance. At each such meeting, a quorum of the City Council was present and remained present throughout the meeting.

The meetings held on May 15, 2016 and June 5, 2018 were duly called regular meetings of the City Council. As required by Chapter 4, Title 30 of the Code of Laws of South Carolina 1976, as amended, a notice of said meeting (including the date, time, and place thereof, as well as an agenda) was posted prominently in the City Hall of the City and posted on the City's website at least twenty-four hours prior to said meeting. In addition, the local news media and all persons requesting notification of meetings of the City Council were notified of the time, date, and place of such meeting, and were provided with a copy of the agenda therefor at least twenty-four hours in advance of such meeting. Such agenda as posted in each case included the Ordinance as an item for consideration by the City Council.

The original of the Ordinance is duly entered in the permanent records of the City, in my custody as City Clerk.

The Ordinance is now in full force and effect, and has not been modified, amended or repealed.

**IN WITNESS WHEREOF**, I have hereunto set my Hand and the Seal of the City of Sumter, South Carolina, this \_\_\_\_ day of \_\_\_\_\_.

**(SEAL)**

\_\_\_\_\_  
City Clerk, City of Sumter,  
South Carolina

## REQUEST FOR PROPOSALS

### Not Exceeding \$1,407,000 Lease-Purchase Financing

The City of Sumter, South Carolina (the "City"), is requesting proposals from financial institutions with respect to a not exceeding \$1,407,000 lease purchase agreement (the "Lease Agreement") between such financial institutions and the City to acquire the items described in Exhibit A hereto (collectively, the "Equipment"). The City will be the "Lessee," and the financial institution submitting the most favorable proposal will be the "Lessor," under the Lease Agreement.

#### I. Structure of Lease

- (a) **Term**: Proposers must name a single fixed rate of interest.
- (b) **Lease Payments**: Equal amortized **monthly** lease payments of principal and interest (in arrears) due on the first day of each month beginning on August 1, 2018, and ending July 1, 2023. The Lessee will have the option to purchase the Equipment at the end of the term for \$1.00. Lease payments will be based upon a 360-day year consisting of twelve 30-day months.
- (c) **Non-Appropriation**: The Lease Agreement shall contain a non-appropriation clause acceptable to the City. The City's right to exercise its right of non-appropriation shall be unconditional, provided, however, that the City will not be permitted to exercise its right of non-appropriation as to less than all of the Equipment.
- (d) **Non-Substitution**: No non-substitution clause or similar clause will be accepted.
- (e) **Leased Equipment**: See attached Exhibit A.
- (f) **Acquisition Fund**: The Lessor will deposit the amount of the lease, not to exceed \$1,407,000, into a custodial account (the "Acquisition Fund") on the day of closing. The Acquisition Fund shall be held by a bank chosen by the City and the Lessor. Such bank will have an office or branch in South Carolina, or other state acceptable to the City.
- (g) **Interest Earnings**: Investment of the Acquisition Fund will be directed by the City. The investment earnings, if any, may be applied as a credit against lease payments, or, at the option of the City, may be used to defray the cost of the Equipment or costs of issuance. The City will reject any proposal that requires the City to pay any portion of investment earnings to the Lessor or a third party, or that includes the effect of interest earnings on the Acquisition Fund in calculating amounts payable thereunder.
- (h) **Draw**: The City expects to begin drawing from the Acquisition Fund soon after the day of the closing, and final acceptance of all Equipment will be made within one (1) year after closing.



(i) **Tax Status:** Assuming compliance by the City with certain covenants, interest on the Lease Agreement will be excludable from income for federal income tax purposes. The City has designated the Lease Agreement as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

(j) **Issuance Costs:** The City will be responsible for the fees and costs of its Bond Counsel and other issuance costs incurred by it, and expects to pay the same from the Acquisition Fund. Up to \$5,000 of the Acquisition Fund may be applied towards costs of issuance. The City will not be responsible for fees or costs of any proposer including the successful proposer, including, but not limited to, counsel fees and costs of proposal preparation.

(k) **Closing:** The City anticipates the closing to occur on or about Wednesday, June 20, 2018.

## II. **Form of Proposals**

(a) The proposals must be in writing and not be subject to credit review. A copy of the City’s audited financial statements through June 30, 2016 are available at <http://www.sumtersc.gov/audit-reports.aspx>. The City is in the midst of a change in financial software, which has delayed issuance of the audited financial statements for Fiscal Year 2017. Additional information from the City, if required, may be obtained by contacting Mr. Deron McCormick, City Manager or Bond Counsel; please submit your request in writing to Mr. McCormick or Bond Counsel.

(b) The proposals must provide a computation of monthly principal and interest payments under an amortized payment schedule. All details necessary to validate those computations must be presented. Proposers must name a single fixed rate of interest. Although interest may be earned on the Acquisition Fund and credited to the payment account, proposals may not give effect to investment earnings in calculating amounts to be paid thereunder.

(c) The proposals should list all opinions that will be expected of the City’s Bond Counsel, Haynsworth Sinkler Boyd, P.A., Columbia, South Carolina and the City Attorney of the City. Neither Bond Counsel nor the City Attorney will opine as to the validity of any provisions in the Lease Agreement requiring the City to indemnify any other party or as to the applicability of Article 9 of the Uniform Commercial Code in any manner to the transactions contemplated by the Lease Agreement.

## III. **Award**

The City will consider all proposals that conform with the foregoing requirements. Unless all proposals are rejected, the award will be made to the financial institution offering terms that are, in the sole discretion of the City Manager, most advantageous to the City. The City reserves the right to reject any or all proposals, to waive irregularities, and to negotiate with any financial institution of its choosing.

**IV. Submission Information**

Proposals must be delivered **no later than 12:00 noon EDT, Tuesday, May 22, 2018** by email to the City's Bond Counsel at [tdubose@hsblawfirm.com](mailto:tdubose@hsblawfirm.com).

Proposals received after 12:00 noon EDT on Tuesday, May 22, 2018 will not be considered. No proposal shall be considered that is not actually received by the City's bond counsel at the indicated email address, and the City shall not be responsible for any failure, misdirection, delay, or error in delivery. The City will notify the successful proposer within 72 hours of the deadline for submittal of proposals and upon such notification all terms of the successful bidders proposal shall remain firm until June 22, 2018. The award of the financing is subject to final approval by the City Council of the City at its meeting of June 5, 2018.

If you should have any questions regarding this Request for Proposals, you should contact Deron McCormick, City Manager, at (803) 436-2570, or the City's Bond Counsel, Haynsworth Sinkler Boyd, P.A., Columbia, South Carolina, Theodore DuBose, at (803) 540-7830.

Dated: May 8, 2018

**Exhibit A**

<u>Description</u>	<u>Estimated Cost</u>
Street Sweeper	\$277,052.31
Fire (Pumper) Truck	426,949.32
Front Load Garbage Truck	261,557.00
Recycling Truck	190,487.00
Trash Trailers	64,726.64
Rear Load Garbage Truck	<u>180,271.00</u>
 Total Estimated Cost	 \$1,401,043.27