

ORDINANCE #09-12-18

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN EQUIPMENT LEASE-PURCHASE AGREEMENT IN AN AMOUNT NOT EXCEEDING \$710,000 RELATING TO THE PURCHASE OF CERTAIN EQUIPMENT BY NEWBERRY COUNTY, AUTHORIZING THE EXECUTION OF OTHER NECESSARY DOCUMENTS AND PAPERS, AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the County Council of Newberry County, South Carolina, in meeting duly assembled:

ARTICLE I

FINDINGS OF FACT

The County Council of Newberry County, South Carolina, the governing body of Newberry County, South Carolina, has made the following findings of fact:

Section 1.01 Findings.

The County Council of Newberry County, the governing body of Newberry County (the "Council"), has determined that a very real need exists for and that it is necessary for Newberry County (the "County") to acquire certain equipment as shown on Exhibit A hereto (collectively, the "Equipment"). The total cost of the Equipment and costs associated therewith is estimated to be not exceeding \$710,000. The Council has determined that it is in the best interests of the County to purchase the Equipment through a lease-purchase financing in accordance with the terms of this Ordinance.

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ARTICLE II

AUTHORIZATION

Section 2.01 Approval of the Financing.

The Council hereby approves the entry of the County into a one or more lease financing agreements in aggregate principal amount not to exceed \$710,000 (singularly or collectively, the "Agreement") to finance the purchase of the Equipment and, in the discretion of the County Administrator, pay associated issuance costs. The interest rate applicable to the agreement shall not exceed 6.0 % per annum (in the absence of default or change in tax status) unless approved by resolution of Council supplemental hereto. Payments due under the Agreement shall be expressed to become due annually in December of each of the Fiscal Years 2019 through 2023, inclusive. The Agreement may, in the discretion

of the County Administrator consists of two or more agreements, each addressing one or more components of the Equipment.

The Agreement shall not constitute a debt of the County, and the full faith, credit and taxing power of the County shall not be pledged to secure payment of rental payments or other sums due pursuant to the Agreement. The Agreement shall contain a “non-appropriation” clause suitable to counsel to the County and shall not, in the opinion of such counsel, contain a “non-substitution” clause.

Section 2.02 Authorization to Contract.

The County Administrator is hereby authorized to solicit proposals from financial institutions for the provision of the financing represented by the Agreement. Proposals shall be solicited from at least three financial institutions on not less than seven (7) days’ notice. The County Administrator is hereby authorized to award the Agreement to the financial institution which proposes the terms most favorable to the County, as determined by the County Administrator in his sole discretion, but subject in any event to the provisions of Section 2.01 of this Ordinance (the “Lessor”). The County Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver the Agreement and associated documents to the Lessor and other appropriate parties. The execution of the Agreement by the County Administrator shall constitute conclusive evidence of approval of the principal amount and rental payments due pursuant to the Agreement and the terms thereof.

Section 2.03 Other Documents, etc.

The Chairman of the Council, the Clerk to Council, Finance Director of the County and the County Administrator 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. The Council further approves the entry by the County into an escrow agreement or similar among the County, the Lender and a financial institution, satisfactory to the County Administrator, as agent, in such form as may be determined by the County Administrator, upon advice of counsel, in order to provide for the deposit and investment of proceeds of the Agreement pending the expenditure thereof.

Section 2.04 Effective Date of Ordinance.

This Ordinance shall become effective upon the third and final reading thereof.

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ARTICLE III

CERTAIN MATTERS PERTAINING TO THE INTERNAL REVENUE CODE

Section 3.01 General Tax Covenants.

The County will comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), in order to preserve the tax-exempt status of the Agreement including without limitation, the requirement to file the information report pertaining to the Agreement with the Internal Revenue Service.

Section 3.02 General Tax Representations and Covenants.

The County hereby represents and covenants that it will not take any action which will, or fail to take any action which failure will, cause the interest component of rental payments made pursuant to the Agreement to become includable in the gross income of the Lessor, or its assigns, for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original execution of the Agreement. Without limiting the generality of the foregoing, the County represents and covenants that:

- (a) All property provided by the net proceeds of the Agreement will be owned by the County in accordance with the rules governing the ownership of property for federal income tax purposes.
- (b) The County shall not permit the proceeds of the Agreement or any facility financed with the proceeds of the Agreement 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 (b) 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 County is not a party to or nor will it enter into any contracts with any person for the use or management of any facility provided with the proceeds of the Agreement that do not conform to the guidelines set forth in Revenue Procedure 2017-13.
- (d) The County will not sell or lease the Equipment or any property provided by the Agreement 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 Agreement.
- (e) The Agreement will not be federally guaranteed within the meaning of Section 149(b) of the Code. The County has not entered into any leases or sales or service contract with any federal government agency 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 Agreement.

Section 3.03 Qualified Tax-Exempt Obligation.

The County and entities subordinate thereto have to date issued in calendar year 2018 tax-exempt obligations in the principal amount of \$1,800,000. The Council has reasonably determined that the aggregate principal amount of tax-exempt obligations to be issued by the County and entities subordinate thereto in calendar year 2018, including the Agreement, will not exceed \$10 million. The Agreement is hereby designated as a “qualified tax-exempt obligation” within the meaning Section 265b(3)(B) of the Code. The County Administrator is authorized to cause the Agreement to not be issued as a qualified tax-exempt obligation should, upon advice of counsel, it appear to him that the foregoing designation should be ignored.

ENACTED this __ day of _____, 2018.

(SEAL)

COUNTY COUNCIL OF
NEWBERRY COUNTY, SOUTH CAROLINA

Chairman, County Council
of Newberry County, South Carolina

Attest:

Clerk to Council, Newberry County,
South Carolina

First Reading: September 5, 2018

Second Reading: September 19, 2018

Third Reading: _____

EQUIPMENT

1. Motor grader.
2. Medium Duty Rescue Truck.
3. Remounted ambulance.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned, Clerk to Council of Newberry County, South Carolina, DO HEREBY CERTIFY:

1. That the foregoing is a true, correct and verbatim copy of an Ordinance enacted by the County Council of Newberry County on _____, 2018, at which a majority/all members were present. It was first introduced at the regular meeting of County Council held on _____, 2018. At that meeting, it was given first reading by the majority/unanimous vote of the County Council. Afterwards, at the regular meeting of the County Council held on _____, 2018, it was given its second reading and at the regular meeting of the County Council held on _____, 2018, it was given third and final reading by the unanimous vote of County Council. At each of said meetings, a quorum of County Council was present at all times during the proceedings pursuant to which the aforesaid Ordinance was adopted, the original of which is duly entered in the record of minutes of the aforesaid meetings of said County Council in my Custody as such Clerk.

2. As required by Title 30, Chapter 4 of the Code of Laws of South Carolina 1976, as amended (the "*Act*"), being the Freedom of Information Act, a copy of the agenda of each of the meetings of the County Council referenced in the preceding paragraph (showing the date, time and place of the meeting), was, at least 24 hours prior to each such meeting, posted on a designated bulletin board in the administrative offices of the County, posted on the County's public website, and provided to news media and others requesting such information. The agenda for each of the meetings listed in the preceding paragraphs included as an item the reading of the aforesaid Ordinance and was made publicly available in accordance with the preceding sentence.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of the County Council this ____ day of _____, 2018.

(SEAL)

Clerk, Newberry County Council