

ORDINANCE NO. CC-_____

AUTHORIZING THE CITY OF CLEMSON, SOUTH CAROLINA, TO EXECUTE AND DELIVER AN EQUIPMENT LEASE PURCHASE AGREEMENT, 2016, IN THE AMOUNT OF NOT EXCEEDING \$225,000 BETWEEN THE CITY AND THE LESSOR THEREOF TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEMSON, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

SECTION 1. Findings and Determinations. The City Council (the "Council") of the City of Clemson, South Carolina, hereby finds and determines:

(a) The City of Clemson, South Carolina (the "City"), is an incorporated municipality located in Anderson and Pickens Counties, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and the laws of this State.

(b) Section 5-7-40 of the Code of Laws of South Carolina, 1976, as amended (the "S.C. Code"), empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property.

(c) The City desires to enter into a lease-purchase agreement (the "Lease Agreement") with a bank or other financial institution for the purpose of financing the acquisition of the equipment set forth on Exhibit A hereto (the "Equipment").

(d) The Lease Agreement will not constitute a "financing agreement" and the Equipment will not constitute an "asset" as such terms are defined in Section 11-27-110 of the S.C. Code. Thus, the amount of the Lease Agreement will not be included when calculating the City's constitutional debt limit under Article X, Section 14 of the Constitution of the State of South Carolina.

(e) The Lease Agreement will be subject to annual appropriation by the Council.

(f) It is in the best interest of the City to acquire the Equipment by entering in to the Lease Agreement. The Lease Agreement will enable the City to purchase the Equipment which will provide service necessary or useful to the operations of the City government.

SECTION 2. Approval of Lease/Purchase Financing; Authorization to Determine Certain Matters Relating to the Lease/Purchase Financing. Some or all of the Equipment described in Exhibit A shall be acquired pursuant to a lease purchase financing which is hereby approved in a principal amount of not exceeding \$225,000. A Request for Proposals in substantially the form set forth as Exhibit B hereto shall be distributed to various banks and other financial institutions

in the City and other areas as the City's Finance Director determines. Without further authorization, the Council hereby authorizes the City Administrator to (a) determine the items of Equipment to be acquired pursuant to the lease purchase financing, (b) determine the payment schedule under the Lease Agreement; (c) determine the date and time for receipt of bids under the Request for Proposals; and (d) award the sale of the lease-purchase financing to the bidder (the "Bidder") who submits the proposal determined to be the most advantageous to the City in accordance with the terms of the Request for Proposals.

SECTION 3. Approval of Lease Agreement. Without further authorization, the City Administrator is authorized to approve the form, terms and provisions of the Lease Agreement proposed by the Bidder. The City Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver the Lease Agreement in the name and on behalf of the City. The Lease Agreement is to be in the form as shall be approved by the City Administrator, the City Administrator's execution thereof to constitute conclusive evidence of such approval.

SECTION 4. Execution of Documents. The Mayor, Mayor Pro-Tempore, City Administrator, Finance Director and Municipal Clerk are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be reasonably requested by the Bidder to effect the delivery of the Lease Agreement, including any project fund or acquisition fund agreement, in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor, Mayor Pro-Tempore, City Administrator, Finance Director and Municipal Clerk shall approve, is hereby fully authorized.

SECTION 5. Federal Tax Covenant. The City, as lessee, agrees and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest components of the payments to be made under the Lease Agreement to become includable in the gross income of the Bidder or its successors or assignees for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and regulations promulgated thereunder in effect on the date of original issuance of the Lease Agreement, and that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest portion of the payments to be made under the Lease Agreement; and to that end the City shall:

- (a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Lease Agreement is outstanding;
- (b) establish such funds, make such calculations and pay such amounts in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and
- (c) make such reports of such information at the times and places required by the Code.

The City covenants that, in accordance with Section 265(b)(3) of the Code, it is hereby designating the Lease Agreement as a “qualified tax-exempt obligation” and that it does not reasonably anticipate that it will issue more than \$10,000,000 in tax-exempt obligations which are not “private activity bonds” during calendar year 2016 all within the meaning of Section 265(b)(3) of the Code.

The City will timely file Form 8038-G in accordance with the applicable regulations of the Internal Revenue Service.

Pursuant to Ordinance No. CC-2012-07 enacted by the City Council on June 11, 2012, the City has adopted written procedures in connection with the issuance of tax-exempt obligations.

SECTION 6. Filings with Central Repository. In compliance with Section 11-1-85 of the S.C. Code, the City covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested: (a) a copy of the annual audit of the City within thirty (30) days of the City’s receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the City, adversely affects more than five (5%) of the City’s revenue or its tax base.

SECTION 7. Severability. All ordinances, orders, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the execution of the Lease Agreement are, to the extent of such conflict, hereby repealed.

SECTION 8. Effective Date. This Ordinance shall be effective upon its enactment.

[Execution Page Follows]

Enacted by the City Council of the City of Clemson, South Carolina, this 20th day of June, 2016.

CITY COUNCIL OF THE CITY OF CLEMSON,
SOUTH CAROLINA

(SEAL)

By: _____
Mayor

ATTEST:

Beverly A. Coleman, Municipal Clerk

Date of First Reading: June 13, 2016

Date of Second Reading: June 20, 2016

Ordinance No.: CC- _____

EXHIBIT A

Equipment

Ten (10) police vehicles

EXHIBIT B

Form of Request for Proposals

REQUEST FOR PROPOSALS

**City of Clemson, South Carolina
Equipment Lease-Purchase Financing, 2016**

Response Due: _____, 2016
12:00 Noon, South Carolina Time

BANK QUALIFIED

The City of Clemson, South Carolina (the "City"), is requesting proposals from various banks and financial institutions for not exceeding \$225,000 tax-exempt lease-purchase financing to defray the costs of acquisition of certain equipment as described herein. The City invites interested parties to submit a proposal to finance the equipment by specifying a rate of interest and other conditions for such financing.

Mailed or Hand Delivered Bids: Each mailed or hand delivered proposal shall be enclosed in a sealed envelope marked "Proposal for 2016 Equipment Lease Purchase" and should be mailed or delivered to:

Richard E. Cotton
City Administrator
1250 Tiger Boulevard, Suite 1
Clemson, SC 29631

Facsimile Bids: The City will accept the facsimile transmission of a proposal at the risk of the bidder. The City shall not be responsible for the confidentiality of bids submitted by facsimile transmission. Any delay in receipt of a facsimile bid, and any incompleteness or illegible portions of such bid are the responsibility of the bidder. Bids by facsimile transmission should be transmitted to the attention of Richard E. Cotton, City Administrator, City of Clemson, Fax No. 864.653.2032.

E-Mail Bids: Electronic proposals may be e-mailed to the attention of Richard E. Cotton, City Administrator, at rcotton@cityofclemson.org, with a copy to Michael W. Burns, Special Counsel, at mburns@mcnair.net.

PROPOSALS MAY BE DELIVERED BY HAND, BY MAIL, BY E-MAIL OR BY FACSIMILE TRANSMISSION, BUT NO PROPOSAL SHALL BE CONSIDERED WHICH IS NOT ACTUALLY RECEIVED BY THE CITY AT THE PLACE, DATE AND TIME APPOINTED, AND THE CITY SHALL NOT BE RESPONSIBLE FOR ANY FAILURE,

MISDIRECTION, DELAY OR ERROR RESULTING FROM THE SELECTION BY ANY BIDDER OF ANY PARTICULAR MEANS OF DELIVERY OF BIDS.

Please note that this Request for Proposals is also being sent to a number of other institutions as well and that the City reserves the right to select the proposal determined to be the most advantageous to the City. The selection process will be heavily weighted toward lowest financing costs. The City reserves the right to reject any or all bid proposals as well as negotiate with the lowest responsible bidder.

I. Terms and Conditions

(a) Amount to be Financed: Not exceeding \$225,000. The City retains the option to reduce the total amount to be financed by up to 10%.

(b) Payments: Two (2) approximately equal annual principal and interest payments on _____ of each year commencing _____, 2017 to and including _____, 2018.

Unless otherwise designated by a bidder, interest on the lease will be calculated based on a 360-day year comprised of twelve 30-day months.

(c) Guarantee of Interest Rate: The interest rate, costs and other terms of the bid submitted must be guaranteed from the date of your proposal to the closing date (expected to be on or about _____, 2016).

(d) Equipment: Ten (10) police vehicles.

(e) Form of Equipment Lease-Purchase Agreement: A bidder's proposed form of lease agreement ("Lease Agreement") should be provided to the City's special counsel within three (3) business days of the award of the successful proposal.

(f) Non-appropriation: A non-appropriation provision acceptable to the City must be included in the Lease Agreement.

(g) Non-substitution: A non-substitution provision is not permitted to be included in the Lease Agreement.

(h) Deficiency Judgment: No deficiency judgment can be assessed or imposed against the City nor will the full faith, credit and taxing power of the City be pledged to the payment of the Lease Agreement.

(i) Title: Title to the equipment will be in the name of the City subject to the bidder's rights under the Lease Agreement.

- (j) Redemption: The Lease Agreement will not be subject to prepayment or redemption by the City.
- (k) Acquisition Account: The City will require the successful bidder to transfer by Federal funds the full amount of this financing on the date of the closing. If a bidder requires that the acquisition or escrow account (the "Acquisition/Escrow Account") be held by it or its designee, the bidder must so indicate on its proposal. Otherwise, the City retains the right to designate a bank to act as custodian of the Acquisition/Escrow Account. Interest earnings in the Acquisition/Escrow Account must accrue to the City. Payments therefrom may be made either to the City as reimbursement for prior expenditures or directly to the equipment vendor for payment of the equipment as directed by the City.
- (l) Costs of Issuance: All such costs relating to the preparation of the Lease Agreement and fees of special counsel will be paid by the City. Any fees and costs of the bidder to be paid by the City must be stated in the response to this Request for Proposals. Any fees or costs to be paid by the City to the bidder will be treated as additional interest cost. The Lease Agreement must allow the City to pay its legal fees and costs related to execution and delivery of the Lease Agreement out of the proceeds of the Lease Agreement.
- (m) Insurance: The City provides insurance through the South Carolina Municipal Insurance and Risk Financing Fund for equipment/personal property. The equipment will be insured in a similar manner at face value. The lessor may be listed as a loss-payee, but may not be listed as an additional insured under the City's insurance arrangement with the South Carolina Municipal Insurance and Risk Financing Fund.
- (n) Closing: The City expects to accept the successful proposal on _____, 2016, and close the transaction on _____, 2016.
- (o) Lease Agreement Designated as Qualified Tax-Exempt Obligation: The City will designate the Lease Agreement as a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986 (the "Code") relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.

II. Form of Proposal

- (a) The proposal must be in writing.
- (b) No response may be modified by a bidder after it has been submitted.

- (c) Proposals should include: the name, address, telephone number of your institution; the primary contact; and identity of legal counsel, if any.
- (d) Proposals must be accompanied with a list of all requirements and conditions associated with its bid.
- (e) Proposals must indicate a single interest rate for the lease term and include an amortization schedule showing annual payment amounts for the term of the financing.
- (f) Proposals must provide full disclosure of all financing costs, including any closing, legal, and tax opinion charges.
- (g) Any prepayment penalty or other fee requirements should be detailed in the proposal.

III. Evaluation of Proposals and Award

After the proposals are received, they will be evaluated by the officials of the City based on various factors, including the interest rate, fees of the bidder or its counsel, additional covenants and terms, if any, and other conditions set forth therein. The City reserves the right to reject any and all bids or to waive irregularities in any proposal. The City expects to accept the successful proposal on _____, 2016.

IV. Legal Opinion. The execution and delivery of the Lease Agreement is subject to the approving opinion of the McNair Law Firm, P.A., Special Counsel.

V. Tax Exemption and Other Tax Matters. The Code, and the Treasury Regulations promulgated thereunder, includes provisions that relate to tax exempt obligations, such as the Lease Agreement, including, among other things, permitted uses and investment of the proceeds of the Lease Agreement and the rebate of certain net arbitrage earnings from the investment of such proceeds to the United States Treasury. Noncompliance with these requirements may result in interest paid under the Lease Agreement becoming subject to federal income taxation retroactive to the date of issuance of the Lease Agreement. The City has covenanted to comply with the requirements of the Code to the extent required to maintain the exclusion of interest on the Lease Agreement from gross income for federal tax purposes. Failure of the City to comply with these covenants could cause the interest on the Lease Agreement to be taxable retroactively to its date of issuance.

The Code imposes an alternative minimum tax on a taxpayer's alternative minimum taxable income. Interest on the Lease Agreement is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, such interest is taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations.

The accrual or receipt of interest on the Lease Agreement may affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. Prospective purchasers of the Lease Agreement should be aware that ownership of the Lease Agreement may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with "excess net passive income," foreign corporations subject to the branch profits tax, life insurance companies and taxpayers otherwise entitled to claim the earned income credit and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Lease Agreement. Special Counsel will not express any opinion as to such collateral tax consequences. Prospective purchasers of the Lease Agreement should consult their tax advisors as to collateral federal income tax consequences.

Special Counsel has not undertaken to determine (or to inform any person) whether any action taken (or not taken) or event occurring (or not occurring) after the date of issuance of the Lease Agreement may affect the tax status of interest on the Lease Agreement. In rendering its opinion, Special Counsel will rely upon certificates and representations of the City with respect to certain material facts solely within the knowledge of the City relating to the application of the proceeds of the Lease Agreement.

VI. Investment Letter. The lessor will be requested to execute a letter to the City in substantially the form submitted with this Request for Proposals.

VII. Additional Information. If you should have any questions regarding the Request for Proposals, you should contact:

Richard E. Cotton
City Administrator
Phone: 864.653.2030
e-mail: rcotton@cityofclemson.org

Michael W. Burns
McNair Law Firm, P.A.
Phone: 864.271.4940
email: mburns@mcnair.net

Thomas Sparacino
Finance Director
Phone: 864.653.2030
e-mail: tsparacino@cityofclemson.org

Dated: _____, 2016

City of Clemson, South Carolina