

**CITY OF SENECA, SOUTH CAROLINA
ORDINANCE NO. 2020-03**

AN ORDINANCE AUTHORIZING THE CITY OF SENECA,
SOUTH CAROLINA, TO EXECUTE AND DELIVER AN
EQUIPMENT LEASE-PURCHASE AGREEMENT IN THE
AMOUNT OF NOT EXCEEDING \$219,695.65 BETWEEN THE
LESSOR THEREOF TO DEFRAY THE COST OF ACQUIRING
CERTAIN EQUIPMENT AND OTHER MATTERS RELATED
THERE TO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SENECA, SOUTH CAROLINA, IN COUNCIL DULY ASSEMBLED AND WITH A QUORUM PRESENT AND VOTING:

Section 1. Findings and Determinations. The City Council (“Council”) of the City of Seneca, South Carolina, hereby finds and determines:

(a) The City of Seneca, South Carolina (the “City”), is an incorporated municipality located in Oconee County, South Carolina, and, as such, possesses all powers granted to municipalities by the Constitution and 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”). The City has received a proposed Lease Agreement, a copy of which is attached as Exhibit B hereto, from the bank or financial institution identified therein (the “Lessor”) to enter into the Lease Agreement and provide the above described lease-purchase financing favorable terms.

(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 South Carolina Code of Laws 1976 as amended (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. The Lease Agreement will be subject to annual appropriation by the Council.

(e) It is in the best interest of the City to acquire the Equipment by entering into the Lease Agreement. The Lease Agreement will enable the City to finance and thereafter purchase the Equipment which is necessary and useful to the operations of the City government.

Section 2. Approval of Lease/Purchase Financing; Delegation of Authority to Determine Certain Matters Relating to the Lease/Purchase Financing. The Equipment described in Exhibit A shall be acquired pursuant to the proposed Lease Agreement which is hereby authorized and approved in the aggregate principal amount of not exceeding \$219, 695.65. The Lessor’s proposed Lease Agreement is hereby accepted. The Mayor or the City Administrator are authorized to (i) agree to such changes or revisions to the Lessor’s proposed Lease Agreement as either of such officers may deem appropriate and beneficial to the City in their discretion, (ii) make changes to the quantity, cost or description of the Equipment to be financed described on Exhibit A, (iii) determine the final principal amount of the Lease Agreement,

provided that such principal amount shall not exceed the amount authorized herein, (iv) determine the interest rate of the Lease Agreement, if different than set forth in the Lessor's proposed Lease Agreement, (v) determine the terms relating to penalties, if any, for prepayment of the Lease Agreement, if other than as set forth in the Lessor's proposed Lease Agreement, (vi) determine the payment schedule under the Lease Agreement, and (vii) make such other determinations as may be necessary to effect the lease-purchase financing authorized hereby.

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 as proposed by the Lessor. The Mayor or 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, City Administrator, Finance Director of the City, and City Attorney are each fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be reasonably requested by the Lessor or as may be necessary to effect the execution and delivery of the Lease Agreement in accordance with the terms and conditions therein set forth and the transactions contemplated hereby and thereby, including, but not limited to, an escrow agreement to govern the deposit and disbursement of the proceeds of the Lease Agreement entered into with the Lessor or other bank or financial institution selected by the City Administrator or Finance Director of the City, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor, City Administrator and Finance Director 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 Lessor or its successor or assignee 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 does not reasonably anticipate that it will issue more the \$10,000,000 in tax-exempt obligations which are not "private activity bonds" during calendar year 2020, all within the meaning of Section 265(b)(3) of the Code. In accordance with Section 265(b)(3) of the Code, the Lease Agreement is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

The Mayor, City Administrator and Finance Director of the City, or any of them acting alone, are hereby authorized to adopt written procedures for and on behalf of the City to ensure the City's compliance with federal tax matters relating to the Lease Agreement.

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

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 percent (5%) of the City's revenue or its tax base.

Section 7. Severability. All orders, ordinances and parts thereof, procedural or otherwise, in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 8. Effective Date. This Ordinance shall become effective upon its enactment.

[Execution Page to Follow]

PROPOSED ORDINANCE APPROVED AS TO FORM this 10th day of March, 2020.

R. BOATNER BOWMAN, City Attorney

APPROVED AND RATIFIED on First Reading this 10th day of March, 2020 by a vote of

_____ YES _____ NO _____ ABSTAIN

APPROVED, RATIFIED and ADOPTED on Second and Final Reading this 24th day of March, 2020 by a vote of

_____ YES _____ NO _____ ABSTAIN

_____, Clerk

Attest:

_____, Mayor

EXHIBIT A
SCHEDULE OF EQUIPMENT

SCBA SERIAL NUMBERS

E0040150D14B65C6, E0040150C520C982, E0040150C5213214, E0040150D14BC0C7,
E0040150C520B161, E0040150C52115D5, E0040150C5211137, E0040150C5211128,
E0040150D14BB1E3, E0040150C520E135, E0040150D14BB552, E0040150D14B5F8B,
E0040150C5210852, E0040150C52132D4, E0040150D14B5838, E0040150D14BA462,
E0040150C5211CC8, E0040150D14BC19B, E0040150C5211A86, E0040150D14BCD8F,
E0040150D14B250C, E0040150C520B713, E0040150C520FD80, E0040150C520DC3C,
E0040150D14B509A, E0040150D14BC777, E0040150D14BFBF5, E0040150D14B4A99,
E0040150D14BD627, E0040150D14BAF36, E0040150D14B6C17, E0040150C521351F,
E0040150C5211256, E0040150D14B4207, E0040150C5213493

Cylinder SERIAL NUMBERS

ACT198495, ACT197393, ACT197364, ACT197360, ACT197410, ACT197284, ACT196704,
ACT198556, ACT197350, ACT197438, ACT198455, ACT197437, ACT196692, ACT198550,
ACT196762, ACT198426, ACT196699, ACT197398, ACT196962, ACT198501, ACT198582,
ACT198478, ACT196773, ACT198480, ACT197568, ACT197541, ACT197342, ACT187477,
ACT197441, ACT198467, ACT198182, ACT198402, ACT198485, ACT198472, ACT198497,
ACT196706, ACT196693, ACT197578, ACT197335, ACT197305, ACT198410, ACT198482,
ACT197439, ACT197358, ACT197402, ACT196756, ACT197310, ACT197274, ACT197494,
ACT198503, ACT196099, ACT196028, ACT196757, ACT196712, ACT197227, ACT198449,
ACT195820, ACT197343, ACT196827, ACT196721, ACT198565, ACT196794, ACT197356,
ACT196829, ACT198447, ACT196755, ACT198493, ACT198577, ACT197419, ACT197336

With a total acquisition cost of \$219,695.65; together with all additions, accessions, and replacements thereto.

EXHIBIT B
LEASE AGREEMENT