

STATE OF SOUTH CAROLINA
CITY OF WALHALLA

ORDINANCE 2025-02

AN ORDINANCE AUTHORIZING THE CITY OF WALHALLA, SOUTH CAROLINA TO FINANCE AND ACQUIRE A CERTAIN TRACKHOE AND RELATED EQUIPMENT IN AN AMOUNT NOT EXCEEDING \$200,000; TO EXECUTE AND DELIVER ALL DOCUMENTS NECESSARY TO CARRY OUT THE FINANCING AND ACQUISITION; AND OTHER RELATED MATTERS.

Pursuant to the authority of the Constitution of the State of South Carolina ("State") and the general laws of the State, **BE IT ENACTED BY THE WALHALLA CITY COUNCIL:**

Section 1. Findings and Determinations.

(a) The City of Walhalla, South Carolina ("City") is a municipal corporation and political organization created according to the Constitution and the laws of the State of South Carolina and has the power to enter into agreements to finance and acquire equipment.

(b) The City desires to acquire and finance a certain Linkbelt 170X4S (trackhoe) and related equipment in an amount not exceeding \$200,000 (collectively, "Equipment"), through means of borrowing money from a bank or other financial institution selected by the City Administrator ("Financing").

(c) It is in the best interest of the City to acquire the Equipment by entering into the Financing, and the Financing will enable the City to acquire the Equipment, which is necessary for the City's proper operation.

Section 2. Approval of Acquisition and Financing; Delegation of Authority. The City shall acquire and finance the Equipment in accordance with a lease-purchase financing arrangement, or other similar means of financing, which is repayable by annual appropriations from operational millage, or other sources, or from general obligation indebtedness, as the City Administrator may determine.

If the Financing is accomplished through a traditional lease-purchase arrangement, the Financing will not constitute a "financing agreement," and the Equipment will not constitute an "asset" as these terms are defined in South Carolina Code Annotated section 11-27-110. Thus, the amount of the Financing will not be includable when calculating the City's constitutional debt limit, and the Financing will be subject to annual appropriation by the City. Should the Financing be accomplished through any alternative means, the City Administrator shall likewise endeavor to ensure the Financing does not count against the City's constitutional debt limit.

At the City Administrator's direction, in consultation with the City Attorney and the City's Special Counsel, the City may not distribute a request for offers or provide for a similar notice to banks and/or other financial institutions or may elect to proceed with a private arrangement for the Financing. Without further authorization, the City Council delegates to the City Administrator the authority to (a) determine

the payment schedule under the Financing; (b) determine the date and time for receipt of offer(s), if any; (c) award the Financing using a number of factors, including applicable interest rate, provided the net interest cost does not exceed 6.0% per annum; and (d) make reasonable changes to the quantity, cost, or description of the Equipment, a substantially final list of which is attached as Schedule I.

Section 3. Approval of Agreements. Without further authorization, the City Administrator is authorized to approve the form, terms, and provisions of the Financing. The City Administrator is authorized, empowered, and directed to execute, acknowledge, and deliver the various documents necessary to carry out the Equipment acquisition and Financing ("Transaction Documents") in the name and on behalf of the City. The Transaction Documents are to be in the form as shall be approved by the City Administrator in consultation with the City Attorney and Special Counsel, the execution thereof to constitute conclusive evidence of that approval.

Section 4. Execution of Documents. The Mayor, the City Administrator, the City Attorney, and the City Clerk are fully empowered and authorized to take further action and to execute and deliver all documents as may be reasonably necessary to effect the Financing and the delivery of the Transaction Documents and any related documents in accordance with their terms, and the contemplated transactions, and the action of these officers in executing and delivering any of these documents, in the form as the City Administrator shall approve, in consultation with the City Attorney and the City's Special Counsel, is fully authorized.

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

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

If at the time the Financing is closed, the City does not reasonably anticipate issuing more than \$10,000,000 in tax-exempt obligations which are not "private activity bonds" during calendar year 2024, all within the meaning of Section 265(b) of the IRC, then the City intends to designate the Financing as a "qualified tax-exempt obligation" in accordance with Section 265(b)(3) of the IRC.

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

Section 6. Special Counsel. The City selects King Kozlarek Root Law LLC to serve as its Special Counsel related to this Financing and understands that role will be limited to those matters necessary to effect the

Financing and issue a customary opinion (including related to any tax consequences). Further, the City understands Special Counsel does not provide financial advisory or municipal advisory services but offers legal advice and services of a traditional legal nature.

Section 7. Financial Advisor. The City serves as its own financial/municipal advisor related to the Financing.

Section 8. Severability. All orders, resolutions, and ordinances, including any parts thereof, in conflict with this Ordinance are, to the extent of any such conflict, repealed.

Section 9. Effective Date. This Ordinance takes and remains in effect only after the City Council has approved it following two readings.

[ONE SIGNATURE PAGE AND ONE SCHEDULE FOLLOW]
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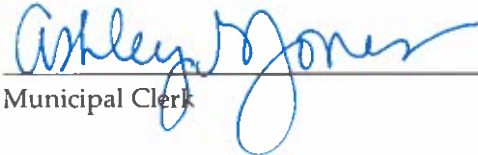
CITY OF WALHALLA, SOUTH CAROLINA



Mayor, City of Walhalla

(SEAL)

ATTEST:



Municipal Clerk

READINGS:

First reading:

January 21, 2025

Second reading:

February 18, 2025

SCHEDULE I
DESCRIPTION OF EQUIPMENT

One Linkbelk 170X4S with hydraulic quick coupler, hydraulic thumb, 24" bucket with pins, 36" bucket with pins, 60" ditching bucket and wide tracks - 27 1/2"