

ORDINANCE NO. 2016-27

A SECOND AMENDED AND RESTATED ORDINANCE AUTHORIZING THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA TO ENTER INTO AN INSTALLMENT PURCHASE TRANSACTION IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING SIXTEEN MILLION DOLLARS (\$16,000,000) TO REFINANCE THE COSTS RELATING TO THE CONSTRUCTION AND EQUIPPING OF A PARKING GARAGE ON CERTAIN REAL PROPERTY OWNED BY THE CITY AND DESCRIBED HEREIN AND FINANCE THE COSTS RELATING TO THE CONSTRUCTION AND EQUIPPING OF CERTAIN ROADS, WATER, SEWER AND RELATED INFRASTRUCTURE LOCATED WITHIN A TAX INCREMENT FINANCING DISTRICT OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS INCLUDING THE BASE LEASE AGREEMENT AND THE INSTALLMENT PURCHASE AND USE AGREEMENT; DELEGATING THE AUTHORITY TO THE MAYOR AND CITY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, AS FOLLOWS:

Section 1. Definitions.

The terms defined in this Section for all purposes of this second amended and restated ordinance (this “*Ordinance*”) shall have the respective meanings as set forth in this Section. The term:

“*Bank*” means Bank of America, N.A., or any affiliate of Bank of America, N.A. or such other financial institution as approved by the City Representative.

“*Base Lease*” means the Second Amended and Restated Base Lease Agreement by and between the City and the Corporation to be dated as of the date of its delivery, together with any amendments, modifications and restatements thereof or substitutions therefor, in each case the form of which shall be negotiated, determined and finalized by a City Representative.

“*Bond*” means, collectively, the Interim Bond and the Permanent Bond.

“*Bond Agreement*” means the Bond Agreement by and between the Corporation and the Trustee (or the Bank, as more fully provided herein) to be dated as of the date of its delivery, together with any amendments, modifications and restatements thereof or substitutions therefor.

“*City*” means the City of North Augusta, South Carolina.

“**City Administrator**” shall mean the City Administrator of the City and any individual appointed to act as City Administrator subsequent hereto.

“**City Clerk**” shall mean the City Clerk of the City of North Augusta.

“**City Council**” means the City Council of the City of North Augusta.

“**City Representative**” shall mean the Mayor, the City Administrator or any other City official or representative selected to act on behalf of the City.

“**Corporation**” means the North Augusta Public Facilities Corporation, a South Carolina nonprofit corporation.

“**Financing**” means, collectively, the First Prior Interim Financing, the Second Prior Interim Financing, the Interim Financing and the Permanent Financing, all as more fully described in Sections 2(c) and (d) hereof.

“**Financing Documents**” means collectively, the Base Lease, the Installment Purchase Agreement, and the Bond Agreement.

“**First Prior Interim Bond**” means the installment purchase revenue bond issued by the Corporation in connection with the First Prior Interim Financing in the form of a \$10,000,000 Taxable Installment Purchase Revenue Bond (Parking Garage Project), Series 2015A dated January 21, 2015.

“**First Prior Interim Financing**” means the initial installment purchase transaction entered into on January 21, 2015 through the issuance of the First Prior Interim Bond, in anticipation of the Permanent Financing, all for the purpose of financing the Prior Project.

“**First Prior Ordinance**” means an ordinance enacted by the City Council on December 15, 2014, the provisions of which, in part, authorized the Prior Project, the First Prior Interim Financing and the approval of the issuance of the First Prior Interim Bond by the Corporation.

“**Installment Payments**” has the meaning assigned to such term in Section 2(e).

“**Installment Purchase Agreement**” means the Second Amended and Restated Installment Purchase and Use Agreement by and between the Corporation and the City to be dated as of the date of its delivery, together with any amendments, modifications and restatements thereof or substitutions therefor, in each case the form of which shall be negotiated, determined and finalized by a City Representative.

“**Interim Bond**” means the installment purchase revenue bond issued by the Corporation in connection with the Interim Financing in the form of a not exceeding \$16,000,000 Taxable Installment Purchase Revenue Bond (Parking Garage and Infrastructure Project), Series 2017A.

“**Interim Financing**” means the installment purchase transaction to be entered into in anticipation of the Permanent Financing, all for the purposes of refinancing or financing the Project, and consisting of the issuance of the Interim Bond.

“**Mayor**” shall mean the Mayor of the City.

“**Ordinance**” means this Ordinance of the City.

“**Permanent Bond**” means the installment purchase revenue bond(s) issued in connection with the Permanent Financing to refinance or refund the Interim Bond.

“**Permanent Financing**” means the installment purchase transaction to be entered into in order to refund or refinance the Interim Financing, all for the purpose of financing the Project, and consisting of the issuance of the Permanent Bond.

“**Prior Project**” means the construction and equipping of a parking garage facility.

“**Project**” means (a) the Prior Project, and (b) the construction and equipping of roads, water, sewer and related infrastructure of the City, such infrastructure to be located generally and bound by the Savannah River to the south, Georgia Avenue to the east, the brick ponds to the north and the Hammond’s Ferry subdivision to the west, and those portions of Center Street and Railroad Avenue adjacent to such parcels, as applicable.

“**Real Property**” means all those certain pieces, parcels or tracts of land as described on Exhibit A hereto, including the existing improvements thereon as of the date hereof.

“**Second Prior Interim Bond**” means the installment purchase revenue bond issued by the Corporation in connection with the initial Interim Financing in the form of a \$13,000,000 Taxable Installment Purchase Revenue Bond (Parking Garage and Infrastructure Project), Series 2016A dated January 21, 2016.

“**Second Prior Interim Financing**” means the second installment purchase transaction entered into on January 21, 2016 through the issuance of the Second Prior Interim Bond, in anticipation of the Permanent Financing, all for the purpose of financing or refinancing the Project.

“**Second Prior Ordinance**” means an amended and restated ordinance enacted by the City Council on January 4, 2016, the provisions of which, in part, authorized the Project, the Second Prior Interim Financing and the approval of the issuance of the Second Prior Interim Bond by the Corporation.

“**State**” shall mean the State of South Carolina.

“**Trustee**” means a financial institution that shall act as trustee in connection with the consummation of the Financing Documents, such institution to be selected by a City

Representative; provided that the Financing Documents may provide that so long as the Bank is the sole owner of the Bond, the Bond Agreement will function as a loan agreement between the Bank, for its own account and not as a bond trustee, and the Corporation and, if the Bond Agreement provides for the role of a Trustee, then, except as otherwise provided in the Bond Agreement, (a) the Bank shall succeed to all of the rights and obligations of the Trustee thereunder and (b) all references therein to the Trustee shall be deemed to be references to the Bank.

Section 2. Findings and Determinations.

The City Council hereby finds and determines:

(a) The City is a body politic and corporate of the State and as such possesses all general powers granted to municipalities of the State.

(b) Under South Carolina law, the City is authorized to sell, lease or dispose of personal and/or real or mixed property.

(c) The City Council enacted the First Prior Ordinance to provide for the authorization of the Prior Project, the entering into of the First Prior Interim Financing and the approval of the issuance by the Corporation of the First Prior Interim Bond. The provisions of the First Prior Ordinance allowed for the extension of the First Prior Interim Financing subject to the approval of the Bank. The City Council enacted the Second Prior Ordinance to provide for the authorization of the Project, the entering into of the Second Prior Interim Financing and the approval of the issuance by the Corporation of the Second Prior Interim Bond. The provisions of the Second Prior Ordinance allowed for the extension of the Second Prior Interim Financing subject to the approval of the Bank. This Ordinance is being enacted for the purposes of: (i) providing for the refinancing of the Second Prior Interim Financing and providing funds to payoff the Second Prior Interim Bond; (ii) expanding the original scope of the Project by increasing the par amount of the original authorization contained within the Second Prior Ordinance by \$3,000,000; (iii) authorizing the entering into and execution of the Financing Documents; (iv) authorizing the consummation of the Interim Financing and the approval of the issuance and delivery by the Corporation of the Interim Bond; and (v) amending and restating the Second Prior Ordinance.

(d) The Financing of the Project will be effected through an installment purchase transaction pursuant to which the City will enter into the Base Lease and the Installment Purchase Agreement; provided that it is understood that the installment purchase transaction initially will be structured as the Interim Financing and that the maturity of such Interim Financing will be approximately one year from the closing thereof, subject to a one year extension as determined by the Bank in its sole discretion, and that the Permanent Financing will occur on or before the maturity of the Interim Financing, all as more fully contemplated in the Financing Documents.

(e) Pursuant to the provisions of the Base Lease, the City will lease the Real Property to the Corporation in consideration of (i) the issuance by the Corporation of the Bond pursuant to the provisions of the Bond Agreement, and (ii) the payment of Base Lease Rent (as defined in the Base Lease) to the City. The Bond will be paid by the Corporation from the receipts of certain payments (the “*Installment Payments*”) made by the City to the Corporation under the provisions of the Installment Purchase Agreement. Pursuant to the provisions of the Installment Purchase Agreement, the City will agree to purchase from the Corporation the Facilities (as defined in the Installment Purchase Agreement) by making the Installment Payments. Notwithstanding the foregoing, the Financing Documents will provide that the refunding or refinancing of the Interim Bond with the Permanent Bond will be permitted and, when consummated, will not constitute one or more Installment Payments, but rather, in such case, the Installment Payments will be provided for in the definitive documents relating to the issuance of the Permanent Bond.

(f) The proceeds of the Bond will be used (i) to defray all or a portion of the costs of the financing or refinancing of the Project (or, in the case of the Permanent Bond, to refund the Interim Bond), and (ii) to pay the costs of issuance of the Bond.

(g) It is understood that the Interim Bond evidencing the Interim Financing shall be purchased initially by the Bank.

(h) The rights to receive Installment Payments, together with all rights, but not obligations of the Corporation under the Base Lease and the Installment Purchase Agreement, shall be assigned by the Corporation to the Trustee, or the Bank, as applicable, under the Bond Agreement as security and a source of payment for the Bond. In addition, the revenues generated by the Project shall be assigned by the Corporation and the City to the Trustee, or the Bank, as applicable, under the Bond Agreement as security and a source of payment for the Bond. It is also understood that the Interim Bond evidencing the Interim Financing will be secured in part by a covenant of the Corporation to consummate the Permanent Financing described herein through the issuance of the Permanent Bond on or prior to the maturity of the Interim Bond and the proceeds of the Permanent Bond will be used, among other purposes, to refund the Interim Bond.

(i) As previously discussed, in order to finance or refinance all or a portion of the costs of the Project, the City Council has determined that it is necessary and in the best interest of the City to enter into the Financing authorized by this Ordinance with the Corporation. The Financing will serve a proper public and corporate purpose of the City.

(j) It is understood that the Permanent Financing shall be subject to approval of a separate ordinance of the City to be enacted by City Council prior to the consummation of such Permanent Financing.

Section 3. Authorization for the Project; Pledge of Revenues.

The Project is hereby approved. The City Representative or such other appropriate officers and agents of the City are empowered and directed to negotiate, execute and deliver contracts, agreements, certificates and conveyances necessary or convenient to accomplish the Project and pledge the revenues therefrom as security for payment of the Bond, including, without limitation, the Financing Documents. In connection with the consummation of the Interim Financing, the City is authorized to pay or is authorized to cause the Corporation to pay to the Bank all accrued interest and any unused fees with respect to the Second Prior Interim Bond, such payment of accrued interest and any unused fees to be paid to the Bank at or prior to the closing of the Interim Financing.

Section 4. Approval of Corporation and Issuance of Bond.

The City hereby ratifies the formation of the Corporation, the appointment of the Corporation's initial Board of Directors and the issuance by the Corporation of the Bond. The City also acknowledges that, in accordance with the provisions of the Installment Purchase Agreement, the City will acquire absolute title to the Facilities upon payment of all amounts due under the Installment Purchase Agreement; *provided, however*, that the City does not hereby waive its right to terminate the Installment Purchase Agreement prior to such payment in accordance with the provisions of the Installment Purchase Agreement.

Section 5. Delegation of City Representative to Approve Base Lease, Installment Purchase Agreement, and Bond Agreement.

The City Council hereby approves the City Representative to negotiate, make such determinations as may be necessary, and finalize the Base Lease. The Mayor or the City Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the City Clerk is hereby authorized, empowered and directed to attest, the Base Lease in the name and on behalf of the City, and thereupon to cause the Base Lease to be delivered to the Corporation and to cause the Base Lease (or memorandum thereof) to be recorded in the office of the Register of Deeds for Aiken County, South Carolina. Any amendment to the Base Lease shall be executed in the same manner.

The City Council hereby approves the City Representative to negotiate, make such determinations as may be necessary, and finalize the Installment Purchase Agreement. The Mayor or the City Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the City Clerk is hereby authorized, empowered and directed to attest, the Installment Purchase Agreement in the name and on behalf of the City, and thereupon to cause the Installment Purchase Agreement to be delivered to the Corporation and to cause the Installment Purchase Agreement (or memorandum thereof) to be recorded in the office of the Register of Deeds for Aiken County, South Carolina. Any amendment to the Installment Purchase Agreement shall be executed in the same manner.

The City is not a party to the Bond Agreement, but the City acknowledges that the Bond Agreement is an integral part of the documents related to the Financing. A City

Representative is hereby authorized to provide for the review and approval of the form of the Bond Agreement with such additions, deletions, amendments and changes as may be deemed necessary by the parties thereto and approved by the City Representative prior to the consummation of the Financing.

Section 6. Execution of Documents.

The Mayor and the City Administrator, or either one of them acting alone, and the City Clerk are fully empowered and authorized to take such further actions and to execute and deliver such additional documents as may be deemed necessary or desirable in order to effectuate the execution and delivery of the Base Lease and the Installment Purchase 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 and the City Administrator shall approve, is hereby fully authorized. The City Council hereby retains the law firm of Pope Flynn, LLC as bond counsel with respect to the transactions authorized by this Ordinance.

Section 7. Severability.

If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 8. Amendment and Restatement; Repeal of Inconsistent Ordinances and Resolutions.

This Ordinance amends and restates the Second Prior Ordinance. All ordinances and resolutions of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 9. Effective Date.

This Ordinance shall be effective upon its enactment by the City Council.

**DONE, RATIFIED AND ENACTED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA IN MEETING DULY
ASSEMBLED ON THIS 9TH DAY OF JANUARY, 2017.**

(SEAL)

Lark W. Jones, Mayor

ATTEST:

Donna B. Young, City Clerk

First Reading: December 27, 2016
Second Reading: December 27, 2016
Public Hearing: January 9, 2017
Third Reading: January 9, 2017

EXHIBIT A

Description of the Real Property

ALL THAT LOT, TRACT OR PARCEL OF LAND, WITH ANY IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE CITY OF NORTH AUGUSTA, AIKEN COUNTY, SOUTH CAROLINA, HAVING THE FOLLOWING METES AND BOUNDS, TO WIT:

COMMENCING AT THE SOUTHEAST INTERSECTION OF BLUFF AVENUE AND WEST AVENUE AT A PK NAIL FOUND BEING THE POINT OF COMMENCEMENT; THENCE SOUTH 19 DEGREES 27 MINUTES 31 SECONDS WEST (S19°27'31"W), A DISTANCE OF 185.93 FEET TO A #4 REBAR SET BEING THE **POINT OF BEGINNING**; THENCE SOUTH 70 DEGREES 18 MINUTES 41 SECONDS EAST (S70°18'41"E), A DISTANCE OF 324.42 FEET TO A #4 REBAR SET; THENCE SOUTH 17 DEGREES 04 MINUTES 52 SECONDS WEST (S17°04'52"W), A DISTANCE OF 194.71 FEET TO A #4 REBAR FOUND; THENCE NORTH 72 DEGREES 55 MINUTES 08 SECONDS WEST (N72°55'08"W), A DISTANCE OF 18.43 FEET TO A #4 REBAR FOUND; THENCE ALONG A CURVE HAVING A RADIUS OF 118.00 FEET AND AN ARC LENGTH OF 78.37 FEET, WITH A CHORD BEARING OF SOUTH 88 DEGREES 03 MINUTES 18 SECONDS WEST (S88°03'18"W) AND A CHORD DISTANCE OF 76.94 FEET TO #4 REBAR SET; THENCE NORTH 67 DEGREES 48 MINUTES 09 SECONDS WEST (N67°48'09"W), A DISTANCE OF 42.59 FEET TO A #4 REBAR FOUND; THENCE NORTH 19 DEGREES 25 MINUTES 18 SECONDS EAST (N19°25'18"E), A DISTANCE OF 24.57 FEET TO A #4 REBAR SET; THENCE NORTH 70 DEGREES 19 MINUTES 10 SECONDS WEST (N70°19'10"W), A DISTANCE OF 199.89 FEET TO A #4 REBAR SET; THENCE NORTH 19 DEGREES 27 MINUTES 31 SECONDS EAST (N19°27'31"E), A DISTANCE OF 28.39 FEET TO A #4 REBAR SET; THENCE SOUTH 70 DEGREES 12 MINUTES 34 SECONDS EAST (S70°12'34"E), A DISTANCE OF 5.00 FEET TO A #4 REBAR SET; THENCE NORTH 19 DEGREES 27 MINUTES 31 SECONDS EAST (N19°27'31"E), A DISTANCE OF 77.21 FEET TO A #4 REBAR SET; THENCE NORTH 70 DEGREES 12 MINUTES 34 SECONDS WEST (N70°12'34"W), A DISTANCE OF 5.00 FEET TO A #4 REBAR SET; THENCE NORTH 19 DEGREES 27 MINUTES 31 SECONDS EAST (N19°27'31"E), A DISTANCE OF 91.71 FEET TO A #4 REBAR SET BEING THE **POINT OF BEGINNING** CONTAINING 1.51 ACRES.