
CITY OF ORANGEBURG, SOUTH CAROLINA

ORDINANCE NO. 2022-03

PROVIDING FOR AN INSTALLMENT PLAN OF FINANCE NOT TO EXCEED \$7,000,000 FOR CERTAIN CAPITAL PROJECTS AND EQUIPMENT; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, TO ACQUIRE UNDIVIDED INTERESTS IN SUCH CAPITAL PROJECTS AND EQUIPMENT; AND OTHER RELATED MATTERS.

ADOPTED: APRIL 19, 2022

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AN ORDINANCE

PROVIDING FOR AN INSTALLMENT PLAN OF FINANCE NOT TO EXCEED \$7,000,000 FOR CERTAIN CAPITAL PROJECTS AND EQUIPMENT; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, TO ACQUIRE UNDIVIDED INTERESTS IN SUCH CAPITAL PROJECTS AND EQUIPMENT; AND OTHER RELATED MATTERS.

THE CITY OF ORANGEBURG, SOUTH CAROLINA, CITY COUNCIL ORDAINS:

SECTION 1. Findings. The City Council ("City Council") of the City of Orangeburg, South Carolina ("City"), finds and determines that:

(a) It is necessary and desirable to improve and expand certain public facilities and acquire and install certain equipment therein, including the rehabilitation, improvement, expansion and equipping of a facility owned by the City in order to provide a new City Hall in which the City can carry out its functions and provide services to the citizens of the City, all in furtherance of the governmental purposes of the City and for the benefit and enjoyment of the citizens of the City ("Project");

(b) The City desires to utilize an installment plan of finance ("Installment Plan") to finance the 2022 Project, whereby the City and a South Carolina nonprofit corporation ("Corporation"), the sole purpose of which is to support the governmental mission of the City, would enter into certain agreements pursuant to which the City and the Corporation would, among other things, agree as follows: (i) the City would lease certain real property owned by the City, as more particularly described on Exhibit A ("Real Property") and convey any existing improvements thereon ("Conveyed Improvements") to the Corporation, subject to certain release provisions; (ii) the Corporation would make funds available to the City to undertake the Project; and (iii) the City, subject to nonappropriation, would make installment payments ("Installment Payments") to the Corporation to acquire undivided interests in the Conveyed Improvements and the Project (together the Conveyed Improvements and the Project are the "Facilities") and pay certain administrative fees and expenses of the Corporation;

(c) The Installment Payments would constitute a current expenses of the City and the City may therefore use any available revenue source to make the Installment Payments to the Corporation, including the proceeds of general obligation bonds issued by the City;

(d) To provide funds to pay for the costs of the Project, the Corporation would issue its installment purchase revenue bonds ("IPRBs") pursuant to a Trust Agreement ("Trust Agreement") between the Corporation and a trustee, which is expected to be Zions Bancorporation, National Association;

(e) The Corporation would use the Installment Payments received from the City to make the debt service payments on the IPRBs and pledge its right to receive the Installment Payments as security for the IPRBs; and

(f) The City desires to authorize (a) the Installment Plan for the Project, including the issuance of the IPRBs by the Corporation, and (b) the issuance of general obligation bonds, if necessary, to make Installment Payments to the Corporation in order to acquire undivided interest in the Facilities.

SECTION 2. Authorization of the Installment Plan and Execution of Documents.

(a) The City is authorized to pursue the Installment Plan for the Project. City Council affirms that the Project is necessary for and incidental to the City carrying out its governmental purpose and is for the benefit and well-being of the citizens of the City. The City is authorized to enter into and carry out its obligations under the following agreements, the form, terms and provisions of which as shall be negotiated, determined and approved by the City Administrator or the Mayor of the City ("Mayor"), or their designees, either acting alone or collectively (each, an "Authorized Representative"):

(i) *Base Lease and Conveyance Agreement.* Pursuant to the Base Lease and Conveyance Agreement ("Base Lease"), the City will (A) lease the Real Property to the Corporation for a term of approximately 30 years, and (B) convey to the Corporation the Conveyed Improvements. The Corporation will prepay the City rent for the Real Property to ensure, in an event of nonappropriation by the City, the Corporation's right to occupy and use all or a portion of the Real Property and the Facilities for the entire term of the Base Lease.

(ii) *Installment Purchase and Use Agreement.* Pursuant to the Installment Purchase and Use Agreement ("Purchase and Use Agreement"), the Corporation will agree, among other things, to

(A) provide the proceeds of its IPRBs for the Project, and (B) sell the Facilities to the City. The City will agree to (W) serve as the agent for the Corporation in connection with the Project, (X) make periodic Installment Payments, subject to the City's right to not appropriate funds therefor, to the Corporation for (I) the acquisition of undivided interests in the Facilities, and (II) the use and occupancy of the Facilities to the extent not owned by the City, (Y) maintain and operate the Facilities, including purchasing and maintaining insurance thereon, and (Z) pay certain expenses and fees of the Corporation.

(b) Each Authorized Representative is authorized, empowered and directed to execute, acknowledge and deliver the Base Lease and the Purchase and Use Agreement to the Corporation. The final terms of the Base Lease and the Purchase and Use Agreement shall accomplish the Installment Plan and shall not be inconsistent with or contrary to such purposes. The execution of the Base Lease and the Purchase and Use Agreement shall constitute conclusive evidence of the approval by the Authorized Representatives of the final terms of the Base Lease and the Purchase and Use Agreement.

(c) The Authorized Representative is further authorized to take such actions and make such other determinations as may be necessary or appropriate to carry out the Installment Plan and is directed and empowered to consult with the City Attorney, Bond Counsel (as defined herein) or the Financial Advisor (as defined herein) as the Authorized Representative determines, in his or her sole discretion, may be necessary or advisable regarding the Installment Plan.

SECTION 3. *Approval of the Corporation and the Issuance and Sale of the Corporation's IPRBs.* City Council approves, acknowledges and consents to:

(a) the organization of the Corporation for the purpose of (i) supporting the governmental mission of the City and (ii) alleviating the burdens of the City in carrying out its governmental purposes and providing for the benefit and well-being of its citizens;

(b) the governance by the Corporation of a self-perpetuating board of directors;

(c) the Corporation's issuance, sale and delivery of its IPRBs in one or more series, taxable or tax-exempt, in an amount or amounts to be set pursuant to a resolution to be adopted by the board of directors of the Corporation, to provide funds for (i) the costs of the Project, (ii) prepayment rent to the City for the Real Property, (iii) paying capitalized interest on the IPRBs through May 1, 2024, and (iv) the costs of issuing the IPRBs;

(d) the execution of the Trust Agreement providing for the terms and security for the IPRBs including the pledge of, among other things, the Installment Payments, for the payment of the debt service on the IPRBs; and

(e) the hiring by the Corporation of certain professionals as may be necessary to facilitate the Plan of Finance and the issuance of the IPRBs.

City Council acknowledges that the Corporation, in conjunction with the City, will or has requested proposals from certain banks and financial institutions (collectively, "Institutions") for the purchase of the IPRBs and acknowledges that such Institutions may request or have requested certain financial and operating data regarding the City in making their assessment of the IPRBs and determination to submit a proposal for the purchase of the IPRBs. The City is authorized to provide to such Institutions with such financial and operating data regarding the City as may be requested and is further authorized to negotiate, execute, accept, or acknowledge the proposal from the Institution which provides the most advantageous offer (which will be based substantially on the lowest total financing cost) to the Corporation and the City with respect to the IPRBs and the fulfillment of the Installment Plan.

SECTION 4. *Real Property Considerations.* City Council authorizes the lease of the Real Property and the transfer of the Conveyed Improvements to the Corporation pursuant to the Base Lease. City Council further authorizes, subject to the City's right to not appropriate funds therefor, the acquisition of the Facilities from the Corporation pursuant to the Purchase and Use Agreement. Once the IPRBs are discharged, the City will accept title to the Facilities (to the extent the City does not already have such title), including any additional or improvements thereto, no later than such time as the IPRBs are discharged.

City Council acknowledges that the Corporation, as security for the IPRBs, may pledge and mortgage its interest in the Facilities and City Council consents to such pledge and mortgage and the preparation and filing of such documents and instruments as may be necessary to create, evidence and perfect the security interest in the Facilities. The City Council further acknowledges that a failure to appropriate funds or issue general obligations bonds to make the Installment Payments could result in a loss of the right to use or occupy the Facilities, as the case may be.

SECTION 5. *Authorization and Details of the General Obligation Bonds of the City for Installment Payments.* Pursuant to Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended, ("Constitution") and Title 5, Chapter 21 and Title 11, Chapter 27 of the Code of Laws of South Carolina, 1976, as amended (collectively, "Enabling Act"), the City is authorized to issue, without a referendum, general obligation bonds ("Bonds"), in an amount not exceeding eight percent of the assessed value of all taxable property of the City for the purposes of making Installment Payments to the Corporation. The Bonds may be issued in one or more series, taxable or tax-exempt, from time to time with such further designation of each series to identify the year in which such Bonds are issued.

The Bonds may be issued as fully-registered bonds; dated the date of their delivery or such other date as may be selected by an Authorized Representative; may be in denominations of \$1,000 or any whole multiple thereof not exceeding the principal amount of the Bonds maturing in each year; shall be numbered from R-1 upward; shall bear interest, if any, from their dated date as may be accepted by an Authorized Representative; and shall mature as determined by an Authorized Representative.

SECTION 6. *Delegation of Certain Details of the Bonds to the City Administrator.* City Council expressly delegates to the City Administrator all determinations regarding the Bonds as may be necessary or appropriate in order to provide funds to make Installment Payments or for any other lawful purpose in furtherance of the Installment Plan, including the form of the Bonds (or BANs). The City Administrator is further directed to consult with its bond counsel in making any such decisions.

SECTION 7. *Registrar/Paying Agent.* Both the principal installments of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. The City Treasurer's Office or a qualified financial institution shall serve as the Registrar/Paying Agent for the Bonds ("Registrar/Paying Agent") and shall fulfill all functions of the Registrar/Paying Agent enumerated herein.

SECTION 8. *Registration and Transfer.* The City shall cause books (herein referred to as the "registry books") to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

The Bonds shall be transferable only upon the registry books of the City, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Bonds, the Registrar/Paying Agent on behalf of the City shall issue in the name of the transferee new fully registered Bonds, of the same aggregate principal amount, interest rate and maturity as the surrendered Bonds. Any Bond surrendered in exchange for a new registered bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The City and the Registrar/Paying Agent may deem or treat the person in whose name the fully registered Bonds shall be registered upon the registry books as the absolute owner of such Bonds, whether such Bonds shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bonds and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid, and neither the City nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring the Bonds is exercised, the City shall execute and the Registrar/Paying Agent shall authenticate and deliver the Bonds in accordance with the provisions of this Ordinance. Neither the City nor the Registrar/Paying Agent shall be obliged to make any such transfer of the Bonds during the period beginning on the Record Date (as defined in Section 6 hereof) and ending on an interest payment date.

SECTION 9. *Record Date.* The City establishes a record date ("Record Date") for the payment of interest or for the giving of notice of any proposed redemption of the Bonds, and such Record Date shall be the 15th day of the calendar month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of the Bonds, such Record Date shall not be more than 15 days prior to the mailing of notice of redemption of the Bonds.

SECTION 10. *Lost, Stolen, Destroyed or Defaced Bonds.* In case the Bonds shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the City shall execute and the Registrar/Paying Agent shall authenticate and deliver at the principal office of the Registrar/Paying Agent, or send by registered mail to the owner thereof at his request, risk and expense, new bonds of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant

for the issuance of a substitute bond shall furnish the City and the Registrar/Paying Agent evidence or proof satisfactory to the City and the Registrar/Paying Agent of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in such amount as may be required by the laws of the State of South Carolina or such greater amount as may be required by the City and the Registrar/Paying Agent. Any duplicate bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such duplicate bond is issued.

All expenses necessary for the providing of any duplicate bond shall be borne by the applicant therefor.

SECTION 11. *Book-Entry Only System.*

(a) Notwithstanding anything to the contrary herein, so long as the Bonds are being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bonds will be effected pursuant to rules and procedures established by such securities depository. The initial securities depository for the Bonds will be The Depository Trust Company ("DTC"), New York, New York. DTC and any successor securities depositories are hereinafter referred to as the "Securities Depository." The Bonds shall be registered in the name of Cede & Co., as the initial securities depository nominee for the Bonds. Cede & Co. and successor securities depository nominees are hereinafter referred to as the "Securities Depository Nominee."

(b) As long as a book-entry system is in effect for the Bonds, the Securities Depository Nominee will be recognized as the holder of the Bonds for the purposes of (i) paying the principal, interest and premium, if any, on such Bonds, (ii) if the Bonds are to be redeemed in part, selecting the portions of such Bonds to be redeemed, (iii) giving any notice permitted or required to be given to Bondholders under this ordinance, (iv) registering the transfer of the Bonds, and (v) requesting any consent or other action to be taken by the holder of such Bonds, and for all other purposes whatsoever, and the City shall not be affected by any notice to the contrary.

(c) The City shall not have any responsibility or obligation to any participant, any beneficial owner or any other person claiming a beneficial ownership in the Bonds which is registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as holder of the Bonds.

(d) The City shall pay all principal, interest and premium, if any, on the Bonds issued under a book-entry system, only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal of and premium, if any, and interest on such Bonds.

(e) In the event that the City determines that it is in the best interest of the City to discontinue the book-entry system of transfer for the Bonds, or that the interests of the beneficial owners of the Bonds may be adversely affected if the book-entry system is continued, then the City shall notify the Securities Depository of such determination. In such event, the City shall appoint a Registrar/Paying Agent which shall authenticate, register and deliver physical certificates for the Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bonds discontinues providing its services, the City shall either engage the services of another Securities Depository or arrange with a Registrar/Paying Agent for the delivery of physical certificates in the manner described in (e) above.

(g) In connection with any notice or other communication to be provided to the holder of the Bonds by the City or by the Registrar/Paying Agent with respect to any consent or other action to be taken by the holder of the Bonds, the City or the Registrar/Paying Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

SECTION 12. *Execution of Bonds.* The Bonds shall be executed in the name of the City with the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk under a facsimile of the seal of the City which shall be impressed, imprinted or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Bonds shall bear a certificate of authentication manually executed by the Registrar/Paying Agent in substantially the form set forth herein.

SECTION 13. *Form of Bonds.* The Bonds shall be in the form as determined by the City Administrator under Section 6.

SECTION 14. *Security for Bonds.* The full faith, credit and taxing power of the City are irrevocably pledged for the payment of the principal and interest of the Bonds as it matures and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the City an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

SECTION 15. *Exemption from Taxation.* Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the Code of Laws of South Carolina, 1976, as amended, from all State, City, municipal, school district and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest thereon may be includable in certain franchise fees or taxes.

SECTION 16. *Sale of Bond, Form of Notice of Sale.* The Bonds may be sold at a public or private sale, as authorized by and in accordance with Section 11-27-40(4) of the Enabling Act, as the City Administrator may determine.

SECTION 17. *Deposit and Application of Proceeds.* The proceeds of the Bonds or of BANs (authorized under Section 19 of this Ordinance), when drawn, will be deposited in a bond account fund for the City and shall be expended and made use of as follows:

(a) accrued interest, if any, shall be applied to the payment of the first installment of interest to become due on the Bonds or BANs; and

(b) the remaining proceeds shall be expended and made use of to defray the cost of issuing the Bonds or BANs and to make Installment Payments. Pending the use of such proceeds, the same shall be invested and reinvested in such investments as are permitted under State law. Earnings on such investments shall be applied either to Installment Payments or, if not so required, to pay principal on the Bonds.

SECTION 18. *Defeasance.*

(a) If a series of bonds issued pursuant to this Ordinance shall have been paid and discharged, then the obligations of the Ordinance hereunder, and all other rights granted thereby shall cease and determine with respect to such series of bonds. A series of bonds shall be deemed to have been paid and discharged within the meaning of this Section under any of the following circumstances:

(i) If the Registrar/Paying Agent (or, if the City is the Registrar/Paying Agent, a bank or other institution serving in a fiduciary capacity) ("Escrow Agent") shall hold, at the stated maturities of the bonds, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or

(ii) If default in the payment of the principal of such series of bonds or the interest thereon shall have occurred, and thereafter tender of payment shall have been made, and the Escrow Agent shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of payment; or

(iii) If the City shall have deposited with the Escrow Agent, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America, which are not subject to redemption by the issuer prior to the date of maturity thereof, as the case may be, the principal of and interest on which, when due, and without reinvestment thereof, will provide moneys, which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium or premiums, if any, due and to become due on such series of bonds and prior to the maturity date or dates of such series of bonds, or, if the City shall elect to redeem such series of bonds prior to their stated maturities, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided in the form of the bonds, on and prior to the redemption date or dates of such series of bonds, as the case may be; or

(iv) If there shall have been deposited with the Escrow Agent either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on such series of bonds on the maturity thereof.

(b) In addition to the above requirements of paragraphs (a) (i), (ii), (iii), and (iv), in order for this Ordinance to be discharged with respect to a series of bonds, all other fees, expenses and charges of the Escrow Agent have been paid in full at that time.

(c) Notwithstanding the satisfaction and discharge of this Ordinance with respect to a series of bonds, the Escrow Agent shall continue to be obligated to hold in trust any moneys or investments then held by the Escrow Agent for the payment of the principal of, premium, if any, and interest on, such series of bonds, to pay to the owners of such series of bonds the funds so held by the Escrow Agent as and when payment becomes due.

(d) Any release under this Section shall be without prejudice to the rights of the Escrow Agent to be paid reasonable compensation for all services rendered under this Ordinance and all reasonable expenses, charges, and other disbursements and those of their respective attorneys, agents, and employees, incurred on and about the performance of the powers and duties under this Ordinance.

(e) Any moneys which at any time shall be deposited with the Escrow Agent by or on behalf of the City for the purpose of paying and discharging any bonds shall be and are assigned, transferred, and set over to the Escrow Agent in trust for the respective holders of such bonds, and the moneys shall be and are irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the holders of such bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Escrow Agent to transfer the funds to the City.

(f) In the event any bonds are not to be redeemed within the 60 days next succeeding the date the deposit required by Section 15(a)(iii) or (iv) is made, the City shall give the Escrow Agent irrevocable instructions to mail, as soon as practicable by registered or certified mail, a notice to the owners of the bonds at the addresses shown on the registry books that (i) the deposit required by subparagraph (a)(iii) or (a)(iv) of this Section 15 has been made with the Escrow Agent, (ii) the bonds are deemed to have been paid in accordance with this Section and stating the maturity or redemption dates upon which moneys are to be available for the payment of the principal of, and premium, if any, and interest on, the bonds, and (iii) stating whether the City has irrevocably waived any rights to redeem the bonds, or any of them, prior to the maturity or redemption dates set forth in the preceding clause (ii).

(g) The City covenants and agrees that any moneys which it shall deposit with the Escrow Agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Section, and whenever it shall have elected to redeem bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Escrow Agent to cause notice of redemption to be given in its name and on its behalf.

SECTION 19. Authority to Issue Bond Anticipation Notes. If the City Administrator should determine that issuance of BANs pursuant to Chapter 17 of Title 11 of the Code of Laws of South Carolina, 1976, as amended ("BAN Act"), rather than the Bonds would result in a substantial savings in interest under prevailing market conditions or for other reasons would be in the best interest of the City, the City Administrator is further requested and authorized to effect the issuance of one or more series of BANs pursuant to the BAN Act. If BANs are issued and if, upon the maturity thereof, the City Administrator should determine that further issuance of BANs rather than the Bonds would result in a substantial savings in interest under then prevailing market conditions or for other reasons would be in the best interest of the City, the City Administrator is authorized to continue the issuance of BANs until the City Administrator determines to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

SECTION 20. Details of Bond Anticipation Notes. Subject to changes in terms required for any particular issue of BANs, the BANs shall be subject to the following particulars:

(a) The BANs shall be dated and bear interest from the date of delivery thereof or, if the BAN is issued on a draw-down basis, from the date of each such advance, payable upon the stated maturity thereof, at the rate negotiated by the City Administrator and shall mature on such date, not to exceed one year from the issue date thereof, as shall be determined by the City Administrator.

(b) The BANs shall be numbered from one upwards for each issue and shall be in the denomination of \$1,000 or any whole multiple thereof requested by the purchaser thereof. The BANs shall be payable, both as to principal and interest, in legal tender upon maturity, at the principal office of a bank designated by the City or, at the option of the City, by the purchaser thereof.

The BANs also may be issued as one or more fully registered "draw-down" style instruments in an aggregate face amount not exceeding the maximum amount permitted hereunder, to a lending institution under terms which permit the balance due under such note or notes to vary according to the actual cash needs of the City, as shall be determined by the City Administrator. In such event, the City may draw upon such note or notes as it needs funds so long as the maximum outstanding balance due under such note or notes does not exceed the aggregate face amount thereof.

(c) The City Administrator is authorized to negotiate or to arrange for a sale of the BANs and to determine the rate of interest to be borne thereby.

(d) The BANs shall be in the form as determined by the City Administrator under Section 3.

(e) The BANs shall be issued in fully registered or bearer certificated form or a book-entry-only form as specified by the City, or at the option of the City, by the purchaser thereof; provided that once issued, the BANs of any particular issue shall not be reissued in any other form and no exchange shall be made from one form to the other.

(f) In the event any BAN is mutilated, lost, stolen or destroyed, the City may execute a new BAN of like date and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated BAN, such mutilated BAN shall first be surrendered to the City, and in the case of any lost, stolen or destroyed BAN, there shall be first furnished to the City evidence of such loss, theft or destruction satisfactory to the City, together with indemnity satisfactory to it; provided that, in the case of a holder which is a bank or insurance company, the agreement of such bank or insurance company to indemnify shall be sufficient. In the event any such BAN shall have matured, instead of issuing a duplicate BAN, the City may pay the same without surrender thereof. The City may charge the holder of such BAN with its reasonable fees and expenses in this connection.

(g) Any BAN issued in fully-registered form shall be transferable only upon the books of registry of the City, which shall be kept for that purpose at the office of the City as note registrar (or its duly authorized designee), by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the City as note registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any BAN, the City shall issue, subject to the provisions of paragraph (h) below, in the name of the transferee, a new BAN or BANs of the same aggregate principal amount as the unpaid principal amount of the surrendered BAN. Any holder of a BAN in fully-registered form requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any BAN in fully-registered form, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal and interest of any BAN in fully-registered form shall be made only to or upon the order of the registered holder thereof, or his duly authorized attorney, and the City shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such BAN to the extent of the sum or sums so paid.

(h) BANs issued in fully registered form, upon surrender thereof at the office of the City (or at such office as may be designated by its designee) as note registrar, with a written instrument of transfer satisfactory to the City, duly executed by the holder of the BAN or his duly authorized attorney, may, at the option of the holder of the BAN, and upon payment by such holder of any charges which the City may make as provided in paragraph (i), be exchanged for a principal amount of BANs in fully registered form of any other authorized denomination equal to the unpaid principal amount of surrendered BANs.

(i) In all cases in which the privilege of exchanging or transferring BANs in fully-registered form is exercised, the City shall execute and deliver BANs in accordance with the provisions of such Ordinance. All BANs in fully-registered form surrendered in any such exchanges or transfers shall forthwith be canceled by the City. There shall be no charge to the holder of such BAN for such exchange or transfer of BANs in fully-registered form except that the City may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer.

SECTION 21. *Security for Bond Anticipation Notes.* For the payment of the principal of and interest on the BANs as the same shall fall due, so much of the principal proceeds of the Bonds when issued shall and is directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the City covenants and agrees to effect the issuance of sufficient BANs or bonds in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

SECTION 22. *Tax and Securities Laws Covenants.*

(a) The City covenants that no use of the proceeds of the sale of the Bonds or BANs authorized hereunder or the IPRBs shall be made which, if such use had been reasonably expected on the date of issue of such Bonds or BANs or the IPRBs would have caused the Bonds or BANs or the IPRBs to be "arbitrage bonds," as defined in the Code, and to that end the City shall comply with all applicable regulations of the Treasury Department previously promulgated under Section 103 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated under the Code so long as the Bonds or BANs and the IPRBs are outstanding.

(b) The City further covenants to take all action necessary, including the payment of any rebate amount, to comply with Section 148(f) of the Code and any regulations promulgated thereunder.

(c) The City covenants to file IRS form 8038, if the Code so requires, at the time and in the place required therefore under the Code.

(d) To the extent the City and the Corporation do not issue more than \$10,000,000 of obligations, the interest on which is excludable from the gross income of the holders thereof under the Code (excluding private activity bonds (within the meaning of Section 141(a) of the Code) other than qualified 501(c)(3) bonds (within the meaning of Section 145 of the Code)) during any calendar year, the City designates such obligations, if issued as tax-exempt bonds, as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

(e) In accordance with Section 11-1-85, Code of Laws of South Carolina, 1976, as amended, the County covenants and agrees that it will file with a central repository for availability in the secondary bond market when requested: (i) an annual independent audit within 30 days of the City's receipt of the audit, and (ii) event specific information, within 30 days of an event adversely affecting more than five percent of the City's revenue or tax base.

SECTION 23. *Reimbursement Provisions.* The City is authorized and has paid or may pay for certain costs and expenditures relating to the Project from its general fund or capital project fund, in an amount not exceeding \$2,000,000, prior to the issuance of the IPRBs (collectively "Initial Expenditures"). Such Initial Expenditures are (a) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of "placed in service" under Treasury Regulation §1.150-2) under general federal income tax principles; or (b) certain *de minimis* or preliminary expenditures satisfying the requirements of Treasury Regulation §1.150-2(f).

The City and the Corporation may agree for the Corporation to repay the City for these Initial Expenditures, the source of such repayment to be the proceeds of the IPRBs. To the extent the Corporation repays the City for the Initial Expenditures from the proceeds of the IPRBs, pursuant to Treasury Regulation §1.150-2, this Ordinance is an official declaration by the City of its intent with respect to the repayment of the Initial Expenditures incurred and paid on or after the date occurring 60 days prior to the date of adoption of this Ordinance, from the proceeds IPRBs.

SECTION 24. *Further Authorization for Authorized Representatives; Ratification of Prior Acts.* City Council authorizes each Authorized Representative to negotiate, execute and deliver such other documents, agreements, certificates and instruments and to take such further actions as may be necessary to effect the Installment Plan, the Project, including the modification thereof, the issuance of the IPRBs, and subject to non-appropriation, the payment of Installment Payments to the Corporation, including the issuance of the Bonds therefor. Any actions taken by the Authorized Representative prior to the date of this Ordinance with respect to the Installment Plan, including the expenditure of funds and the execution of documents, are hereby approved, ratified and confirmed in all respects.

SECTION 25. *Publication of Notice of Adoption of Ordinance pursuant to Section 11-27-40, paragraph 8, of the Code of Laws of South Carolina, 1976.* Pursuant to the provisions of Section 11-27-40 of the Code of Laws of South Carolina, 1976, as amended, the City Administrator, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

SECTION 26. *Retention of Bond Counsel and Financial Advisor.* City Council authorizes and consents to the retention of the law firm of Parker Poe Adams & Bernstein LLP, as bond counsel ("Bond Counsel"), and the firm of First Tryon Advisors, as financial advisor ("Financial Advisor") in connection with the Installment Plan.

City Council further authorizes the Authorized Representatives, in accordance with the City's procurement policy, to enter into such contractual arrangements with suppliers of goods and services necessary to effect the Installment Plan or the sale, execution and delivery of the Bonds as is necessary and desirable.

SECTION 27. *General Repealer.* All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bond are, to the extent of such conflict, repealed and this Ordinance shall take effect and be in full force from and after its adoption.

ENACTED BY the City Council on April 19, 2022.

Mayor

Michael C. Butler

Members of Council

Stanley J. Parks

Jim Jones

Calvin

L. Zimmerman Keitt

Attest:

Linda McDaniel

City Clerk

First Reading: March 15, 2022
Second Reading: April 7, 2022
Third Reading: April 19, 2022



Exhibit A

Description of Real Property

All that certain piece, parcel or lot of land with buildings and other improvements thereon situate, lying and being in the City of Orangeburg, Consolidated School District 5, County of Orangeburg, State of South Carolina containing .69 acre and being set forth and shown on a plat prepared for First - Citizens Bank and Trust Company of South Carolina by Cox and Dinkins, Inc., Engineers and Surveyors, approved by J. Don Rawls, Jr. RLS dated November 1, 2000 and recorded in the Office of the Register of Deeds for the County of Orangeburg, State of South Carolina in Plat Cabinet C202 at page 1 and having the following boundaries and measurements: Northwest by property now or formerly of Orangeburg Association 232.02 feet; Northeast by the right-of-way of Broughton Street 130.72 feet; Southeast by the right-of-way of Russell Street 232.75 feet; and Southwest by property now or formerly of Orangeburg Association 129.31 feet.

Derivation: Being the same property conveyed to the City of Orangeburg by deed of First Citizens Bank and Trust Company, Inc. dated September 30, 2009, and recorded in said Office of the Register of Deeds in Deed Book 1332 at page 231

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