

ORDINANCE NO.: 2012-027

Authorizing the execution and delivery of an Amendment No. 1 to the Installment Sale Agreement dated March 1, 2003 relating to the Financing and Construction of Public Infrastructure Connecting the Columbia Metropolitan Convention Center with Adjacent Facilities; and other matters relating thereto

BE IT ORDAINED by the Mayor and City Council of the City of Columbia, South Carolina this 18th day of April, 2012 that the Installment Sale Agreement dated as of March 1, 2003, between the City of Columbia and Columbia Public Facilities Corporation, relating to the financing and construction of the Columbia Metropolitan Convention Center, is amended as follows:

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

(a) The City is an incorporated municipality located in Richland County, South Carolina and Lexington County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and general laws of the State of South Carolina.

(b) Pursuant to Section 5-5-10, Code of Laws of South Carolina, 1976, as amended (the "S.C. Code"), the City has selected the Council-Manager form of government and is governed by a Council composed of a Mayor and six council members which constitute the governing body of the City.

(c) Columbia Public Facilities Corporation (the "Corporation") is a South Carolina nonprofit corporation organized and existing under the laws of the State of South Carolina.

(d) The Corporation has heretofore issued its \$36,570,000 original principal amount Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Tourism Development Fee Pledge), Series 2003 (the "Series 2003 Certificates"), pursuant to the Trust Agreement dated as of March 1, 2003 (the "Trust Agreement"), between the Corporation and U.S. Bank National Association (as successor to Wachovia Bank, National Association), as Trustee, in order to finance the acquisition, construction and installation of the Columbia Metropolitan Convention Center (the "Convention Center") and related improvements.

(e) After the Series 2003 Certificates were issued, the City acquired one or more parcels of land on the block bordered by Lincoln Street, Senate Street, Pendleton Street and Park Street, which is adjacent to the Convention Center (the "Adjacent Parcels"), upon which Adjacent Parcels it was intended that parking and/or meeting space facilities (the "Adjacent Facilities") could be constructed to support and enhance and increase the use of, and be of significant benefit to, the Convention Center.

(f) The Adjacent Facilities will be connected to the Convention Center through dedicated walkways or pathways, including but not limited to tunnels constructed under Lincoln Street (the "Public Infrastructure").

(g) There currently exists a balance of approximately \$1,700,000 of original proceeds of the Series 2003 Certificates on deposit in the Construction Fund established under the Trust Agreement, which amounts are required by the Trust Agreement and the Installment Sale Agreement dated as of March 1, 2003 (the "Original Agreement"), between the City and the Corporation, to be expended for improvements which are located on the parcel of land upon which the Convention Center is located (the "Land").

(h) It is proposed that the Original Agreement be amended to permit improvements that are located adjacent to the Land to be funded with the remaining proceeds of the Series 2003 Certificates.

(i) The City and the Corporation have caused to be prepared an Amendment No. 1 to Installment Sale Agreement (the "Amendment"), the form of which is attached hereto as Exhibit A, which is in appropriate form and is an appropriate instrument to be executed and delivered by the City and the Corporation for the purposes intended.

(j) It is anticipated that the execution of the Amendment and the development of the Public Infrastructure contemplated thereby will benefit the City through, among other things, supporting and encouraging the use of the facilities of the Convention Center by users of the Additional Facilities (and vice versa) and increasing and enhancing the use of the Convention Center, which will encourage and promote tourism in the City and the surrounding area (i.e., Lexington County and Richland County, collectively, the "Counties"), increasing the amount of Tourism Development Fees now imposed by

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the City and the Counties upon the rental of hotels, motels and other lodging establishments in the City and the Counties that offer accommodations to tourists and travelers.

(k) The City Council recognizes that the expenditure of public funds must be for a public purpose in accordance with the applicable provisions of the South Carolina Constitution and decisions of the South Carolina Supreme court. Specifically, the cases of Byrd v. County of Florence, 315 S.E.2d 804 (S.C. 1984) and Nichols v. The South Carolina Research Authority, 351, S.E.2d 155 (S.C. 1986), formulate a four-point standard by which undertakings for financing economic development are tested for constitutionality. The City Council finds that the expenditure of funds for the Public Infrastructure meets all four points of this standard.

(l) In order to further the development of the Public Infrastructure, and to promote and enhance the economic development within the City and surrounding areas, and in consideration of the direct and indirect benefits, some of which are set forth herein, afforded to the City by connecting the Additional Facilities to the Convention Center, it is necessary and in the best interests of the City to undertake the design, acquisition and/or construction of the Public Infrastructure herein approved and authorized. The design, acquisition and/or construction of the Park Infrastructure will be undertaken for a public purpose of the City.

Section 2. Public Infrastructure; Approval of Amendment. On the basis of the benefits (both direct and indirect) that the Public Infrastructure will confer upon the Convention Center and the further economic development of the City and the Counties, the City Council does hereby approve the application of proceeds of the Series 2003 Certificates presently on deposit in the Construction Fund established under the Trust Agreement, to defray the costs of the Public Infrastructure. In furtherance thereof, the form of Amendment attached hereto as Exhibit A is hereby approved, and the City Manager is hereby authorized to execute and deliver the Amendment in substantially the form hereby approved, together with such additions, modifications and changes as may be approved, upon the advice of counsel, with such approval being evidenced by the execution and delivery thereof. The City Manager is further authorized to take such actions as may be necessary or desirable, upon advice of counsel, in order to obtain the consent of the holders of the Series 2003 Certificates (or the deemed holders of the Series 2003 Certificates, i.e., Ambac Assurance Corporation, the insurer of the Series 2003 Certificates) as may be permitted by the Trust Agreement and the Original Agreement) to the execution of the Amendment.

Section 3. Further Authorization. The City Manager is authorized to execute any documents and take any further actions as may be reasonably necessary or desirable, upon advice of counsel, to further the intent of this Ordinance.

Section 4. Effective Date. This Ordinance shall become effective upon its enactment.

Requested by:

Steven A. Gantt, City Manager



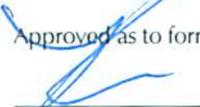
Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:


City Clerk

Introduced: 4/10/2012

Final Reading: 4/18/2012

AMENDMENT NO. 1 TO INSTALLMENT SALE AGREEMENT

THIS AMENDMENT NO. 1 TO INSTALLMENT SALE AGREEMENT entered into and executed this 1st day of May, 2012 (the "Amendment") by and between Columbia Public Facilities Corporation, a nonprofit corporation organized and existing under the laws of the State of South Carolina, as seller (the "Corporation"), and the City of Columbia, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina, as purchaser (the "City").

WITNESSETH:

WHEREAS, the City and the Corporation have heretofore executed the Installment Sale Agreement dated as of March 1, 2003 (the "Original Agreement"), relating to the acquisition, construction and installation of a multipurpose convention/conference facility and related improvements described in Exhibit B attached to the Original Agreement (collectively, the "Convention Center") on the Land (as defined in the Original Agreement); and

WHEREAS, as contemplated by the Original Agreement, the Corporation heretofore issued its \$36,570,000 original principal amount Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Tourism Development Fee Pledge), Series 2003 (the "Series 2003 Certificates"), pursuant to the Trust Agreement dated as of March 1, 2003 (the "Trust Agreement"), between the Corporation and U.S. Bank National Association (as successor to Wachovia Bank, National Association), as Trustee, in order to finance such acquisition, construction and installation costs related to the Convention Center; and

WHEREAS, after the Series 2003 Certificates were issued, the City acquired one or more parcels of land bordered by the block of Lincoln Street, Senate Street, Pendleton Street and Park Street, which is adjacent to the Convention Center (the "Adjacent Parcels"), upon which Adjacent Parcels it was intended that parking and/or meeting space facilities (the "Adjacent Facilities") could be constructed to support and enhance and increase the use of, and be of significant benefit to, the Convention Center; and

WHEREAS, the City and the Corporation desire to directly connect the Adjacent Facilities to the Convention Center through dedicated walkways or pathways, including but not limited to tunnels constructed under Lincoln Street; and

WHEREAS, there currently exists a balance of approximately \$1,700,000 of original proceeds of the Series 2003 Certificates on deposit in the Construction Fund established under the Trust Agreement; and

WHEREAS, the Trust Agreement and the Installment Sale Agreement requires that the amounts in the Construction Fund that are to be expended for Costs of the 2003 Project (e.g., the Convention Center) to be spent for such improvements that are actually located on the Land; and

WHEREAS, the City and the Corporation desire to expand the definition of "2003 Project" in the Original Agreement to also include improvements that are located adjacent to the Land; and

NOW, THEREFORE, the Corporation and the City hereby agree as follows:

Amendments

1. Section 1.1 of the Original Agreement is hereby amended by deleting the definition of "2003 Project" in its entirety and replacing it as follows:

"2003 Project" means the improvements to be acquired, constructed and installed on or adjacent to the Land as set forth in Exhibit B attached hereto.

2. Exhibit B to the Original Agreement is hereby amended by deleting the definition of "2003 Project" in its entirety and replacing it as follows:

The 2003 Project comprises (i) an approximately 142,500 square foot multipurpose conference/convention center (the "Conference/Convention Center"), including a ballroom, additional meeting space, exhibit space and a full service kitchen, (ii) roadways, sidewalks, sanitary and storm sewers, irrigation, landscaping and other infrastructure and (iii) other related improvements and appurtenances, all located on or adjacent to the Land.

Miscellaneous

1. Agreement Continuation. The Original Agreement, as modified herein, shall continue in full force and effect.

2. Definitions. All capitalized terms in this Amendment shall have the meaning ascribed to them in the Original Agreement, except as defined herein.

3. Counterparts. This Amendment may be executed in counterparts (including by facsimile or electronic transmission) each of which will be deemed an original.

4. Effective Date. This Amendment shall be effective as of the date hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to Installment Sale Agreement to be duly executed and delivered as of the date and year first written above.

COLUMBIA PUBLIC FACILITIES CORPORATION

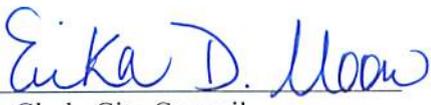
By: 
Its: _____



CITY OF COLUMBIA, SOUTH CAROLINA

By: 
Mayor

Attest:

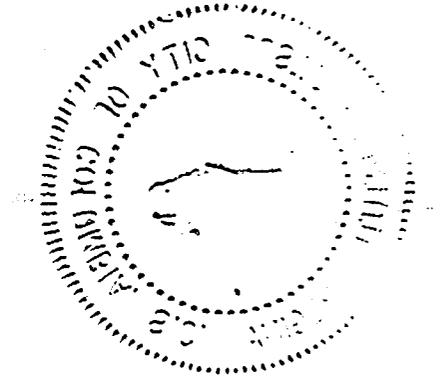
By: 
Clerk, City Council

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

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THE STATE EDUCATION DEPARTMENT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND COUNTY)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being first duly sworn, deposes and says: that (s)he saw the City of Columbia, South Carolina, by Stephen K. Benjamin, its Mayor, sign the foregoing Amendment No. 1 to Installment Sale Agreement, and that (s)he, with the other witness whose signature appears above witnessed the execution thereof.



Witness

SWORN to and subscribed before me
this 30th day of April, 2012.



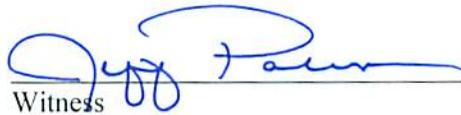
(L.S.)
Notary Public for South Carolina

My Commission expires: 4/14/2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND COUNTY)

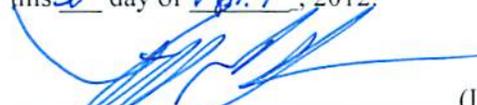
PROBATE

PERSONALLY appeared before me the undersigned witness, who, being first duly sworn, deposes and says: that (s)he saw Columbia Public Facilities Corporation, by Steven A. Gandy, its President, sign the foregoing Amendment No. 1 to Installment Sale Agreement, and that (s)he, with the other witness whose signature appears above witnessed the execution thereof.


Witness

SWORN to and subscribed before me

this 30th day of Apr. 1, 2012.


_____(L.S.)
Notary Public for South Carolina

My Commission expires: 12/17/17