
AN ORDINANCE 4393

AUTHORIZING THE CITY OF HARTSVILLE, SOUTH CAROLINA TO ENTER INTO AN INSTALLMENT PURCHASE TRANSACTION TO MAKE CERTAIN IMPROVEMENTS TO CITY HALL AND TO REFINANCE SERIES OF BONDS ISSUED TO DEFRAY THE COSTS OF THE ACQUISITION, RENOVATION, AND IMPROVEMENT OF CITY HALL AND THE PAVILION AT LAWTON PARK AND CERTAIN OTHER BONDS AND CAPITAL LEASES OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS RELATING TO SUCH TRANSACTION, INCLUDING THE BASE LEASE AGREEMENT AND THE INSTALLMENT PURCHASE AND USE AGREEMENT; APPROVING THE USE OF CERTAIN MONEY OF THE CITY; APPROVING THE ISSUANCE OF BONDS BY THE CITY OF HARTSVILLE PUBLIC FACILITIES CORPORATION; DELEGATING AUTHORITY TO THE MAYOR AND CITY MANAGER TO EFFECT SUCH TRANSACTION AND DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO.

Enacted July 14, 2020

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF HARTSVILLE, SOUTH CAROLINA, AS FOLLOWS:

Section 1 Findings

The City Council (“**City Council**”) of the City of Hartsville, South Carolina (the “**City**”), hereby finds and determines:

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

(b) Section 5-7-30 of the Code of Laws of South Carolina 1976, as amended (the “**South Carolina Code**”), provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, order and good government in the municipality. Section 5-7-40 of the South Carolina Code empowers all municipalities to own and possess real and personal property and, upon such terms as a city council may determine, to convey, lease, or otherwise dispose of such property.

(c) The City has outstanding the remaining principal amount of its (i) originally issued \$1,224,500 General Obligation Bond, Series 2012 of the City of Hartsville, South Carolina, dated June 29, 2012 (the “**Series 2012 GO Bond**”), the proceeds of which were utilized by the City for the acquisition and renovation of the City Hall of the City (the “**City Hall**”) and certain other capital projects of the City; and (ii) originally issued \$3,665,000 Special Obligation Bonds Series 2012, dated June 29, 2012 (“**2012 Special Obligation Bond**”), which refinanced the outstanding principal amount of a Loan Agreement dated March 30, 2007, a portion of the proceeds of which loan were utilized by the City to fund improvements the City’s historic pavilion located at its Lawton Park (the “**Lawton Park Pavilion**,” and together with the City Hall, the “**Facilities**”).

(d) The administration of the services and departments of the City and the provision of recreational opportunities are core functions of municipal government and the provision of facilities to foster the efficiency and effectiveness of the administration of the City and the provision of recreational opportunities, in particular the Facilities, is a priority for the City Council. In this regard, the City Council has previously determined to undertake the acquisition, renovation, and improvement of the Facilities in order to provide for the health, safety, and welfare of its citizens and visitors to the City.

(e) The City additionally has outstanding the remaining installments of the originally issued (i) \$350,419 Lease-Purchase Financing, dated May 26, 2017 (the “**2017A Lease-Purchase**”); (ii) \$545,632 Lease-Purchase Financing, dated May 26, 2017 (the “**2017B Lease-Purchase**”); (iii) \$850,000 Lease-Purchase Financing, dated May 25, 2018 (the “**2018 Lease-Purchase**”); and (iv) \$329,504 Lease-Purchase Financing, dated September 10, 2019 (the “**2019 Lease-Purchase**,” and, together with the Series 2012 GO Bond, the 2012 Special Obligation Bond, the 2017A Lease-Purchase, the 2017B Lease-Purchase, the 2018 Lease-Purchase, and the 2019 Lease-Purchase, the “**Outstanding Financings**”).

(f) The City Council has determined to (1) provide for certain information technology upgrades to the City Council Chambers of the Facilities (the “**2020 Project**”), and (2) redeem the Outstanding Financings (collectively, the “**Refinancing**”) in order to decrease and extend annual debt service payments of the City and improve the City’s annual cash flows on a short-term basis. The estimated cost of the 2020 Project is \$10,000 and of the redemption of the Outstanding Financings is \$3,000,000, exclusive of costs of issuance.

(g) The City Council has determined to (1) effect the Refinancing, and (2) defray the costs of the 2020 Project through an installment purchase transaction, or transactions, pursuant to which the City will enter into a Base Lease (the form of which is attached hereto as Exhibit A) and an Installment Purchase and Use Agreement (the form of which is attached hereto as Exhibit B) (the Refinancing and the 2020 Project are collectively referred to herein as the “**Transaction**”). Such Base Lease and Purchase and Use Agreement may be amended from time to time to allow for multiple transactions.

(h) Pursuant to the provisions of the Base Lease, the City will (i) lease the real property underlying the Facilities (as more specifically defined herein, the “**Real Property**”) to the Corporation (as defined herein) in consideration of the issuance by the Corporation of one or more series of installment purchase revenue bonds which will be issued pursuant to the provisions of the Trust Agreement (as defined herein), and (ii) convey the improvements situated on the Real Property, consisting of the Facilities to the Corporation. The installment purchase revenue bonds 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 Purchase and Use Agreement. Pursuant to the provisions of the Purchase and Use Agreement, the City will agree to purchase the Facilities from the Corporation by making the Installment Payments.

(i) Installment purchase revenue bonds will be issued by the Corporation in one or more series and captioned as “Installment Purchase Revenue Bonds (City of Hartsville Facilities Refinancing), Series 2020”, in a principal amount to be determined by the Corporation (the “**Series 2020 Bonds**”). The Corporation shall change the bond caption or series designation as appropriate to reflect transaction timing and structure, upon advice received and as appropriate. The proceeds of the Series 2020 Bonds may be used to (i) defray all or a portion of the costs of the Transaction, and (ii) pay the cost of issuance of the Series 2020 Bonds.

(j) The rights to receive Installment Payments are being assigned by the Corporation to the Trustee under the Trust Agreement as security and the source of payment for the Series 2020 Bond.

(k) The Council has further determined that the Transaction will serve a proper public and corporate purpose, that the refinancing of the costs of the Facilities by and through the Transaction amounts to a purchase-money refinancing of the costs of such Facilities, and that the Facilities will be publicly owned.

(1) As previously discussed, in order to effect the redemption of the Outstanding Financings, the Council has determined that it is necessary and in the best interest of the City to enter into the Transaction authorized by this Ordinance with the Corporation.

Section 2 Definitions

The terms defined in this Section for all purposes of this Ordinance shall have the respective meanings as set forth in this Section. The term:

“**2020 Project**” shall be given the meaning ascribed to such term in the recitals of this Ordinance.

“**Authorized Officer**” means the Mayor or the City Manager, each of whom is authorized to act as the Authorized Officer.

“**Base Lease**” means the Base Lease Agreement by and between the City and the Corporation to be dated as of the date of its delivery, as the same may be amended or supplemented from time to time, the form of which is attached hereto as Exhibit A.

“**Bond Counsel**” shall mean an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal, state and public agency financing, selected by the City.

“**City**” means the City of Hartsville, South Carolina.

“**City Clerk**” shall mean the City Clerk of the City of Hartsville, South Carolina.

“**Facilities**” means (i) the City Hall facility housing the City’s administrative department and functions, and (ii) the historic pavilion at Lawton Park, as each are situated on the Real Property.

“**City Manager**” shall mean the City Manager of the City of Hartsville, South Carolina.

“**Code**” means the Internal Revenue Code of 1986, as amended, from time to time, or any successor internal revenue laws of the United States enacted by the Congress of the United States in replacement thereof. References to the Code and sections of the Code include relevant applicable regulations, temporary regulations and proposed regulations thereunder and any successor provisions to those sections, regulations, temporary regulations or proposed regulations.

“**Continuing Disclosure Agreement**” means the agreement, which may also be referred to as the Disclosure Dissemination Agent Agreement, of the City (on behalf of the Corporation) authorized pursuant to Section 4(c) of this Ordinance and attached hereto at Exhibit C.

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

“**Council**” means the City Council of the City of Hartsville, South Carolina.

“**Financing Documents**” means collectively, the Base Lease, the Purchase and Use Agreement, and the Trust Agreement, as each may be amended or supplemented from time to time.

“**Mayor**” shall mean the Mayor of the City of Hartsville, South Carolina.

“**Official Statement**” means the official statement prepared in connection with the sale of the Series 2020 Bonds.

“**Ordinance**” means this ordinance.

“**Preliminary Official Statement**” means the preliminary official statement prepared in connection with the sale of the Series 2020 Bonds.

“**Purchase and Use Agreement**” means the one or more Installment Purchase and Use Agreements by and between the Corporation and the City to be dated as of the date of its delivery to provide for the City’s acquisition of the Facilities, as may be amended from time to time, the form of which is attached hereto as Exhibit B.

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

“**Real Property**” means all those certain pieces, parcels or tracts of land as described in the Base Lease and at Exhibit D attached hereto.

“**South Carolina Code**” shall mean the Code of Laws of South Carolina 1976, as amended.

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

“**Trust Agreement**” means the Trust Agreement by and between the Corporation and Regions Bank, as Trustee, to be dated as of the date of its delivery, as the same may be amended or supplemented from time to time by the parties thereto.

“**Trustee**” means Regions Bank, in the capacity as Trustee.

Section 3 Authorization for the Transaction

The Transaction and the Refinancing are hereby approved. The Authorized Officer and 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 Transaction and effect the Refinancing, including the Financing Documents.

Section 4 Approval of Corporation, Issuance of the Series 2020 Bonds, and Rule 15c2-12 Undertaking

(a) The City hereby approves the formation, purposes, and activities of the Corporation as the same are set forth in the bylaws of the Corporation. Further, the City confirms Bobby McGee, Karen Caulder and Franklin Hines as the initial directors of the Corporation.

(b) The City hereby approves the issuance by the Corporation of the Series 2020 Bonds as a single series, or from time to time as several series of Bonds. In the event multiple series of bonds are issued, or in the event there is only issued a single series, the first series or single series, as appropriate, shall be issued within one year of the date hereof. No Bonds shall mature later than December 1, 2040. The foregoing authorization related to the issuance of the Series 2020 Bonds is explicitly conditioned on the prior or simultaneous execution by the Authorized Officer of the Purchase and Use Agreement and the Base Lease. The City also acknowledges that, in accordance with the provisions of the Purchase and Use Agreement, the City will acquire absolute title to the Facilities upon payment of all amounts due under the Purchase and Use Agreement; *provided, however*, that the City does not hereby waive its right to terminate the Purchase and Use Agreement prior to such payment in accordance with the provisions of the Purchase and Use Agreement.

(c) Any Authorized Officer is hereby authorized to execute and deliver, on behalf of the City (and the Corporation), the Continuing Disclosure Agreement in form substantially similar to that attached hereto at Exhibit C, with such changes thereto as such official, with advice of counsel, shall approve. The City hereby covenants and agrees to comply with and carry out its obligations pursuant to said Continuing Disclosure Agreement. Additionally, the Authorized Officer is authorized to contract with Digital Assurance Certification, L.L.C. (“**DAC**”) for certain dissemination services associated with the execution and delivery of the Continuing Disclosure Agreement. Should the City determine to contract with DAC, the City may execute an amendment to a prior Continuing Disclosure Agreement in lieu of a new such agreement.

Section 5 Approval of Base Lease, Purchase and Use Agreement, and Trust Agreement

(a) The Council has reviewed the Base Lease, the form of which is attached to this Ordinance as Exhibit A. The Base Lease is approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Base Lease were set out in this Ordinance in its entirety. The Authorized Officer 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 memoranda thereof) to be recorded in the office of the Register of Deeds for Darlington County. The Base Lease is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Authorized Officer. Such changes shall be made only after receipt of the advice of legal counsel and may include such terms and conditions as are useful or necessary to carry out the purposes of this Ordinance. The execution thereof by an Authorized Officer and the City Clerk constitutes conclusive evidence of approval of any and all changes or revisions therein from the form of Base Lease now before this meeting. Any amendment to the Base Lease shall be executed in the same manner. The Base Lease may be effected through one or more Base Leases.

(b) The Council has reviewed the Purchase and Use Agreement, the form of which is attached to this Ordinance as Exhibit B. The Purchase and Use Agreement is approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Purchase and Use Agreement were set out in this Ordinance in its entirety. The Authorized Officer is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the City

Clerk is hereby authorized, empowered and directed to attest, the Purchase and Use Agreement in the name and on behalf of the City, and thereupon to cause the Purchase and Use Agreement to be delivered to the Corporation and to cause the Purchase and Use Agreement (or memoranda thereof) to be recorded in the office of the Register of Deeds for Darlington County. The Purchase and Use Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by an Authorized Officer. Such changes shall be made only after receipt of the advice of legal counsel and may include such terms and conditions as are useful or necessary to carry out the purposes of this Ordinance. The execution thereof by the Authorized Officer and the City Clerk constitutes conclusive evidence of approval of any and all changes or revisions therein from the form of the Purchase and Use Agreement now before this meeting. Any amendment to the Purchase and Use Agreement shall be executed in the same manner. The Purchase and Use Agreement may be effected through one or more Purchase and Use Agreements.

(c) The City is not a party to the Trust Agreement, but the City acknowledges that the Trust Agreement is an integral part of the documents related to the Transaction. The form of the Trust Agreement previously presented to the City Manager and made available for review by the City Council is hereby approved by the City with such additions, deletions, amendments and changes as may be deemed necessary by the parties thereto and approved by the City Manager prior to the consummation of the Transaction. Such changes shall be made only after receipt of the advice of legal counsel to the City and may include such terms and conditions as are useful or necessary to carry out the purposes of this Ordinance. The Trust Agreement may be effected through one or more Trust Agreements, as any of such agreements may be supplemented or amended to carry out the Transaction.

Section 6 Selection of Trustee

The City and the Corporation have selected Regions Bank as the Trustee in connection with the Transaction. The City Manager is hereby authorized to effect, with advice from bond counsel and the consent of the Corporation, the engagement of the Trustee.

Section 7 Execution of Documents

(a) The Authorized Officer is 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 Purchase and Use Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officer in executing and delivering any of such documents is hereby fully authorized. The Authorized Officer is authorized to negotiate and execute any bond purchase agreement, term sheet, or other purchase document related to the Series 2020 Bonds, and actions previously taken to such effect are fully ratified.

(b) The City Manager is hereby authorized on behalf of the City to “deem final” the Preliminary Official Statement within the meaning of Rule 15c2-12 adopted by the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, and to execute and deliver the final Official Statement.

Section 8 Tax Covenants

(a) The Corporation is issuing the Series 2020 Bonds on behalf of the City. Without limiting the generality of the foregoing, the City represents and covenants, except as to any portion of the Series 2020 Bonds that may be issued on a federally taxable basis, that:

(1) The City will not permit the proceeds of the Series 2020 Bonds or any facility financed or refinanced with the proceeds thereof to be used in any manner that would cause the Series 2020 Bonds to meet the private business tests of Section 141(b)(1) and (2) of the Code or the private loan financing test of Section 141(c) of the Code.

(2) The City is not a party to nor will it enter into any contracts with any person for the use or management of any facility provided with the proceeds of the Series 2020 Bonds that do not conform to the guidelines set forth in Revenue Procedure 2017-13.

(3) The City will not sell or lease the Facilities (as defined in the Purchase and Use Agreement) obtained with proceeds of the Series 2020 Bonds or the Real Property to any person unless it obtains the opinion of Bond Counsel that such lease or sale will not adversely affect the designation of the Series 2020 Bonds as tax-exempt bonds.

(4) The Bonds will not be federally guaranteed within the meaning of Section 149(b) of the Code.

(5) The City, pursuant to Purchase and Use Agreement, will have exclusive beneficial use of the Project for the life of the Series 2020 Bonds for the purposes of Sec. 3.041(a) of Rev. Proc. 82-26, 1982-1 CB 476.

(b) In the event that at the time of closing of the Series 2020 Bonds, the City (including the Corporation's issuance of the Series 2020 Bonds) expects to issue no tax-exempt obligations in a given calendar year which, along with the Series 2020 Bonds, would aggregate more than \$10,000,000, an Authorized Officer may designate such Series 2020 Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code.

Section 9 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 10 Repeal of Inconsistent Ordinances and Resolutions

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 11 Effective Date

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

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DONE, RATIFIED AND ENACTED this 14th day of July, 2020.

**CITY OF HARTSVILLE,
SOUTH CAROLINA**

(SEAL)

Carl M. (Mel) Pennington IV, Mayor

Attest:

Sherron L. Skipper, City Clerk

First Reading: June 9, 2020
Public Hearing: July 14, 2020
Second Reading: June 14, 2020

EXHIBIT A

Form of Base Lease

EXHIBIT B

Form of Purchase and Use Agreement

EXHIBIT C

Form of Continuing Disclosure Agreement

EXHIBIT D

Description of the Real Property

The Real Property described for the purposes of this Ordinance and the transactions contemplated hereby as follows; provided that the City Manager is directed to obtain a current legal description of the Real Property to include as an exhibit to the Base Lease prior to the execution thereof:

City Hall:

100 East Carolina Avenue, Hartsville, South Carolina (TMS Nos. 056-06-02-037 & 056-06-02041)

Lawton Park:

716 Prestwood Drive, Hartsville, South Carolina (TMS No. 055-14-01-037)