

ORDINANCE NO. 226.2014

AN ORDINANCE AUTHORIZING KERSHAW COUNTY, SOUTH CAROLINA TO ENTER INTO AN INSTALLMENT PURCHASE TRANSACTION IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING EIGHT MILLION FIVE HUNDRED THOUSAND DOLLARS (\$8,500,000) TO FINANCE ALL OR A PORTION OF THE COSTS RELATING TO THE IMPROVEMENTS TO COUNTY JAIL FACILITIES, IMPROVEMENTS TO RECREATIONAL FACILITIES OF THE COUNTY, IMPROVEMENTS TO THE CAMPUS OF CENTRAL CAROLINA TECHNICAL COLLEGE, AND FOR OTHER AUTHORIZED PURPOSES, ALL AS MORE FULLY DESCRIBED HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS INCLUDING, WITHOUT LIMITATION, THE BASE LEASE AGREEMENT AND THE INSTALLMENT PURCHASE AND USE AGREEMENT; DELEGATING THE AUTHORITY TO THE CHAIRMAN OF COUNTY COUNCIL AND COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED, BY THE COUNTY COUNCIL OF KERSHAW COUNTY, AS FOLLOWS:

Section 1. 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:

“Bank” means a financial institution as approved by the County Representative.

“Base Lease” means the Base Lease Agreement by and between the County and the Corporation to be dated as of the date of its delivery, the form of which shall be negotiated, determined and finalized by a County Representative.

“Bond Agreement” means the Bond Agreement by and between the Corporation and the Trustee to be dated as of the date of its delivery.

“Chairman of County Council” shall mean the Chairman of County Council of Kershaw County.

“Clerk to County Council” shall mean the Clerk to County Council of Kershaw County.

“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.

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KERSHAW COUNTY, S.C.

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

“County” means Kershaw County, South Carolina.

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

“County Council” means the County Council of Kershaw County.

“County Representative” shall mean the County Administrator, the Chairman of County Council or any other County official or representative selected to act on behalf of the County.

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

“Installment Purchase Agreement” means the Installment Purchase and Use Agreement by and between the Corporation and the County to be dated as of the date of its delivery, the form of which shall be negotiated, determined and finalized by a County Representative.

“Ordinance” means this Ordinance of the County.

“Project” means certain improvements to (i) the campus of Central Carolina Technical College, (ii) the County’s jail facilities, (iii) recreational facilities of the County, and (iv) such other property of the County as determined by the County Council, the final scope and description of each component thereof to be determined by a County Representative.

“Real Property” means all those certain pieces, parcels or tracts of land as described on Exhibit B hereto, including the existing improvements thereon as of the date hereof, or such portions thereof as shall be finally determined by a County Representative.

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

“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 County Representative.

Section 2. Findings and Determinations.

The County Council hereby finds and determines:

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

(b) Section 4-9-30 of the South Carolina Code authorizes counties to “lease, sell, or otherwise dispose of real and personal property.” In order to “sell, lease, or contract to sell or lease real property owned by the county,” a county is required to hold a public hearing on such matter prior to final council action being taken. Section 4-9-130 of the South Carolina Code. In holding the public hearing as set forth in Section 8 hereof, the County shall be in compliance with the provisions of the South Carolina Code.

(c) The financing of the Project will be effected through an installment purchase transaction pursuant to which the County will enter into the Base Lease and the Installment Purchase Agreement, the final forms of which shall be approved by a County Representative (the “*Financing*”).

(d) Pursuant to the provisions of the Base Lease, the County will lease the Real Property to the Corporation in consideration of (i) the issuance by the Corporation of installment purchase revenue bonds which will be issued pursuant to the provisions of the Bond Agreement, and (ii) the payment of Base Lease Rent (as defined in the Base Lease) to the County to be spent on certain capital improvements. The installment purchase revenue bonds will be paid by the Corporation from the receipts of certain payments (the “*Installment Payments*”) made by the County to the Corporation under the provisions of the Installment Purchase Agreement. Pursuant to the provisions of the Installment Purchase Agreement, the County will agree to purchase from the Corporation the Facilities (as defined in the Installment Purchase Agreement) by making the Installment Payments.

(e) The installment purchase revenue bonds will be issued by the Corporation in the form of a not exceeding \$8,500,000 Installment Purchase Revenue Bond (2014 County Projects), Series 2014 (the “*Series 2014 Bond*”), the proceeds of which will be used to (i) defray all or a portion of the costs of the Project, (ii) fund a debt service reserve fund, if any, and (iii) pay the costs of issuance of the Series 2014 Bond. To the extent excess proceeds are available after the completion of the Project, such moneys may be used to defray the costs of any other capital improvements in the County.

(f) It is understood that the Series 2014 Bond shall be purchased by a Bank.

(g) The rights to receive Installment Payments shall be assigned by the Corporation to the Trustee under the Bond Agreement as security and the source of payment for the Series 2014 Bond.

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

Section 3. Authorization for the Project.

The Project is hereby approved. The County Representative or such other appropriate officers and agents of the County are empowered and directed to negotiate, execute and deliver contracts, agreements, certificates and conveyances necessary or convenient to accomplish the Project, including, without limitation, the Financing Documents.

Section 4. Approval of Corporation and Issuance of Series 2014 Bond.

The County hereby approves the Corporation and the issuance by the Corporation of the Series 2014 Bond. The County also acknowledges that, in accordance with the provisions of the Installment Purchase Agreement, the County will acquire absolute title to the Facilities upon payment of all amounts due under the Installment Purchase Agreement; *provided, however*, that the County 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 County Representative to Approve Base Lease, Installment Purchase Agreement, and Bond Agreement.

The County Council hereby approves the County Representative to negotiate, make such determinations as may be necessary, and finalize the Base Lease. The Chairman of County Council or the County Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to County Council is hereby authorized, empowered and directed to attest, the Base Lease in the name and on behalf of the County, 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 the County. Any amendment to the Base Lease shall be executed in the same manner.

The County Council hereby approves the County Representative to negotiate, make such determinations as may be necessary, and finalize the Installment Purchase Agreement. The Chairman of County Council or the County Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to County Council is hereby authorized, empowered and directed to attest, the Installment Purchase Agreement in the name and on behalf of the County, 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 the County. Any amendment to the Installment Purchase Agreement shall be executed in the same manner.

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

Section 6. Execution of Documents.

The Chairman of County Council and the County Administrator, or either one of them acting alone, and the Clerk to County Council 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 Chairman of County Council and the County Administrator shall approve, is hereby fully authorized. The County Council hereby retains the law firm of Pope Zeigler, LLC, as bond counsel with respect to the transaction authorized by this Ordinance.

Section 7. Tax Covenants.

The Corporation is issuing the Series 2014 Bond on behalf of the County. Without limiting the generality of the foregoing, the County represents and covenants that:

(a) The County will not permit the proceeds of the Series 2014 Bond or any facility financed with the proceeds thereof to be used in any manner that would cause the Series 2014 Bond 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.

(b) The County 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 2014 Bond that do not conform to the guidelines set forth in Revenue Procedure 97-13.

(c) The County will not sell or lease the Facilities obtained with proceeds of the Series 2014 Bond or the Real Property to any person unless it obtains the opinion of nationally recognized bond counsel that such lease or sale will not adversely affect the designation of the Series 2014 Bond as a tax-exempt bond.

(d) The Series 2014 Bond will not be federally guaranteed within the meaning of Section 149(b) of the Code.

Section 8. Public Hearing.

In accordance with the provisions of Section 4-9-130 of the South Carolina Code, a public hearing is required prior to final action by the County Council to “sell, lease or contract to sell or lease real property owned by the County,” and, accordingly, a notice in the form attached hereto as Exhibit A shall be published in a newspaper of general circulation in the County either: (1) not less than fifteen (15) days prior to the date established for such public hearing; or (2) as provided in Section 15-29-40 of the South Carolina Code. Such public hearing shall be scheduled to occur prior to third reading of this Ordinance.

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 County, 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 County Council.

[Execution Page Follows]

Done, Ratified And Enacted This 27th day of May, 2014.



KERSHAW COUNTY, SOUTH CAROLINA


Kershaw County Council

Attest



Merri M. Seigler
Clerk to County Council

First Reading (by title only): April 22, 2014
Second Reading: May 13, 2014
Public Hearing: May 13, 2014
Third Reading: May 27, 2014

EXHIBIT A

Form of Notice of Public Hearing

NOTICE OF PUBLIC HEARING

On May 13, 2014 at 5:30 p.m., the County Council of Kershaw County (the "County Council"), the governing body of Kershaw County, South Carolina (the "County"), will hold a public hearing in the County Council's chambers, which are located at 515 Walnut Street, Camden, South Carolina, to discuss an installment purchase transaction between the County and a corporation to be known as the Kershaw Public Facilities Corporation (the "Corporation") regarding the financing of the Project (as defined below) and the proposed issuance by the Corporation of a not exceeding \$8,500,000 Installment Purchase Revenue Bond (2014 County Projects), Series 2014 (the "Bond"). Pursuant to an ordinance of the County Council entitled, "AN ORDINANCE AUTHORIZING KERSHAW COUNTY, SOUTH CAROLINA TO ENTER INTO AN INSTALLMENT PURCHASE TRANSACTION IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING EIGHT MILLION FIVE HUNDRED THOUSAND DOLLARS (\$8,500,000) TO FINANCE ALL OR A PORTION OF THE COSTS RELATING TO THE IMPROVEMENTS TO COUNTY JAIL FACILITIES, IMPROVEMENTS TO RECREATIONAL FACILITIES OF THE COUNTY, IMPROVEMENTS TO THE CAMPUS OF CENTRAL CAROLINA TECHNICAL COLLEGE, AND FOR OTHER AUTHORIZED PURPOSES, ALL AS MORE FULLY DESCRIBED HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS INCLUDING, WITHOUT LIMITATION, THE BASE LEASE AGREEMENT AND THE INSTALLMENT PURCHASE AND USE AGREEMENT; DELEGATING THE AUTHORITY TO THE CHAIRMAN OF COUNTY COUNCIL AND COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO" (the "Ordinance"), the County Council intends to authorize the County to enter into an installment purchase transaction for the purposes of providing funds to finance the Project and acknowledge the issuance of the Bond. The Ordinance is expected to be finally enacted by the County Council on May 27, 2014, which will be subsequent to the public hearing noticed herein. The Bonds will be issued by the Corporation for the purpose of providing funds to defray all or a portion of the costs of (i) providing for certain improvements to (i) the campus of Central Carolina Technical College, (ii) the County's jail facilities, (iii) recreational facilities of the County, and (iv) such other property of the County as determined by the County Council (collectively, the "Project"), and (ii) costs related to the issuance of the Bond.

At the time and place fixed for said public hearing, all taxpayers, residents or other interested persons who appear will be given an opportunity to express their views for or against the enactment of the Ordinance. Assistance is available for those who are visually or hearing impaired.

For assistance, please call Ms. Merri Seigler, Clerk to County Council, telephone (803) 425-1500.

EXHIBIT B

Description of the Real Property

Jail Site

All that piece, parcel or tract of land lying, being and situate in the City of Camden, Kershaw County, South Carolina, containing sixteen and fifty-one hundredths (16.51) acres, more or less, and being more particularly shown as Parcel "A" on that plat prepared by Daniel Riddick and Associates, Inc., dated April 16, 1998, and recorded in the office of the Clerk of Court for Kershaw County in Plat Book A115, at page 7, and bound as follows: NORTHEAST by other property of Grantors; SOUTH and SOUTHWEST by property of the City of Camden, and NORTHWEST by property now or formerly of Bobbie Shirley, the center line of the run of Bateman Ditch being the line.

ALSO

All that piece, parcel or tract of land lying, being and situate in the City of Camden, Kershaw County, South Carolina, containing three and seventy-two hundredths (3.72) acres, more or less, being more particularly shown as Parcel "B" on the plat prepared by Daniel Riddick and Associates, Inc., hereinabove referred to, extending from Ehrenclou Drive southwestwardly from point A to point B, as shown on said plat, and being bound on the EAST by Ehrenclou Drive, on the SOUTH by other property of Grantors, on the WEST by property first above described and NORTH by other property of Grantors, all as shown by said plat.

The parcels above described are portions of that property conveyed to Alfred M. Ehrenclou and John O. Ehrenclou by deed of Core Morris Ehrenclou dated June 13, 1969, and recorded in the office of the Clerk of Court for Kershaw County in Deed Book HW, at page 640. All interest of John O. Ehrenclou therein was subsequently conveyed to the Grantors herein by deed of Moultrie B. Burns, Jr., Special Referee for Kershaw County, dated October 1, 1993, and recorded in said office in Record Book 211 at page 111.

County Tax Map Number portion of C284-00-00-013.

Central Carolina Technical College Site

All that piece, parcel or tract of land lying, being and situate in the State of South Carolina, County of Kershaw, south of Camden, on the southeast side of Century Boulevard, containing 40.58 acres, more or less, and being more particularly shown as a combination of Parcel A (36.75 acres) and Parcel B (3.83 acres) on that plat prepared by Robert H. Lackey, R.L.S., dated December 20, 2006, and recorded in the office of the Register of Deeds for Kershaw County in Plat Book C2 at page 3.

The above-described property is a portion of that property conveyed to the Mulberry Plantation, Inc., by deed of Williams Daniels Partnership dated October 3, 1995, and recorded in Book 374, page 77 on October 4, 1995.

Tax Map #: 299-00-00-049 (portion)

All that piece, parcel or tract of land being and situate in the State of South Carolina, County of Kershaw, south of Camden on the southeast side of Century Boulevard containing 1.57 acres, more or less, and more particularly shown as Parcel C on that plat prepared by Robert H. Lackey Surveying, Inc., RLS, dated December 20, 2006 and recorded in the Office of Register of Deeds for Kershaw County in Plat Book C2, at Page 3.

The foregoing premise is a portion of that conveyed to Camden Business Associates, LLC by deed of Norfolk Southern Railway Company recorded in the Office of the Register of Deeds for Kershaw County in Book 917, at Page 72.

Tax Map No.: 299-00-00-049 (portion) and 299-00-00-079 (portion)

All that piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of Kershaw, near the City of Camden, adjoining Century Boulevard, containing 1.04 acres, more or less, not being more particularly shown as Parcel A on that plat prepared by Robert H. Lackey, RLS, dated January 14, 2009, and recorded in the office of the Register of Deeds for Kershaw County in Plat Book 2501 at page 4.

The above-described property is a portion of the property conveyed by Grantor by deed of Williams Daniels Partnership dated October 3, 1995, and recorded in Book 374, page 77 on October 4, 1995.

Tax Map #: 299-00-00-049 (portion)

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

I, the undersigned, Clerk to Council of Kershaw County, South Carolina (the "**County**"), DO HEREBY CERTIFY THAT:

The foregoing constitutes a true, correct and verbatim copy of an ordinance (the "**Ordinance**") enacted on May 27, 2014 by the County Council of Kershaw County, the governing body of the County (the "**County Council**"), which was given three readings on three separate days, with an interval of not less than seven days between the second and third readings. The original of the Ordinance is duly entered in the permanent records of minutes of meetings of the County Council, in my custody as such Clerk to County Council.

Said meetings were duly called, and all members of the County Council were notified of the same; that a quorum of the membership attended and remained throughout the proceedings incident to the enactment of the Ordinance.

As required by Chapter 4, Title 30 of the Code of Laws of South Carolina 1976, as amended, a notice of the meeting (including the date, time, and place thereof, as well as an agenda) was posted prominently in the offices of the County at least twenty-four hours prior to said meetings. In addition, the local news media and all persons requesting notification of meetings of the County Council were notified of the time, date, and place of such meetings, and were provided with a copy of the agendas therefor at least twenty-four hours in advance of such meetings.

The Ordinance is now of full force and effect, and has not been modified, amended or repealed.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the County, this 27th day of May, 2014.



Merri M. Seigler

Merri M. Seigler
Clerk to County Council

Second Reading: April 22, 2014
May 13, 2014
Public Hearing: May 13, 2014
Third Reading: May 27, 2014