

ORDINANCE NO. 2002-102

AN ORDINANCE AUTHORIZING THE CITY OF COLUMBIA, SOUTH CAROLINA, TO ENTER INTO AND APPROVING THE FORM AND TERMS OF AN INSTALLMENT SALE AGREEMENT AND A BASE LEASE BETWEEN THE CITY OF COLUMBIA, SOUTH CAROLINA, AND THE COLUMBIA PUBLIC FACILITIES CORPORATION AND AN ASSIGNMENT AGREEMENT AMONG THE CITY OF COLUMBIA, SOUTH CAROLINA, THE COLUMBIA PUBLIC FACILITIES CORPORATION AND WACHOVIA BANK, NATIONAL ASSOCIATION, AS TRUSTEE; APPROVING THE FORM AND TERMS OF A TRUST AGREEMENT BETWEEN THE COLUMBIA PUBLIC FACILITIES CORPORATION AND WACHOVIA BANK, NATIONAL ASSOCIATION, AS TRUSTEE, IN CONNECTION WITH THE CONSTRUCTION OF A REGIONAL CONVENTION CENTER IN THE CITY OF COLUMBIA, SOUTH CAROLINA; CONSENTING IN THE INSTALLMENT SALE AGREEMENT TO THE ISSUANCE OF CERTIFICATES OF PARTICIPATION IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$40,000,000; AND OTHER MATTERS RELATED THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA, SOUTH CAROLINA, 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:

"Assignment Agreement" means the Assignment Agreement dated as of a date as may be determined by the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, among the City, the Corporation and the Trustee.

"Base Fee Payments" means that portion of the Fee Payments specified as Base Fee Payments in the Installment Sale Agreement.

"Base Lease" shall mean the Base Lease dated as of a date as may be determined by the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, between the City and the Corporation, as amended and supplemented from time to time.

"Certificate" or "Certificates" means any one or all of the Certificates authorized by and secured under the Trust Agreement, including the Series 2002 Certificates and any Additional Certificates (as such terms are defined in the Trust Agreement).

"City" means the City of Columbia, South Carolina, a municipal corporation duly organized and existing under the laws of the State.

"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.

"Corporation" means Columbia Public Facilities Corporation, a nonprofit corporation organized and existing under the laws of the State, and its successors and assigns.

"Council" means the City Council of the City.

"Facilities" means the Land and the Project.

"Installment Sale Agreement" means the Installment Sale Agreement dated as of a date as may be determined by the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, between the Corporation and the City, as amended or supplemented from time to time.

"Intergovernmental Agreement" means the Intergovernmental Agreement among the City, Richland County and Lexington County.

"Land" means the parcels of real property described in Exhibit A of the Installment Sale Agreement.

"Lexington County" means Lexington County, South Carolina.

"Project" means the improvements to be acquired, constructed and installed in the City as set forth in Exhibit A attached hereto.

"Richland County" means Richland County, South Carolina.

"Trust Agreement" means the Trust Agreement dated as of a date as may be determined by the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, between the Corporation and the Trustee, pursuant to which the Certificates will be issued.

"Trustee" means Wachovia Bank, National Association, or any successor Trustee that may become the Trustee pursuant to the applicable provisions of the Trust Agreement.

"Underwriter" means Banc of America Securities LLC.

Section 2. Findings and Determinations. The Council hereby finds and determines:

A. The City is an incorporated municipality located in Richland County and Lexington County and as such possesses all powers granted to municipalities by the Constitution and laws of this State.

B. Pursuant to Section 5-5-10, Code of Laws of South Carolina 1976, as amended (the "South Carolina 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. Section 5-7-40 of the South Carolina Code empowers all municipalities to own and possess real and personal property.

D. The City intends to enter into the Base Lease with the Corporation whereby the Corporation will lease the Land from the City.

E. The Corporation intends to construct, furnish and equip on the Land the Project and to sell the Project to the City pursuant to the Installment Sale Agreement.

F. To undertake, construct and acquire the Project, it is proposed that the City enter into the Installment Sale Agreement under which:

(i) the Corporation will agree to cause to be issued and sold the Certificates;

(ii) the Corporation will acquire from the City the City's interests in the Project (the "City Interests," as more particularly defined in the Installment Sale Agreement), and the City will reacquire the City Interests from the Corporation;

(iii) the Corporation will make available to the City the proceeds from the sale of the Certificates for the purposes of defraying the cost of acquisition and construction of the Project (including the reimbursement of the City for other moneys of the City (the "City Moneys") expended therefor) and for such other purposes as are provided herein and in the Installment Sale Agreement and the Trust Agreement;

(iv) the City will agree to make Base Fee Payments and Additional Fee Payments, secured by Tourism Development Fees (as such terms are defined in the Installment Sale Agreement) imposed pursuant to Ordinance No. 96-003 of the City Council of the City enacted on March 26, 1996, and Tourism Development Fees received from Richland County and Lexington County pursuant to the Intergovernmental Agreement in such amounts and at such times as will be specified in the Installment Sale Agreement; and

(v) the Corporation and the City will enter into the Assignment and assign their interests in the Installment Sale Agreement, the Base Fee Payments and the Trust Agreement to the Trustee for the benefit of the owners of the Certificates.

G. The Council finds that the proceeds of the Certificates authorized by this Ordinance, as well as the Tourism Development Fees pledged in connection therewith, for the Project will be used for a public purpose and that the issuance of the Certificates is necessary and in the best interest of the City. The Project will be owned by the City. It is estimated that the period of construction of the Project will continue through the Spring of 2004.

H. It is now in the best interest of the City for the Council to approve the issuance and sale by the Corporation of the Certificates in the principal amount of not exceeding \$40,000,000. The proceeds of the Certificates shall be used for the purposes of (a) defraying the Costs of the Project (as defined in the Trust Agreement); and (b) paying the premiums for a surety bond to satisfy the reserve requirement for the reserve account created under the Trust Agreement and the municipal bond insurance policy; and (c) paying the costs of issuance of the Certificates.

I. The undertakings authorized by this Ordinance are necessary and in the best interest of the City and will assist and enhance the City in the acquisition and construction of the Project. The financing transaction authorized by this Ordinance for such purposes is necessary, and the proceeds therefrom will be issued for a corporate purpose and a public purpose of the City.

Section 3. Approval of Transaction. The City, for the purposes of the financing contemplated by the Base Lease, the Installment Sale Agreement and the Trust Agreement, represents that it currently owns the Land and all of such Land is located within the geographic boundaries of the City.

Pursuant to the Installment Sale Agreement, the City will sell the City Interests to the Corporation and will purchase the City Interests and all improvements to be constructed on such land as part of the Project, back from the Corporation in consideration of the payment by the City to the Corporation or its assigns of Base Fee Payments and certain Additional Fee Payments.

Pursuant to the Trust Agreement, the Corporation's right to receive the Base Fee Payments and rights to receive certain of the Additional Fee Payments, as provided in the Trust Agreement and in the Installment Sale Agreement (with certain exceptions as provided in the Trust Agreement and the Installment Sale Agreement), will be assigned to the Trustee.

There will be authenticated and delivered by the Trustee pursuant to the Trust Agreement one or more Certificates evidencing proportionate undivided interests in Base Fee Payments.

The net proceeds from the sale of the Certificates to the Registered Owners of the Certificates (the "Registered Owners") will be disbursed at the direction of the City, as agent for the Corporation (as provided in the Installment Sale Agreement), to pay the cost of acquisition and construction of the Project (or to reimburse the City for the City Moneys previously expended therefor), to pay the premium for a surety bond to satisfy the reserve requirement for the reserve account created under the Trust Agreement, to pay the costs of issuance of the Certificates, including the municipal bond insurance policy premium, and for such other purposes as are set forth in the Installment Sale Agreement and the Trust Agreement.

The Council does hereby approve the sale of the City Interests to the Corporation pursuant to the Installment Sale Agreement and the purchase of the City Interests by the City from the Corporation pursuant to the Installment Sale Agreement, such agreements being central aspects of the transaction through which the Certificates shall be issued, said issuance being approved herein. The Council does hereby ratify and approve the actions taken by certain officials and employees of the City in connection with the establishment and organization of the Corporation and authorize such officials and employees to take such further actions as may be necessary in connection therewith. The Council does hereby approve the purposes and activities of the Corporation with respect to the Corporation's actions consistent with this Ordinance and authorizes the consummation of the transactions authorized by this Ordinance.

Section 4. Certificates to Evidence Undivided Proportionate Interests in Obligations of the City. The City intends for the Certificates issued by the Corporation to be considered evidences of undivided proportionate interests in obligations of the City under Section 103(a) of the Code.

Section 5. Approval of Base Lease. The form, terms and provisions of the Base Lease, a copy of which has been presented to Council and filed with the Clerk of the City, be and are hereby approved. The Mayor or the City Manager, or either one of them acting alone, be and is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk of City be and 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. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby delegated the authority to approve such changes in the form, terms and provisions of the Base Lease as may be appropriate for the financing plan contemplated thereby. The execution of the Base Lease shall constitute 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.

Section 6. Approval of Installment Sale Agreement. The form, terms and provisions of the Installment Sale Agreement, a copy of which has been presented to Council and filed with the Clerk of the City, be and are hereby approved. The Mayor or the City Manager, or either one of them acting alone, be and is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk of City be and is hereby authorized, empowered and directed to attest, the Installment Sale Agreement in the name and on behalf of the City, and thereupon to cause the Installment Sale Agreement to be delivered to the Corporation. The

Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby delegated the authority to approve such changes in the form, terms and provisions of the Installment Sale Agreement as may be appropriate for the financing plan contemplated thereby. The execution of the Installment Sale Agreement shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Installment Sale Agreement now before this meeting. Any amendment to the Installment Sale Agreement shall be executed in the same manner.

Section 7. Approval of the Trust Agreement. The form of the Trust Agreement, a copy of which has been presented to Council and filed with the Clerk of the City, is hereby approved. The City does hereby approve and consent to the Trust Agreement with such changes in the form, terms and provisions thereof as the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, shall approve.

Section 8. Approval of Purchase Contract. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby delegated the authority to approve the form, terms and provisions of the Purchase Contract between the Underwriter and the City providing for the purchase and sale of the Certificates (the "Purchase Contract"), a copy of which has been presented to Council and filed with the Clerk of the City. The Mayor or the City Manager, or either one of them acting alone, be and is hereby authorized to execute, acknowledge and deliver the Purchase Contract in the name or and on behalf of the City without further authorization so long as the net interest costs of the Certificates does not exceed 6% per annum. The execution of the Purchase Contract shall constitute conclusive evidence of approval of the form, terms and provision of said Purchase Contract.

Section 9. Official Statement. The form and content of the Preliminary Official Statement to be dated as determined by the Underwriter, a copy of which has been presented to Council and filed with the Clerk of the City, pertaining to the sale of the Certificates by the Underwriter, and the distribution of the same, is hereby ratified and approved. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby authorized to approve the form of the Official Statement pertaining to the sale of the Certificates by the Underwriter, and to deem said Preliminary Official Statement to be "final" as described in SEC Rule 15c2-12(b)(1) for the purposes of such Rule.

Section 10. Trustee, Registrar and Paying Agent. The City hereby appoints and consents to the appointment of Wachovia Bank, National Association, as Trustee, Registrar and Paying Agent under the terms and conditions provided in the Trust Agreement. The Mayor or the City Manager, or either one of them acting alone, is hereby delegated the authority to determine a successor trustee or a replacement trustee if for any reason Wachovia Bank, National Association does not serve as Trustee under the Trust Agreement.

Section 11. Authorization. The Mayor or the City Manager, or either one of them acting alone, and the City Clerk and Finance Director are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be reasonably requested by the Corporation and the Trustee to effect the delivery of

the Base Lease, the Installment Sale Agreement, the Trust Agreement and the Purchase Contract in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor or the City Manager, or either one of them acting alone, shall approve, is hereby fully authorized. The authorization conferred herein shall extend to and include, but not be limited to, the documents and certificates reasonably expected to be necessary for the closing of the financing transaction, including, but not limited to, deeds or other instruments of conveyance, a general certificate of the City, a certificate as to the official statement, any designation of City representatives, and such other documents required to be executed in connection with the bond insurance policy or surety bond to be obtained with respect to the Certificates. The Council hereby retains the law firm of McNair Law Firm, P.A., as special counsel in connection with respect to the Certificates.

Section 12. Federal Tax Covenants. The City agrees and covenants that it will comply with all applicable portions of the Code, as in effect or hereafter amended, including Sections 103 and 141 through 150 thereof, and the regulations of the Treasury Department thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest components of the Base Fee Payments under the Installment Sale Agreement pursuant to the terms of the Certificates, including without limitation the proper use and expenditure of proceeds of the Certificates, the observation of the applicable investment limitations provided in the Code, the filing of information reports with the Internal Revenue Service and the rebate of certain arbitrage earnings on such proceeds to the United States Government.

Section 13. 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 14. Conflicts with Preceding Ordinances. Should conflicts arise between this and any preceding ordinances, this Ordinance shall prevail with respect to the conflicting sections.

All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings, to the extent of such conflict, are hereby repealed and this Ordinance shall take effect and be in full force from and after its enactment.

This Ordinance shall be forthwith codified in the Code of City Ordinances in the manner required by law.

ENACTED this 13th day of November, 2002.

CITY OF COLUMBIA, SOUTH CAROLINA

  
\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

  
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Clerk

First Reading: November 6, 2002  
Second Reading: November 13, 2002

## EXHIBIT A

### DESCRIPTION OF PROJECT

The construction, furnishing and equipping of the Columbia Metropolitan Convention Center, a 142,500 square foot facility to be located at the corner of Lincoln Street and Senate Street which will feature approximately 25,000 square feet of exhibit space, 15,500 square feet of meeting space and an 18,000 square foot ballroom.