

CHANGES TO EXHIBIT A OF
ORDINANCE NO. 2015-22,
FORM OF BASE LEASE
AGREEMENT, SINCE SPECIAL
CALLED MEETING VERSION OF
013017

AGENDA PACKET OF
FEBRUARY 6, 2017

ARTICLE IV TERMINATION

SECTION 4.1. Termination.

(a) This Base Lease shall terminate upon the completion of the Base Lease Term; provided, however, in the event the City exercises the option to purchase the Facilities as provided in Section 9.1 of the Purchase and Use Agreement and satisfies the conditions thereof, then this Base Lease shall be considered terminated through merger of the leasehold interest with the interest of the City and, provided further, that upon any partition of the Facilities pursuant to Section 2.4 of the Purchase and Use Agreement, this Base Lease shall be terminated with respect to that portion of the 2017 Real Property (the "*City Real Property*") relating to any City Facilities (as defined in the Purchase and Use Agreement) and the City Real Property shall no longer be subject to this Base Lease and the Corporation shall have no interest therein.

(b) The Corporation agrees, upon any termination or completion of the Base Lease Term or the exercise by the City of its option to purchase as provided in Section 9.1 of the Purchase and Use Agreement, to quit and surrender the 2017 Real Property and that all title and interest in the Facilities and the 2017 Real Property shall vest in the City free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances. The Corporation agrees, upon any partition of the Facilities provided for in Section 2.4 of the Purchase and Use Agreement, to quit and surrender the City Real Property and that all title and interest in the City Facilities and the City Real Property shall vest in the City free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances.

If an Event of Default under the Purchase and Use Agreement occurs or if the City fails to continue the Purchase and Use Agreement for the entire term thereof for any reason, the Corporation shall have the right of possession of the portion of the 2017 Real Property (the "*Corporation Real Property*") relating to the Corporation Facilities (as defined in the Purchase and Use Agreement) as the result of a partition as provided for in Section 2.4 of the Purchase and Use Agreement for the remainder of the Base Lease Term and shall have the right to sublease the Corporation Facilities or transfer its leasehold interest in the Corporation Real Property and in this Base Lease upon whatever terms and conditions it deems prudent; provided that the Corporation Facilities shall always be operated in compliance with all applicable governmental rules, regulations and orders. Both parties acknowledge that the City has an insurable interest in the Corporation Facilities but not in any additions, alterations, furnishings and fixtures provided in connection with the use of the Corporation Facilities by the Corporation or any person to whom the Corporation enters into a lease, license or other such agreement providing for occupancy temporary or long-term. Therefore, the City's obligation to provide insurance and pay taxes under the provisions of Section 3.5 hereof shall be limited to the 2017 Real Property and the Facilities as they existed as of the Partition Date (as defined in the Purchase and Use Agreement) and the Corporation shall provide the City with adequate public liability and comprehensive risk insurance covering ~~the use of~~ any additions, alterations, furnishings and fixtures to the Corporation Facilities acquired, constructed or installed after the Partition Date, and shall pay all taxes relating to any additions, alterations, furnishings and fixtures located therein for the remainder of the Base Lease Term and will furnish the City with

CHANGES TO EXHIBIT B OF
ORDINANCE NO. 2015-22,
FORM OF INSTALLMENT
PURCHASE AGREEMENT, SINCE
SPECIAL CALLED MEETING
VERSION OF 013017

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FEBRUARY 6, 2017

“Environmental Laws” means all federal, state and local laws, rules, regulations, ordinances, programs, permits, guidance, orders and consent decrees relating to health, safety and environmental matters, including, but not limited to, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, state and federal superfund and environmental cleanup programs and laws and U.S. Department of Transportation regulations.

“Event of Default” means the events set forth in Section 8.1 of this Purchase and Use Agreement.

“Event of Nonappropriation” means (i) the failure by the City, for any reason, to specifically budget and appropriate moneys for a Fiscal Year that may be lawfully used to pay amounts due hereunder for such Fiscal Year or (ii) the provision by a City Representative of written notice to the Corporation and the Trustee of the City’s intention to not appropriate funds that may be lawfully used to pay amounts due hereunder for a Fiscal Year. An Event of Nonappropriation will be deemed to occur on the earlier of the date on which the City gives notice to the Corporation and the Trustee under clause (ii) above or the ~~February~~January 15 ~~[Note: change this date to March 15 if the first Bond Payment Date is after March 1]~~ following the commencement of a Fiscal Year in which a budget has been adopted which fails to appropriate amounts due hereunder for such Fiscal Year; provided, however, that an Event of Nonappropriation may be waived as provided for in Section 4.7 herein. ~~The parties understand and agree that~~Notwithstanding the foregoing, an Event of Nonappropriation shall not be deemed to occur if the City adopts an ordinance prior to ~~February 15~~December 1 of any Fiscal Year authorizing the issuance of bonds, notes or other obligations for the purpose of paying all Installment Payments due in ~~such~~the succeeding Fiscal Year.

“Facilities” means the improvements currently existing and to be constructed on the 2017 Real Property (including the Existing Facilities and the 2017 Project (subject to Section 3.1 hereof)), including fixtures and any future additions, modifications and substitutions to any facilities on the 2017 Real Property and any personal property financed with the proceeds of the Series 2017B Bonds.

“Fiscal Year” means the fiscal year of the City, currently beginning on each January 1 and ending on the succeeding December 31.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies or terrorism; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials of any civil or military authority; insurrection; riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

“Hazardous Material” means and includes any pollutant, contaminant, or hazardous, toxic or dangerous waste, substance or material (including without limitation petroleum products, asbestos-containing materials and lead), the generation, handling, storage,

“*Security Documents*” means this Purchase and Use Agreement, the Base Lease, the Trust Agreement, financing statements, if any, and any other instruments or documents providing security for the Holders of the Series 2017B Bonds.

“*Series 2017B Bonds*” means any or all of the not exceeding \$69,000,000 Installment Purchase Revenue Bonds (City of North Augusta Project), Series 2017B of the North Augusta Public Facilities Corporation, authorized by and secured under the Trust Agreement, and as may be issued in a single series or from time to time in multiple series.

“*State*” means the State of South Carolina.

“*Taxable Series*” means a series of the Series 2017B Bonds so designated, the interest upon which is not excludable from income for federal income tax purposes.

“*Waiver Period*” means the period of time commencing on the date an Event of Nonappropriation is deemed to occur and ending and including the date on the later of (i) the next following ~~March~~February 1 ~~[change this date if the first Bond Payment Date is changed]~~ or (ii) the date on which the 2017 Reserve Sub-Account of the Reserve Account becomes fully depleted by the Trustee pursuant to the provisions of Section 5.5 of the Trust Agreement (provided, however, that such 2017 Reserve Sub-Account is deemed to be fully depleted when insufficient funds remain therein to make the payments required to be made to the Holders on the subsequent Bond Payment Date).

SECTION 1.2. Terms Defined in the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Trust Agreement unless the context clearly indicates to the contrary.

SECTION 1.3. City Representations, Warranties and Covenants. The City makes the following representations, warranties and covenants:

(a) The City is a political subdivision of the State and has full power and legal right to enter into this Purchase and Use Agreement and the Base Lease and to perform its obligations hereunder and thereunder. The City’s actions in making and performing its obligations under this Purchase and Use Agreement and the Base Lease have been duly authorized by all necessary governmental action and will not violate or conflict with any law or governmental rule or regulation, or any mortgage, agreement, instrument or other document by which the City or its properties are bound.

(b) The City is a political subdivision within the meaning of Section 103(c)(1) of the Code.

(c) The City will take such action as is necessary to assure that the 2017 Project is completed, furnished and occupied by the City. In the event the amounts available from the Bond Proceeds together with the Initial Installment Payments appear to be insufficient for such purpose, the City will use its best efforts to take one or more of the following steps: (i) cooperate with the Corporation to make such modifications or changes in the 2017 Project as will allow the cost thereof to be funded within the amount available from the Bond Proceeds

ARTICLE II
INSTALLMENT SALE OF FACILITIES; USE OF 2017 REAL PROPERTY AND
FACILITIES AND TERM THEREOF

SECTION 2.1. Installment Sale of Facilities; Use of 2017 Real Property and Facilities; Term. The Corporation hereby agrees to sell the Facilities to the City in accordance with the provisions hereof. On the date hereof, the Corporation has a valid leasehold interest in the 2017 Real Property and holds fee title to the improvements thereon.

Upon the payment of the Initial Installment Payment, the City shall obtain title to certain specific Facilities, as well as a certain undivided interest in the Facilities, identified at Exhibit E.

Upon the payment of each payment of Base Payments from funds other than amounts constituting Bond Proceeds (including income from the investment of such amounts), title to an undivided interest in the Facilities equal to that percentage of the Purchase Price represented by such payment will transfer from the Corporation to the City without further action by either party hereto.

Any prepayment of Base Payments which is used to redeem the Series 2017B Bonds will result in a recalculation of the Purchase Price to take account of such prepayment and, upon the making of such prepayment, the City shall be credited with an undivided ownership interest in the Facilities equal to that percentage of the total Purchase Price, as adjusted, represented by the total of all Base Payments made, including the prepayment on such date.

Subject to the provisions of Article VIII hereof, the City shall have the exclusive right to occupy and use the 2017 Real Property and the Facilities during the term hereof. Subject to the provisions of Sections 2.2 and 2.3 hereof, this Purchase and Use Agreement shall be for a term beginning with the date of execution and delivery hereof, and ending on _____ 1, 20__.

During the term hereof, the City may permit use of portions of the 2017 Real Property and the Facilities subject to the following limitations: (i) the 2017 Real Property and the Facilities shall not be used in any manner that interferes with the use of such property by the City for the purposes for which it was designed or is then being used; (ii) any such agreement shall, subject to the provisions of any existing non-disturbance agreement between the Corporation and [entity leasing baseball stadium and support facilities], be voidable by the Trustee upon the occurrence of an Event of Default or an Event of Nonappropriation hereunder; and (iii) the City shall monitor all such use to ensure continued compliance with the provisions of the Federal Tax Certificate, if any, relating to any Series 2017B Bonds and Section 5.3 hereof.

SECTION 2.2. Termination. The term of this Purchase and Use Agreement shall terminate upon the earliest of any of the following events:

- (a) The occurrence of an Event of Nonappropriation which is not thereafter duly waived or cured;

ARTICLE IV
INSTALLMENT PAYMENTS; ASSIGNMENT TO TRUSTEE

SECTION 4.1. Installment Payments.

(a) Installment Payments to Constitute a Current Expense of the City. The Corporation and the City understand and intend that the obligation of the City to pay Installment Payments hereunder shall constitute a current expense of the City and are dependent upon lawful appropriations of funds being made by the Council from Available Sources to pay Installment Payments due in each Fiscal Year hereunder, and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the Available Sources, general tax revenues, funds, moneys or credit of the City, apart from the TIF Obligation, which is enforceable in accordance with its terms.

It is understood and agreed that the Initial Installment Payments shall consist of payments in the amount of \$~~14,017,266~~ paid by the City in the amounts and at the times set forth on Exhibit H hereof and that the sources of funds from which the City intends to make the Initial Installment Payments are Available Sources, and the City has identified such sources and approved the amounts of such funds from such sources for use in making the Initial Installment Payments.

(b) Payment of Base Payments. Subject to an Event of Nonappropriation as described in Section 4.7 hereof, on or before the 15th day prior to each Bond Payment Date during the period this Purchase and Use Agreement is in effect, the City shall pay to the Trustee as assignee of the Corporation, the Base Payments (exclusively from Available Sources specifically budgeted and appropriated for such purpose in lawful money of the United States of America), which payments shall be made to the Trustee as assignee of this Purchase and Use Agreement, in the amounts set forth on Exhibit D hereto; provided, that nothing herein shall constitute a pledge of the Available Sources, general tax revenues, funds, moneys or credit of the City, apart from the TIF Obligation, which is enforceable in accordance with its terms, and payments on account thereof, if and when received by the Trustee, shall satisfy the City's obligation to make any Base Payment then due and shall constitute such Base Payment to the extent received. Each payment of the Base Payments shall be in consideration for the conveyance of title to an undivided ownership interest in the Facilities as and to the extent provided in Section 2.1 hereof. As further consideration for the receipt of the Base Payments and the Initial Installment Payments, the City shall be entitled to the use and occupancy of all of the 2017 Real Property and the Facilities during the applicable Fiscal Year in which such payments are or will be made.

(c) Payment of Additional Payments. The City agrees to pay, subject to the provisions of Section 4.7 hereof, the following amounts as Additional Payments together with such other sums as are provided for herein:

(i) The amounts provided for in Sections 4.2 and 4.4 hereof to the parties referred to therein;

The City, in all events, shall cooperate with the Corporation and the Trustee in making the partition required under Section 2.4 hereof and shall vacate and deliver over to the Trustee the Corporation Facilities no later than 60 days after the partition report becomes final in accordance with Section 2.4 hereof.

The Trustee shall, upon the occurrence of an Event of Nonappropriation, be entitled to all moneys then on hand and being held in all funds created under the Trust Agreement for the benefit of the Holders of the Series 2017B Bonds. After the expiration of the Fiscal Year during which an Event of Nonappropriation occurs, if such occurs by notice, or the ~~March~~February 2 following (i) the ~~March 1~~January 15 on which the City fails to specifically budget and appropriate sufficient moneys to pay, ~~or~~the Installment Payments hereunder, or (ii) the December 1 on which the City fails to enact an ordinance authorizing the issuance of general obligation bonds for the purpose of paying, the Installment Payments hereunder, the Trustee may or shall, as the case may be, proceed to exercise its remedies, liquidate its interest in this Purchase and Use Agreement or lease the Corporation Facilities (after the partition and delivery thereof pursuant to Section 2.4 hereof) as provided in Section 8.2 hereof. All property, funds and rights acquired by the Trustee by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Trustee for services performed as Trustee, shall be held by the Trustee for the benefit of the Holders of the Bonds as set forth in the Trust Agreement.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, in the event that the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement, or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including attorneys' and other fees and expenses of the Trustee, and all other amounts which are payable hereunder, in excess of the principal amount of the Outstanding Series 2017B Bonds at the time of the Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the City by the Trustee, its assigns or its lessee.

[END OF ARTICLE IV]

EXHIBIT E

VALUATION OF FACILITIES*

Assigned Value as of Date of Execution and
Delivery of Agreement*

Name of Facility
Stadium
Medac Deck
Hotel Deck
City Hall
Conference Facilities
Infrastructure
Park

<u>Payment Date</u>	<u>Initial Installment Payment</u>	<u>Base Payments Allocated to Purchase Price</u>	<u>Percentage of Facilities Purchased*</u>	<u>Payment Date</u>	<u>Base Payments Allocated to Purchase Price</u>	<u>Percentage of Facilities Purchased*</u>
	\$14,017,266					

* Assuming completion of 2017 Project as of date of execution and delivery of this Purchase and Use Agreement. After the Completion Date, the assigned values of the Facilities and the percentages thereof being purchased shall be recalculated based upon final construction costs of the Facilities.

CHANGES TO TRUST
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described in the said requisition), and the Project Fund shall be closed and any proceeds therein, shall be deposited to the Bond Fund.

SECTION 5.5. CREATION OF BOND FUND, FACILITIES PURCHASE ACCOUNT AND RESERVE ACCOUNT.

(a) There is hereby created in the custody of the Trustee a separate trust fund to be designated the "Bond Fund." Within the Bond Fund there shall be established a Facilities Purchase Account and a Reserve Account. There shall be deposited in the Bond Fund (and credited, as required by this Trust Agreement or the Purchase and Use Agreement, to appropriate Accounts and subaccounts therein), amounts sufficient to pay the principal and premium, if any, of and interest on the Series 2017B Bonds from the Base Payments and the TIF Payments to be made by the City to the Trustee, as assignee of the Corporation, under the terms of the Purchase and Use Agreement. Upon the issuance of the Series 2017B Bonds, one subaccount (the 2017 Reserve Sub-Account) shall be created in the Reserve Account of the Bond Fund for the benefit of the Series 2017B Bonds. The Reserve Requirement with respect to the Series 2017B Bonds shall be equal to the 2017 Reserve Requirement. Notwithstanding anything in this Trust Agreement to the contrary, upon the partial refunding of the Series 2017B Bonds, the Trustee shall recalculate the 2017 Reserve Requirement taking into account such refunding. If, at the time of such refunding, there shall exist any amounts in the 2017 Reserve Sub-Account in excess of the 2017 Reserve Requirement, such excess amounts shall be disbursed upon written direction of an Authorized Corporation Representative, subject to the provisions of Section 5.5(f)(iii) hereof.

Upon the issuance of any series of Additional Bonds hereunder, (i) one or more separate subaccounts shall be created in the Reserve Account of the Bond Fund to provide for any Reserve Requirement with respect to such Additional Bonds with the intent being that the Series 2017B Bonds and any Additional Bonds shall only be payable from the subaccounts of the Reserve Account established with respect to such series of Bonds upon the issuance thereof and (ii) a separate subaccount shall be created in the Facilities Purchase Account for purposes of making payment on each series of Bonds with the intent being that the Series 2017B Bonds and any Additional Bonds shall only be payable from the subaccounts of the Facilities Purchase Account established with respect to such series of Bonds upon the issuance thereof.

(b) The Bond Fund (and the Accounts and subaccounts therein) and the moneys and Permitted Investments therein shall be used solely and exclusively for the payment of principal of, premium, if any, and interest on the Bonds as the same become due, except as otherwise provided in this Trust Agreement.

(c) The Trustee shall set aside from moneys in the Bond Fund amounts sufficient to make timely payments of the principal of, premium, if any, and interest on the Bonds.

(d) Amounts due with respect to a particular series of Bonds, except as provided in the remainder of this Section 5.5, shall be payable as they become due in the following order, (i) first, from amounts in the applicable subaccount of the Facilities Purchase Account; (ii) second, from the moneys available from the applicable subaccounts of the Reserve Account; (iii) third, from other Revenues to the extent available; and (iv) fourth, from any other source