



CITY COUNCIL

SPECIAL CALLED

AGENDA OF

SEPTEMBER 5, 2017

Administration Department



Interoffice Memorandum

TO: Mayor and City Council

FROM: Robert A. Pettit, Mayor

DATE: September 1, 2017

SUBJECT: Special Called Meeting of Tuesday, September 5, 2017

Pursuant to Section 2-37, entitled "Calling Special Meetings," of the Code of Laws of North Augusta, South Carolina, a Special Called Meeting is called for **Tuesday, September 5, 2017 at 6:00 P. M.** in the Municipal Center 3rd Floor Council Conference Room/Council Chambers located at 100 Georgia Avenue, North Augusta, South Carolina.

The purpose of the Special Called Meeting is as follows:

ITEM 1. FINANCE: Resolution 2017-37 - A Resolution to Authorize the City to Enter into an Amendment to Base Lease Agreement and Installment Purchase and Use Agreement; and to take such Actions as are Necessary in Furtherance of the Subdivision of the Clubhouse

A resolution has been prepared for Council's consideration authorizing the City to enter into an Amendment to the Base Lease Agreement and Installment Purchase and Use Agreement and to take such actions as are necessary in furtherance of the Subdivision of the Clubhouse.

Please see **ATTACHMENT NO. 1** for the proposed resolution and agreement.

ITEM 2. PLANNING: Ordinance No. 2017-10 - An Ordinance Establishing the Department of Planning and Development, Third and Final Reading

An ordinance has been prepared for Council's consideration on third and final reading establishing the Department of Planning and Development.

Please refer to the minutes of August 21, 2017 for the ordinance text.

**ITEM 3. PARKS, RECREATION, AND TOURISM: Resolution 2017-38 - A Resolution
Committing the City of North Augusta to Provide a Local Match for a Municipal
Association of South Carolina Hometown Economic Development Grant**

A resolution has been prepared for Council's consideration committing the City of North Augusta to provide a local match for a Municipal Association of South Carolina Hometown Economic Development grant.

Please see **ATTACHMENT NO. 3** for the proposed resolution.



Robert A. Pettit, Mayor

ATTACHMENT 1

RESOLUTION NO. 2017-37

A RESOLUTION TO AUTHORIZE THE CITY TO ENTER INTO AN AMENDMENT TO BASE LEASE AGREEMENT AND INSTALLMENT PURCHASE AND USE AGREEMENT; AND TO TAKE SUCH ACTIONS AS ARE NECESSARY IN FURTHERANCE OF THE SUBDIVISION OF THE CLUBHOUSE

WHEREAS, the City of North Augusta, South Carolina (the "City") is participating in the development of the public-private development known as Project Jackson; and

WHEREAS, to finance certain public improvements contained within Project Jackson, the North Augusta Public Facilities Corporation (the "Corporation") issued its \$69,450,000 original principal amount Installment Purchase Revenue Bonds (City of North Augusta Project), Taxable Series 2017B (the "Bonds") on May 16, 2017; and

WHEREAS, the Bonds were issued under the provisions of a Trust Agreement dated May 16, 2017 (the "Trust Agreement"), by and between the Corporation and U.S. Bank National Association, as Trustee (the "Trustee"), and the City and the Corporation entered into an Installment Purchase and Use Agreement dated May 16, 2017 (the "Purchase and Use Agreement") and a Base Lease Agreement dated May 16, 2017 (the "Base Lease"); and

WHEREAS, the Purchase and Use Agreement and Base Lease provide for the installment purchase by the City of certain improvements and the use of such improvements during the term of the Bonds; and

WHEREAS, the provisions of Section 5.3(c) of the Trust Agreement require that prior to the Trustee releasing certain proceeds of the Bonds to provide funds with which to design, construct, furnish, or equip the Clubhouse (as defined in the Trust Agreement), certain conditions have to be met, including (i) the Base Lease and the Purchase and Use Agreement shall have each been amended to include a legal description of the Clubhouse reflecting the legal subdivision of the Clubhouse from other facilities located on the site of the Clubhouse, such amendments shall have been recorded and copies of both showing the date of recording shall have been provided to the Trustee, (ii) the Trustee shall have received an ALTA Title Insurance policy, endorsement to an existing ALTA Title Insurance policy, or an opinion of counsel indicating that the Clubhouse is free and clear of any mortgage liens, and reflecting all matters of record impacting the use and ownership of the Clubhouse, which matters conform with the requirements of the Master Development Agreement (as defined in the Trust Agreement) and do not materially interfere with the development and use of the Clubhouse as contemplated thereby, as certified to the Trustee by the City Representative (as defined in the Trust Agreement), and (iii) the Trustee shall have received a legal opinion to the effect that the Clubhouse has been lawfully subdivided in accordance with the requirements of the Master Development Agreement (collectively, the "Conditions"); and

WHEREAS, in order to satisfy the Conditions, the City now has before it a draft of an Amendment to Base Lease Agreement and Installment Purchase and Use Agreement between the City and the Corporation (the "Amendment"); and

WHEREAS, the City Council finds that entering into the Amendment and affecting the subdivision and acquisition of the Clubhouse is a necessary and desirable step, contemplated by the documents entered into with respect to the issuance of the Bonds, in order to continue the development of Project Jackson.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of North Augusta, in meeting duly assembled and by the authority thereof, that:

1. The City approves the Amendment presented before this meeting.
2. The Mayor of the City, the City Clerk of the City and the City Administrator (the "City Authorized Representatives") are authorized to execute the Amendment on behalf of the City.
3. The City Authorized Representatives are authorized to approve and execute such further documents, agreements, certificates or documentation that are in keeping with the purposes of the Amendment and which further the acquisition and subdivision of the Clubhouse, including, but not limited to, approving the Master Deed for Greenstone Condominium Horizontal Property Regime, which creates the condominium unit that comprises the Clubhouse, and approval of the deed in favor of the City to said condominium unit.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS THE 5TH DAY OF SEPTEMBER, 2017.

Robert A. Pettit, Mayor

ATTEST:

Donna B. Young, City Clerk

AMENDMENT TO BASE LEASE AGREEMENT
AND
INSTALLMENT PURCHASE AND USE AGREEMENT

between

CITY OF NORTH AUGUSTA, SOUTH CAROLINA

and

NORTH AUGUSTA PUBLIC FACILITIES CORPORATION

Dated September __, 2017

**AMENDMENT TO BASE LEASE AGREEMENT AND
INSTALLMENT PURCHASE AND USE AGREEMENT**

This AMENDMENT TO BASE LEASE AGREEMENT AND INSTALLMENT PURCHASE AND USE AGREEMENT, dated September __, 2017 (this "*Amendment*") is made and entered into by and between the CITY OF NORTH AUGUSTA, SOUTH CAROLINA, a political subdivision of the State of South Carolina (the "*City*"), and the NORTH AUGUSTA PUBLIC FACILITIES CORPORATION, a nonprofit corporation duly organized under the laws of the State of South Carolina (the "*Corporation*").

W I T N E S S E T H

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31 of the Code of Laws of South Carolina 1976, as amended; and

WHEREAS, the City is a political subdivision of the State of South Carolina; and

WHEREAS, the Corporation and the City agreed to a financing plan under the terms of an Installment Purchase and Use Agreement dated May 16, 2017 (the "*Purchase and Use Agreement*") between the City and the Corporation pursuant to which the Corporation undertook to acquire, improve, construct and equip the 2017 Project and to pay the Base Lease Rent to the City for the costs of the Ancillary Projects (as such terms are defined in the Purchase and Use Agreement); and

WHEREAS, the City and the Corporation entered into a Base Lease Agreement dated May 16, 2017 (the "*Base Lease*") pursuant to which the City conveyed the Existing Facilities (as defined in the Base Lease) to the Corporation and is leasing certain real property (the "*2017 Real Property*") to the Corporation; and

WHEREAS, the payments to be made under the Purchase and Use Agreement and the rights of the Corporation thereto (except certain reserved rights as provided therein) were assigned to U.S. Bank National Association, as Trustee (the "*Trustee*"), pursuant to the terms of a Trust Agreement dated May 16, 2017 (the "*Trust Agreement*") between the Corporation and the Trustee, in order to secure and provide a source of payment for the Corporation's \$69,450,000 Installment Purchase Revenue Bonds (City of North Augusta Project), Taxable Series 2017B (the "*Series 2017B Bonds*"), the proceeds of which are being used, in part, to acquire, improve, construct and equip the 2017 Project; and

WHEREAS, Exhibit A to both the Purchase and Use Agreement and the Base Lease includes a legal description of the 2017 Real Property; and

WHEREAS, pursuant to Section 5.3(c) of the Trust Agreement, no proceeds of the Series 2017B Bonds may be spent to design, construct, furnish or equip the clubhouse portion (the "*Clubhouse*") of the baseball stadium component of the 2017 Project until "the Base Lease and the Purchase and Use Agreement shall have each been amended to include a legal description of the Clubhouse reflecting the legal subdivision of the Clubhouse from other facilities located on the site of the Clubhouse"; and

WHEREAS, Section 10.6 of the Purchase and Use Agreement provides, in part:

The City and the Corporation may, with notice to but without the prior consent of the Trustee, and without the consent of the Holder of any Bond, enter into any amendments hereto at any time and from time to time ... in connection with Section 5.3(c) of the Trust Agreement.

WHEREAS, Section 6.4 of the Base Lease provides, in part:

This Base Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, if and to the extent required by the Trust Agreement, other than ... in connection with Section 5.3(c) of the Trust Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements, herein set forth the City and the Corporation do hereby covenant and agree as follows:

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.1. *Definitions of Words and Terms.* Capitalized terms not otherwise defined herein are used with the meanings provided therefor in the Purchase and Use Agreement or the Base Lease, as applicable, unless some other meaning is plainly intended.

SECTION 1.2. *Rules of Construction.* All references in the Base Lease to “this Base Lease” shall be deemed to refer to the Base Lease as supplemented and amended by this Amendment. All references in the Purchase and Use Agreement to “this Purchase and Use Agreement” shall be deemed to refer to the Purchase and Use Agreement as supplemented and amended by this Amendment. All references in the Base Lease and the Purchase and Use Agreement to “2017 Real Property” shall mean the real property described in Exhibit A thereto, as amended by Exhibit A attached hereto.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

ARTICLE II AMENDMENT OF THE BASE LEASE AND PURCHASE AND USE AGREEMENT

SECTION 2.1. *Amended Description of 2017 Real Property.* Exhibit A of the Base Lease and Exhibit A of the Purchase and Use Agreement, containing the legal description of the 2017 Real Property, are hereby amended to include a legal description of the Clubhouse reflecting the legal subdivision of the Clubhouse from other facilities located on the site of the Clubhouse. Exhibit A of the Base Lease and Exhibit A of the Purchase and Use Agreement are hereby replaced by Exhibit A attached hereto.

ARTICLE III MISCELLANEOUS

SECTION 3.1. *Binding Effect.* This Amendment shall inure to the benefit of and shall be binding upon the City, the Corporation and their respective successors and assigns.

SECTION 3.2. *Severability.* In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

SECTION 3.3. *Execution in Counterparts.* This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

SECTION 3.4. *Applicable Law.* This Amendment shall be governed by and construed in accordance with the laws of the State of South Carolina.

SECTION 3.5. *Captions.* The Section and Article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

SECTION 3.6. *Confirmation of Base Lease and Purchase and Use Agreement.* Except as expressly supplemented or amended by this Amendment, the Base Lease and the Purchase and Use Agreement are and shall remain unchanged and in full force and effect in accordance with their terms. Nothing in this Amendment is intended, or shall be construed, to constitute a novation or an accord and satisfaction of any obligations evidenced thereby.

[Remainder of Page Left Blank]

ACKNOWLEDGEMENT OF TRUSTEE

U.S. Bank National Association, as Trustee, under the terms of the Trust Agreement, hereby acknowledges that, by the execution of this acknowledgement below, it has received the notice required by Section 10.6 of the Purchase and Use Agreement of the entering into by the Corporation and the City of the foregoing Amendment.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Name: _____
Title: _____

EXHIBIT A
AMENDED LEGAL DESCRIPTION

[Insert legal descriptions]

ATTACHMENT 3

RESOLUTION NO. 2017-38
A RESOLUTION COMMITTING THE CITY OF NORTH AUGUSTA TO PROVIDE A
LOCAL MATCH FOR A MUNICIPAL ASSOCIATION OF SOUTH CAROLINA
HOMETOWN ECONOMIC DEVELOPMENT GRANT

WHEREAS, the City is aware of a grant program through the South Carolina Municipal Association that could provide funds to be utilized for the Parks, Recreation and Tourism Department Master Plan; and,

WHEREAS, the grant program requires a minimum match for funding by the grant recipient in the amount of 15%. Such match must be in the form of cash; and,

WHEREAS, the Director of Parks, Recreation and Tourism has recommended that the City apply for a \$25,000.00 grant, which is the maximum grant available; and,

WHEREAS, after considering the matter, the Mayor and City Council have determined that such request is appropriate and it would be in the best interest of the City that the City apply for said grant.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of North Augusta, South Carolina in meeting duly assembled and by the authority thereof, that the following is authorized:

1. The Parks, Recreation and Tourism Department is authorized to apply for a \$25,000.00 South Carolina Hometown Economic Development Grant to be used by the City for funding for the preparation of a new Parks, Recreation and Tourism Department Master Plan.
2. The City Administrator is authorized to execute any documents necessary to apply for said grant.
3. The City commits to a local cash match of at least \$3,750.00 in the event that the City is awarded the grant.
4. The funding for the \$3,750.00 cash match will come from the Parks, Recreation and Tourism Department budget.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS THE ____ DAY OF _____, 2017.

Robert A. Pettit, Mayor

ATTEST:

Donna B. Young, City Clerk

