

FLORENCE CITY COUNCIL RETREAT

WEDNESDAY, FEBRUARY 25 - FRIDAY, FEBRUARY 27, 2009

MARINA INN, 1499 GRAND DUNES BOULEVARD

MYRTLE BEACH, SOUTH CAROLINA

ADDENDUM TO THE AGENDA

III. INTRODUCTION OF ORDINANCES

- a. Bill No. 2009-05 - First Reading**
An Ordinance authorizing the lease of parcels located in the block bounded by Cheves Street, Dargan Street, West Evans Street, and Irby Street, and being the parcels designated as a portion of Tax Map 90-168-02-005 in the records of the Florence County Tax Assessor.
- b. Bill No. 2009-06 - First Reading**
An Ordinance authorizing the lease-purchase financing of capital projects to be located in the City of Florence; authorizing the City of Florence, South Carolina to execute documents including the base lease by and between the City of Florence, South Carolina and BB&T Governmental Finance and the lease agreement by and between BB&T Governmental Finance and the City of Florence, South Carolina; and other matters relating thereto.

FLORENCE CITY COUNCIL MEETING

DATE: February 4, 2009

AGENDA ITEM: Ordinance to Approve Lease of a portion of the Old McLeod Hospital Property on Cheves Street to M. B. Kahn Construction Company, Inc.

DEPARTMENT/DIVISION: City Council / City Attorney

I. ISSUE UNDER CONSIDERATION

This ordinance would authorize the lease of a portion of the old McLeod Hospital Property on Cheves Street between the City of Florence and M. B. Kahn Construction Company, Inc. The purpose of the lease is to allow M. B. Kahn Construction Company, Inc. to use the old McLeod Hospital property on Cheves Street for a secured construction staging area during the construction of the Performing Arts Center.

II. CURRENT STATUS/PREVIOUS ACTION TAKEN

The attached ordinance authorizes the execution of the Lease to provide a secured staging area for the construction of the Performing Arts Center.

III. POINTS TO CONSIDER

- A. City has been approached by M. B. Kahn Construction Company, Inc., General Contractor, for the Performing Arts Center to use a portion of the old McLeod Hospital property on Cheves Street as a secured construction staging area during the construction of the Performing Arts Center.
- B. Lease contains the provision that the lease can be terminated by the city upon ninety (90) days notice in the event that there is a buyer for the property.
- C. Lease requires M. B. Kohn Construction to provide proof of insurance, to indemnify and hold the City harmless, and to return the property to the City in its original condition.

IV. STAFF RECOMMENDATION

Staff recommends approval of the Ordinance.

V. ATTACHMENTS

- (a) Copy of the proposed Ordinance.
- (b) Copy of the proposed lease.

JAMES W. PETERSON, JR.
City Attorney

ORDINANCE NO. 2009-_____

AN ORDINANCE AUTHORIZING THE LEASE OF PARCELS LOCATED IN THE BLOCK BOUNDED BY CHEVES STREET, DARGAN STREET, WEST EVANS STREET, AND IRBY STREET, AND BEING THE PARCELS DESIGNATED AS A PORTION OF TAX MAP 90-168-02-005 IN THE RECORDS OF THE FLORENCE COUNTY TAX ASSESSOR.

WHEREAS, after due consideration, the City has concluded that the land more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, is owned by the City, and the City of Florence and M. B. Kahn Construction Company, Inc. have entered into an agreement to lease property which will result in M. B. Kahn Construction Company, Inc. acquiring the use of property for a staging area during the construction of the Performing Arts Center, and

WHEREAS, the leasing of the properties described herein to M. B. Kohn Construction is in furtherance of the City's efforts to assist in the building of the Performing Arts Center in the downtown area of the City;

NOW, THEREFORE, be it ordained by the City Council of the City of Florence in meeting duly assembled and by the authority thereof:

1. That, pursuant to §5-7-260(6) of the South Carolina Code of Laws, as amended, and §2-26(8) of the Code of Ordinances of the City of Florence, the City Manager of the City of Florence is hereby authorized to execute the Lease attached hereto as Exhibit "B" and other documentation in order to lease the property described on Exhibit "A" to M. B. Kahn Construction Company, Inc. in order to provide a secured staging area for the construction of the Performing Arts Center.

2. This Ordinance shall become effective immediately upon its approval and adoption by the City Council of the City of Florence, South Carolina.

ADOPTED THIS _____ DAY OF _____, 2009.

STEPHEN J. WUKELA
Mayor

Approved as to form:

Attest:

JAMES W. PETERSON, JR.
City Attorney

DIANNE M. ROWAN
Municipal Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

LEASE

This Lease made this ____ day of _____, 2009, between M. B. Kahn Construction Company, Inc., hereinafter called "Lessee", and the City of Florence, South Carolina, hereinafter called "Lessor".

1. DEMISE AND TERM.

The Lessor hereby leases to the Lessee that certain piece, parcel, or tract of land located in the City and County of Florence, State of South Carolina, and being shown and described on "Exhibit A" attached hereto.

To have and to hold the premises described above for a term of Eighteen (18) months beginning February _____, 2009.

2. RENT

The Lessee agrees to pay the One Dollar per year in rent.

3. MAINTENANCE OF PROPERTY

The Lessee shall, at its own cost, maintain the premises as a secured construction staging area for the construction of the Performing Arts Center. At the conclusion of the rental period, Lessee agrees to return the premises to the same condition it is in on today's date.

4. TAXES

Any taxes or assessments on the premises or on personal property located on the premises will be the sole responsibility of the Lessee.

5. ASSIGNMENT

Lessee shall not assign this Lease without Lessor's prior written consent to such assignment.

6. INSURANCE

It shall be Lessee's responsibility to keep the premises insured against loss or damage and to provide Lessor with proof of said insurance and proof of Lessor being added as an additional insured on said policy. In addition, Lessee agrees to hold harmless, indemnify, and defend Lessor, its agents and employees, from any claims for property damage or personal injury on the premises (including death resulting therefrom). Lessee shall also maintain general liability coverage in the amount of at least \$1,000,000.00 covering the activities on the premises of Lessee, its subcontractors, agents, employees and invitees, and Lessor shall be named as an additional insured on said policy..

7. MAINTENANCE OF PREMISES

Lessee agrees that it will be solely responsible for the maintenance and upkeep of the property for so long as Lessee utilizes the premises under this lease.

8. TERMINATION AND SURRENDER

If at any time during the term of the Lease Lessor decides that the premises are needed by the City for other public uses which will prohibit its use as a secured construction staging area, Lessor may, at Lessor's option, terminate the Lease by providing Lessor 90 days written notice of its intention to do so. Otherwise, the Lease will be

terminated at the conclusion of the term or terms as set forth herein. Upon termination of the Lease, Lessee shall surrender the premises to Lessor in its original condition.

9. BINDING EFFECT

It is agreed that the covenants, stipulations, and conditions herein contained shall inure to the benefit of and shall be binding upon the successors and assigns of the Lessee and the successor and assigns of the Lessor.

IN WITNESS WHEREOF, the parties hereto have signed by their proper corporate officers and have caused their proper corporate seal to be affixed hereto this _____ day of February, 2009.

WITNESSES:

LESSEE:

M. B. KAHN CONSTRUCTION COMPANY, INC.

As to Lessee

By _____

LESSOR:

City of Florence

As to Lessor

By _____
DAVID N. WILLIAMS
City Manager

III. b.
Bill No. 2009-06
First Reading

FLORENCE CITY COUNCIL MEETING

DATE: March 2, 2009
AGENDA ITEM: Ordinance--First Reading
DEPARTMENT/DIVISION: Finance

I. ISSUE UNDER CONSIDERATION

An ordinance authorizing capital lease-purchase financing from BB&T Governmental Finance in an amount not to exceed \$7,500,000 to pay costs associated with the construction of a municipal tennis complex and providing a capital contribution for the construction of the Francis Marion University performing arts center to be located in downtown Florence.

II. CURRENT STATUS/PREVIOUS ACTION TAKEN

1. April 2007: City Council received proposal for \$3 million construction contribution to Francis Marion University (FMU) for Performing Arts Center (PAC).
2. November 2007: City Council authorized a letter of commitment for the \$3 million to FMU.
3. November 2007: City Council also approved construction of \$5 million tennis complex (\$3 million funding from the City; \$1.5 million funding from Bruce and Lee Foundation; and \$522,000 funding from Florence County).
4. February 2008: City Council authorized lease-purchase financing for the tennis center and the contribution to FMU for PAC to be paid from local hospitality fee funds.
5. September 2008: City receives confirmation from Bruce & Lee Foundation of \$1.5 million grant to be paid from 2012, 2013, and 2014 at \$500,000 per year.
6. February 6, 2009: City requests proposals from fifteen area banks for 15-year financing to fund the projects (including \$1.5 million to be reimbursed over 3-year period by Bruce & Lee Foundation).
7. Debt service for the fifteen-year lease-purchase financing for the tennis complex construction and the capital contribution for the performing arts center is included in the FY 2008-09 budget.

III. POINTS TO CONSIDER

On February 23, 2009 the City received a proposal from BB&T Governmental Finance with an interest rate cost of 3.79% for a fifteen-year lease-purchase term.

IV. STAFF RECOMMENDATION

Approval and adoption of the proposed ordinance providing for the fifteen-year lease-purchase financing of funds to be used for the tennis complex construction and the capital contribution for the performing arts center.

V. ATTACHMENTS

Lease-purchase financing ordinance.



Thomas W. Chandler
Finance Director



David N. Williams
City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE LEASE-PURCHASE FINANCING OF CAPITAL PROJECTS TO BE LOCATED IN THE CITY OF FLORENCE; AUTHORIZING THE CITY OF FLORENCE, SOUTH CAROLINA TO EXECUTE DOCUMENTS INCLUDING THE BASE LEASE BY AND BETWEEN THE CITY OF FLORENCE, SOUTH CAROLINA AND BB&T GOVERNMENTAL FINANCE AND THE LEASE AGREEMENT BY AND BETWEEN BB&T GOVERNMENTAL FINANCE AND THE CITY OF FLORENCE, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, 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.

“Bank” means BB&T Governmental Finance.

“Base Lease” means the Base Lease dated March 19, 2009, by and between the City and the Bank.

“City” means the City of Florence, South Carolina.

“City Council” means the City Council of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations thereunder.

“Lease” means the Lease Agreement dated March 19, 2009, by and between the Bank and the City.

“Ordinance” means this Ordinance of City Council.

“Project” means the construction of a municipal tennis complex and providing a capital contribution for the construction of the Francis Marion University Center for the Performing Arts to be located in downtown Florence.

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

- (a) Chapter 5, Title 7 of the Code of Laws of South Carolina 1976, as amended, empowers the City to lease real and personal property.
- (b) In addition, Section 6-1-700 through 6-1-770 (The Local Hospitality Tax Act) permits city councils to impose a local hospitality tax not to exceed two percent of

the charges for prepared food and beverages. Section 6-1-730 of the Local Hospitality Tax Act describes permitted uses of revenues so generated including tourism-related cultural and recreational facilities.

- (c) Pursuant to the Local Hospitality Tax Act, City Council imposed the Local Hospitality Fee codified at Sections 13-100 to 13-108 of the City of Florence Municipal Code. It also provides the use to which the proceeds may be applied including promotion of tourism, recreation and infrastructure to and for these projects.
- (d) The acquisition and construction of the Project within the City will promote tourism and provide related benefits to the citizens of the City such as increased employment opportunities and revenues to the City. The Tennis Complex is an important component of a strategy to attract tennis tournaments, players, their families, spectators and visitors to the City. The Francis Marion University Center for the Performing Arts is an important component of the City's redevelopment efforts to attract visitors to the downtown and surrounding areas. The City desires to finance the acquisition and construction of the Project by entering into a lease-purchase transaction with the Bank.
- (e) The Project will serve a proper corporate and public purpose of the City and satisfies the requirements of the Local Hospitality Tax Act as well as Sections 13-100 to 13-108 of the City of Florence Municipal Code.
- (f) Pursuant to the Base Lease, the City will convey to the Bank a leasehold interest in certain real property, including the improvements located thereon, as more particularly described in the Base Lease, and pursuant to the Lease, the Bank will lease to the City that certain real property and all improvements located thereon upon payment of Lease Rentals by the City to the Bank, as set forth in the Lease.
- (g) It has been determined that the estimated cost of the acquisition and construction of the Project, including necessary expenses incidental to the financing thereof, will not exceed \$7,500,000, and the City Council intends to apply the Base Lease Rent received from the Bank pursuant to the Base Lease to finance the acquisition and construction of the Project and the necessary expenses incidental thereto. It is anticipated that payments of Rentals will be made from the Local Hospitality Fee.

Section 3. Approval of Base Lease and Lease. The form, terms and provisions of the Base Lease and the Lease presented to this meeting and filed with the Clerk to the City Council be and hereby are approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Base Lease and the Lease were set out in this Ordinance in their entirety. The City Manager and the Finance Director or either of them be and are hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to the City Council is hereby authorized, empowered and directed to attest, the Base Lease and Lease in the name and on behalf of the City, and thereupon to cause the Base Lease and the Lease to be delivered to the Bank and to cause the Base Lease and the Lease (or memoranda

thereof) to be recorded in the office of the Clerk of Court for Florence County. The Base Lease and the Lease are to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the City Manager and the Finance Director, the City Manager's and Finance Director's execution thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the form of the Base Lease and the Lease now before this meeting. Any amendment to the Base Lease and the Lease Amendment shall be executed in the same manner.

Section 4. Acceptance of Bank Commitment. The proposal of the Bank, a copy of which is presented at this meeting, to provide financing for the lease-purchase transaction authorized by the Ordinance is hereby approved and accepted. City Council hereby ratifies and approves the acceptance of such proposal on behalf of the City by the Finance Director. City Council hereby delegates the authority to the City Manager and the Finance Director to approve any change in the terms set forth in the proposal.

Section 5. Approval of Transactions. The consummation of all transactions contemplated by the Base Lease and the Lease, including the lease and lease-back of the Property as defined therein and the application of the Base Lease Rent received pursuant to the Base Lease to the acquisition and construction of the Project, is hereby approved.

Section 6. Designation of "Qualified Tax-Exempt Obligation". City Council makes the following findings with respect to the Lease:

- (a) The Lease is not a private activity bond as defined in Section 141 of the Code.
- (b) The City does not reasonably anticipate the amount of "qualified tax-exempt obligations" required to be included in such calculation which will be issued by the City during the calendar year ending December 31, 2009, to exceed \$30,000,000.

On the basis of the foregoing, City Council hereby designates the Lease as a "Qualified Tax-Exempt Obligation" under the Code.

Section 7. Authorization. The City Manager, the Clerk to City Council, the Finance Director, and the City Attorney, for and on behalf of the City, 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 Bank to effect the delivery of the Base Lease and Lease in accordance with the terms and conditions herein 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 City Manager and Finance Director shall approve, is hereby fully authorized.

Section 8. Severability. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 9. Arbitrage Covenant. 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 Rent (as defined in the Lease) under the Lease, including without limitation the proper use and expenditure of proceeds and 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 10. Repeal of Conflicting Ordinance. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

ADOPTED THIS DAY OF , 2009.

Approved as to form:

James W. Peterson, Jr.
City Attorney

Stephen J. Wukela
Mayor

Attest:

Dianne M. Rowan

Municipal Clerk

Date of First Reading: March 9, 2009
Date of Second Reading: March 16, 2009