CITY OF GREER, SOUTH CAROLINA

ORDINANCE NUMBER 27 - 2013


Enacted: August 13, 2013
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREER, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. Definitions.

The terms in this Section 1 and all words and terms defined in the General Bond Ordinance No. 27-97 enacted by the City Council of the City of Greer, South Carolina, on July 22, 1997, as amended, (except as herein otherwise expressly provided or unless the context otherwise requires) shall for all purposes of this Ordinance have the respective meanings given to them in the General Bond Ordinance and in Section 1 hereof.

“2004 SRF Note” shall mean the $9,211,590 original principal amount Promissory Note of the City, Series 2004, dated June 24, 2004, and outstanding as of the effective date of this Ordinance in the principal amount of $7,394,159 and payable to the State Authority for South Carolina Drinking Water Revolving Fund Loan No. 3-018-04-2310005-02.

“2005 SRF Note” shall mean the $7,500,000 original principal amount Promissory Note of the City, Series 2005, dated June 30, 2005, and outstanding as of the effective date of this Ordinance in the principal amount of $6,198,504 and payable to the State Authority for South Carolina Drinking Water Revolving Fund Loan No. 3-022-05-2310005-03.

“2007 SRF Note” shall mean the $13,600,000 original principal amount Promissory Note of the City, Series 2007, dated November 16, 2007, and outstanding as of the effective date of this Ordinance in the principal amount of $11,393,235 and payable to the State Authority for South Carolina Water Pollution Control Revolving Fund Loan No. X1-110-07-463-11.

“2009 SRF Note” shall mean the $5,130,485 original principal amount Promissory Note of the City, Series 2009, dated September 25, 2009, and outstanding as of the effective date of this Ordinance in the principal amount of $4,842,066 and payable to the State Authority for South Carolina South Carolina Drinking Water Revolving Fund Loan No. S3-043-09-2310005-04.

"2013 Junior Lien Note" shall mean the not exceeding $3,500,000 promissory note of the City, also identified as the "City of Greer, South Carolina, Combined Utility System Revenue Bond (Junior Lien), Series 2013", payable to the Public Service Authority, authorized by this Ordinance, and in substantially the form attached hereto as Exhibit A.

"2013 Project" shall mean the acquisition and installation of an electric substation to be located near S.C. Highway 101 and the Greenville-Spartanburg International Airport.

“Bond of 2007” shall mean the $5,700,000 original principal amount Combined Utility System Revenue Bond, Series 2007, dated May 24, 2007, and outstanding as of the effective date of this Ordinance in the principal amount of $4,664,966.

“Bond of 2009” shall mean the $24,230,000 original principal amount Combined Utility System Refunding Revenue Bond, Series 2009, dated June 4, 2009, and outstanding as of the effective date of this Ordinance in the principal amount of $21,555,000.
“Bond of 2010” shall mean the $6,115,000 original principal amount Combined Utility System Revenue Bond, Series 2010, dated December 2, 2010, and outstanding as of the effective date of this Ordinance in the principal amount of $5,525,000.

“Bonds of 2002” shall mean the $25,060,000 original principal amount Combined Utility System Revenue Bonds, Series 2002, dated May 15, 2002, and outstanding as of the effective date of this Ordinance in the principal amount of $23,845,000.

"City" shall mean City of Greer, South Carolina.

“Construction Fund of 2013” shall mean the Fund established pursuant to Section 9 hereof into which the proceeds of the 2013 Junior Lien Note will be deposited and from which such proceeds will be disbursed to pay the costs of the 2013 Project and costs of issuance of the 2013 Junior Lien Note.

"Council" shall mean the City Council of the City.

“Custodian” shall mean the bank, depository or trust company selected by the Finance Manager of the Commission as custodian of the Construction Fund of 2013.


“Fifth Supplemental Ordinance” shall mean Fifth Supplemental Ordinance No. 20- 2005 enacted on May 24, 2005, by the Council authorizing the issuance of the 2005 SRF Note.

“Fourth Supplemental Ordinance” shall mean the Fourth Supplemental Ordinance No. 7-2004 enacted on May 25, 2004, by the Council authorizing the issuance of the 2004 SRF Note.

“General Bond Ordinance” shall mean General Bond Ordinance No. 27-97 duly enacted by the Council on July 22, 1997, as amended, authorizing and providing for the issuance of Combined Utility System Revenue Bonds.

“Interest Payment Date” shall mean July 1 of each year commencing July 1, 2019, or such other date or dates as the Mayor and City Administrator may determine as reflected in the Loan Agreement and 2013 Junior Lien Note.

"Loan" shall mean the loan from the Public Service Authority to the City in the amount of not exceeding $3,500,000.

"Loan Agreement" shall mean the Intergovernmental Loan Agreement evidencing the Loan to be dated the date of its execution and delivery between the Public Service Authority and the City, in substantially the form attached hereto as Exhibit B.
“Ninth Supplemental Ordinance” shall mean Ninth Supplemental Ordinance No. 20-2009 enacted on September 8, 2009, by the Council authorizing the issuance of the 2009 SRF Note.

“Paying Agent” shall mean Branch Banking and Trust Company, in Wilson, North Carolina, as Paying Agent for the 2013 Junior Lien Note.

“Principal Payment Date” shall mean July 1 of each of the years 2019 to and including 2023, or such other date or dates as the Mayor and City Administrator may determine.

"Public Service Authority" shall mean the South Carolina Public Service Authority.

“Registrar” shall mean Branch Banking and Trust Company, in Wilson, North Carolina, as Registrar for the 2013 Junior Lien Note.

“Senior Lien Bonds” shall mean, collectively, the Bonds of 2002, the 2004 SRF Note, the 2005 SRF Note, the Bond of 2007, the 2007 SRF Note, the Bond of 2009, the 2009 SRF Note, and the Bond of 2010.

“Seventh Supplemental Ordinance” shall mean Seventh Supplemental Ordinance No. 45-2007 enacted on October 23, 2007, of the City authorizing the issuance of the 2007 SRF Note.


"State Authority" shall mean the South Carolina Water Quality Revolving Fund Authority.

"Supplemental Ordinances" shall mean, collectively, the Third Supplemental Ordinance, Fourth Supplemental Ordinance, Fifth Supplemental Ordinance, Sixth Supplemental Ordinance, Seventh Supplemental Ordinance, Eighth Supplemental Ordinance, Ninth Supplemental Ordinance and Tenth Supplemental Ordinance.

“Tenth Supplemental Ordinance” shall mean Tenth Supplemental Ordinance No. 21-2010 enacted on September 28, 2010, by the Council authorizing the issuance of the Bond of 2010.


Section 2. Certain Findings and Determinations.

The Council hereby finds and determines:

(a) The City is an incorporated municipality located in Greenville and Spartanburg Counties, State of South Carolina, and as such possesses all powers and duties granted to municipalities by the Constitution and laws of the State of South Carolina.
(b) In the exercise of the powers vested in the City by the Constitution and statutes of the State of South Carolina, and in conformity therewith, the City pursuant to the favorable results of elections duly held in the City did establish a waterworks system, a sewer system and an electric light system, which, respectively, have been continuously operated and maintained since their establishment.

(c) By ordinance enacted on August 25, 1950, the aforesaid three utility systems were combined into a single system designated as "Combined Utility System of the City of Greer."

(d) By ordinance enacted February 15, 1958, a natural gas system was added to the System which is now comprised of a waterworks system, a sewer system, an electric light system, and a natural gas system.

(e) The System is operated and under the control of the Greer Commission of Public Works (the "Commission") and furnishes service through the City and in certain areas adjacent thereto.

(f) Pursuant to the General Bond Ordinance and the Supplemental Ordinances, the City has heretofore issued the Senior Lien Bonds.

(g) This Ordinance is enacted under the provisions of Section 3.5 of the General Bond Ordinance, which permits the City to issue Junior Bonds, payable from the Revenues of the System, provided that such Junior Bonds are issued to secure funds to defray the cost of improving, extending, enlarging, or repairing the System, and provided further that the pledge of Net Revenues securing such Junior Bonds shall at all times be subordinate and inferior to the pledge securing the Bonds.

(h) The Net Revenues pledged under the General Bond Ordinance are not encumbered by any lien and charge thereon or pledge thereof, other than: (i) the lien and charge thereon and the pledge thereof created by the General Bond Ordinance and the Supplemental Ordinances for the payment and security of the respective Senior Lien Bonds; and (ii) the lien and charge thereon and the pledge thereof created by the General Bond Ordinance and a Supplemental Ordinance (as defined in the General Bond Ordinance) for any Series of Bonds hereafter issued pursuant to Section 3.3 or Section 3.4 of the General Bond Ordinance.

(i) The Commission proposes to undertake the 2013 Project, which 2013 Project will be part of the System.

(j) The Commission has negotiated with the Public Service Authority for the Loan from the Public Service Authority to defray a portion of the costs of the 2013 Project and costs associated therewith, including the costs of issuance relating to the 2013 Junior Lien Note. The 2013 Junior Lien Note constitutes and will be a "Junior Bond" within the meaning of the quoted words as defined and used in the General Bond Ordinance.

(k) Pursuant to Resolution No. 6-2013 adopted on June 27, 2013, the Commission has requested the Council to enact this Ordinance and issue the 2013 Junior Lien Note.
(l) The funds are to be loaned to the City for the Commission to undertake the 2013 Project, and secured pursuant to the Loan Agreement and the 2013 Junior Lien Note to be executed by the City and delivered to the Public Service Authority. To secure its obligations, the City will grant to the Public Service Authority a pledge of, and lien upon, all Net Revenues derived from the operation of the System, which pledge will be junior and subordinate to the pledge securing the Senior Lien Bonds and any Series of Bonds hereafter issued on a parity with the Senior Lien Bonds.

(m) The Council is enacting this Ordinance in order to:

(i) Authorize the execution by the City and delivery to the Public Service Authority of the Loan Agreement and the 2013 Junior Lien Note;

(ii) Evidence the approval of the 2013 Project, the Loan, the 2013 Junior Lien Note and the Loan Agreement; and

(iii) Authorize the execution and delivery by the City of such other agreements and certificates and the taking of such other action by the City and its officers as shall be necessary or desirable in connection with the Loan and the financing of the 2013 Project in order to carry out the intent of this Ordinance.

(n) The Council further finds and determines:

(i) The issuance of the 2013 Junior Lien Note is authorized under and pursuant to an ordinance which is not supplemental to the General Bond Ordinance as provided in the definition of "Junior Bonds" in Article I of the General Bond Ordinance.

(ii) The 2013 Junior Lien Note is being issued for the purpose of improving, extending, enlarging or repairing the System, i.e., the acquisition and installation of the 2013 Project.

(iii) A Debt Service Reserve Fund will not be established for the 2013 Junior Lien Note.

(iv) There does not exist an Event of Default, nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(v) Compliance with Section 3.3(C) of the General Bond Ordinance is not required in order to issue the 2013 Junior Lien Bond.

(o) The proceeds of the 2013 Junior Lien Note will be used for the purposes of (i) defraying the costs of the 2013 Project, and (ii) paying the costs of issuance of the 2013 Junior Lien Note.
(p) It is necessary and in the best interest of the City and the Commission to undertake the 2013 Project and for the City to issue the 2013 Junior Lien Note in the principal amount of not exceeding $3,500,000 in accordance with the General Bond Ordinance, the Act and this Ordinance for the purposes set forth above.

Section 3. Authorization of the 2013 Project. There is hereby approved and authorized the undertaking of the 2013 Project. Upon the acquisition and installation of the 2013 Project, the 2013 Project shall constitute and be operated as an integral part of the System. The period of usefulness of the System after the acquisition of the such project is determined to be not less than thirty (30) years from the date hereof.

Section 4. Authorization of the Loan. The Council hereby authorizes the City's acceptance of the Loan from the Public Service Authority of not exceeding $3,500,000 pursuant to and in accordance with the provisions of the Loan Agreement the terms of which are incorporated herein.

Section 5. Repayment of Loan by the City. The Council hereby authorizes the repayment of the Loan by the City to the Public Service Authority from the Net Revenues of the System, pursuant to and in accordance with the provisions of the General Bond Ordinance, the Loan Agreement and the 2013 Junior Lien Note.

Section 6. Payment of the 2013 Junior Lien Note. The 2013 Junior Lien Note, together with the interest thereon, shall be payable, in such coin or currency of the United States of America which at the time of such payment is legal tender for public and private debts, solely from the Net Revenues of the System, in accordance with the provisions of the General Bond Ordinance and this Ordinance. The 2013 Junior Lien Note shall be subject, so long as any of the Senior Lien Bonds or any Series of Bonds issued pursuant to the General Bond Ordinance are Outstanding, to a prior and paramount lien upon the pledge of the Net Revenues for the payment of the Senior Lien Bonds and any Series of Bonds hereafter issued pursuant to the General Bond Ordinance.

The 2013 Junior Lien Note shall not be a debt of the City, nor a charge, lien or encumbrance, legal or equitable, upon any property of the City or upon any income, receipts or revenues of the City other than such of the Net Revenues of the System as are hereby pledged to the payment thereof. No recourse shall be had for the payment of the 2013 Junior Lien Note or any part thereof, against the general fund of the City, nor shall the credit or taxing powers of the City be deemed to be pledged to the payment of the principal of the 2013 Junior Lien Note. The full faith, credit and taxing powers of the State of South Carolina or of the City are not pledged to the payment of the principal of the 2013 Junior Lien Note and the 2013 Junior Lien Note shall never constitute an indebtedness of the City within the meaning of any State constitutional provisions (other than Article X, Section 14(10) of the State Constitution authorizing indebtedness payable solely from a source of revenues derived other than from a tax or license) or statutory limitation.

Section 7. Authorization of the 2013 Junior Lien Note and the Loan Agreement. The 2013 Junior Lien Note and the Loan Agreement, in substantially the forms attached hereto as Exhibit A and Exhibit B, respectively, with such changes as the executing officers shall approve (their execution to be conclusive evidence of such approval) are hereby authorized and approved, and the execution and delivery of the Loan Agreement and the 2013 Junior Lien Note, on behalf of the City,
are hereby authorized and directed. The Loan Agreement and the 2013 Junior Lien Note shall be executed on behalf of the City by the Mayor and attested by the Municipal Clerk under the seal of the City. Certain duties and responsibilities in connection with the 2013 Project, the Loan Agreement and the 2013 Junior Lien Note shall be exercised and undertaken by the Commission which duties and responsibilities are hereby approved by the City. The Council hereby authorizes the incurrence of total indebtedness under the 2013 Junior Lien Note in a principal amount not to exceed $3,500,000. The actual aggregate principal amount of the 2013 Junior Lien Note, the principal and interest repayment terms of the 2013 Junior Lien Note, and the prepayment provisions of the 2013 Junior Lien Note, will be as set forth in the final form of the Loan Agreement and 2013 Junior Lien Note. The 2013 Junior Lien Note shall constitute a "Junior Bond" under the General Bond Ordinance. The 2013 Junior Lien Note shall be registered in the name of the Public Service Authority on the Books of Registry maintained by the Registrar.

Section 8. 2013 Junior Lien Note Payment Fund. There shall be established and maintained a special fund of the City to be designated the “2013 Junior Lien Note Payment Fund” (the “2013 Note Payment Fund”) which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

Payments into the 2013 Note Payment Fund shall be made in the manner prescribed by this Ordinance and all moneys in the 2013 Note Payment Fund shall be used solely to pay the principal of and interest on the 2013 Junior Lien Note, and for no other purpose, and withdrawals therefrom shall be made only to effect payment of the principal of and interest on the 2013 Junior Lien Note. Earnings on investments in the 2013 Note Payment Fund, including the accounts therein, shall be added to and become a part of such 2013 Note Payment Fund and the accounts therein.

There shall be transferred from the Net Revenues of the System into the 2013 Note Payment Fund sufficient moneys so as to comply with the following provisions for the payment of the 2013 Junior Lien Note:

(a) There shall be established and maintained for the purpose of paying the interest on the 2013 Junior Lien Note as the same becomes due and payable, an Interest Account in the 2013 Note Payment Fund. Not later than the fifth (5th) Business Day preceding an Interest Payment Date, the City shall transfer or cause to be transferred to the Trustee for deposit into the 2013 Note Payment Fund to the credit of the Interest Account therein an amount which will, together with any other funds on deposit therein, on such Interest Payment Date be equal to the installment of interest then coming due on the 2013 Junior Lien Note.

(b) There shall be established and maintained for the purpose of paying the principal of the 2013 Junior Lien Note as it matures a Principal Account in the 2013 Note Payment Fund. Not later than the fifth (5th) Business Day preceding a Principal Payment Date, the City shall transfer or cause to be transferred to the Trustee for deposit into the 2013 Note Payment Fund to the credit of the Principal Account therein an amount which will, together with any other funds on deposit therein, on such Principal Payment Date be equal to the amount of the principal then coming due on the 2013 Junior Lien Note.
Moneys in the 2013 Note Payment Fund shall be used and applied solely to the payment of the interest on and the retirement of the principal of and interest on the 2013 Junior Lien Note and shall be used and applied in accordance with the provisions of this Section and this Ordinance. The moneys paid into the 2013 Note Payment Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of the 2013 Junior Lien Note and withdrawals from such fund shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the 2013 Junior Lien Note. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one (1) Business Day prior to the day on which principal or interest or both, as the case may be, are payable on the 2013 Junior Lien Note.

Section 9. Construction Fund of 2013. There is hereby established the Construction Fund of 2013 which fund shall be held by the Custodian appointed by the Finance Manager of the Commission. The moneys on deposit in the Construction Fund of 2013 shall be used and applied to the payment of the cost of acquisition and installation of the 2013 Project and for costs of issuance of the 2013 Junior Lien Note. Moneys on deposit in the Construction Fund of 2013 shall be invested in Permitted Investments.

If after the payment in full of the costs of the 2013 Project or after adequate provision has been made for such payment any moneys remain in the Construction Fund of 2013, such excess may be applied to the payment of the principal of the 2013 Junior Lien Note.

Section 10. Filings with Central Repository. So long as and to the extent required pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended (“Section 11-1-85”), the City covenants that it will with a central repository for availability in the secondary bond market when requested:

(i) An annual independent audit, within 30 days of the City’s receipt of the audit; and

(ii) Event-specific information within 30 days of an event adversely affecting more than 5% of Revenues or the City’s tax base.

The only remedy for failure by the City to comply with the covenant of this Section 10 shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an “Event of Default” under the General Bond Ordinance or this Ordinance. The City specifically reserves the right to amend or delete this covenant in order to reflect any change in Section 11-1-85, without the consent of the Public Service Authority or any subsequent holder of the 2013 Junior Lien Note.

Section 11. Further Actions. The Mayor, or in his absence the Mayor Pro Tempore, City Administrator, Municipal Clerk and City Attorney are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the 2013 Junior Lien Note pursuant to the Loan Agreement, and to carry out the intentions of this Ordinance, and are hereby authorized to execute and deliver such certificates, instruments and agreements as they shall deem necessary or desirable.
Section 12. Law and Place of Enforcement of this Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State.

Section 13. Effect of Section and Section Headings and Table of Contents. The headings or titles of the several Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 14. Ordinance a Contract. This Ordinance shall be a contract between the City and the Public Service Authority, and shall be enforceable as such against the City.

Section 15. Repeal. 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.

Section 16. Effective Date. This Ordinance shall become effective upon its enactment.

[Signature Page Follows]
Enacted by the City Council of the City of Greer, South Carolina, this 13th day of August, 2013.

CITY COUNCIL OF THE CITY OF GREER,
SOUTH CAROLINA

By: [Signature]
Richard W. Danner, Mayor
City of Greer, South Carolina

(SEAL)

ATTEST:

[Signature]
Tammela V. Duncan, Municipal Clerk
City of Greer, South Carolina

Introduced By: Councilman Jay Arrowood

Date of First Reading: July 23, 2013
Date of Second Reading: August 13, 2013
Exhibit A

Form of 2013 Junior Lien Note
Exhibit B

Form of Loan Agreement