

DATE 12-8, 09

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REVIEWED BY

PREPARED BY

CITY ATTORNEYS OFFICE

[Redacted]

[Redacted]

AN ORDINANCE TO APPROVE THE MODIFICATION OF LOAN AGREEMENT AND NOTE BETWEEN THE CITY OF ROCK HILL AND THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL RELATED TO THE CLEANUP OF THE ARCADE MILL SITE

BE IT ORDAINED by the Governing Body of the City of Rock Hill, in Council assembled:

SECTION 1. That this Ordinance is being adopted in order to effect proper compliance with the provisions of the Home Rule Act of 1975, now South Carolina Code of Laws for 1976, Section 5-7-30, Section 5-7-40 and Section 5-7-260, and Section 2-48 and Section 2-96 of the Code of the City of Rock Hill.

SECTION 2. That the City of Rock Hill entered into a Voluntary Cleanup Contract with the South Carolina Department of Health and Environmental Control ("DHEC") whereby DHEC agreed to loan the City funds necessary to finance the cleanup of the Arcade Mill site. Promissory Note ("Note") and Loan Agreement were signed on October 17, 2005 with a final maturity date of October 15, 2010.

SECTION 3. That the City of Rock Hill has requested that the Note be extended for a period of two (2) years. The Note will be amended to reflect a loan maturity date of October 15, 2012 with four loan payments of \$69,035.62 due October 15th of each year until the maturity date. The City will be responsible for all legal fees associated with this extension and a \$500.00 renewal fee payable to

Catawba Regional Council of Governments as fund manager for DHEC. All other terms and conditions of the loan shall remain the same.

SECTION 4. That the City of Rock Hill and DHEC agree to enter into an extension as set forth herein. The form of the Modification of Loan Agreement and Note ("Agreement") is attached hereto as Exhibit A and all terms, provisions and conditions of the Agreement are incorporated herein by reference. By adoption of this Ordinance, the Rock Hill City Council approves the Agreement and all of its terms, provisions and conditions. Furthermore, it is hereby approved, authorized, directed, ratified and confirmed that the City Manager, or his designee, is authorized to execute and deliver the Agreement and any other related documents as are necessary to effect the delivery of the Agreement.

SECTION 5. That this Ordinance was adopted by the Rock Hill City Council by a majority vote and applicable public hearing requirements.

SECTION 6. That all ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 7. That this Ordinance shall be and become finally binding immediately after same shall have received first and final readings, given in manner required by law.

DONE AND RATIFIED in Council assembled on this the ____ day of _____, 2009.

A. Douglas Echols, Jr., Mayor

Kevin H. Sutton, Mayor Pro Tempore

John P. Gettys, Jr., Councilmember

Susie B. Hinton, Councilmember

Kathy S. Pender, Councilmember

James C. Reno, Jr., Councilmember

Osbey Roddey, Councilmember

ATTEST:

David B. Vebaun
Municipal Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

**MODIFICATION OF LOAN
AGREEMENT AND NOTE**

This Modification of Loan Agreement and Note ("Agreement") is executed this _____ day of October, 2009, by and between the South Carolina Department of Health and Environmental Control ("DHEC") the City of Rock Hill ("City").

W I T N E S S E T H:

WHEREAS, the City executed that certain Promissory Note dated October 17, 2005 ("Note"), whereby it promised to pay the sum of \$425,000.00 (Four hundred twenty five and 00/100 Dollars); and

WHEREAS, the Note is secured by a pledge of funds received through the City's Community Development Block Grant allocation; and

WHEREAS, the City executed a Loan Agreement with DHEC on October 17, 2005 ("Loan Agreement"); and

WHEREAS, it is the intention of the parties to hereto modify said Loan Agreement and any modifications thereto, and the Note as set forth hereinbelow;

NOW THEREFORE, in consideration of the covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby modify the Loan Agreement and Note as follows:

The City and DHEC agree to extend the maturity date of the Note for a period of two (2) years. The Note will be amended to reflect a loan maturity date of October 15, 2012 with four loan payments due in the amount of \$69,035.62 payable each year on October 15, beginning with the due date of October 15, 2009.

Except as modified by this Agreement, the terms of the Loan Agreement and Note or any other loan documents related to this matter shall remain in full force and effect. In the event of a conflict of terms, the terms of this Agreement shall control over any conflicting terms and provisions.

All parties represent that no consent of any other person, firm or corporation, not a party hereto, is required for the execution and performance of this Agreement and all parties agree to indemnify and hold harmless all other parties from and against any and all loss, damage or liability whatsoever, including reasonable attorneys' fees, arising out of a party's failure to obtain consent of any person not a party hereto.

DHEC hereby acknowledges that the Loan Agreement and Note, as modified herein, are fully enforceable according to their terms and the City knows of no defenses or facts that would provide defenses to enforcement of the Loan Agreement and Note and this Agreement.

Any other loan documents and any amendments thereto affected by this Agreement are hereby amended to reflect the terms as stated above.

This Agreement shall be binding on the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have placed their hands and seals and caused the within Loan Agreement and Note Modification Agreement to be executed this ____ day of October, 2009.

WITNESSES:

South Carolina Department of
Health and Environmental Control

By: _____
Its: _____

City of Rock Hill

By: Carey F. Smith
Its: City Manager