

RESOLUTION NO.: R-2012-54

A Resolution of the City Council of the City of Columbia, South Carolina Approving the Use of Certain Bond Proceeds to (i) Acquire, Construct, Renovate and Equip Certain New Facilities on the Columbia, South Carolina Campus of Benedict College, (ii) to refinance certain prior indebtedness incurred to finance facilities on the Columbia campus of Benedict College, and (iii) to Refund the Richland County, South Carolina Educational Facilities Revenue Bonds, Series 1998 (Benedict College Project), Richland County, South Carolina Educational Facilities Revenue Bonds, Series 1999 (Benedict College Project), and the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning (South Carolina) Educational Facilities Capital Improvement and Refunding Revenue Bonds, Series 2002 (Benedict College Project) the Proceeds of Which Were Used to Finance and Refinance Certain Improvements to the Columbia, South Carolina Campus of Benedict College

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WHEREAS, Benedict College (the "College"), a South Carolina nonprofit corporation, has indicated to the City of Columbia, South Carolina (the "City"), that it is undertaking a plan of financing involving the issuance of Education Revenue Bonds, Series 2012 (Benedict College Project) (the "Bonds"), by The Industrial Development Authority of the City of Phoenix, Arizona (the "Arizona Issuer") in an aggregate principal amount not to exceed Eighty-Five Million Dollars (\$85,000,000), the proceeds of which Bonds will be loaned to the College; and,

WHEREAS, the College has represented to the City that a portion of the proceeds of the Bonds will be used by the College to: (i) refund the Richland County, South Carolina Educational Facilities Revenue Bonds, Series 1998 (Benedict College Project), Richland County, South Carolina Educational Facilities Revenue Bonds, Series 1999 (Benedict College Project), and the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning (South Carolina) Educational Facilities Capital Improvement and Refunding Revenue Bonds, Series 2002 (Benedict College Project) (collectively, the "Refunded Bonds"), proceeds of which were originally used to finance or refinance all or a portion of the costs of the acquisition, construction, renovation and equipping of the following facilities of the College: (a) Haskell Avenue Residence Hall at 1600 Harden Street, (b) renovation of two existing administrative buildings at 1600 Harden Street, (c) new administration building at 1600 Harden Street, (d) 60 acres of real property at Two Notch Road, Edgewood Lane and Pinehurst Road, (e) refinancing of 40 unit apartment complex, known as English Meadows Apartments at 5610 Farrow Road, (f) Bentley Court Apartments at 1801 Atlantic Drive, (g) certain land parcels at 2324 Haskell Avenue, 1624 Waverly Street, 1603 Two Notch Road, 2315 Laurel Street and 1902 Two Notch Road, (h) completion of certain components of the College's ten year facility plan for the campus located at 1600 Harden Street, all located within the corporate boundaries of the City (the "Prior Projects"); (ii) finance the acquisition, construction, renovation and equipping, etc. of certain new facilities on its campus in Columbia, South Carolina, as follows: (a) new four-story, 394 bed student housing building at 2100 Two Notch Road, (b) renovation of the environmental health labs to create a new 7400 square foot office, classroom, laboratory and chemical storage space at 2001 Harper Street, (c) renovation of the David H. Swinton Campus Center, including a 6600 square foot addition at 1616 Oak Street, (d) a new 5500 square foot bookstore and TV/Radio station at 2300 Haskell Avenue, (e) a new 22,700 square foot two-story facility to house the Freshmen Institute, and (f) miscellaneous capital improvements on the campus of the Borrower, including equipment, landscaping, site improvements and other capital expenditures, all within the corporate boundaries of the City (the "Project"); (iii) refinance certain taxable indebtedness incurred to finance the following: (a) The 36 unit Courtyard West apartments located at 3609 Juneau Road, (b) Student Leadership and Placement Program Facility at 2303 Taylor Street, and (c) the Charlie W. Johnson Football Stadium facility located on the Read Street Extension west of Two Notch Road (the "Taxable Prior Projects" and calculating with the Tax-Exempt Prior Projects, the "Prior Projects"), all located within the corporate boundaries of the City; and (iv) pay certain costs of issuing the Bonds. The Project and the Prior Projects are owned by the College; and,

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended, including the U.S. Treasury Regulations promulgated thereunder (collectively, the "Code"), requires that, prior to the issuance of private activity bonds within the meaning of the Code, the elected representatives of (1) the governmental unit which issues such private activity bonds and (2) the governmental unit having jurisdiction over the area in which any facility financed or refinanced by such private activity bonds must, after a public hearing following reasonable public notice, approve the issuance of such private activity bonds; and,

WHEREAS, the College has represented to the City that the Arizona Issuer, as the issuer of the Bonds, has approved or will approve prior to the issuance of the Bonds, the issuance of the Bonds, the financing of the Project and the refinancing of the Prior Projects consistent with all applicable requirements of federal and state law (including but not limited to Section 147(f) of the Code); and,

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WHEREAS, the College published notice of a public hearing on the Bonds, the financing of the Project and the refinancing of the Prior Projects on May 1, 2012, in The State, a newspaper of general circulation available to residents of the City, and such public hearing was held on May 15, 2012, at 7:00 p.m. (local time), at the third floor Council Chambers located at 1737 Main Street, Columbia, South Carolina, at which time members of the public were given an opportunity to express their views on the Bonds; and,

WHEREAS, the College has requested that the City Council of the City (the "Council") approve the issuance of the Bonds, the financing of the Project and the refinancing of the Prior Projects by the Arizona Issuer; and,

WHEREAS, the City shall not be obligated for the payment of the Bonds or any costs associated therewith; and,

WHEREAS, the Council is familiar with the Project, the Prior Projects and the financing therefor; **NOW, THEREFORE,**

BE IT RESOLVED by the City Council of the City of Columbia, South Carolina, this 5th day of June, 2012, as follows:

The foregoing recitals are incorporated as set forth herein.

That, after considering the comments, if any, made by the public at the public hearing held on May 15, 2012, the Council does hereby approve the issuance of the Bonds, the financing of the Project, and the refinancing of the Prior Projects by the Arizona Issuer, on behalf of the College.

That the provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

That the College agrees to defend and hold harmless and shall indemnify the City and its elected and appointed officials, employees, agents and representatives against any and all claims, losses, expenses, lawsuits, judgments and attorney fees to which the City or its elected and appointed officials, employees, agents and representatives may incur or may be subject by reason of any default or breach caused by or on the part of the College or its officials, agents and representatives in connection with, involving or in any way relative to the Bonds issued by the Arizona Issuer or any other related financing objectives of the College, including but not limited to any costs and expenses incurred by the City in connection with any actual, pending or threatened audit or investigation of the Internal Revenue Service, the Securities and Exchange Commission or any similar federal or state regulatory body.

That all ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superseded.

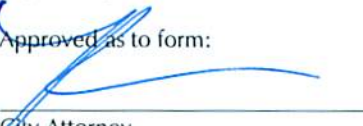
That this Resolution shall be in full force and effect immediately upon its adoption.

Requested by:

Benedict College _____


MAYOR

Approved by: 
City Manager

Approved as to form: 
City Attorney

ATTEST: 
City Clerk

Public Hearing: 5/25/2012
Introduced: 5/25/2012
Final Reading: 6/5/2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT
(Resolution No.: R-012-054)

WHEREAS, Benedict College (hereinafter "Benedict") intends to undertake a plan of financing involving the issuance of Education Revenue Bonds, Series 2012 (the "Bonds") by the Industrial Department Authority of the City of Phoenix, Arizona (the "Arizona Issuer") in an aggregate principal amount not to exceed Eighty-Five Million and No/100 (\$85,000,000.00) Dollars; and,

WHEREAS, Benedict has represented to the City of Columbia (the "City") that the proceeds of the Bonds would be loaned to Benedict, to be used to: (i) refund the Richland County, South Carolina Educational Facilities Revenue Bonds, Series 1998 (Benedict College Project), Richland County, South Carolina Educational Facilities Revenue Bonds, Series 1999 (Benedict College Project), and the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning (South Carolina) Educational Facilities Capital Improvement and Refunding Revenue Bonds, Series 2002 (Benedict College Project) (collectively, the "Refunded Bonds"), proceeds of which were originally used to finance or refinance all or a portion of the costs of the acquisition, construction, renovation and equipping of the following facilities of Benedict: (a) Haskell Avenue Residence Hall at 1600 Harden Street, (b) renovation of two existing administrative buildings at 1600 Harden Street, (c) new administration building at 1600 Harden Street, (d) 60 acres of real property at Two Notch Road, Edgewood Lane and Pinehurst Road, (e) refinancing of 40 unit apartment complex, known as English Meadows Apartments at 5610 Farrow Road, (f) Bentley Court Apartments at 1801 Atlantic Drive, (g) certain land parcels at 2324 Haskell Avenue, 1624 Waverly Street, 1603 Two Notch Road, 2315 Laurel Street and 1902 Two Notch Road, (h) completion of certain components of the College's ten year facility plan for the campus located at 1600 Harden Street (the "Tax-Exempt Prior Projects"); (ii) finance the acquisition, construction, renovation and equipping, etc. of certain new facilities on its campus in Columbia, South Carolina, as follows: (a) new four-story, 394 bed student housing building at 2100 Two Notch Road, (b) renovation of the environmental health labs to create a new 7400 square foot office, classroom, laboratory and chemical storage space at 2001 Harper Street, (c) renovation of the David H. Swinton Campus Center, including a 6600 square foot addition at 1616 Oak Street, (d) a new 5500 square foot bookstore and TV/Radio station at 2300 Haskell Avenue, (e) a new 22,700 square foot two-story facility to house the Freshmen Institute, and (f) miscellaneous capital improvements on the campus of the Borrower, including equipment, landscaping, site improvements and other capital expenditures (the "Projects"); (iii) refinance certain taxable indebtedness incurred to finance the following: (a) The 36 unit Courtyard West apartments located at 3609 Juneau Road, (b) Student Leadership and Placement Program Facility at 2303 Taylor Street, and (c) the Charlie W. Johnson Football Stadium facility located on the Read Street Extension west of Two Notch Road (the "Taxable Prior Projects" and together with the Tax-Exempt Prior Projects, the "Prior Projects"); and (iv) pay certain costs of issuing the Bonds; and,

WHEREAS, Benedict has represented to the City that the Projects and the Prior Projects are all owned by Benedict and located within the corporate boundaries of the City; and,

WHEREAS, Benedict has represented to the City that the Arizona Issuer has heretofore approved the issuance of the Bonds and the contemplated plan of financing, namely the financing of the Projects and the refinancing of the Prior Projects; and,

WHEREAS, Benedict has requested that the City, as the governmental unit having jurisdiction over the Projects and the Prior Projects, satisfy the requirements contained in Internal Revenue Code §147(f) by adopting a resolution of its City Council to approve the issuance of the Bonds by the Arizona Issuer and the plan of financing contemplated above; and,

WHEREAS, Benedict has agreed to hold the City harmless and defend and fully indemnify the City against all costs, expenses (including outside attorneys' fees, expenses, and court costs), liabilities, damages, claims, suits, actions and causes of actions whatsoever arising from the City's Internal Revenue Code §147(f) approval and the issuance by the Arizona Issuer of the Bonds; and,

WHEREAS, as a result of such approval, the City may be considered a conduit issuer of the Bonds for financial accounting purposes, and therefore be required to include certain disclosures in its Comprehensive Annual Financial Report (hereinafter "CAFR"); and,

WHEREAS, the City will require current and timely financial and other information from Benedict in order to meet the City's deadlines to complete the CAFR; NOW, THEREFORE

FOR AND IN CONSIDERATION of the sum of One and No/100 (\$1.00) Dollar, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Benedict does hereby agree as follows:

(a) Benedict agrees to defend and hold harmless and shall fully indemnify the City and its elected and appointed officials, employees, agents and representatives against any and all claims, losses, expenses, lawsuits, judgments and attorney fees to which the City, or its elected and appointed officials, employees, agents and representatives may incur or may be subject by reasons of any default or breach caused by or on the part of Benedict or its officials, agents and representatives in connection with, involving or in any way relative to the Bonds or any other related financing objectives of Benedict, including but not limited to any costs and expenses incurred by the City in connection with any actual, pending or threatened audit or investigation of the Internal Revenue Service, the Securities and Exchange Commission or any similar federal or state regulatory body.

(b) Benedict agrees to provide and make available to the City any and all information or documents as may be requested by the City, in the City's sole and exclusive discretion, as the City deems reasonably necessary to timely complete its annual CAFR. Benedict acknowledges that time is of the essence when such a request is made and agrees to provide such information or documentation to the City post haste when a request for the same is made. Should Benedict fail to provide such information or documentation to the City within five (5) business days after written request has been made by the City, Benedict consents to the entry of an order of specific performance by the Richland County Court of Common Pleas ordering such information or documentation to be provided to the City, immediately. If such an action is filed by the City, Benedict shall be responsible for all costs associated therewith including attorney fees.

(c) The City shall not be obligated for the payment of the Bonds or any costs associated therewith.

Any modification of this Agreement shall be by a signed writing between the Benedict and the City.

In the event Benedict shall fail to comply with this Agreement then the City shall be entitled to pursue any and all remedies provided under this Agreement or South Carolina law.

The failure of the City to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provisions or of any other provision of this Agreement at any time. Waiver of any breach of this Agreement by the City shall not constitute waiver of subsequent breach.

Notice under this Agreement or the written request for information or documents for the City's CAFR shall be sent by U.S. Mail, postage prepaid, or hand delivered to:

To City: City Manager
City of Columbia
Post Office Box 147
Columbia, SC 29217

To Benedict: Benedict College
Attn: Office of President
1600 Harden Street
Columbia, SC 29204

With a copy to: City Attorney
City of Columbia
Post Office Box 667
Columbia, SC 29202

With a copy to: Benedict College
Attn: V.P of Business & Finance
1600 Harden Street
Columbia, SC 29204

Written notice may also be made by personal hand-delivery:

To City: City Manager
City of Columbia
Post Office Box 147
Columbia, SC 29217

To Benedict: Benedict College
Attn: Office of President
1600 Harden Street
Columbia, SC 29204

Ambiguities in the terms of this Agreement, if any, shall not be construed against the City. This Agreement shall be interpreted pursuant to the laws of the State of South Carolina.

If any provision of this Agreement is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, Benedict College has set its hand by David H. Swinton, its President, duly authorized this 30 day of May, 2012.

WITNESSES:

BENEDICT COLLEGE

Barbara Simon Cook

BY: David H. Swinton

David H. Swinton
(Print or Type Name)

Arthur Burgess

ITS: President

Brenda Walker
Brenda Walker, VP Business & Finance