
1 **2023-28 (2ND READING): A SERIES ORDINANCE APPROVING THE**
2 **FINANCING OF THE INSTALLATION OF STANDBY PUMPS AT SANITARY**
3 **SEWER PUMP STATIONS IN CONNECTION WITH THE WATER AND**
4 **SEWER SYSTEM OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA,**
5 **THROUGH THE BORROWING BY THE CITY OF NOT EXCEEDING**
6 **\$5,400,000, INCLUDING CAPITALIZED INTEREST, IF ANY, FROM THE**
7 **STATE WATER POLLUTION CONTROL REVOLVING FUND, BY**
8 **AGREEMENT WITH THE SOUTH CAROLINA WATER QUALITY**
9 **REVOLVING FUND AUTHORITY (THE “AUTHORITY”), PURSUANT TO**
10 **TITLE 48, CHAPTER 5, CODE OF LAWS OF SOUTH CAROLINA 1976, AS**
11 **AMENDED; PROVIDING FOR AN AGREEMENT TO MAKE AND TO**
12 **ACCEPT A LOAN, THE EXECUTION AND DELIVERY OF A LOAN**
13 **AGREEMENT BETWEEN THE CITY AND THE AUTHORITY, THE**
14 **EXECUTION AND DELIVERY OF A PROMISSORY NOTE FROM THE CITY**
15 **TO THE AUTHORITY; AND OTHER MATTERS RELATING THERETO.**

16 **Applicant/Purpose:** Staff / to enter into a loan agreement with the South Carolina
17 Revolving Fund Authority (SRF), to provide for low interest rate financing for the Myrtle
18 Beach Pump Station Protective Measures – Standby Pump Installation.

19
20 **Brief:**

- 21 • This proposed ordinance authorizes the Mayor or City Manager to execute a loan
22 agreement with the South Carolina Revolving Fund to provide for Sewer Pump
23 Station Protective Measures – Standby Pump Installation.
- 24 • City Council adopted Resolution R2022-14 dated April 12, 2022 and the amending
25 Resolution R2023-008 adopted on March 13, 2023 authorizing the City Manager
26 or his designee to apply for the SRF loan.
- 27 • The amount to borrow will not exceed \$5,400,000 including capitalized interest, if
28 any, from the South Carolina Revolving Fund Authority.
- 29 • No changes since 1st reading.

30
31 **Issues:**

- 32 • There was an amendment in the authorized loan amount due to cost escalations
33 for material and labor.

34
35 **Public Notification:** Normal meeting notification.

36
37 **Alternatives:** Do not pass ordinance. Find additional funding to complete the project or
38 not do the project.

39
40 **Financial Impact:** The estimated savings by using SRF financing at 1.40% vs. current
41 market rates for a revenue backed bond issue (est. 3.5%) is approximately \$1.3m over
42 the 20-year term.

43
44 **Manager’s Recommendation:**

- 45 • I recommend 1st reading (5.9.23).
- 46 • I recommend approval (5.23.23)

47
48 **Attachment(s):** Proposed ordinance.

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

A SERIES ORDINANCE APPROVING THE FINANCING OF THE INSTALLATION OF STANDBY PUMPS AT SANITARY SEWER PUMP STATIONS IN CONNECTION WITH THE WATER AND SEWER SYSTEM OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, THROUGH THE BORROWING BY THE CITY OF NOT EXCEEDING \$5,400,000, INCLUDING CAPITALIZED INTEREST, IF ANY, FROM THE STATE WATER POLLUTION CONTROL REVOLVING FUND, BY AGREEMENT WITH THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY (THE "AUTHORITY"), PURSUANT TO TITLE 48, CHAPTER 5, CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; PROVIDING FOR AN AGREEMENT TO MAKE AND TO ACCEPT A LOAN, THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE CITY AND THE AUTHORITY, THE EXECUTION AND DELIVERY OF A PROMISSORY NOTE FROM THE CITY TO THE AUTHORITY; AND OTHER MATTERS RELATING THERETO.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

SECTION 1. Definitions. The terms in this Section 1 and all words and terms defined in the Ordinance No. 2007-75 enacted by the Council on December 11, 2007 (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this 2023A Series Ordinance have the respective meanings given to them in the Bond Ordinance and in Section 1 hereof.

"2011 Series Ordinance" shall mean Series Ordinance No. 2011-54 enacted by the City on November 8, 2011, authorizing and providing for the issuance and sale of the Series 2011 Bonds.

"2016 Series Ordinance" shall mean Series Ordinance No. 2015-78 of the City enacted on January 12, 2016, authorizing and providing for the issuance and sale of the Series 2016 Bonds.

"2016B Series Ordinance" shall mean Series Ordinance No. 2016-84 of the City enacted on January 10, 2017, authorizing and providing for the issuance of the Series 2016B Note.

"2023A Series Ordinance" shall mean this Ordinance No. 2023-28 of the City authorizing and providing for the issuance of the Series 2023A Note.

"2023B Series Ordinance" shall mean Ordinance No. 2023-29 of the City enacted May 23, 2023, authorizing and providing for the issuance of the Series 2023B Note.

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

1 “Bond Ordinance” shall mean Ordinance No. 2007-75 duly enacted on December 11,
2 2007, by the Council of the City authorizing and providing for the issuance from time to time of
3 Waterworks and Sewer System Revenue Bonds.
4

5 “Loan” shall mean the loan from the Authority to the City in the amount of not
6 exceeding \$5,400,000 including capitalized interest, if any.
7

8 “Loan Agreement” shall mean the Loan Agreement evidencing the Loan to be dated the
9 date of its execution and delivery between the Authority and the City.
10

11 “Project” shall mean the improvement of the System, to wit: the installation of standby
12 pumps at 16 of the City’s sanitary sewer pump stations to address potential overflow conditions
13 in the associated service areas, as more particularly described in the Loan Agreement.
14

15 “Revolving Fund” shall mean the State Water Pollution Control Revolving Fund created
16 by the Federal Clean Water Act and the Revolving Fund Act.
17

18 “Revolving Fund Act” shall mean the South Carolina Water Quality Revolving Fund
19 Authority Act, Title 48, Chapter 5, South Carolina Code of Laws 1976, as amended.
20

21 “Series 2011 Bonds” shall mean the City’s \$8,900,000 original principal amount
22 Waterworks and Sewer System Revenue Bonds, Series 2011, dated December 1, 2011,
23 outstanding as of the date hereof in the principal amount of \$5,410,000.
24

25 “Series 2016 Bonds” shall mean the City’s \$18,440,000 original principal amount
26 Waterworks and Sewer System Revenue Refunding and Improvement Bonds, Series 2016, dated
27 January 28, 2016, outstanding as of the date hereof in the principal amount of \$13,480,000.
28

29 “Series 2016B Note” shall mean the City’s \$6,345,371 original principal amount
30 Promissory Note of the City to the Authority dated January 27, 2017, currently outstanding in
31 the amount of \$4,769,112.96.
32

33 “Series 2023A Bond and Interest Redemption Fund” shall mean the fund so designated
34 and established pursuant to Section 8 of this 2023A Series Ordinance and Section 7.03 of the
35 Bond Ordinance.
36

37 “Series 2023A Debt Service Reserve Fund” shall mean the fund so designated and
38 established pursuant to Section 9 of this 2023A Series Ordinance.
39

40 “Series 2023A Note” shall mean the not exceeding \$5,400,000 (including capitalized
41 interest, if any) Promissory Note of the City to the Authority.
42

43 “Series 2023A Reserve Requirement” shall have the meaning set forth in Section 4.2 of
44 the Loan Agreement.
45

46 “Series 2023B Note” shall mean the not exceeding 2,550,000 (including capitalized
47 interest, if any) Promissory Note of the City to the Authority.
48
49

1 **SECTION 2. Findings and Determinations.** The Council hereby finds and determines:

2
3 (a) The City is an incorporated municipality located in Horry County, State of South
4 Carolina, and as such has all powers granted to municipalities by the Constitution and the
5 general law of this State.

6
7 (b) The System is operated by and under the control of the City.

8
9 (c) The City has the power to possess and operate utility systems and is empowered
10 by the provisions of the Revolving Fund Act (i) to undertake the Project; (ii) to make application
11 for and to receive assistance; (iii) to comply with regulations relating to the receipt and
12 disposition of money of the Revolving Fund; (iv) to apply for and receive state grants; (v) to
13 enter into loan agreements; and (vi) to comply with all terms and conditions of any loan
14 agreement.

15
16 (d) The Enabling Act permits the incurrence of debt for the purpose of financing
17 facilities for the furnishing of water pollution control and permits the securing of such
18 indebtedness with a pledge of Gross Revenues of the System.

19
20 (e) Pursuant to the Enabling Act, the City has enacted the Bond Ordinance which
21 sets forth certain conditions which the City must satisfy in order to issue additional
22 indebtedness secured by a pledge of Gross Revenues of the System.

23
24 (f) On April 12, 2022, the Council adopted Resolution R2022-14 authorizing
25 application to the Authority for the Loan to provide for the financing of the Project.

26
27 (g) The Authority has conditionally approved the Loan upon review of the City's loan
28 application.

29
30 (h) The Loan must be incurred pursuant to the terms and conditions of the Bond
31 Ordinance in order for the Loan to be issued on a parity in all respects to the pledge securing
32 the Series 2011 Bonds, the Series 2016 Bonds, the Series 2016B Note, the Series 2023A Note, and
33 the Series 2023B Note.

34
35 (i) The funds are to be loaned and secured pursuant to the Loan Agreement and a
36 promissory note (herein defined as the Series 2023A Note) to be executed and delivered by the
37 City and registered in the name of the Authority. The Series 2023A Note will constitute a Bond
38 as defined in the Bond Ordinance. Pursuant to the Loan Agreement, the City will agree to use
39 the proceeds of the Loan only to pay the actual eligible costs of the Project plus capitalized
40 interest, if any, and the City will agree to pay to the Authority such amounts as shall be
41 required to provide for the payment of all amounts due with respect to the repayment of the
42 Loan. Upon any failure of the City to make any payments to the Authority pursuant to the Loan
43 Agreement or the Series 2023A Note, the Authority shall require the State Treasurer to pay to
44 the Authority, subject to the provisions of the Revolving Fund Act, such amount from state
45 appropriations to which the City may be or become entitled as may be necessary to provide for
46 the payment of all amounts due with respect to the Series 2023A Note.

47
48 (j) The Council is enacting this 2023A Series Ordinance in order to:

49
50 (i) authorize the execution and delivery on behalf of the City of the Loan
51 Agreement and the Series 2023A Note;

1
2 (ii) evidence the approval of the Project, the Series 2023A Note and the Loan
3 by the City; and
4

5 (iii) authorize the execution and delivery by, and on behalf of, the City of
6 such other agreements and certificates and the taking of such other
7 action by the City and its officers as shall be necessary or desirable in
8 connection with the financing of the Project in order to carry out the
9 intent of this 2023A Series Ordinance.
10

11 (k) The most economical means of financing the Project is through the Loan from
12 the Authority.
13

14 (l) This 2023A Series Ordinance supplements the Bond Ordinance, constitutes and is
15 a "Series Ordinance" within the meaning of such quoted term as defined and used in the Bond
16 Ordinance, and is enacted under and pursuant to the Bond Ordinance.
17

18 (m) The Series 2023A Note constitutes and is a "Bond" within the meaning of the
19 quoted word as defined and used in the Bond Ordinance.
20

21 (n) The Gross Revenues pledged under the Bond Ordinance are not encumbered by
22 any lien and charge thereon or pledge thereof, other than the lien and charge thereon and
23 pledge created by the Bond Ordinance; the 2011 Series Ordinance for the benefit of the Series
24 2011 Bonds; the 2016 Series Ordinance for the benefit of the Series 2016 Bonds; the 2016B
25 Series Ordinance for payment and security of the Series 2016B Note, this Series 2023A Series
26 Ordinance for payment and security of the Series 2023A Note, and the Series 2023B Series
27 Ordinance for payment and security of the Series 2023B Note.
28

29 (o) There does not exist an Event of Default on any condition which, after the
30 passage of time or the giving of notice, or both, would constitute such Event of Default.
31

32 (p) The period of usefulness of the System is in excess of 30 years from the date
33 hereof.
34

35 (q) The estimated Costs of Acquisition and Construction of the Project to be funded
36 by the Loan is not more than \$5,400,000, including capitalized interest, if any.
37

38 (r) Section 4.01 of the Bond Ordinance provides that one or more Series of Bonds
39 may be issued for such purposes as may be permitted by the Enabling Act upon compliance with
40 certain provisions of the Bond Ordinance for the purpose of obtaining funds for the expansion
41 and improvement of the System. Bonds issued upon compliance with Section 4.01 and Section
42 4.02 of the Bond Ordinance shall be issued on a parity in all respects inter sese, but not with
43 respect to the particular Bond and Interest Redemption Fund or Debt Service Reserve Fund
44 created for the benefit of the Holders of a particular Series of Bonds.
45

46 (s) The Series 2023A Note is being used for the purposes of (i) defraying the costs of
47 the Project; (ii) paying costs of issuance of the Series 2023A Note; and (iii) capitalizing interest
48 on the Series 2023A Note, if any.
49

50 (t) It is necessary and in the best interest of the City to undertake the Project and
51 for the City to issue the Series 2023A Note in the principal amount of not exceeding \$5,400,000,

1 including capitalized interest, if any, in accordance with the Bond Ordinance, the Enabling Act
2 and this 2023A Series Ordinance for the purposes set forth above.
3

4 SECTION 3. Authorization of the Project. There is hereby approved and authorized the
5 undertaking of the Project. The period of usefulness of the System after the completion of the
6 Project is determined to be not less than 30 years from the date hereof. The Council hereby
7 finds that the Project when completed shall constitute and be operated as an integral part of
8 the System.
9

10 SECTION 4. Authorization of Loan. The Council hereby authorizes the City's acceptance
11 of the Loan from the Authority of not exceeding \$5,400,000 including capitalized interest, if
12 any, pursuant to and in accordance with the provisions of the Loan Agreement, the terms of
13 which are incorporated herein.
14

15 SECTION 5. Repayment of Loan by the City. The Council hereby authorizes the
16 repayment of the Loan by the City to the Authority from the Gross Revenues of the System,
17 pursuant to and in accordance with the provisions of the Bond Ordinance, the Loan Agreement
18 and the Series 2023A Note. Notwithstanding the above, upon any failure of the City to make
19 any payments to the Authority pursuant to the Loan Agreement or the Series 2023A Note, the
20 Authority shall require the State Treasurer to pay to the Authority, subject to the provisions of
21 the Revolving Fund Act, such amount from state appropriations to which the City may be or
22 become entitled as may be necessary to provide for all payments with respect to the Series
23 2023A Note.
24

25 SECTION 6. Payment of the Series 2023A Note. The Series 2023A Note, together with
26 the interest thereon, shall be payable, in such coin or currency of the United States of America
27 which at the time of such payment is legal tender for public and private debts, solely from the
28 Gross Revenues of the System, in accordance with the provisions of the Bond Ordinance and this
29 2023A Series Ordinance. The Series 2023A Note is a special obligation of the City payable solely
30 from, and secured by a pledge of and lien upon, the Gross Revenues derived from the System on
31 a parity in all respects with the Series 2011 Bonds, the Series 2016 Bonds, the Series 2016B
32 Note, the Series 2023B Note and any Series of Bonds hereafter issued under the Bond Ordinance
33 payable from such Gross Revenues on a parity and equally and ratably secured therewith.
34

35 The Series 2023A Note does not constitute an indebtedness of the City within any State
36 Constitutional provisions (other than Article X, Section 14, Paragraph 10 of the South Carolina
37 Constitution authorizing obligations payable solely from special sources not involving revenues
38 from any tax or license) or statutory limitation and shall never constitute nor give rise to a
39 pecuniary liability of the City or a charge against its general credit or taxing power. The full
40 faith, credit and taxing powers of the City are not pledged to the payment of the principal of
41 and interest on the Series 2023A Note.
42

43 SECTION 7. Authorization of Loan Agreement and the Series 2023A Note. The Loan
44 Agreement including the Series 2023A Note in substantially the forms attached hereto as Exhibit
45 A, with such changes as the executing officers shall approve (their execution to be conclusive
46 evidence of such approval) are hereby approved, and the execution and delivery of the Loan
47 Agreement and the Series 2023A Note, on behalf of the City, are hereby authorized and
48 directed. The Loan Agreement and the Series 2023A Note shall be executed on behalf of the
49 City by the Mayor and attested by the City Clerk under the seal of the City. The Council hereby
50 authorizes the incurrence of total indebtedness under the Series 2023A Note in a principal
51 amount not to exceed \$5,400,000 in order to allow the City to elect to capitalize interim

1 interest on the Series 2023A Note in accordance with the terms of the Loan Agreement. The
2 principal amount of the Series 2023A Note may be adjusted pursuant to the terms of the Loan
3 Agreement.
4

5 SECTION 8. Establishment of Series 2023A Bond and Interest Redemption Fund. There
6 is hereby established, pursuant to Section 7.03 of the Bond Ordinance and Section 4.1.2 of the
7 Loan Agreement, the Series 2023A Bond and Interest Redemption Fund for the purposes set
8 forth in such Section 7.03.
9

10 SECTION 9. Creation of the Series 2023A Debt Service Reserve Fund. (A) A Debt
11 Service Reserve Fund is hereby established for the Series 2023A Note and shall be designated
12 the "City of Myrtle Beach, South Carolina, Waterworks and Sewer System, Series 2023A Note
13 Debt Service Reserve Fund" (the "Series 2023A Debt Service Reserve Fund"), and shall, subject to
14 the other provisions of this 2023A Series Ordinance, and if and to the extent required by the
15 Loan Agreement, be maintained in an amount equal to the Series 2023A Reserve Requirement
16 for so long as the Series 2023A Note shall be Outstanding. Such Fund is intended to insure the
17 timely payment of the principal of and interest on the Series 2023A Note, and to provide for the
18 redemption of such Series 2023A Note prior to its stated maturity. Money in the Series 2023A
19 Debt Service Reserve Fund shall be used for the following purposes, and for no other, viz.:

- 20
21 (i) To prevent a default in the payment of the principal of or interest on the Series
22 2023A Note, by reason of the fact that money in the Series 2023A Bond and
23 Interest Redemption Fund is insufficient for such purposes;
24
- 25 (ii) To pay the principal of, interest on, and redemption premium of the Series 2023A
26 Note in the event that the Outstanding Series 2023A Note is redeemed as a
27 whole; or
28
- 29 (iii) To effect partial redemption of the Series 2023A Note; provided that subsequent
30 to said partial redemption, the value of the Series 2023A Debt Service Reserve
31 Fund shall be not less than the Series 2023A Reserve Requirement.
32

33 (B) The Series 2023A Debt Service Reserve Fund shall be kept in the complete custody
34 and control of the Trustee pursuant to the Debt Service and Debt Service Reserve Fund
35 Agreement and withdrawals from the Series 2023A Debt Service Reserve Fund shall be made
36 only in accordance with the provisions of this 2023A Series Ordinance and the Loan Agreement.
37

38 (C) Money in the Series 2023A Debt Service Reserve Fund shall be invested and
39 reinvested by the Trustee at the written direction of the City in Authorized Investments.
40 Subject to the remaining provisions of this paragraph (C), the earnings from such investments
41 shall be added to and become a part of the Series 2023A Debt Service Reserve Fund. The value
42 of the Series 2023A Debt Service Reserve Fund shall be established (i) as of the first day of
43 March of each year, and (ii) on the date of any withdrawal therefrom pursuant to subsection (B)
44 of this Section 9. Investments therein shall be valued at market value as of the date of such
45 valuation. Whenever, and as of any date of calculation, the value of the Series 2023A Debt
46 Service Reserve Fund shall exceed the Series 2023A Reserve Requirement, any excess, to the
47 extent represented by cash and/or securities, shall either be used to effect the redemption of
48 the Series 2023A Note, or shall be removed from the Series 2023A Debt Service Reserve Fund
49 and transferred into the Series 2023A Bond and Interest Redemption Fund or to the City for
50 deposit into the Contingent Fund, as directed in writing by the City.
51

1 (D) On or prior to the last business day of each month in each year, beginning with the
2 first full calendar month following the date on which (i) the valuation of the Series 2023A Debt
3 Service Reserve Fund results in a determination that the value of the Series 2023A Debt Service
4 Reserve Fund is less than the Series 2023A Reserve Requirement, or (ii) amounts have been
5 withdrawn from the Series 2023A Debt Service Reserve Fund, the City shall, pursuant to Section
6 8.04 of the Bond Ordinance, deposit in the Series 2023A Debt Service Reserve Fund an amount
7 equal to one-twelfth (1/12th) of the amount of the deficiency in the Series 2023A Debt Service
8 Reserve Fund determined as set forth in clause (i) above and the amount then withdrawn from
9 the Series 2023A Debt Service Reserve Fund, (it being understood that any such one-twelfth
10 (1/12th) payment shall be made in such amount for 12 consecutive months unless the amount in
11 the Series 2023A Debt Service Reserve Fund shall have been made equal to the Series 2023A
12 Reserve Requirement prior to such twelfth (12th) consecutive month); and provided further, that
13 no payments shall be required to be made into the Series 2023A Debt Service Reserve Fund
14 whenever and as long as the amount deposited therein shall be equal to the Series 2023A
15 Reserve Requirement.

16
17 SECTION 10. Approval of Debt Service Fund and Debt Service Reserve Fund Agreement.

18 The Debt Service Fund and Debt Service Reserve Fund Agreement in substantially the form
19 attached hereto as Exhibit B, with such changes as the executing officers shall approve (their
20 execution to be conclusive evidence of such approval), is hereby approved; and the execution
21 and delivery of the Debt Service Fund and Debt Service Reserve Fund Agreement on behalf of
22 the City is hereby authorized and directed. The Debt Service Fund and Debt Service Reserve
23 Fund Agreement shall be executed on behalf of the City by the Mayor and attested by the Clerk
24 of the City.

25
26 SECTION 11. Filings with Central Repository. So long as and to the extent required
27 pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended (“Section
28 11-1-85”), the City covenants that it will with a central repository for availability in the
29 secondary bond market when requested:

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

33
34 (ii) Event-specific information within 30 days of an event adversely
35 affecting more than 5% of Revenues or the City’s tax base.

36
37 The only remedy for failure by the City to comply with the covenant of this Section 11
38 shall be an action for specific performance of this covenant; and failure to comply shall not
39 constitute a default or an “Event of Default” under the Bond Ordinance or this 2023A Series
40 Ordinance. The Trustee shall have no responsibility to monitor the City’s compliance with this
41 covenant. The City specifically reserves the right to amend or delete this covenant in order to
42 reflect any change in Section 11-1-85, without the consent of the Trustee, the Authority or any
43 subsequent holder of the Series 2023A Note.

44
45 SECTION 12. Further Actions. The Mayor or in his absence the Mayor Pro Tem, City
46 Manager, Chief Financial Officer, City Clerk and City Attorney are hereby authorized and
47 directed to take any and all such further actions as shall be deemed necessary or desirable in
48 order to effectuate issuance of the Series 2023A Note pursuant to the Loan Agreement and to
49 carry out the intentions of this 2023A Series Ordinance and are hereby authorized to execute
50 and deliver such certificates, instruments and agreements as they shall deem necessary or
51 desirable.

1
2 **SECTION 13. Notices.** All notices, certificates or other communications hereunder or
3 under the Bond Ordinance shall be in writing and shall be deemed given when delivered and, if
4 delivered by mail, shall be mailed by first-class mail, postage prepaid, and addressed as follows:
5

6 If to the City:

7
8 City of Myrtle Beach
9 937 Broadway Street
10 Myrtle Beach, South Carolina 29578
11 Attention: Chief Financial Officer
12

13 If to the Authority:

14
15 South Carolina Water Quality Revolving
16 Fund Authority
17 c/o Office of Local Government - SRF
18 South Carolina Rural Infrastructure Authority
19 1201 Main Street, Suite 1600
20 Columbia, South Carolina 29201
21 Attention: Patricia A. Comp
22

23 If to the Trustee:

24
25 Regions Bank
26 Attention: Corporate Trust
27 1180 W. Peachtree St.
28 Suite 1200
29 Atlanta, Georgia 30309
30

31 The City, the Authority and the Trustee may, by notice given to the other parties,
32 designate any further or different addresses to which subsequent notices, certificates or other
33 communications shall be sent.
34

35 **SECTION 14. Ordinance a Contract.** This Ordinance shall be a contract between the City
36 and the Authority and shall be enforceable as such against the City.
37

38 **SECTION 15. Repeal.** All orders, resolutions, ordinances and parts thereof in conflict
39 herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take
40 effect and be in full force from and after its passage and approval.
41

42 **SECTION 16. Effectiveness of Ordinance; Codification.** This 2023A Series Ordinance shall
43 be in full force and effect from and after its enactment as provided by law. This 2023A Series
44 Ordinance shall be forthwith indexed by title and a summary thereof codified in the Code of
45 City Ordinances in the manner required by law and shall be indexed under the general heading
46 "Waterworks and Sewer System Loan-Not Exceeding \$5,400,000," and shall be made available
47 for public inspection at the office of the Clerk of the City.
48

49 **SECTION 17. Effective Date.** This Ordinance shall become effective upon its enactment.
50

1 Enacted by the City Council of the City of Myrtle Beach, South Carolina, this 23rd day of
2 May 2023.
3
4
5

6 CITY COUNCIL OF THE CITY OF MYRTLE BEACH,
7 SOUTH CAROLINA
8
9

10 By: _____
11 Brenda Bethune, Mayor

11 (SEAL)

12 ATTEST:
13
14
15

16 _____
17 Jennifer Adkins, City Clerk
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19
20

21 Date of First Reading: May 9, 2023
22 Date of Second Reading: May 23, 2023
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Exhibit A

Form of Loan Agreement

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Exhibit B

Form of Debt Service Fund and Debt Service Reserve Fund Agreement

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**DEBT SERVICE FUND AND
DEBT SERVICE RESERVE FUND AGREEMENT**

between

THE CITY OF MYRTLE BEACH, SOUTH CAROLINA

and

REGIONS BANK

Dated _____, 2023

relating to

Pump Station Protective Measures-Standby Pump Installation

SOUTH CAROLINA WATER POLLUTION CONTROL REVOLVING FUND

LOAN NUMBER: 1-263-23-494-25

1 DEBT SERVICE FUND AND DEBT SERVICE RESERVE FUND AGREEMENT

2
3
4 This DEBT SERVICE FUND AND DEBT SERVICE RESERVE FUND AGREEMENT, dated as of
5 _____, 2023, by and between the City of Myrtle Beach, South Carolina (the "Project
6 Sponsor") and Regions Bank, a banking corporation organized under the laws of the State of
7 Alabama, as Trustee (the "Trustee");
8

9 WITNESSETH:

10
11 WHEREAS, the South Carolina Water Quality Revolving Fund Authority (the "State
12 Authority") and the Project Sponsor have entered into a Loan Agreement (the "Loan
13 Agreement") relating to South Carolina Water Pollution Control Revolving Fund Loan Number:
14 1-263-23-494-25 (the "Loan") in order to finance the installation of a standby pump as more
15 fully described in the Loan Agreement; and
16

17 WHEREAS, pursuant to the Loan Agreement, and to evidence the Project Sponsor's
18 obligation to repay the Loan, the Project Sponsor has delivered its promissory note (the
19 "2023A Note") in the principal amount of \$5,400,000, or such lesser principal sum as may be
20 disbursed pursuant to the Loan Agreement; and
21

22 WHEREAS, Section 4.1.2 of the Loan Agreement requires the Project Sponsor to
23 establish and maintain a Debt Service Fund (the "Debt Service Fund") to provide for the
24 payment of principal and interest on the 2023A Note; and
25

26 WHEREAS, Section 4.2.1 of the Loan Agreement requires the Project Sponsor to
27 establish and maintain a Debt Service Reserve Fund (the "Debt Service Reserve Fund") to
28 provide a reserve for payment of principal of and interest on the 2023A Note; and
29

30 WHEREAS, the Project Sponsor has requested that the Trustee act as trustee with
31 respect to the Debt Service Fund and the Debt Service Reserve Fund and the Trustee has
32 agreed to so act;
33

34 NOW THEREFORE, in consideration of the mutual covenants and agreements herein
35 contained, the Project Sponsor and the Trustee agree as follows:
36

37 SECTION 1. ACCEPTANCE OF TRUST. The Trustee hereby acknowledges and accepts
38 the duties and responsibilities of the Trustee with respect to the Debt Service Fund and the
39 Debt Service Reserve Fund as set forth in the Loan Agreement and particularly in Section 4.4
40 thereof. The Trustee acknowledges that, in accordance with Article IV of the Loan
41 Agreement, it has established or will establish the Debt Service Fund and the Debt Service
42 Reserve Fund at the times required by the Loan Agreement and that it will make payments
43 from the Debt Service Fund to the State Authority in accordance with the schedule of
44 payments presented to the Trustee by the State Authority, as such schedule may be amended
45 by the State Authority from time to time.
46

47 SECTION 2. INDEMNITY. To the extent permitted by law, the Project Sponsor hereby
48 assumes liability for, and hereby agrees (whether or not any of the transactions contemplated
49 hereby are consummated) to indemnify, protect, save and keep harmless the Trustee and its
50 respective successors, assigns, agents and servants, from and against any and all liabilities,
51 obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and

1 disbursements (including legal fees and disbursements) of whatsoever kind and nature which
2 may be imposed on, incurred by, or asserted against at any time, the Trustee (whether or not
3 also indemnified against the same by the Project Sponsor or any other person under any other
4 agreement or instrument) and in any way relating to or arising out of the execution and
5 delivery of this Agreement, the establishment of the Debt Service Fund and the Debt Service
6 Reserve Fund, the acceptance of the money deposited therein, and any investment, payment,
7 transfer or other application of funds or securities by the Trustee in accordance with the
8 provisions of this Agreement; provided, however, that the Project Sponsor shall not be
9 required to indemnify the Trustee against its own negligence or willful misconduct. The
10 indemnities contained in this section shall survive the termination of this Agreement.

11
12 SECTION 3. RESPONSIBILITIES OF TRUSTEE. The Trustee and its respective successors,
13 assigns, agents and servants shall not be held to any liability whatsoever, in tort, contract, or
14 otherwise, in connection with the execution and delivery of this Agreement, the
15 establishment of the Debt Service Fund or the Debt Service Reserve Fund, the acceptance of
16 the money deposited in the Debt Service Fund or the Debt Service Reserve Fund, or any
17 investment, payment, transfer or other application of money or securities by the Trustee or
18 any act, omission or error of the Trustee made in good faith in the conduct of its duties and
19 not constituting negligence. The Trustee shall, however, be liable to the Project Sponsor for
20 its negligent or willful acts, omissions or errors which violate or fail to comply with the terms
21 of this Agreement. The duties and obligations of the Trustee shall be determined by the
22 express provisions of the Loan Agreement and this Agreement. The Trustee may consult with
23 counsel, who may be counsel to the Project Sponsor, and in reliance upon the opinion of such
24 counsel shall have full and complete authorization and protection in respect of any action
25 taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Trustee
26 shall deem it necessary or desirable that a matter be proved or established prior to taking,
27 suffering or omitting any action under this Agreement, such matter may be deemed to be
28 conclusively established by a certificate signed by an authorized officer of the Project
29 Sponsor.

30
31 SECTION 4. RESIGNATION OF TRUSTEE. The Trustee may resign and thereby become
32 discharged from the duties and obligations hereby created by notice in writing given to the
33 Project Sponsor and the State Authority not less than sixty (60) days before such resignation
34 shall take effect. Such resignation shall take effect immediately upon the appointment of a
35 new Trustee hereunder, if such new Trustee shall be appointed before the time limited by
36 such notice and shall then accept the duties and obligations thereof. If no appointment of a
37 successor Trustee shall be made pursuant to the foregoing provisions of this Section, the
38 resigning Trustee may apply to any court of competent jurisdiction to appoint a successor
39 Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper
40 and prescribe, appoint a successor Trustee.

1 **SECTION 5. REMOVAL OF TRUSTEE.**
2

3 (a) The Trustee may be removed at any time by an instrument or concurrent
4 instruments in writing, executed by the Project Sponsor and the State Authority.
5

6 (b) The Trustee may also be removed at any time for any breach of trust or for acting
7 or proceeding in violation of, or for failing to act or proceed in accordance with, any
8 provisions of this Agreement with respect to the duties and obligations of the Trustee, by any
9 court of competent jurisdiction upon the application of the Project Sponsor or the State
10 Authority.
11

12 **SECTION 6. SUCCESSOR TRUSTEE.** If at any time hereafter the Trustee shall resign, be
13 removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any
14 governmental official, agency, department or board, the position of Trustee shall thereupon
15 become vacant. If the position of Trustee shall become vacant for any of the foregoing
16 reasons or for any other reason, the Project Sponsor shall, with prior written approval of the
17 State Authority, appoint a Trustee to fill such vacancy.
18

19 **SECTION 7. TERM.** This Agreement shall commence upon its execution and delivery
20 and shall terminate when the 2023A Note has been paid and discharged in accordance with
21 the Loan Agreement, at which time all money and securities in the Debt Service Fund and the
22 Debt Service Reserve Fund shall be delivered to the Project Sponsor.
23

24 **SECTION 8. COMPENSATION FOR TRUSTEE.** The Project Sponsor agrees to pay to the
25 Trustee reasonable compensation for its services and to pay all of its expenses, including
26 counsel fees which it may incur in acting hereunder. To the extent that any portion of the
27 compensation of the Trustee has been agreed to by any separate agreement, such separate
28 agreement shall control, to the extent so intended.
29

30 **SECTION 9. SEVERABILITY.** If any one or more of the covenants or agreements
31 provided in this Agreement on the part of the Project Sponsor or the Trustee to be performed
32 should be determined by a court of competent jurisdiction to be contrary to law, such
33 covenant or agreements herein contained shall be null and void and shall be severed from the
34 remaining covenants and agreements and shall in no way affect the validity of the remaining
35 provisions of this Agreement.
36

37 **SECTION 10. COUNTERPARTS.** This Agreement will be executed in several
38 counterparts, all or any of which shall be regarded for all purposes as duplicate originals and
39 shall constitute and be but one and the same instrument.
40

41 **SECTION 11. GOVERNING LAW.** This Agreement shall be construed under the laws of
42 the State of South Carolina.
43

44 **SECTION 12. SECURITY FOR ACCOUNTS AND FUNDS.** All accounts and funds maintained
45 or held pursuant to this Agreement shall be continuously secured in the same manner as other
46 deposits of trust funds are secured by the Trustee.
47

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
2 by their duly authorized officers as of the date first above written.
3

4 THE CITY OF MYRTLE BEACH,
5 SOUTH CAROLINA
6

7 By: _____
8

9 Its: _____
10

11 Attest:

12
13 By: _____
14

15 Its: _____
16

17 REGIONS BANK
18

19 By: _____
20

21 Its: _____
22

23 Attest:

24
25 By: _____
26

27 Its: _____
28

29
30 The South Carolina Water Quality Revolving Fund Authority hereby approves Regions
31 Bank as Trustee of the Debt Service Fund and the Debt Service Reserve Fund.
32

33 SOUTH CAROLINA WATER QUALITY
34 REVOLVING FUND AUTHORITY
35

36
37
38 By: _____
39 Bonnie Ammons, Director
40 Office of Local Government,
41 South Carolina Rural Infrastructure Authority
42