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CITY OF CLEMSON, SOUTH CAROLINA

ORDINANCE NO. CC-2016-\_\_

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A CITY OF CLEMSON, SOUTH CAROLINA, WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE, SERIES 2017, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$1,750,000; AUTHORIZING THE MAYOR OR CITY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS RELATING TO THE BOND ANTICIPATION NOTE; PRESCRIBING THE FORM AND DETAILS OF THE BOND ANTICIPATION NOTE; LIMITING THE PAYMENT OF THE BOND ANTICIPATION NOTE FROM THE REVENUES DERIVED FROM THE OPERATION OF THE SYSTEM AND PLEDGING THE REVENUES TO SUCH PAYMENT; ESTABLISHING CERTAIN FUNDS AND ACCOUNTS; AND OTHER MATTERS RELATING THERETO.

Enacted: December \_\_, 2016

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEMSON, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

Section 1. Definitions. Unless the context shall clearly indicate some other meaning, all words and terms used in this Ordinance which are defined in the General Bond Ordinance (as hereinafter defined) shall for all purposes of this Ordinance have the respective meanings given to them in the General Bond Ordinance and in Section 1 hereof (except as herein otherwise expressly provided or unless the context otherwise requires). The term:

“2005A SRF Note” shall mean the \$3,408,342 final principal amount Promissory Note, Series 2005A, dated June 17, 2005, outstanding as of the date hereof in the principal amount of \$[to be provided].

“2005B SRF Note” shall mean the \$561,226 final principal amount Promissory Note, Series 2005B, dated May 1, 2006, outstanding as of the date hereof in the principal amount of \$[to be provided].

“2009 SRF Note” shall mean the \$575,800 final principal amount Promissory Note, Series 2009, dated December 18, 2009, outstanding as of the date hereof in the principal amount of \$[to be provided].

“2014 SRF Note” shall mean the \$1,570,000 final principal amount Promissory Note, Series 2014, dated September 29, 2014, outstanding as of the date hereof in the principal amount of \$[to be provided].

“2015 SRF Note” shall mean the \$[to be provided] final principal amount Promissory Note, Series 2015, dated June 30, 2015, outstanding as of the date hereof in the principal amount of \$[to be provided].

“Books of Registry” shall mean the registration books maintained by the Registrar in accordance with Section 6 herein.

“City” shall mean the City of Clemson, South Carolina.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Construction Fund” shall mean the fund or funds of that name established pursuant to Section 8 of this Ordinance.

“Council” shall mean the City Council of the City.

“Custodian” shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the City as a depository of moneys or securities held in the Construction Fund.

“General Bond Ordinance” shall mean General Bond Ordinance No. CC-2005-16 duly enacted on June 6, 2005 by the Council of the City authorizing and providing for the issuance of Water and Sewer System Revenue Bonds.

“Government Obligations” shall mean, to the extent permitted by Section 6-5-10 of the South Carolina Code or any other authorization relating to the investment of funds by the City, any of the following: (1) cash; (2) United States Treasury Obligations – State and Local Government Series; (3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market; (4) obligations of

any agencies or instrumentalities which are backed by the full faith and credit of the United States of America; (5) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; (6) obligations of the Federal National Mortgage Association; or (7) any legally permissible combination of any of the foregoing. Government Obligations must be redeemable only at the option of the holder thereof.

"Holder" shall mean the registered owner of the outstanding Series 2017 BAN.

"Ordinance" shall mean this Ordinance No. CC-2016-\_\_\_ duly enacted on December \_\_\_, 2016, by the Council of the City, authorizing the issuance of the Series 2017 BAN.

"Paying Agent" shall mean the paying agent appointed pursuant to Section 4(d) of this Ordinance.

"Projects" shall mean (a) architectural and engineer services for the design and construction of the expansion and improvement of the City's Cochran Road Wastewater Treatment Plant; (b) design, construction, improvement and equipping of office and laboratory space at the City's Cochran Road Wastewater Treatment Plant; and (c) any other matters with respect to the above improvements and such other improvements as may be necessary or incidental to the System.

"Record Date" shall mean the fifteenth (15<sup>th</sup>) day of the month (whether or not a Business Day) of the calendar month immediately preceding the maturity date of the Series 2017 BAN.

"Registrar" shall mean the registrar appointed pursuant to Section 4(c) of this Ordinance.

"Revenue Bonds" shall mean the Water and Sewer System Revenue Bonds to be issued with respect to the Series 2017 BAN pursuant to the General Bond Ordinance and one or more subsequent Supplemental Ordinances enacted by the City.

"Senior Lien Bonds" shall mean, collectively, the 2005A SRF Note, the 2005B SRF Note, the 2009 SRF Note, the 2014 SRF Note, the 2015 SRF Note, and any Bond or Bonds (as defined in the General Bond Ordinance) hereafter issued pursuant to the General Bond Ordinance.

"Series 2017 BAN" shall mean the City of Clemson, South Carolina, Water and Sewer System Revenue Bond Anticipation Note, with an appropriate series designation, in the aggregate principal amount of not exceeding \$1,750,000, authorized to be issued hereunder. The Series 2017 BAN may be issued in one or more series.

Section 2. Finding and Determinations. The Council hereby finds and determines:

(a) The City is an incorporated municipality located in portions of Anderson County and Pickens County, State of South Carolina, and as such has all powers granted to municipalities by the Constitution and general laws of the State, including the power to possess and operate a water system and a sewer system (as combined, the "System").

(b) The System is operated under the direction of the Council, and furnishes water and sewer service throughout the City and in certain territory adjacent thereto.

(c) Title 11, Chapter 17, Code of Laws of South Carolina, 1976, as amended (the "BAN Act"), provides that any borrower, the definition of which includes the City, whenever authorized by general or special law to issue bonds, may, pending the sale and issuance thereof, borrow in anticipation of the receipt of the proceeds of such bonds and evidence the debt by a note or notes.

(d) The Net Revenues of the System presently are pledged as security for and payment of the Senior Lien Bonds.

(e) The City has heretofore issued the Senior Lien Bonds which are and will be subject to a lien upon the Net Revenues which is prior and paramount to the lien upon the Net Revenues securing the payment of the Series 2017 BAN. The Series 2017 BAN is designated as a "Junior Bond" as such term is defined in the General Bond Ordinance.

(f) The proceeds of the Series 2017 BAN shall be used to: (i) defray a portion of the costs of acquisition or construction of one or more of the Projects; and (ii) pay the costs of issuance of the Series 2017 BAN.

(g) The Series 2017 BAN authorized by this Ordinance will be issued in anticipation of the Revenue Bonds to be issued pursuant the General Bond Ordinance, and one or more Supplemental Ordinances of the City, and for the purposes for which such Revenue Bonds are authorized.

(h) Pending the issuance and sale of the Revenue Bonds, it is in the best interest of the City to provide for the issuance of the Series 2017 BAN in the aggregate principal amount of not exceeding \$1,750,000 in anticipation of the issuance of the Revenue Bonds and the receipt of the proceeds thereof.

Section 3. Authorization of Revenue Bonds. The Council irrevocably obligates and binds the City to effect the issuance of one or more series of Revenue Bonds prior to the stated maturity of any of the Series 2017 BAN authorized by this Ordinance, the proceeds of which shall be used to meet the payment of principal and, if necessary, interest on the Series 2017 BAN. This provision shall constitute a covenant between the City and the Holders from time to time of the Series 2017 BAN issued pursuant to this Ordinance. Nothing herein shall prohibit the City from renewing or refunding the Series 2017 BAN.

Section 4. Authorization of the Projects; Authorization of the Series 2017 BAN.

(a) There is hereby authorized and approved the undertaking of one or more of the Projects. Any of the Projects may be funded with the proceeds of the Series 2017 BAN. The Council hereby finds that the Projects when completed shall constitute and be operated as an integral part of the System. Pending the issuance and delivery of the Revenue Bonds and pursuant to the BAN Act, there is hereby authorized to be issued a Water and Sewer System Revenue Bond Anticipation Note designated "City of Clemson, South Carolina, Water and Sewer System Revenue Bond Anticipation Note, [appropriate series designation]" (the "Series 2017 BAN").

(b) The Series 2017 BAN shall be in fully registered form, registered in the name of the Holder thereof; shall be dated as of the date of its initial delivery; shall be in the denomination as determined by the Mayor or City Administrator; shall be numbered as determined by the Registrar; shall be subject to redemption prior to maturity upon such terms and conditions as the Mayor or City Administrator and the initial purchaser thereof agree upon; shall bear interest (calculated, unless otherwise specified by the bid of the initial purchaser thereof, on the basis of a 360-day year comprised of twelve 30-day months) from its date at a rate of interest approved by the Mayor or City Administrator; and shall mature not more than one year from its initial date.

Bond anticipation notes (“Refunding BANS”) may be issued to refund the outstanding principal of and, if necessary, accrued interest on the outstanding Series 2017 BAN issued pursuant to this Ordinance (“BAN to be Refunded”). In the event the City issues one or more series of Refunding BANS, the principal amount of the BAN to be Refunded shall not be included when calculating the aggregate principal amount of the Series 2017 BAN issued pursuant to this Ordinance.

(c) The City shall cause the Books of Registry to be kept at the offices of the person or entity so designated by the City as the Registrar for the registration and transfer of the Series 2017 BAN. Upon presentation at its office for such purpose, the Registrar shall register or transfer, or cause to be registered or transferred, on such Books of Registry the Series 2017 BAN under such reasonable regulations as the Registrar may prescribe. The Registrar shall be a bank, trust company, depository or transfer agent located either within or outside the State of South Carolina or the City Clerk of the City, as determined by the Mayor or City Administrator.

The Series 2017 BAN shall be transferable only upon the Books of Registry of the City, which shall be kept for such purpose at the office of the Registrar, by the Holder thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such Series 2017 BAN, the Registrar on behalf of the City shall issue in the name of the transferee a new fully registered Series 2017 BAN of the same aggregate principal amount, interest rate and maturity as the surrendered Series 2017 BAN. Any Series 2017 BAN surrendered in exchange for a new registered Series 2017 BAN pursuant to this paragraph shall be canceled by the Registrar.

(d) Both the principal of and interest on the Series 2017 BAN shall be payable to the Holders thereof in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts. Principal of and interest on the Series 2017 BAN shall be payable at the office of the Paying Agent. The Paying Agent shall be a bank, trust company or depository located either within or without the State or the City Clerk of the City, as determined by the Mayor and City Administrator.

Section 5. Authorization to Determine Certain Matters Relating to the Series 2017 BAN; Execution and Form of Series 2017 BAN; Sale of Series 2017 BAN.

(a) Without further authorization, the Council hereby authorizes the Mayor or the City Administrator to: (a) offer the Series 2017 BAN for sale at such date and time as deemed to be in the best interest of the City; (b) determine the principal amount of the Series 2017 BAN to be issued at one time or from time to time; (c) determine the maturity date of the Series 2017 BAN; (d) determine the redemption provisions, if any, for the Series 2017 BAN; (e) determine the interest rate for the Series 2017 BAN; (f) approve the final form of a Notice of Sale, in substantially the form set forth in Exhibit B hereto, under which the Series 2017 BAN will be offered for sale by private placement with a bank or other financial institution; (g) award the sale of the Series 2017 BAN to the bidder providing the most advantageous proposal for the purchaser thereof in accordance with the terms of the Notice of Sale; (h) designate the Registrar and Paying Agent for the Series 2017 BAN; (i) determine the original issue date of the Series 2017 BAN; (j) determine whether and when to issue any Refunding BANS to refund the outstanding principal of and, if necessary, accrued interest on any BANS to be Refunded; (k) determine whether the Series 2017 BAN shall be designated as a “qualified tax-exempt obligation” as defined in the Code; and (l) agree to any other terms, provisions and matters necessary or advisable to effect the issuance of the Series 2017 BAN.

(b) The Series 2017 BAN shall be executed in the name of the City with the manual or facsimile signature of the Mayor or Mayor Pro-Tempore attested by the manual or facsimile signature of the City Clerk

with the seal of the City impressed or affixed thereon or a facsimile thereof. The Series 2017 BAN shall be issued in substantially the form attached hereto as Exhibit A. The Series 2017 BAN shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Series 2017 BAN shall bear a certificate of authentication manually executed by the Registrar in substantially the form set forth in Exhibit A.

(c) A Notice of Sale for the Series 2017 BAN may be provided to prospective purchasers of the Series 2017 BAN as determined by the Finance Director of the City. In the Notice of Sale, the City may either fix the sale date or reserve the right to set the actual sale date by 48 hours' notice disseminated by an electronic information service. If a fixed date is set, the City may reserve the right to modify such date by notice disseminated by an electronic information service at least 48 hours prior to the time set for receipt of proposals. The Notice of Sale shall be in substantially the form set forth in Exhibit B hereto. Proposals may be received in electronic format.

Section 6. Books of Registry. The City shall cause the Books of Registry to be kept at the offices of the Registrar for the registration and transfer of the Series 2017 BAN. Upon presentation at its office for such purpose, the Registrar shall register or transfer, or cause to be registered or transferred, on such Books of Registry, the Series 2017 BAN under such reasonable regulations as the Registrar may prescribe.

The Series 2017 BAN shall be transferable only upon the Books of Registry of the City, which shall be kept for such purpose at the office of the Registrar, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Series 2017 BAN, the Registrar on behalf of the City shall issue in the name of the transferee a new fully registered Series 2017 BAN of the same aggregate principal amount, interest rate and maturity as the surrendered Series 2017 BAN. Any Series 2017 BAN surrendered in exchange for a new registered Series 2017 BAN pursuant to this Section shall be canceled by the Registrar.

The City, the Registrar and the Paying Agent may deem or treat the person in whose name the Series 2017 BAN shall be registered upon the Books of Registry as the absolute owner of such Series 2017 BAN, whether such Series 2017 BAN shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Series 2017 BAN and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Series 2017 BAN to the extent of the sum or sums so paid, and neither the City nor the Registrar nor the Paying Agent shall be affected by any notice to the contrary.

Section 7. Disposition of Proceeds of Series 2017 BAN. The proceeds derived from the sale of the Series 2017 BAN shall be used (1) to defray a portion of the costs of acquisition and construction of one or more of the Projects; and (2) to pay for the costs of issuance of the Series 2017 BAN. The respective amounts specified in this Section 7 shall be determined by the City upon the delivery of the Series 2017 BAN.

Section 8. Construction Funds. There is hereby authorized to be established one or more Construction Funds (with an appropriate series designation, if necessary) in connection with the Series 2017 BAN. The Construction Fund shall be held by a Custodian selected by the City Administrator. The moneys on deposit in the Construction Fund shall be invested in Permitted Investments and shall be used and applied to the payment of the cost of the Projects and to all costs incidental to the issuance and sale of the Series 2017 BAN, including without limiting the generality of the foregoing, the cost of legal, financial and accounting expenses, costs of printing and of preparing and issued the Series 2017 BAN, and all other items or expenses incidental thereto. Withdrawals from the Construction Fund shall be made in the manner withdrawals from

other funds of the City are made.

Section 9. Covenants of the City. The City hereby covenants with the Holder of the Series 2017 BAN, as follows:

(a) The City will attempt to sell on or before the maturity date of the Series 2017 BAN a sufficient amount of Revenue Bonds, the proceeds of which shall be used to pay the principal of and, if necessary, interest on the Series 2017 BAN or the City will renew or refund the Series 2017 BAN.

(b) The City covenants that it has not issued, nor will it cause to be issued, any notes or certificates of indebtedness of any type in anticipation of the issuance of the Revenue Bonds, except the Series 2017 BAN authorized by this Ordinance (including any refunding or renewal thereof); provided, however, the City may issue additional bond anticipation notes which are junior, subordinate and inferior to the Series 2017 BAN authorized by this Ordinance.

(c) The City hereby covenants and agrees with the Holders of the Series 2017 BAN that it will not take any action which will, or fail to take any action which failure will, cause interest on the Series 2017 BAN to become includable in the gross income of the owners thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Series 2017 BAN. The City further covenants and agrees with the Holders of the Series 2017 BAN so long as the Series 2017 BAN is outstanding that no use of the proceeds of the Series 2017 BAN shall be made which, if such use had been reasonably expected on the date of issue of the Series 2017 BAN would have caused the Series 2017 BAN to be an "arbitrage bond," as defined in the Code; and to that end the City hereby shall:

(i) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Series 2017 BAN is outstanding;

(ii) establish such funds, make such calculations and pay such amounts in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates, if any, of certain amounts to the United States; and

(iii) make such reports of such information at the times and places required by the Code.

To the extent the Series 2017 BAN is designated as a "qualified tax exempt obligation" by the Mayor or City Administrator pursuant to Section 5 hereof: (a) the City covenants that the City and all subordinate entities thereof do not anticipate issuing more than \$10,000,000 (or the applicable limitation in effect at the time of issuance of the Series 2017 BAN) in tax-exempt bonds or other tax-exempt obligations in applicable calendar year other than private activity bonds (other than private activity bonds which are "qualified 501(c)(3) bonds" as defined in the Code); and (b) the City represents that the sum of all tax-exempt obligations (other than such private activity bonds) issued by the City and all subordinate entities thereof during the applicable calendar year is not reasonably expected to exceed \$10,000,000 (or the applicable limitation in effect at the time of issuance of the Series 2017 BAN).

The City Administrator or the Finance Director of the City are hereby authorized to adopt written procedures to ensure the City's compliance with federal tax matters relating to the Series 2017 BAN.

(d) The City will comply with the rate covenant set forth in Section 7.1 of the General Bond Ordinance.

Section 10. Payment of Series 2017 BAN. For the payment of the principal of and interest on the Series 2017 BAN as the same respectively mature, there are hereby pledged the proceeds of the Revenue Bonds. The City also hereby pledges the Net Revenues of the System for the payment of such principal and interest; provided the pledge of Net Revenues shall be junior, subordinate and inferior to the pledge of Net Revenues securing the Senior Lien Bonds. The City at its option may also utilize any other funds available therefor for the payment of the principal of and interest on the Series 2017 BAN.

Section 11. Incorporation of Portions of General Bond Ordinance. All of the provisions of the General Bond Ordinance shall be applicable to the Series 2017 BAN and are made a part hereof for the benefit and security of the Holders thereof as though fully set forth herein, including without limiting the generality of the foregoing, all provisions of the General Bond Ordinance relating to books, accounts and audits; insurance; sale, lease or encumbrance of the System; other general covenants; the terms and conditions upon which the General Bond Ordinance may be modified; and the Events of Default and the consequences thereof.

Section 12. Defeasance. The obligations of the City under this Ordinance and the pledges, covenants and agreements of the City herein made or provided for shall be fully discharged and satisfied as to the Series 2017 BAN, and the Series 2017 BAN shall no longer be deemed to be outstanding hereunder when:

(a) the Series 2017 BAN shall have been purchased by the City and surrendered to the City for cancellation or otherwise surrendered to the City or the Paying Agent and are canceled or subject to cancellation by the City or the Paying Agent; or

(b) payment of the principal of and interest on the Series 2017 BAN either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Paying Agent in trust and irrevocably setting aside exclusively for such payment, (1) moneys sufficient to make such payment, or (2) Government Obligations (hereinafter defined) maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment and all necessary and proper fees, compensation and expenses of the Paying Agent. At such time as the Series 2017 BAN shall no longer be deemed to be outstanding hereunder, the Series 2017 BAN shall cease to draw interest from the due date thereof and, except for the purposes of any such payment from such moneys or Government Obligations as set forth in (ii) above, shall no longer be secured by or entitled to the benefits of this Ordinance.

Section 13. Continuing Disclosure. The City covenants, 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”), to file with a central repository for availability in the secondary bond market when requested:

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

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

The only remedy for failure by the City to comply with the covenant of this Section 13 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 Holder of the Series 2017 BAN.

Section 14. General Authorizations. The Mayor, Mayor Pro-Tempore, City Administrator, Finance Director of the City, City Clerk and the 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 Series 2017 BAN and to carry out the intentions of this Ordinance.

Section 15. Benefits of Ordinance Limited to the City and Holder of the Series 2017 BAN. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Series 2017 BAN is intended or should be construed to confer upon or give to any person other than the City or Holders any legal or equitable right, remedy or claim under or by reason of or in respect to the Ordinance or any covenant, condition, stipulation, promise, agreement or provision therein or herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions contained therein are intended to be and shall be for and inure to the sole and exclusive benefit of the City and the Holder of the Series 2017 BAN from time to time as therein provided.

Section 16. Ordinance Binding Upon Successors or Assigns of the City. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the City and shall inure to the benefit of the Holders.

Section 17. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the City contained in this Ordinance or the Series 2017 BAN against any member of the City, any officer or employee, as such, in his or her individual capacity, past, present or future, of the City, either directly or through the City, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Ordinance and the Series 2017 BAN are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the City, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the City or any holder of the Series 2017 BAN or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member, officer and employee is, by the enactment of this Ordinance and the execution of the Series 2017 BAN, and as a condition of, and as a part of the consideration for, the enactment of this Ordinance and the execution of the Series 2017 BAN, expressly waived and released. The immunity of members, officers and employees of the City under the provisions contained in this Section 17 shall survive the termination of this Ordinance.

Section 18. Law and Place of Enforcement of the Ordinances. The Ordinances shall be construed and interpreted in accordance with the laws of the State of South Carolina (the "State"), and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in said State.

Section 19. Section Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 20. Notices. All notices, certificates or other communications to the City hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows:

City of Clemson  
Attention: City Administrator  
1250 Tiger Boulevard, Suite 1  
Clemson, South Carolina 29631

The City may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 21. Codification. This Ordinance shall be forthwith codified in the Code of City Ordinances in the manner required by law and the name shall be indexed under the general heading "Ordinance - Water and Sewer System Revenue Bond Anticipation Notes."

Section 22. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the City and any part of any ordinance or resolution in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 23. Effective Date. This Ordinance shall become effective upon its enactment.

[Execution Page Follows]

Enacted by the City Council of the City of Clemson, South Carolina, this 19<sup>th</sup> day of December, 2016.

CITY COUNCIL OF THE CITY OF CLEMSON,  
SOUTH CAROLINA

(SEAL)

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J.C. Cook, III, Mayor

ATTEST:

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Beverly A. Coleman, Clerk

Date of First Reading: December 5, 2016  
Date of Second Reading: December \_\_\_\_, 2016

Ordinance No.: CC-2016-\_\_

[Execution Page]

**EXHIBIT A**

**FORM OF NOTICE OF SALE**

**\$1,750,000 WATER AND SEWER SYSTEM REVENUE  
BOND ANTICIPATION NOTE, SERIES 2017,  
OF THE CITY OF CLEMSON, SOUTH CAROLINA**

**[NOT] BANK QUALIFIED**

**Bid Date and Time:** \_\_\_\_\_, 2017,  
12:00 Noon, South Carolina Time  
**Facsimile:** 864.653.2032  
**E-Mail:** [rcotton@cityofclemson.org](mailto:rcotton@cityofclemson.org)  
[m burns@mcnair.net](mailto:m burns@mcnair.net)

**Time and Place of Sale:** NOTICE IS HEREBY GIVEN that bids for the purchase of a not exceeding \$1,750,000 Water and Sewer System Revenue Bond Anticipation Note, Series 2017 (the “BAN”), of the City of Clemson, South Carolina (the “City”), will be received on behalf of the City by the City Administrator of the City until 12:00 Noon, South Carolina time, on \_\_\_\_\_, \_\_\_\_\_, 2017.

**Mailed or Hand-Delivered Proposals:** Each mailed or hand-delivered proposal should be enclosed in an envelope marked “Proposal for Water and Sewer System Revenue Bond Anticipation Note, Series 2017, City of Clemson, South Carolina” and should be mailed or delivered to:

Richard E. Cotton  
City Administrator  
City of Clemson, South Carolina  
1250 Tiger Boulevard, Suite 1  
Clemson, South Carolina 29631

**Facsimile Proposals:** The City will accept the facsimile transmission of a manually signed Official Bid Form or other form of proposal at the risk of the bidder. The City will take reasonable steps to ensure the confidentiality of bids transmitted to it by facsimile transmission, but cannot guarantee the confidentiality of information transmitted by such means. Any delay in receipt of a facsimile bid, and any incompleteness or illegible portions of such proposal are the sole responsibility of the bidder. Bids by facsimile should be transmitted to the attention of Richard E. Cotton, City Administrator, Fax No.: 864.653.2032.

**E-Mail Bids:** Electronic proposals may be e-mailed to the attention of Richard E. Cotton at e-mail address: [rcotton@cityofclemson.org](mailto:rcotton@cityofclemson.org) with a copy to the City’s Bond Counsel, Michael W. Burns at e-mail address: [m burns@mcnair.net](mailto:m burns@mcnair.net).

**PROPOSALS MAY BE DELIVERED BY HAND, BY MAIL, BY FACSIMILE TRANSMISSION OR BY E-MAIL, BUT NO PROPOSAL SHALL BE CONSIDERED WHICH IS NOT ACTUALLY RECEIVED BY THE CITY AT THE PLACE, DATE AND TIME DESIGNATED. THE CITY SHALL NOT BE RESPONSIBLE FOR ANY FAILURE, MISDIRECTION, DELAY OR ERROR RESULTING FROM THE SELECTION BY ANY BIDDER OF ANY PARTICULAR MEANS OF DELIVERY OF BIDS.**

BAN: The BAN will be issued in fully registered form; will be registered as to principal and interest in the name of the purchaser thereof; will be as of the date of its delivery; will mature one year from the date of issuance (subject to prior redemption); will be in the denomination of not exceeding \$1,750,000; and will bear interest payable at maturity or earlier redemption. Unless otherwise designated by a bidder, interest on the BAN will be calculated based on a 360-day year comprised of twelve 30-day months.

Redemption: Unless otherwise specified by a bidder, the BAN will be subject to redemption prior to maturity in whole at any time, at the option of the City, at the principal amount then outstanding and interest accrued thereon to the date of redemption.

Bid Requirements: Bidders shall specify a single fixed rate of interest per annum which the BAN is to bear to be expressed as a percentage interest rate of one-hundredth (1/100<sup>th</sup>) of a percent. Any sum named by way of a premium shall be paid in cash as part of the purchase price. The interest rate, costs and other terms of the bid submitted must be guaranteed from the date of the proposal to the date of delivery of the BAN (expected to be \_\_\_\_\_, 2017).

Award of BAN: After the proposals are received, they will be evaluated by the officials of the City and the based on various factors, including, but in no way limited to, the interest cost, mandatory or optional redemption provisions, additional credit or underwriting approval, additional covenants and terms, if any, and other conditions set forth therein. Based on such evaluation, the most advantageous bid, determined in the sole and absolute discretion of the City, may be accepted by the City. The selection process will be weighted toward the lowest net interest cost, but net interest cost is not the only factor that may be considered by the City. Any fees or charges of the bidder to be paid by the City will be treated as additional interest. The City reserves the right to reject any and all bids or to waive irregularities in any bid. It is anticipated that bids will be accepted or rejected no later than 5:00 p.m., South Carolina time, on the date of the sale. The City retains the option to reduce the principal amount of the BAN by not more than \_\_\_% prior to issuance.

Bid Form: No good faith check is required. It is requested, but not required, that your bid be submitted on the attached bid form. Each mailed or hand-delivered proposal should be enclosed in a sealed envelope marked "Proposal for Water and Sewer System Revenue Bond Anticipation Note, Series 2017, of the City of Clemson, South Carolina," and should be directed to the City Administrator of the City at the address in the second paragraph hereof. Facsimile and email bids should be transmitted in accordance with the provisions of the third and fourth paragraphs hereof, respectively.

Legal Authority and Security: The BAN will be issued pursuant to Title 11, Chapter 17, Code of Laws of South Carolina, 1976, as amended, General Bond Ordinance No. CC-2005-16 of the City duly enacted on June 6, 2005 (the "General Bond Ordinance"); and Ordinance No. CC-2016-\_\_ of the City duly enacted on December \_\_, 2016 (the "BAN Ordinance") by the City authorizing the BAN. The BAN is issued in anticipation of the receipt of proceeds of one or more water and sewer system revenue bonds (the "Bonds") to be issued by the City pursuant to Title 6, Chapter 21, Code of Laws of South Carolina, 1976, as amended, and are payable both to principal and interest, from the proceeds thereof. The BAN is payable solely from and secured equally and ratably by a pledge and lien upon the Net Revenues of the System (as such terms are defined in the General Bond Ordinance).

The BAN is designated as a "Junior Bond" as such term is defined in the General Bond Ordinance. The pledge of and lien upon the Net Revenues of the System securing the BAN will rank junior, subordinate and inferior to the pledge and lien securing the outstanding obligations set forth in the table set forth below and any Bond or Bonds (as defined in the General Bond Ordinance) hereafter issued by the City pursuant to the General Bond Ordinance.

<b>Obligation</b>	<b>Original Principal Amount</b>	<b>Currently Outstanding Principal Amount</b>	<b>Quarterly Payment Amount</b>	<b>Maturity Date</b>
2005A SRF Note	\$3,408,342			
2005B SRF Note	\$561,226			
2009 SRF Note	\$575,800			
2014 SRF Note	\$1,570,000			
2015 SRF Note	[\$to be provided]			

The BAN, and the interest thereon, shall not be a general obligation indebtedness 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 pledged to the payment thereof. The full faith, credit and taxing powers of the City shall not be deemed to be pledged to the payment of the principal of and interest on the BAN.

Projects: The City proposes to make certain improvements, extensions and enlargements to the System, including any one or more of the following: (a) architectural and engineer services for the design and construction of the expansion and improvement of the City's Cochran Road Wastewater Treatment Plant; (b) design, construction, improvement and equipping of office and laboratory space at the City's Cochran Road Wastewater Treatment Plant; and (c) any other matters with respect to the above improvements and such other improvements as may be necessary or incidental to the System.

Legal Opinions: The issuance of the BAN is subject to the respective opinions of the McNair Law Firm, P.A., Bond Counsel, and the City's attorney, Mary C. McCormac, Esq.

Tax Exemption and Other Tax Matters: The Internal Revenue Code of 1986, as amended (the "Code"), includes provisions that relate to tax-exempt obligations, such as the BAN, including, among other things, permitted uses and investment of the proceeds of the BAN and the rebate of certain net arbitrage earnings from the investment of such proceeds to the United States Treasury. Noncompliance with these requirements may result in interest on the BAN becoming subject to federal income taxation retroactive to the date of issuance of the BAN. The City has covenanted to comply with the requirements of the Code to the extent required to maintain the exclusion of interest on the BAN from gross income for federal tax purposes. Failure of the City to comply with the covenant could cause the interest on the BAN to be taxable retroactively to the date of issuance.

The Code imposes an alternative minimum tax on a taxpayer's alternative minimum taxable income. Interest on the BAN is not an item for tax preference for purposes of the individual and corporate alternative minimum tax. However, interest on the BAN will be includable in the adjusted net book income or adjusted current earnings of a corporation for purposes of computing the alternative minimum tax imposed on corporations.

Purchasers of the BAN should consult their tax advisors with respect to collateral tax consequences of ownership of the BAN, such as the calculation of alternative minimum tax, environmental tax or foreign branch profits tax liability, the tax on passive income of S corporations, the inclusion of Social Security or other retirement payments in taxable income, or the portion of interest expense of a financial institution which is allocable to tax-exempt interest.

BAN [Not] Designated as Qualified Tax-Exempt Obligation(s): The City will [not] designate the BAN as "qualified tax-exempt obligations" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended (the "Code"), relating to the ability of financial institutions to deduct from income for

federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.

South Carolina Taxation: The interest on the BAN is exempt from all State taxation except estate or other transfer taxes. Section 12-11-20 of the South Carolina Code of Laws 1976, as amended, imposes upon every bank engaged in business in the State a fee or franchise tax computed at the rate of 4-1/2% of the entire net income of such bank. Regulations of the South Carolina Department of Revenue and Taxation require that the term "entire net income" includes income derived from any source whatsoever including interest on obligations of any state and any political subdivision thereof. Interest on the BAN will be included in such computation.

Investment Letter: The successful purchaser of the BAN will be requested to execute a letter to the City acknowledging, among other things, that (1) no official statement or other offering material has been furnished other than this Notice of Sale; (2) the purchaser had an opportunity to make inquiries of, and receive answers from such officials, employees, agents and attorneys of the City; (3) the purchaser has knowledge and experience in financial and business matters and that it is capable of evaluating the merits and risks of its investment in the BAN and is financially able to bear the economic risk of its investment in the BAN; (4) the purchaser is acquiring the BAN as a vehicle for making a commercial loan and without a present view to the distribution or resale thereof (subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be under its control) within the meaning of the Federal securities laws; and (5) the purchaser is acquiring the BAN solely for its own account and no other person now has any direct or indirect beneficial ownership or interest therein.

The purchaser will also be requested to covenant that it will not voluntarily dispose of all or any portion of the BAN unless it procures from each assignee thereof representations and covenants in form and content substantially the same as those made by the purchaser.

Delivery: The BAN will be delivered on or about \_\_\_\_\_, 2017, in Clemson, South Carolina, at the expense of the City, or at such other place as may be agreed upon with the purchasers at the expense of the purchasers.

Miscellaneous: Bidders are also requested to indicate whether any commitment fee will be required or whether the City will be requested to reimburse the successful bidder for out-of-pocket expenses and counsel fees.

Persons seeking additional information should communicate with:

Richard E. Cotton  
City Administrator  
City of Clemson, South Carolina  
1250 Tiger Boulevard, Suite 1  
Clemson, SC 29631  
Phone: 864.653.2030  
E-Mail: [rcotton@cityofclemson.org](mailto:rcotton@cityofclemson.org)

Thomas Sparacino  
Finance Director  
City of Clemson, South Carolina  
1250 Tiger Boulevard, Suite 1  
Clemson, SC 29631  
Phone: 864.653.2030  
E-Mail: [tsparacino@cityofclemson.org](mailto:tsparacino@cityofclemson.org)

Daniel R. McLeod, Jr., Esq. or  
Michael W. Burns, Esq.  
McNair Law Firm, P.A.  
Post Office Box 447  
Greenville, SC 29602  
Telephone: 864.271.4940  
E-Mail: [dmcLeod@mcnair.net](mailto:dmcLeod@mcnair.net)  
E-Mail: [mburns@mcnair.net](mailto:mburns@mcnair.net)

CITY OF CLEMSON, SOUTH CAROLINA

\_\_\_\_\_, 2017

FORM OF SERIES 2017 BAN

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
CITY OF CLEMSON  
WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE  
SERIES 2017

Date: \_\_\_\_\_, 2017 \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that the City of Clemson, South Carolina (the "City"), is justly indebted and, for value received, hereby promises to pay to \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_, the principal sum of \$ \_\_\_\_\_ and to pay interest on such principal amount at the rate of \_\_\_\_\_% per annum (based on 30-day month, 360-day year). Both the principal of and interest on this Note are payable by the City on \_\_\_\_\_, 20\_\_ (unless earlier redeemed), upon presentation and surrender of this Note at the principal office of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts.

This Note shall not be entitled to any benefit under the BAN Ordinance (as defined below), nor become valid or obligatory for any purpose, until the Certificate of Authentication hereon shall have been duly executed by the Registrar.

This Note is [not] subject to redemption prior to maturity [on or after \_\_\_\_\_ 1, 20\_\_, at the option of the City at par plus accrued interest to the date of redemption].

This Note is issued by the City for the purpose of (i) defraying a portion of the cost of acquisition or construction of one or more of the Projects (as defined in the BAN Ordinance described below); and (ii) paying the cost of issuance of this Note.

This Note is issued under, pursuant to and in full compliance with the Constitution and statutes of the State of South Carolina (the "State"), including particularly Article X, Section 14(10) of the South Carolina Constitution, Title 11, Chapter 17, of the Code of Laws of South Carolina 1976, as amended (the "BAN Act"), in anticipation of the issuance of water and sewer system revenue bonds (the "Revenue Bonds") to be issued by the City pursuant to the General Bond Ordinance (as defined in the BAN Ordinance) and a subsequent ordinance of the City. This Note shall constitute a "Junior Bond" within the meaning of, and as permitted by, Section 3.5 of the General Bond Ordinance. This Note is being issued pursuant to Ordinance No. CC-2016-\_\_\_\_ duly enacted on December \_\_, 2016 (the "BAN Ordinance") (collectively the General Bond Ordinance and the BAN Ordinance are referred to as the "Ordinances"), authorizing the Series 2017 BAN (as such term is defined in the BAN Ordinance), which Ordinances have been duly codified and indexed as prescribed by law. Reference is hereby made to the Ordinances to all of the provisions of which any holder of this Note by acceptance hereof thereby assents. The provisions of the BAN Act and the Ordinances shall be a contract with the holder of this Note.

This Note is payable, both as to principal and interest, from the proceeds of the Revenue Bonds and from the Net Revenues (as defined in the General Bond Ordinance) derived by the City from the operation of its water and sewer system; provided the pledge of Net Revenues shall be junior, subordinate and inferior to

the pledge of Net Revenues securing the Senior Lien Bonds (as defined in the BAN Ordinance). Reference is hereby made to the Ordinances for a description of the security, provisions with respect to the nature and extent of the security, the rights and remedies of the holder of this Note, the rights, duties, and obligations of the City, and the terms upon which this Note is issued and secured, to all of the provisions of which any holder of this Note by the acceptance hereof thereby assents, and for a more complete description of the foregoing and of the other matters contained therein.

THIS NOTE IS A SPECIAL OBLIGATION OF THE CITY AND THERE IS HEREBY PLEDGED TO THE PAYMENT OF THE PRINCIPAL HEREOF AND INTEREST HEREON THE PROCEEDS OF THE REVENUE BONDS AND THE AFORESAID NET REVENUES. THE CITY AT ITS OPTION MAY ALSO UTILIZE ANY OTHER AVAILABLE FUNDS THEREFOR FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS NOTE. THE FULL FAITH, CREDIT AND TAXING POWERS OF THE CITY SHALL NOT BE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE.

This Note shall be transferable only upon the Books of Registry of the City, which shall be kept for such purpose at the office of the Registrar, by the Purchaser or the holders hereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such Note, the Registrar on behalf of the City shall issue in the name of the transferee one or more new fully registered Note of the same aggregate principal amount, interest rate and maturity as the surrendered Note. Any Note surrendered in exchange for a new registered Note pursuant to this paragraph shall be canceled by the Registrar.

Under the laws of the State, this Note and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and statutes of the State to exist, to happen and to be performed precedent to and in the issuance of this Note, do exist, have happened and have been performed in due time, form and manner as required by law; that the series of which this Note is a part does not exceed any constitutional or statutory limitation of indebtedness; and that provision has been made for the payment of the principal of and interest on this Note, as provided in the Ordinances.

IN WITNESS WHEREOF, the City of Clemson, South Carolina, has caused this Note to be executed this \_\_\_\_ day of \_\_\_\_\_, 2017, in its name by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City under the seal of the City impressed, imprinted or reproduced hereon.

CITY OF CLEMSON, SOUTH CAROLINA

By: \_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk

REGISTRATION

This Note has been registered in the name of \_\_\_\_\_, on the registration books kept by \_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Registrar