

BERKELEY COUNTY GOVERNMENT
COMMITTEE ON FINANCE AGENDA
MARCH 28, 2022

County Administration Building
1003 Highway 52, Moncks Corner, SC 29461

6:02 PM



BERKELEY
— COUNTY —
SOUTH CAROLINA

Chairman

Joshua Whitley

Committee Member

Dan Owens

Committee Member

Brandon Cox

Committee Member

Steve Davis

Committee Member

Phillip Obie

Committee Member

Jack Schurlknight

Committee Member

Johnny Cribb

Committee Member

Tommy Newell

Ex-officio

Caldwell Pinckney

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

ELECTRONIC PARTICIPATION AUTHORIZED

1. CALL TO ORDER

2. APPROVAL OF MINUTES

- 2.a Minutes from February 28, 2022
[Committee on Finance - Minutes from 2.28.2022.pdf](#)

3. AGENDA ITEM(S)

- 3.a **Economic Development Setaside Grant #C-19-3032 for Jofran**
(Sandi Riddle, Grants Administrator)
[C-19-3032 Jofran \(Project Bright\) grant award agreement 3.4.22.pdf](#)
[C-19-3032 Jofran \(Project Bright\) grant award letter 3.4.22.pdf](#)
- 3.b **Economic Development Setaside Grant #C-21-3511 for Sagebrook Home**
(Sandi Riddle, Grants Administrator)
[C-21-3511 Sagebrook Home \(Project Lily Pad\) grant award agreement 3.4.22.pdf](#)
[C-21-3511 Sagebrook Home \(Project Lily Pad\) grant award letter 3.4.22.pdf](#)
- 3.c **Funding FY2022 - Overtime & Professional Services- Medical**
(George Oliver, County Coroner)

4. CONSIDERATION PRIOR TO FIRST READING

- 4.a **BILL NO. 22-19, AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO AN EXISTING FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND AMONG BERKELEY COUNTY, SOUTH CAROLINA, PROJECT BLUE OPERATING COMPANY, AND PROJECT BLUE REAL PROPERTY OWNER TO EFFECT CERTAIN MODIFICATIONS THERETO WITH RESPECT TO CERTAIN PROPERTY NOW OR TO BE HEREAFTER LOCATED IN THE COUNTY; AND (2) OTHER MATTERS RELATING THERETO.**
(Kristen Lanier, Economic Development Director)
- 4.b **BILL NO. 22-20, AN EIGHTEENTH SUPPLEMENTAL ORDINANCE APPROVING THE FINANCING OF THE IMPROVEMENT, EXTENSION AND ENLARGEMENT OF THE COMBINED UTILITY SYSTEM OF BERKELEY COUNTY, SOUTH CAROLINA, THROUGH THE BORROWING BY THE COUNTY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$35,000,000, INCLUDING CAPITALIZED INTEREST, IF ANY, FROM THE STATE WATER POLLUTION CONTROL REVOLVING FUND, BY AGREEMENT WITH THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, PURSUANT TO TITLE 48, CHAPTER 5, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; PROVIDING FOR AN AGREEMENT TO MAKE AND TO ACCEPT LOANS DESIGNATED AS SERIES 2022A, SERIES 2022B AND SERIES 2022C, THE EXECUTION AND DELIVERY OF LOAN AGREEMENTS BETWEEN THE COUNTY AND THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY; THE EXECUTION AND DELIVERY OF PROMISSORY**

NOTES FROM THE COUNTY TO THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY; AND OTHER MATTERS RELATING THERETO.
(Mr. John O. Williams, II, County Attorney)

5. REVIEW PRIOR TO SECOND READING

- 5.a **BILL NO. 21-80, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND COOPER RIVER PARTNERS, LLC DBA BUSHY PARK, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT LONGLEAF (THE "COMPANY") WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH THE COMPANY AND PROVIDING FOR PAYMENT BY THE COMPANY OF CERTAIN FEES-IN-LIEU OF AD VALOREM TAXES; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.** *HISTORY: 11/22/21 Committee on Finance - Recommendation of DENIAL; 11/22/21 County Council - No Action/Denied in Committee; 12/13/21 Committee on Finance - TABLED; 12/13/21 County Council - Tabled in Committee; 1/24/2022 - Committee on Finance - Recommendation of Approval; 1/24/2022 - Regular Council - Referred; 2/28/2022 - Deferred by Applicant*
[FILOT Ordinance - Berkeley County \(Project Longleaf\).docx](#)
[FILOT Agreement - Berkeley County \(Project Longleaf\).docx](#)

6. REVIEW PRIOR TO THIRD READING

- 6.a **BILL NO. 22-03, AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING SIXTY-FIVE MILLION DOLLARS (\$65,000,000) GENERAL OBLIGATION BONDS OF 2022 OF BERKELEY COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO.** *HISTORY: 1/24/2022 - Committee on Finance - Recommendation of Approval; 1/24/2022 - Regular Council - Referred; 2/28/2022 - Committee on Finance - Recommendation of Approval; 2/28/2022 - Regular Council - Approved and Referred*
[General Obligation Bond Ordinance DM 7108446-v1.doc](#)
[Berkeley County SC Summary of Financing Options 2.11.22 First Tryon.pdf](#)

7. ADJOURNMENT



Amanda D. Turner, Clerk To Council



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: Minutes from February 28, 2022
Prepared By: Shelley Forest, County Council
Date: March 28, 2022

Attachment(s):
[Committee on Finance - Minutes from 2.28.2022.pdf](#)



BERKELEY COUNTY GOVERNMENT

FINANCE COMMITTEE

MINUTES • FEBRUARY 28, 2022

REGULAR COMMITTEE MEETING

Administration Building

6:00 PM

1003 HIGHWAY 52
MONCKS CORNER, SC 29461

ELECTRONIC PARTICIPATION AUTHORIZED

CALL TO ORDER

During periods of discussion and/or presentations, minutes are condensed and paraphrased. Video coverage of the full meeting is available on the Berkeley County Government website.

Chairman Josh Whitley called the meeting to order.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

Attendee Name	Title	Status	Arrived
Dan Owens	Committee Member	Present	
Phillip Obie	Committee Member	Present	
Tommy Newell	Committee Member	Excused	
Brandon Cox	Committee Member	Present	
Jack H. Schurlknight	Committee Member	Present	
Caldwell Pinckney	Committee Member	Present	
Steve Davis	Committee Member	Present	
Joshua Whitley	Chairman	Present	
Johnny Cribb	Ex-officio	Present	

INVOCATION

Ms. Jenna-Ley Jamison, Public Information Officer, provided the Invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

Councilman Caldwell Pinckney, Jr., led the Pledge of Allegiance to the Flag of the United States of America.

POINT OF PERSONAL PRIVILEGE

Chairman Whitley stated that Council has been at work since 3:30 this afternoon attending a Budget Workshop. He thanked all of Council for participating. He also recognized Congressman Henry Brown, who was present this evening

Applause.

APPROVAL OF MINUTES

Chairman Whitley asked for approval of minutes from the Regular Committee meeting held on January 24, 2022.

1. Finance Committee - Regular Committee Meeting - Jan 24, 2022 6:29 PM

It was moved by Committee Member Schurlknight and seconded by Committee Member Obie to **approve** the minutes as presented. The motion **passed** by a unanimous voice vote of the Committee.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Jack H. Schurlknight, Committee Member
SECONDER:	Phillip Obie, Committee Member
AYES:	Dan Owens, Phillip Obie, Brandon Cox, Jack H. Schurlknight, Caldwell Pinckney, Steve Davis
EXCUSED:	Tommy Newell

AGENDA ITEM

1. Sheriff's Request for Overtime Appropriation from Accommodations Fees

Presenter - Sheriff Duane Lewis

Chief Deputy Jeremy Baker was available to answer questions from the Committee.

Chairman Whitley inquired as to the balance in Accommodations Fees Account.

Inaudible response from audience.

Supervisor Cribb stated that this amount will carry the Sheriff's Office through June 30, 2022. Next budget year, we will budget for the tourism-related activities.

It was moved by Committee Member Schurlknight and seconded by Committee Member Davis to **approve** the **Sheriff's Request for Overtime Appropriation from Accommodations Fees**, in the amount of \$180,000.00. The motion **passed** by a unanimous voice vote of the Committee.

RESULT:	APPROVED AND REFERRED [UNANIMOUS]
MOVER:	Jack H. Schurlknight, Committee Member
SECONDER:	Steve Davis, Committee Member
AYES:	Owens, Obie, Cox, Schurlknight, Pinckney, Davis
EXCUSED:	Newell

2. Authorize Funding for Sheriff's Auxiliary Facility

Presenter - Chief Deputy Jeremy Baker

Chief Deputy Jeremy Baker was available to answer questions from the Committee.

It was moved by Committee Member Obie and seconded by Committee Member Cox to **approve Authorizing Funding for the Sheriff's Auxiliary Facility**, in an amount **not to exceed \$300,000.00**. The motion **passed** by a unanimous voice vote of the Committee.

RESULT:	APPROVED AND REFERRED [UNANIMOUS]
MOVER:	Phillip Obie, Committee Member
SECONDER:	Brandon Cox, Committee Member
AYES:	Owens, Obie, Cox, Schurlknight, Pinckney, Davis
EXCUSED:	Newell

3. Financial Consulting Contract

Chairman Whitley stated that this is to fund retaining Johnette Connelley on a part-time basis as a Financial Consultant.

It was moved by Committee Member Cox and seconded by Committee Member Obie to **approve a Financial Consulting Contract**, in an amount **not to exceed \$20,000.00**. The motion **passed** by a unanimous voice vote of the Committee.

RESULT:	APPROVED AND REFERRED [UNANIMOUS]
MOVER:	Brandon Cox, Committee Member
SECONDER:	Phillip Obie, Committee Member
AYES:	Owens, Obie, Cox, Schurlknight, Pinckney, Davis
EXCUSED:	Newell

REVIEW PRIOR TO SECOND READING

1. BILL NO. 22-03, AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING SIXTY-FIVE MILLION DOLLARS (\$65,000,000) GENERAL OBLIGATION BONDS OF 2022 OF BERKELEY COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO.

Chairman Whitley stated, for the public's benefit, that this will not result in a tax increase. It is in the existing millage that we levy.

It was moved by Committee Member Schurlknight and seconded by Committee Member Obie to **approve prior to Second Reading, Bill No. 22-03**. The motion was **passed** by a majority voice vote of the Committee.

RESULT:	APPROVED AND REFERRED [UNANIMOUS]
MOVER:	Jack H. Schurlknight, Committee Member
SECONDER:	Phillip Obie, Committee Member
AYES:	Owens, Obie, Cox, Schurlknight, Pinckney, Davis
EXCUSED:	Newell

CONSIDERATION OF RESOLUTIONS

1. A RESOLUTION APPROVING AND CONSENTING TO THE TRANSFER AND ASSIGNMENT TO, AND ASSUMPTION BY, VICTORIA LOGISTICS ASSETS, LP OF THE INTEREST IN A CERTAIN EXISTING FILOT AGREEMENT TO WHICH THE COUNTY IS A PARTY (THE "FILOT AGREEMENT") AND OTHER MATTERS RELATING THERETO.

It was moved by Committee Member Obie and seconded by Committee Member Cox to **approve a Resolution approving and consenting to the Transfer and Assignment to, and Assumption by, Victoria Logistics Assets, LP for the Interest in a certain existing FILOT Agreement to which the County is a party (The "FILOT Agreement") and other matters relating thereto.** The motion **passed** by a unanimous voice vote of the Committee.

RESULT:	APPROVED AND REFERRED [UNANIMOUS]
MOVER:	Phillip Obie, Committee Member
SECONDER:	Brandon Cox, Committee Member
AYES:	Owens, Obie, Cox, Schurlknight, Pinckney, Davis
EXCUSED:	Newell

RESOLUTION

2. A RESOLUTION APPROVING AND CONSENTING TO THE TRANSFER AND ASSIGNMENT TO, AND ASSUMPTION BY, VICTORIA LOGISTICS ASSETS, LP OF THE INTEREST IN A CERTAIN EXISTING FILOT AGREEMENT TO WHICH THE COUNTY IS A PARTY (THE "FILOT AGREEMENT") AND OTHER MATTERS RELATING THERETO.

It was moved by Committee Member Schurlknight and seconded by Committee Member Obie to **approve a Resolution approving and consenting to the Transfer and Assignment to, and Assumption by, Victoria Logistics Assets, LP for the Interest in a certain existing FILOT Agreement to which the County is a party (The "FILOT Agreement") and other matters relating thereto.** The motion **passed** by a unanimous voice vote of the Committee.

RESULT:	APPROVED AND REFERRED [UNANIMOUS]
MOVER:	Jack H. Schurlknight, Committee Member
SECONDER:	Phillip Obie, Committee Member
AYES:	Owens, Obie, Cox, Schurlknight, Pinckney, Davis
EXCUSED:	Newell

RESOLUTION

ADJOURNMENT

It was moved by Committee Member Schurlknight and seconded by Committee Member Davis to **adjourn** the Committee on Finance meeting. The motion **passed** by unanimous voice vote of the Committee.

The meeting **adjourned** at 6:08 p.m.



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: Economic Development Setaside Grant #C-19-3032 for Jofran

Prepared By: Sandi Riddle, Grants Administration

Date: March 28, 2022

Financial Impact: None - this is a pass-through award with the County only acting as the reimbursement entity.

Background: The South Carolina Department of Commerce has approved an award of \$100,000 in grant funds from the Economic Development Set-aside Fund for Jofran (Project Bright), which will create 25 new jobs and make a capital investment of \$28.5 million. Grant funds will be used for leasehold improvements. Berkeley County will act solely as a reimbursement entity for these grant funds.

Discussion: Although there is no financial obligation assigned to the County as Grantee, the grant award agreement requires that the County Supervisor (or designee) have legal authority to execute the agreement. Said authority derives from County Council.

Recommendation: Authorize the County Supervisor to enter into the grant award agreement.

Attachment(s):

C-19-3032 Jofran (Project Bright) grant award agreement 3.4.22.pdf
C-19-3032 Jofran (Project Bright) grant award letter 3.4.22.pdf

**SOUTH CAROLINA COORDINATING COUNCIL
FOR ECONOMIC DEVELOPMENT
1201 Main Street, Suite 1600
Columbia, South Carolina 29201**

GRANT AWARD AGREEMENT
GRANT # C-19-3032

In accordance with the provisions of Section 12-28-2910 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), the South Carolina Coordinating Council for Economic Development, hereinafter called the Council, does commit and grant to Berkeley County, hereinafter called the Grantee, the sum in dollars set forth in Section 3 below for the Project identified in Section 2 below. The acceptance of the Agreement creates a contract between the Council and the Grantee, legally binding the Grantee to carry out the activities and obligations set forth in the Application and this Agreement, all in accordance with the terms and conditions set forth in this Agreement and in any appendices attached hereto and any other documents or conditions referred to herein.

Section 1: DEFINITIONS:

- (a) Agreement means this Grant Award Agreement.
- (b) Application means the grant application forms submitted by the Grantee to the Council.
- (c) Company means the economic development corporate entity that is identified in the Application.
- (d) Contractor means a private contractor who undertakes all or part of the Grant Project.
- (e) Council means the South Carolina Coordinating Council for Economic Development (CCED).
- (f) Grant means the dollars committed by the Council to the Grantee for the Project.
- (g) Grant Project means the portion of the Project that is within the scope of work as described in Section 2.0 hereof and approved by the Council to be reimbursed with Grant funds.
- (h) Grantee means the unit of government designated for the Grant and set forth above.
- (i) Project means the project identified and described in the Application.
- (j) State means the State of South Carolina and any agencies or offices thereof.

Section 2: PROJECT DESCRIPTION: Funds will be used for site preparation and building construction to assist Jofran, Inc. (Project Bright). The Grant Project has been approved by the Council and is included by reference as Economic Development Set-aside Grant #C-19-3032 - site preparation and building construction.

Section 3: AWARD AMOUNT: The Council hereby commits an amount not to exceed \$100,000, to be used only for the Grant Project and related costs, as described in the Application. Eligible costs that can be paid from the Grant shall include only those costs within the scope of work approved by the Council.

3.1: Approval of Third Party Contracts: The Grantee must submit all agreements with a Contractor engaged to perform work within the scope of the Grant Project to the Council when it submits a reimbursement request relating to a payment to that Contractor.

3.2: Notice to Proceed: The Grantee must obtain from the Council written notice to proceed prior to incurring costs against the Grant. If the Grantee or the Company needs to incur expenses prior to the Council's notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

3.3: Engineering Costs: Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.

3.4. Administrative Fees: The Grantee may not charge an administration fee in connection with the Grant.

Section 4: AMENDMENTS: Any changes in the scope of work of the Grant Project, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.

Section 5: PERFORMANCE: By acceptance of this Grant, the Grantee warrants that it will complete or cause to be completed the Grant Project as described in the approved Application, including any approved amendments appended hereto. Should Grantee fail to cause the completion of all or part of the Grant Project, the Council shall be entitled to reimbursement from the Grantee of any Grant funds that were received by the Grantee for any work that was not performed.

Section 6: FUNDING UNDERRUNS: The Grantee agrees that it will return surplus Grant funds that result from Grant Project cost underruns.

Section 7: AUDIT: The Grantee must include an examination and accounting of the expenditures of Grant funds in its first annual audit following the completion of the Grant Project, and submit a copy of the audit report to the Council. The Grantee agrees that it will reimburse the Council for unauthorized and unwarranted expenditures disclosed in

the audit, if so directed by the Council. Upon request of the Council, the Grantee shall make available, and cause the Company to make available, for audit and inspection by the Council and its representatives all the books, records, files and other documents relating to any matters pertaining to the Grant Project, the Application or this Agreement. The Grantee shall have prepared an audit of Grant funds received under this Agreement that adheres to the following audit requirements, whichever is applicable:

- (a) Generally accepted auditing standards established by the American Institute of Certified Public Accountants, (AICPA);
- (b) The General Accounting Office (GAO) Standards for Audits of Governmental Organizations, Programs, Activities, and Functions, latest revised edition (Yellow Book);

Section 8: CONTRACTOR SELECTION:

- (a) In the event that the Grantee will be engaging a Contractor to undertake all or any part of the scope of work of the Grant Project, then the selection of that Contractor by the Grantee must follow the applicable procurement laws, regulations and guidelines of the county. The use of the grant funds is not subject to the requirements of the State Procurement Code or the regulations promulgated thereunder. If the Grantee fails to adhere to procurement requirements as set forth herein, the Council may call for repayment by the Grantee for Grant funds that were expended in a disallowable manner.

A Contractor must represent that it has, or will secure at its own expense, all personnel required in the performance of the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with the Council or the Grantee.

All of the services required to complete the Project will be performed by the Grantee and/or a Contractor, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

The Grantee and/or a Contractor shall be liable for and pay all taxes required by local, state, or federal governments, which may include, but not be limited to, social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Council to or for the benefit of the Grantee and/or a Contractor or his employee or agents by reason of this Agreement.

- (b) In the event that the Company will be engaging a Contractor to undertake all or any part of the scope of work of the Grant Project, the Grantee warrants that it will ensure that the selection of the Contractor complies with the requirements set forth in Exhibit A attached hereto.

Section 9: CONFIDENTIAL INFORMATION: Any reports, information, data, or other documentation given to or prepared or assembled by the Grantee under this Agreement shall remain confidential and exempt from disclosure pursuant to the South Carolina Freedom of Information Act, S.C. Code Section 30-4-40(a), If information

given to or prepared or assembled by the Grantee under this Agreement is or may be required to be disclosed, Grantee agrees to consult with the Council prior to such required disclosure to protect any and all confidential proprietary interests of third party companies.

Section 10: DISCRIMINATION: The Grantee shall not, and in the event it engages Contractors it shall impose on its Contractors the obligation not to, discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The Grantee and any Contractor shall be required to take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, age, sex, national origin, or handicap.

Section 11: INTEREST OF CERTAIN FEDERAL OR STATE OFFICIALS: No elected or appointed State or federal official shall be admitted to any share or part of the Grant funds, this Agreement or to any benefit to arise from the same.

Section 12: INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANTEE, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS: No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Grant Project or this Agreement. If the Grantee engages any Contractors for the Grant Project, the Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Grant Project and this Agreement this provision prohibiting such interest.

Section 13: PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION: The assistance and Grant funds provided under this Agreement shall not be used for the payment of any bonus or commission for the purpose of obtaining the Council's approval of the Application, or the Council's approval of any applications for additional assistance or Grant funds, or any other approval or concurrence of the Council required under this Agreement. However, the payment from Grant funds of reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Grant Project costs.

Section 14: MAINTENANCE OF AND ACCESS TO RECORDS: The Grantee shall retain records for property purchased totally or partially with Grant funds and records relating to procurement matters for a period of three years after the final disposition of the Grant. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved. Upon request, the Grantee must make these records available to the Grantee's auditor, the Council, and its representatives.

Section 15: MBE OBLIGATION: The Grantee agrees to use its best efforts to ensure that minority business enterprises, as identified in Article 21, Sections 11-35-5210 through 11-35-5270 of the Code have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Grant funds provided under this Agreement. In this regard, the Grantee and any Contractors shall

take all necessary and reasonable steps to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts

Section 16: PROJECT COMPLETION: The Grantee must complete, or cause to be completed, the Grant Project within 18 months of the Date of Award of this Grant. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.

Section 17: SANCTIONS: If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the Council may take, in addition to any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

Section 18: APPLICABLE LAW: This Agreement is made under and shall be construed in accordance with the laws of the State, without regard to conflicts of laws principles. The federal and state courts within the State shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement.

Section 19: APPROPRIATIONS: Notwithstanding any other provisions of this Agreement, the parties hereto agree that the Grant funds awarded hereunder are payable by appropriations from the State. In the event sufficient appropriations, grants, and monies are not made available to the Council to pay the compensation and expenses hereunder for any fiscal year, this Agreement shall terminate without further obligation of the Council. In such event, the Council shall certify to the Grantee the fact that sufficient funds have not been made available to the Council to meet the obligations of this Agreement; and such written certification shall be conclusive upon the parties.

Section 20: COPYRIGHT: No material produced in whole or in part under this Grant shall be subject to copyright in the United States or in any other country. The Council shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Grant.

Section 21: TERMS AND CONDITIONS: The Council reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Council and any other agency of the State.

Section 22: REPORTING REQUIREMENTS: The Grantee agrees to submit quarterly progress reports that provide a status update and identification of any material issues affecting the Project. Progress reports will be due on the first day of the month beginning with the first full month after commencement of the Project. Failure to submit progress reports will be subject to sanctions identified in Section 17 herein. The Grantee further agrees to complete and submit all quarterly progress reports and any other reports, in such form and according to such schedule, to the extent not specified herein, as may be required by the Council.

Section 23: PROJECT START-UP: The Project must begin within three months of the Date of Award of the Grant. If the Grantee or the Company does not begin the

Project within three months of the Date of Award of the Grant, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds provided to Grantee and terminate this Agreement. For purposes of this section, the Grantee or the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.

Section 24: LIABILITY: The Grantee understands that Council accepts no liability for the Project nor any responsibility other than its agreement to provide the Grantee the Grant funds for the Grant Project in the amount shown in Section 3, insofar as such funds are expended in accordance with the terms and conditions of this Agreement. During the term of the Grant, the Grantee shall maintain tort liability insurance or shall have a self-funded and excess liability program with coverage amounts sufficient to meet the limits set forth under the SC Torts Claims Act in Section 15-78-120, as may be amended.

Section 25: PAYMENT: The Grantee must submit to the Council a certified request for payment for work that is documented by the Grantee. The Council, upon its approval of the request for payment, shall forward such requests to the Finance Department of the South Carolina Department of Commerce. Payments are issued from the Comptroller General's office. Payment requests should be submitted to the Council no more than once a month.

The Grantee will certify, to the best of its knowledge, information and belief, that the work on the Project for which reimbursement is requested has been completed in accordance with the terms and conditions of this Agreement, and that the payment request is due and payable from Grant funds.

All requests for payment must be certified as valid expenditures by an official representative of the Grantee. Invoices and canceled checks supporting the Grantee's request for reimbursement from Grant funds must be kept on file and be available for inspection at any time.

Section 26: RESPONSIBILITY FOR MAINTENANCE: Maintenance of new roads and other improvements to the Grantee's or Company's right of way and/or property is the sole responsibility of the Grantee. Neither the Council nor the State shall have any responsibility whatsoever to maintain such roads and other improvements relating to the Project. The Grantee may assign this responsibility to any agreeable party.

Section 27: SEVERABILITY: If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

[Signatures on following page]

This Agreement shall become effective, as of the Date of Award, upon receipt of one copy of this Agreement which have been signed in the space provided below. The agreement must have original signatures and must be returned within fifteen days from the Date.

Date of Award

Alan D. Young
Executive Director
Coordinating Council for Economic Development

ACCEPTANCE FOR THE GRANTEE

Signature of Official with Legal Authority
to Execute this Agreement for the Grantee

Date

Printed Name and Title of Authorized Official

ATTEST:

Signature of Elected City or County Council
Member, as appropriate

Signature of Elected City or County Council
Member, as appropriate

Exhibit A

Bidding Process to be used for Costs to be reimbursed with Grant Funds

1. Use full and open competition to the maximum extent practicable.
2. Permit acquisitions without competition only when the purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required timely supply, service, or construction item. A copy of such written determination must be included with any request to disbursement of grant funds to reimburse for the costs of such supply, service or construction item. In addition, the company must maintain a copy of such written determination as set forth in Section 12 of the Agreement.
3. Restrict competition only when necessary to satisfy a reasonable public requirement.
4. Provide clear, adequate, and sufficiently definite information about project needs to allow bidders to enter the acquisition on an equal basis.
5. Use reasonable methods to publicize bidding requirements and timely provide solicitation documents (including amendments, clarifications and changes in requirements).
6. State in solicitations the bases to be used for evaluating bids and proposals and for making the award.
7. Evaluate bids and proposals and make the award based solely on the criteria in the solicitation.
8. Grant maximum public access to procurement information subject to the Company's needs to protect its trade secrets, proprietary or confidential source selection information, and personal privacy rights.
9. Ensure that all parties involved in the bidding process participate fairly, honestly, and in good faith.
10. Recognize that adherence to these bidding process requirements is essential to maintenance of the integrity of the project.



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Harry M. Lightsey III
Secretary

March 4, 2022

The Honorable Johnny Cribb
Supervisor
Berkeley County
Post Office Box 6122
Moncks Corner, South Carolina 29461

Re: *Jofran, Inc. - Economic Development Set-aside Grant #C-19-3032 - Berkeley County*

Dear Supervisor Cribb:

Pursuant to the meeting of the Coordinating Council on March 3, 2022, I am pleased to inform you that funding in the amount of \$100,000 has been approved for the above referenced project. Funds will be used for site preparation and building construction to assist Jofran, Inc. (Project Bright). Please be advised that only approved budget items described in the cost estimates submitted as part of the application are eligible for reimbursement. Any costs over the funding amount will not be the responsibility of the Coordinating Council.

Please note that before grant funds can be used to reimburse approved project costs, several steps must be completed. Specifically, the following **must be submitted** to our office:

1. **Grant Award Agreement** – Enclosed for signature are two copies of the Grant Award Agreement between the SC Coordinating Council for Economic Development and Berkeley County. The agreement must be signed by an official (or his/her authorized designee) with legal authority to execute the agreement for the Grantee (Berkeley County) as well as two witnesses (Council Members or the Attorney representing Berkeley County). Please read this contract carefully. Once signed, please return both copies to my attention within fourteen (14) days. Once the signed agreements are received, they will be signed by our office and one original executed agreement will be sent to your attention.
2. **Performance Agreement** – The Performance Agreement is between the SC Coordinating Council for Economic Development, Berkeley County, and Jofran, Inc.. The agreement must be signed by officials (or their authorized designees) with legal authority to execute the agreement for the Grantee (Berkeley County) and for the Company (Jofran, Inc.). The Performance Agreement is being forwarded to the Company first for signatures and revisions if necessary. Once the Company has signed the Agreement they will be forwarded to the Grantee. Please read this contract carefully. Once signed, please return all three copies to my attention within fourteen (14) days. Once the signed agreements are received, they will be signed by our office. One original executed agreement will be sent to your attention and the other to the company.

Please also note that work for which the grant is approved should not commence prior to the Council's receipt of the signed agreements by all parties and the Council's issuance of a notice to proceed.

1201 Main Street, Suite 1600, Columbia, SC 29201
Tel: (803) 737-0400 • Fax: (803) 737-0418 • www.sccommerce.com

3. Project Budget – The project cost estimates provided as part of the application will serve as the project budget. If actual costs fluctuate by more than 10% or more than \$10,000 (whichever is less) a new detailed budget must be submitted for the Council's approval before additional funds may be drawn. If specific items are not reimbursable under the terms of the agreement, we will notify you in writing.
4. Signed Contracts – Once signed, please forward all contracts pertaining to the grant project to our office. Additionally, if there are amendments to contracts related to the grant project, those must also be forwarded to our office within 14 days of execution.
5. Status Reports – The status reports are designed to provide the Council with relevant information related to your grant project. These reports should be submitted on a quarterly basis.

For your convenience, we have enclosed a grant packet which includes: a program checklist that notifies you of required documents and the dates which they are due, a customized request for payment form that must accompany all reimbursement requests, a status report form to be submitted quarterly and two copies of the signed grant award agreement. All of these forms are available electronically, and we will gladly forward them to you upon request.

The SC Coordinating Council for Economic Development appreciates the opportunity to serve the citizens of Berkeley County, and we look forward to working with you to ensure the success of this project. If you have any questions, please feel free to contact us.

Sincerely,



Alan D. Young
Executive Director
Coordinating Council for Economic Development

Enclosures

cc: Harry M. Lightsey, III (w/o enclosures)
Teresa Powers (w/o enclosures)
Kristen Lanier (w/o enclosures)



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: Economic Development Setaside Grant #C-21-3511 for Sagebrook Home

Prepared By: Sandi Riddle, Grants Administration

Date: March 28, 2022

Financial Impact: None - this is a pass-through award with the County only acting as the reimbursement entity.

Background: The South Carolina Department of Commerce has approved an award of \$100,000 in grant funds from the Economic Development Set-aside Fund for Sagebrook Home (Project Lily Pad), which will create 117 new jobs and make a capital investment of \$22.6 million. Grant funds will be used for site preparation and building improvements. Berkeley County will act solely as a reimbursement entity for these grant funds.

Discussion: Although there is no financial obligation assigned to the County as Grantee, the grant award agreement requires that the County Supervisor (or designee) have legal authority to execute the agreement. Said authority derives from County Council.

Recommendation: Authorize the County Supervisor to enter into the grant award agreement.

Attachment(s):

C-21-3511 Sagebrook Home (Project Lily Pad) grant award agreement 3.4.22.pdf
C-21-3511 Sagebrook Home (Project Lily Pad) grant award letter 3.4.22.pdf

**SOUTH CAROLINA COORDINATING COUNCIL
FOR ECONOMIC DEVELOPMENT
1201 Main Street, Suite 1600
Columbia, South Carolina 29201**

GRANT AWARD AGREEMENT
GRANT # C-21-3511

In accordance with the provisions of Section 12-28-2910 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), the South Carolina Coordinating Council for Economic Development, hereinafter called the Council, does commit and grant to Berkeley County, hereinafter called the Grantee, the sum in dollars set forth in Section 3 below for the Project identified in Section 2 below. The acceptance of the Agreement creates a contract between the Council and the Grantee, legally binding the Grantee to carry out the activities and obligations set forth in the Application and this Agreement, all in accordance with the terms and conditions set forth in this Agreement and in any appendices attached hereto and any other documents or conditions referred to herein.

Section 1: DEFINITIONS:

- (a) Agreement means this Grant Award Agreement.
- (b) Application means the grant application forms submitted by the Grantee to the Council.
- (c) Company means the economic development corporate entity that is identified in the Application.
- (d) Contractor means a private contractor who undertakes all or part of the Grant Project.
- (e) Council means the South Carolina Coordinating Council for Economic Development (CCED).
- (f) Grant means the dollars committed by the Council to the Grantee for the Project.
- (g) Grant Project means the portion of the Project that is within the scope of work as described in Section 2.0 hereof and approved by the Council to be reimbursed with Grant funds.
- (h) Grantee means the unit of government designated for the Grant and set forth above.
- (i) Project means the project identified and described in the Application.
- (j) State means the State of South Carolina and any agencies or offices thereof.

Section 2: PROJECT DESCRIPTION: Funds will be used for site preparation and building improvements to assist Sagebrook Home, LLC (Project Lily Pad). The Grant Project has been approved by the Council and is included by reference as Economic Development Set-aside Grant #C-21-3511 - site preparation and building improvements.

Section 3: AWARD AMOUNT: The Council hereby commits an amount not to exceed \$100,000, to be used only for the Grant Project and related costs, as described in the Application. Eligible costs that can be paid from the Grant shall include only those costs within the scope of work approved by the Council.

3.1: Approval of Third Party Contracts: The Grantee must submit all agreements with a Contractor engaged to perform work within the scope of the Grant Project to the Council when it submits a reimbursement request relating to a payment to that Contractor.

3.2: Notice to Proceed: The Grantee must obtain from the Council written notice to proceed prior to incurring costs against the Grant. If the Grantee or the Company needs to incur expenses prior to the Council's notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

3.3: Engineering Costs: Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.

3.4. Administrative Fees: The Grantee may not charge an administration fee in connection with the Grant.

Section 4: AMENDMENTS: Any changes in the scope of work of the Grant Project, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.

Section 5: PERFORMANCE: By acceptance of this Grant, the Grantee warrants that it will complete or cause to be completed the Grant Project as described in the approved Application, including any approved amendments appended hereto. Should Grantee fail to cause the completion of all or part of the Grant Project, the Council shall be entitled to reimbursement from the Grantee of any Grant funds that were received by the Grantee for any work that was not performed.

Section 6: FUNDING UNDERRUNS: The Grantee agrees that it will return surplus Grant funds that result from Grant Project cost underruns.

Section 7: AUDIT: The Grantee must include an examination and accounting of the expenditures of Grant funds in its first annual audit following the completion of the Grant Project, and submit a copy of the audit report to the Council. The Grantee agrees that it will reimburse the Council for unauthorized and unwarranted expenditures disclosed in

the audit, if so directed by the Council. Upon request of the Council, the Grantee shall make available, and cause the Company to make available, for audit and inspection by the Council and its representatives all the books, records, files and other documents relating to any matters pertaining to the Grant Project, the Application or this Agreement. The Grantee shall have prepared an audit of Grant funds received under this Agreement that adheres to the following audit requirements, whichever is applicable:

- (a) Generally accepted auditing standards established by the American Institute of Certified Public Accountants, (AICPA);
- (b) The General Accounting Office (GAO) Standards for Audits of Governmental Organizations, Programs, Activities, and Functions, latest revised edition (Yellow Book);

Section 8: CONTRACTOR SELECTION:

- (a) In the event that the Grantee will be engaging a Contractor to undertake all or any part of the scope of work of the Grant Project, then the selection of that Contractor by the Grantee must follow the applicable procurement laws, regulations and guidelines of the county. The use of the grant funds is not subject to the requirements of the State Procurement Code or the regulations promulgated thereunder. If the Grantee fails to adhere to procurement requirements as set forth herein, the Council may call for repayment by the Grantee for Grant funds that were expended in a disallowable manner.

A Contractor must represent that it has, or will secure at its own expense, all personnel required in the performance of the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with the Council or the Grantee.

All of the services required to complete the Project will be performed by the Grantee and/or a Contractor, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

The Grantee and/or a Contractor shall be liable for and pay all taxes required by local, state, or federal governments, which may include, but not be limited to, social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Council to or for the benefit of the Grantee and/or a Contractor or his employee or agents by reason of this Agreement.

- (b) In the event that the Company will be engaging a Contractor to undertake all or any part of the scope of work of the Grant Project, the Grantee warrants that it will ensure that the selection of the Contractor complies with the requirements set forth in Exhibit A attached hereto.

Section 9: CONFIDENTIAL INFORMATION: Any reports, information, data, or other documentation given to or prepared or assembled by the Grantee under this Agreement shall remain confidential and exempt from disclosure pursuant to the South Carolina Freedom of Information Act, S.C. Code Section 30-4-40(a), If information

given to or prepared or assembled by the Grantee under this Agreement is or may be required to be disclosed, Grantee agrees to consult with the Council prior to such required disclosure to protect any and all confidential proprietary interests of third party companies.

Section 10: DISCRIMINATION: The Grantee shall not, and in the event it engages Contractors it shall impose on its Contractors the obligation not to, discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The Grantee and any Contractor shall be required to take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, age, sex, national origin, or handicap.

Section 11: INTEREST OF CERTAIN FEDERAL OR STATE OFFICIALS: No elected or appointed State or federal official shall be admitted to any share or part of the Grant funds, this Agreement or to any benefit to arise from the same.

Section 12: INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANTEE, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS: No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Grant Project or this Agreement. If the Grantee engages any Contractors for the Grant Project, the Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Grant Project and this Agreement this provision prohibiting such interest.

Section 13: PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION: The assistance and Grant funds provided under this Agreement shall not be used for the payment of any bonus or commission for the purpose of obtaining the Council's approval of the Application, or the Council's approval of any applications for additional assistance or Grant funds, or any other approval or concurrence of the Council required under this Agreement. However, the payment from Grant funds of reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Grant Project costs.

Section 14: MAINTENANCE OF AND ACCESS TO RECORDS: The Grantee shall retain records for property purchased totally or partially with Grant funds and records relating to procurement matters for a period of three years after the final disposition of the Grant. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved. Upon request, the Grantee must make these records available to the Grantee's auditor, the Council, and its representatives.

Section 15: MBE OBLIGATION: The Grantee agrees to use its best efforts to ensure that minority business enterprises, as identified in Article 21, Sections 11-35-5210 through 11-35-5270 of the Code have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Grant funds provided under this Agreement. In this regard, the Grantee and any Contractors shall

take all necessary and reasonable steps to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts

Section 16: PROJECT COMPLETION: The Grantee must complete, or cause to be completed, the Grant Project within 18 months of the Date of Award of this Grant. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.

Section 17: SANCTIONS: If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the Council may take, in addition to any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

Section 18: APPLICABLE LAW: This Agreement is made under and shall be construed in accordance with the laws of the State, without regard to conflicts of laws principles. The federal and state courts within the State shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement.

Section 19: APPROPRIATIONS: Notwithstanding any other provisions of this Agreement, the parties hereto agree that the Grant funds awarded hereunder are payable by appropriations from the State. In the event sufficient appropriations, grants, and monies are not made available to the Council to pay the compensation and expenses hereunder for any fiscal year, this Agreement shall terminate without further obligation of the Council. In such event, the Council shall certify to the Grantee the fact that sufficient funds have not been made available to the Council to meet the obligations of this Agreement; and such written certification shall be conclusive upon the parties.

Section 20: COPYRIGHT: No material produced in whole or in part under this Grant shall be subject to copyright in the United States or in any other country. The Council shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Grant.

Section 21: TERMS AND CONDITIONS: The Council reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Council and any other agency of the State.

Section 22: REPORTING REQUIREMENTS: The Grantee agrees to submit quarterly progress reports that provide a status update and identification of any material issues affecting the Project. Progress reports will be due on the first day of the month beginning with the first full month after commencement of the Project. Failure to submit progress reports will be subject to sanctions identified in Section 17 herein. The Grantee further agrees to complete and submit all quarterly progress reports and any other reports, in such form and according to such schedule, to the extent not specified herein, as may be required by the Council.

Section 23: PROJECT START-UP: The Project must begin within three months of the Date of Award of the Grant. If the Grantee or the Company does not begin the

Project within three months of the Date of Award of the Grant, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds provided to Grantee and terminate this Agreement. For purposes of this section, the Grantee or the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.

Section 24: LIABILITY: The Grantee understands that Council accepts no liability for the Project nor any responsibility other than its agreement to provide the Grantee the Grant funds for the Grant Project in the amount shown in Section 3, insofar as such funds are expended in accordance with the terms and conditions of this Agreement. During the term of the Grant, the Grantee shall maintain tort liability insurance or shall have a self-funded and excess liability program with coverage amounts sufficient to meet the limits set forth under the SC Torts Claims Act in Section 15-78-120, as may be amended.

Section 25: PAYMENT: The Grantee must submit to the Council a certified request for payment for work that is documented by the Grantee. The Council, upon its approval of the request for payment, shall forward such requests to the Finance Department of the South Carolina Department of Commerce. Payments are issued from the Comptroller General's office. Payment requests should be submitted to the Council no more than once a month.

The Grantee will certify, to the best of its knowledge, information and belief, that the work on the Project for which reimbursement is requested has been completed in accordance with the terms and conditions of this Agreement, and that the payment request is due and payable from Grant funds.

All requests for payment must be certified as valid expenditures by an official representative of the Grantee. Invoices and canceled checks supporting the Grantee's request for reimbursement from Grant funds must be kept on file and be available for inspection at any time.

Section 26: RESPONSIBILITY FOR MAINTENANCE: Maintenance of new roads and other improvements to the Grantee's or Company's right of way and/or property is the sole responsibility of the Grantee. Neither the Council nor the State shall have any responsibility whatsoever to maintain such roads and other improvements relating to the Project. The Grantee may assign this responsibility to any agreeable party.

Section 27: SEVERABILITY: If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

[Signatures on following page]

This Agreement shall become effective, as of the Date of Award, upon receipt of one copy of this Agreement which have been signed in the space provided below. The agreement must have original signatures and must be returned within fifteen days from the Date.

Date of Award

Alan D. Young
Executive Director
Coordinating Council for Economic Development

ACCEPTANCE FOR THE GRANTEE

Signature of Official with Legal Authority
to Execute this Agreement for the Grantee

Date

Printed Name and Title of Authorized Official

ATTEST:

Signature of Elected City or County Council
Member, as appropriate

Signature of Elected City or County Council
Member, as appropriate

Exhibit A

Bidding Process to be used for Costs to be reimbursed with Grant Funds

1. Use full and open competition to the maximum extent practicable.
2. Permit acquisitions without competition only when the purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required timely supply, service, or construction item. A copy of such written determination must be included with any request to disbursement of grant funds to reimburse for the costs of such supply, service or construction item. In addition, the company must maintain a copy of such written determination as set forth in Section 12 of the Agreement.
3. Restrict competition only when necessary to satisfy a reasonable public requirement.
4. Provide clear, adequate, and sufficiently definite information about project needs to allow bidders to enter the acquisition on an equal basis.
5. Use reasonable methods to publicize bidding requirements and timely provide solicitation documents (including amendments, clarifications and changes in requirements).
6. State in solicitations the bases to be used for evaluating bids and proposals and for making the award.
7. Evaluate bids and proposals and make the award based solely on the criteria in the solicitation.
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10. Recognize that adherence to these bidding process requirements is essential to maintenance of the integrity of the project.



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Harry M. Lightsey III
Secretary

March 4, 2022

The Honorable Johnny Cribb
Supervisor
Berkeley County
Post Office Box 6122
Moncks Corner, South Carolina 29461

Re: *Sagebrook Home, LLC - Economic Development Set-aside Grant #C-21-3511 - Berkeley County*

Dear Supervisor Cribb:

Pursuant to the meeting of the Coordinating Council on March 3, 2022, I am pleased to inform you that funding in the amount of \$100,000 has been approved for the above referenced project. Funds will be used for site preparation and building improvements to assist Sagebrook Home, LLC (Project Lily Pad). Please be advised that only approved budget items described in the cost estimates submitted as part of the application are eligible for reimbursement. Any costs over the funding amount will not be the responsibility of the Coordinating Council.

Please note that before grant funds can be used to reimburse approved project costs, several steps must be completed. Specifically, the following **must be submitted** to our office:

1. **Grant Award Agreement** – Enclosed for signature are two copies of the Grant Award Agreement between the SC Coordinating Council for Economic Development and Berkeley County. The agreement must be signed by an official (or his/her authorized designee) with legal authority to execute the agreement for the Grantee (Berkeley County) as well as two witnesses (Council Members or the Attorney representing Berkeley County). Please read this contract carefully. Once signed, please return both copies to my attention within fourteen (14) days. Once the signed agreements are received, they will be signed by our office and one original executed agreement will be sent to your attention.
2. **Performance Agreement** – The Performance Agreement is between the SC Coordinating Council for Economic Development, Berkeley County, and Sagebrook Home, LLC. The agreement must be signed by officials (or their authorized designees) with legal authority to execute the agreement for the Grantee (Berkeley County) and for the Company (Sagebrook Home, LLC). The Performance Agreement is being forwarded to the Company first for signatures and revisions if necessary. Once the Company has signed the Agreement they will be forwarded to the Grantee. Please read this contract carefully. Once signed, please return all three copies to my attention within fourteen (14) days. Once the signed agreements are received, they will be signed by our office. One original executed agreement will be sent to your attention and the other to the company.

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Tel: (803) 737-0400 • Fax: (803) 737-0418 • www.sccommerce.com

Please also note that work for which the grant is approved should not commence prior to the Council's receipt of the signed agreements by all parties and the Council's issuance of a notice to proceed.

3. Project Budget – The project cost estimates provided as part of the application will serve as the project budget. If actual costs fluctuate by more than 10% or more than \$10,000 (whichever is less) a new detailed budget must be submitted for the Council's approval before additional funds may be drawn. If specific items are not reimbursable under the terms of the agreement, we will notify you in writing.
4. Signed Contracts – Once signed, please forward all contracts pertaining to the grant project to our office. Additionally, if there are amendments to contracts related to the grant project, those must also be forwarded to our office within 14 days of execution.
5. Status Reports – The status reports are designed to provide the Council with relevant information related to your grant project. These reports should be submitted on a quarterly basis.

For your convenience, we have enclosed a grant packet which includes: a program checklist that notifies you of required documents and the dates which they are due, a customized request for payment form that must accompany all reimbursement requests, a status report form to be submitted quarterly and two copies of the signed grant award agreement. All of these forms are available electronically, and we will gladly forward them to you upon request.

The SC Coordinating Council for Economic Development appreciates the opportunity to serve the citizens of Berkeley County, and we look forward to working with you to ensure the success of this project. If you have any questions, please feel free to contact us.

Sincerely,



Alan D. Young
Executive Director
Coordinating Council for Economic Development

Enclosures

cc: Harry M. Lightsey, III (w/o enclosures)
Amanda Lucas (w/o enclosures)
Kristen Lanier (w/o enclosures)



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: **Funding FY2022 - Overtime & Professional Services-Medical**

Prepared By: Amanda Turner, Coroner

Date: March 28, 2022

Financial Impact:

Overtime - This request will potentially increase my 42102-5102 Budget in the amount of \$16,000 for overtime. Source of funds, we assume will be the county Contingency Fund.

Professional Services/Medical - This request will potentially increase my 42102-5521 Budget in the amount of \$50,000 for autopsies and toxicology testing. Source of funds, we assume, will be the county Contingency Fund.

Background:

Overtime - Our department was originally given \$30,000 for over time. We have depleted it due to call volume, too few deputies, and COVID.

Professional Services/Medical - Our department was originally given \$150,000 for autopsies, toxicology testing, and anthropology services. We are close to depleting these funds due to the increased case load and high number of suspected drug overdoses.

Discussion:

Overtime - We are asking for an additional \$16,000 (plus

related benefits) to cover overtime on the payroll until the end of the fiscal year.

Professional Services/Medical - We are asking for an additional \$50,000.00 to cover these Professional Services until the end of the fiscal year.

Recommendation:

Overtime - I am requesting approval for overtime in the amount of \$16,000.00.

Professional Services/Medical - I am requesting approval for Professional Services/Medical in the amount of \$50,000.

Attachment(s):



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: **BILL NO. 22-19, AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO AN EXISTING FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND AMONG BERKELEY COUNTY, SOUTH CAROLINA, PROJECT BLUE OPERATING COMPANY, AND PROJECT BLUE REAL PROPERTY OWNER TO EFFECT CERTAIN MODIFICATIONS THERETO WITH RESPECT TO CERTAIN PROPERTY NOW OR TO BE HEREAFTER LOCATED IN THE COUNTY; AND (2) OTHER MATTERS RELATING THERETO.**

Prepared By: Kristen Lanier, Economic Development

Date: March 28, 2022

Attachment(s):



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic:

BILL NO. 22-20, AN EIGHTEENTH SUPPLEMENTAL ORDINANCE APPROVING THE FINANCING OF THE IMPROVEMENT, EXTENSION AND ENLARGEMENT OF THE COMBINED UTILITY SYSTEM OF BERKELEY COUNTY, SOUTH CAROLINA, THROUGH THE BORROWING BY THE COUNTY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$35,000,000, INCLUDING CAPITALIZED INTEREST, IF ANY, FROM THE STATE WATER POLLUTION CONTROL REVOLVING FUND, BY AGREEMENT WITH THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, PURSUANT TO TITLE 48, CHAPTER 5, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; PROVIDING FOR AN AGREEMENT TO MAKE AND TO ACCEPT LOANS DESIGNATED AS SERIES 2022A, SERIES 2022B AND SERIES 2022C, THE EXECUTION AND DELIVERY OF LOAN AGREEMENTS BETWEEN THE COUNTY AND THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY; THE EXECUTION AND DELIVERY OF PROMISSORY NOTES FROM THE COUNTY TO THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY; AND OTHER MATTERS RELATING THERETO.

Prepared By:

Shelley Forest, County Council

Date:

March 28, 2022

Attachment(s):



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic:

BILL NO. 21-80, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND COOPER RIVER PARTNERS, LLC DBA BUSHY PARK, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT LONGLEAF (THE "COMPANY") WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH THE COMPANY AND PROVIDING FOR PAYMENT BY THE COMPANY OF CERTAIN FEES-IN-LIEU OF AD VALOREM TAXES; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO. *HISTORY: 11/22/21 Committee on Finance - Recommendation of DENIAL; 11/22/21 County Council - No Action/Denied in Committee; 12/13/21 Committee on Finance - TABLED; 12/13/21 County Council - Tabled in Committee; 1/24/2022 - Committee on Finance - Recommendation of Approval; 1/24/2022 - Regular Council - Referred; 2/28/2022 - Deferred by Applicant*

Prepared By:

Kristen Lanier, Economic Development

Date:

March 28, 2022

Background:

Project Longleaf intends to invest over \$7M, \$2M in real property and \$5M in personal property, for infrastructure support to a new industry.

NOTE

Per the company's general counsel, the company has started using a DBA following its formal corporate name. They would like to start eventually being referred to as "Bushy Park" instead of "Cooper River Partners, LLC" – SC does not provide for DBAs for domestic businesses by statute, but the company has been told that you can obtain it by simply using it.

Attachment(s):

[FILOT Ordinance - Berkeley County \(Project Longleaf\).docx](#)

[FILOT Agreement - Berkeley County \(Project Longleaf\).docx](#)

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND COOPER RIVER PARTNERS, LLC DBA BUSHY PARK, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT LONGLEAF (THE “COMPANY”) WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH THE COMPANY AND PROVIDING FOR PAYMENT BY THE COMPANY OF CERTAIN FEES-IN-LIEU OF AD VALOREM TAXES; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Berkeley County, South Carolina (the “County”) would like to enter into a Fee-in-Lieu of Tax Agreement with Cooper River Partners, LLC DBA Bushy Park, a South Carolina limited liability company previously identified as Project Longleaf, acting for itself, one or more affiliates, and/or other project sponsors (collectively, the “Company”), as the Company has expressed its intent to the County to make, or cause to be made, a capital investment in Berkeley County and to hire, or cause to be hired, full time employees in Berkeley County through the construction of certain infrastructure improvements in connection with one or more existing facilities in the County (the “Project”); and

WHEREAS, as a result of the Company’s desire to undergo the Project, the Company has asked the County to enter into a Fee-in-Lieu of Tax Agreement by and between the County and the Company dated as of [_____], 2022 (the “FILOT Agreement”) in order to encompass the terms of the Project; and

WHEREAS, the County, acting by and through its County Council (the “County Council”) is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “FILOT Act”), to designate real and tangible personal property as “economic development property” and to enter into an arrangement which provides for payments-in-lieu of taxes (“Negotiated FILOT Payments”) for a project qualifying under the FILOT Act; and

[WHEREAS, the County, acting by and through the County Council, is further authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended (the “MCIP Act”) to provide for payments-in-lieu of taxes (“FILOT Payments”) with respect to property located in a multi-county business or industrial park created under the MCIP Act and to create, in conjunction with one or more other counties, a multi-county park in order to afford certain enhanced tax credits to such investors; and]

WHEREAS, the Company proposes to construct, or cause the construction of, certain infrastructure improvements in connection with one or more existing facilities in Berkeley County by acquiring, constructing, equipping and furnishing machinery, equipment and other real and

personal property (the “Negotiated FILOT Project”), which the Company has represented will likely consist of a capital investment of at least \$7,000,000 and the creation of employment for approximately 2 new, full-time employees; and

WHEREAS, the Negotiated FILOT Project is located entirely within Berkeley County and will be included in and subject to the multi-county park and fee-in-lieu of tax arrangements as described herein; and

WHEREAS, the County has made specific proposals, including proposals to offer certain economic development incentives set forth herein, for the purpose of inducing the Company to invest its funds to acquire and equip the Negotiated FILOT Project (the “Incentives”); and

WHEREAS, it is in the public interest, for the public benefit and in furtherance of the public purposes of the FILOT Act [**and the MCIP Act**] that the County Council provide approval for qualifying the Negotiated FILOT Project under the FILOT Act [**and the entire Negotiated FILOT Project under the MCIP Act for the Incentives**]; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Negotiated FILOT Project in the County, the County Council is enacting this Ordinance, which Ordinance is also intended to serve as an “inducement resolution” for the purposes of Section 12-44-30(11) of the FILOT Act.

NOW, THEREFORE, BE IT ORDAINED by the County Council as follows:

Section 1. Evaluation of the Negotiated FILOT Project. County Council has evaluated the Negotiated FILOT Project on the following criteria based upon the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue:

- (a) whether the purposes to be accomplished by the Negotiated FILOT Project are proper governmental and public purposes; and
- (b) the anticipated dollar amount and nature of the investment to be made; and
- (c) the anticipated costs and benefits to the County.

Section 2. Findings by County Council. Based upon information provided by and representations of the Company, County Council’s investigation of the Negotiated FILOT Project, including the criteria described in Section 1 above, and the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue, as required, County Council, pursuant to the FILOT Act and particularly Section 12-44-40(I) thereof, hereby finds that:

- (a) the Negotiated FILOT Project continues to constitute a “project” as that term is defined in the FILOT Act; and
- (b) the Negotiated FILOT Project will continue to serve the purposes of the FILOT

Act; and

- (c) The investment by the Company in the Negotiated FILOT Project is anticipated to be at least \$7,000,000 to be invested within five (5) years from the end of the property tax year in which initial property comprising all or a portion of the Negotiated FILOT Project is placed in service pursuant to the FILOT Agreement; and
- (d) the Negotiated FILOT Project will be located entirely within the County; and
- (e) the Negotiated FILOT Project will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally; and
- (f) the Negotiated FILOT Project will not give rise to a pecuniary liability of the County or any municipality nor a charge against its general credit or taxing power of the County or any municipality; and
- (g) the purposes to be accomplished by the Negotiated FILOT Project are proper governmental and public purposes; and
- (h) the inducement of the location of the Negotiated FILOT Project is of paramount importance; and
- (i) the benefits of the Negotiated FILOT Project to the public are greater than the costs to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the Negotiated FILOT Project is designated as “economic development property” under the FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company which will provide for Negotiated FILOT Payments to be made with respect to the Negotiated FILOT Project based upon a 6% assessment ratio and a millage rate of 273.7 mills, all in accordance with the FILOT Act and as more fully set forth in the FILOT Agreement.

Section 4. Execution of the FILOT Agreement. The form, terms and provisions of the FILOT Agreement presented to this meeting and filed with the Clerk of the County Council be and hereby are approved, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement were set out in this Ordinance in its entirety. The Supervisor/Chairman of the County Council and the Clerk of the County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the County Attorney and the officials of the County executing the same, their execution thereof to

constitute conclusive evidence of their approval of all changes therein from the form of FILOT Agreement now before this meeting.

Section 5. Miscellaneous.

- (a) The Supervisor/Chairman of the County Council and all other appropriate officials of the County are hereby authorized to execute, deliver and receive any other agreements and documents as may be required by the County in order to carry out, give effect to and consummate the transactions authorized by this Ordinance; and
- (b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina; and
- (c) This Ordinance shall become effective immediately upon approval following third reading by the County Council; and
- (d) The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, that declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder; and
- (e) All ordinances, resolutions and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed.

[Section 6. Allocation of MCIP FILOT Revenues.

- (a) **By separate ordinance of the County Council, the County, in cooperation with an adjacent county, shall use its best efforts to designate the site of the Negotiated FILOT Project as a multi-county park pursuant to Article VIII, Section 13 of the Constitution of South Carolina, the MCIP Act, and the terms of a qualifying multi-county industrial/business park agreement (the “MCIP Agreement”). In the FILOT Agreement, the County will agree to use its best efforts to maintain such designation for a term of at least 10 years.**
- (b) **Pursuant to the terms of the MCIP Act and the MCIP Agreement, the County hereby provides that for 10 years, commencing with the first year in which property that is a part of the Negotiated FILOT Project will be placed in service, the annual allocation of the fee-in-lieu of *ad valorem* taxes payable to the County in accordance with the terms of the MCIP Agreement, after deducting any amounts distributed to the partner county, will be distributed to the County and the other overlapping taxing entities, as set forth in greater detail in the MCIP Agreement and the related implementing ordinances of the County.]**

[Remainder of this page intentionally left blank]

ORDAINED this [___] day of [_____], 2022.

BERKELEY COUNTY, SOUTH CAROLINA

John P. Cribb, County Supervisor
Chairman, Berkeley County Council

ATTEST:

Amanda D. Turner
Clerk to Berkeley County Council

Approved as to form:

John O. Williams, II
Berkeley County Attorney

First Reading: January 24, 2022
Second Reading: March 28, 2022
Public Hearing: [_____], 2022
Third Reading: [_____], 2022

FEE-IN-LIEU OF TAX AGREEMENT

by and between

BERKELEY COUNTY, SOUTH CAROLINA

and

COOPER RIVER PARTNERS, LLC DBA BUSHY PARK

Dated as of [_____], 2022

FEE-IN-LIEU OF TAX AGREEMENT

THIS FEE-IN-LIEU OF TAX AGREEMENT is dated as of [_____], 2022, by and between BERKELEY COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the “County”) and COOPER RIVER PARTNERS, LLC DBA BUSHY PARK, a South Carolina limited liability company previously identified as Project Longleaf, acting for itself, one or more affiliates, and/or other project sponsors (collectively, the “Company”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 (the “Act”) of the Code of Laws of South Carolina 1976, as amended (the “Code”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act”): (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain industrial and commercial properties through which the economic development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain payments in lieu of *ad valorem* taxes with respect to the project (a “FILOT”); and (iii) to maintain, create or expand, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, the Company proposes to construct, or cause the construction of, infrastructure improvements in connection with one or more existing facilities in the County (the “Project”); and

WHEREAS, the Company anticipates that the Project will result in the creation of approximately 2 new, full-time jobs and an investment of at least \$2,000,000 in real property in the County and at least \$5,000,000 in personal property in the County; and

WHEREAS, the Council approved an Ordinance, enacted on [_____], 2022, authorizing the County to enter into this Agreement with the Company; and

WHEREAS, as a result of the Company contemplating locating the Project in the County, the Company requested that the County complete the FILOT arrangement referred to in that certain Ordinance referred to above and approved by County Council on [_____], 2022 by entering into this Fee-in-Lieu of Tax Agreement with the Company pursuant to the Act, and the Company elects to enter into such FILOT arrangement with the County in an effort to encompass the terms surrounding the Project and allowing the Company to make FILOT payments pursuant to the Act; and

WHEREAS, for the Project, the parties have also determined that the Company is a Project Sponsor and that the Project constitutes Economic Development Property within the meaning of the Act; and

WHEREAS, this Fee-in-Lieu of Tax Agreement by and between the County and the Company and dated as of [_____], 2022 is referred to herein as the “Agreement”; and

WHEREAS, for the purposes set forth above, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

ARTICLE I

DEFINITIONS AND RECAPITULATION

Section 1.01. Statutorily Required Recapitulation.

(a) Pursuant to Section 12-44-55(B) of the Act, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Act, except as expressly provided in paragraph (b) below, to the extent that and so long as the Company timely provides the County with copies of all filings required by the Act to be made by the Company with regard to the Project. If the Company should be required to retroactively comply with all of the recapitulation requirements of Section 12-44-55 of the Act, then the County agrees, to the extent permitted by law, to waive all penalties of the County for the Company’s noncompliance that are within the County’s control.

(b) Recapitulation.

1. Legal name of each initial party to this Agreement:
Cooper River Partners, LLC DBA Bushy Park and Berkeley
County, South Carolina
2. County and street address of the project and property to be subject
to this Agreement:

[_____]
Berkeley County, South Carolina
3. Minimum investment agreed upon:
\$2,000,000 (real property)
\$5,000,000 (personal property)
4. Length and term of this Agreement:
10 years for each annual increment of investment in the Project
during the Investment Period.

5. Assessment ratio applicable for each year of this Agreement:
6%
6. Millage rate applicable for each year of this Agreement:
Every year of the term: 273.7 mills
7. Schedule showing the amount of the fee and its calculation for each year of this Agreement:
Waived by the County and the Company
8. Schedule showing the amount to be distributed annually to each of the affected taxing entities:
Waived by the County and the Company
9. Statements:
 - (a) The Project is to be located in a multi-county park;
 - (b) Disposal of Project property subject to FILOT payments is allowed;
 - (c) FILOT payments will not be modified using a net present value calculation; and
 - (d) Replacement property provisions will apply.
10. Any other feature or aspect of this Agreement which may affect the calculation of items (7) and (8) of this Recapitulation.
Waived by the County and the Company
11. Description of the effect upon the schedules required by items (7) and (8) of this Recapitulation of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8)
Waived by the County and the Company
12. Which party or parties to this Agreement are responsible for updating any information contained in this Recapitulation:
The Company

Section 1.02. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings, unless the context or use indicates another or different meaning or intent.

“Act” or “Simplified FILOT Act” shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

“Administration Expense” shall mean the reasonable and necessary expenses actually incurred by the County with respect to this Agreement and the Multi-County Park Agreement, including without limitation reasonable and actual attorneys’ fees (such attorneys’ fees will not exceed \$5,000 without prior written consent of the Company), but excluding any expenses incurred

by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company under Section 11.03 hereof; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

“Affiliate” shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with such other person or entity. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person or entity, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” shall mean this Fee-in-Lieu of Tax Agreement by and among the County and the Company, as originally executed and from time to time supplemented or amended as permitted herein, and dated as of [_____], 2022.

“Code” shall mean the Code of Laws of South Carolina 1976, as amended through the date hereof, unless the context clearly requires otherwise.

“Company” shall mean Cooper River Partners, LLC DBA Bushy Park, a South Carolina limited liability company previously identified as Project Longleaf, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets permitted under Section 8.02 or Article IX hereof; or any assignee hereunder which is designated by the Company and approved or ratified by the County. Except as required by law, the County’s subsequent approval or ratification of an assignee hereunder shall not be required if the subsequent assignee is a member of the Controlled Group.

“Company Affiliate” shall mean any Affiliate of the Company which would qualify as a sponsor affiliate within the meaning of that term as defined and used in Section 12-44-30(20) of the Code; provided, however, that such Affiliate must be specifically approved by the County as a sponsor affiliate and must agree in writing to be bound by this Agreement as to any investment by such sponsor affiliate to be subject to FILOT Payments hereunder.

“Controlled Group” shall mean the Company and all Company Affiliates.

“County” shall mean Berkeley County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

“County Council” shall mean the governing body of the County and its successors.

“Department of Revenue” shall mean the South Carolina Department of Revenue.

“Economic Development Property” shall mean each item of real and tangible personal property comprising the Project, except Non-Qualifying Property, within the meaning of that term as defined and used in Sections 12-44-30(6) and 12-44-40(C) of the Code.

“Equipment” shall mean all machinery, equipment, furnishings, and other personal property acquired by the Controlled Group and installed as part of the Project during the Investment Period in accordance with this Agreement.

“Event of Default” shall mean an Event of Default as defined in Section 11.01 hereof.

“Existing Property” shall mean property proscribed from becoming Economic Development Property pursuant to Section 12-44-110 of the Code, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to the execution and delivery of this Agreement and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) property acquired or constructed by any member of the Controlled Group during the Investment Period which has not been placed in service in this State prior to the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; (b) property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County prior to the execution of this Agreement pursuant to Section 12-44-40(E) of the Code, which property shall qualify as Economic Development Property; or (c) modifications which constitute an expansion of Existing Property.

“FILOT” shall mean the fee-in-lieu of taxes, which the Company and/or any Company Affiliate is obligated to pay to the County pursuant to Section 5.01 hereof.

“FILOT Payments” shall mean the payments to be made by the Company and/or any Company Affiliate pursuant to Section 5.01 hereof.

“FILOT Revenues” shall mean the revenues received by the County from payment of the FILOT by the Company and/or any Company Affiliate.

“Indemnified Parties” shall have the meaning ascribed thereto in Section 8.03 hereof.

“Investment Period” shall mean, initially, the period beginning with the first day that the Controlled Group purchased or purchases Economic Development Property, whether before or after the date of this Agreement, and ending on the date that is five years from the end of the property tax year in which the initial Economic Development Property comprising all or a portion of the Project is placed in service, unless extended by written agreement of the County and the Company, all in accordance with Section 12-44-30(13) of the Code.

“Investment Requirement” shall mean the minimum investment the Controlled Group shall make in the Project to receive the incentives described herein, as such term is defined in Section 4.01 hereof.

“Land” shall mean the real estate upon which the Project is to be located, as described in Exhibit A attached hereto, as Exhibit A may be revised, modified, or supplemented from time to time in accordance with the provisions hereof.

“Multi-County Park” shall mean the multi-county industrial/business park established pursuant to a qualifying agreement with [Williamsburg County, dated April 24, 1995, as amended] (the “Multi-County Park Agreement”).

“Multi-County Park Act” shall mean Title 4, Chapter 1 of the Code, as amended through the date hereof.

“Negotiated FILOT” or “Negotiated FILOT Payment” shall mean the FILOT payments due pursuant to Section 5.01(b) hereof with respect to that portion of the Project consisting of Economic Development Property.

“Non-Qualifying Property” shall mean that portion of the Project, if any, consisting of: (i) property as to which the Company or any members of the Controlled Group incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) Existing Property; and (iii) any Released Property or other property which fails or ceases to qualify for Negotiated FILOT Payments, including without limitation property as to which the Company has terminated the Negotiated FILOT pursuant to Section 4.03 hereof. The Company agrees that the real estate improvements placed in service on the Land as of the date of this Agreement shall constitute Non-Qualifying Property for purposes of this Agreement.

“Person” shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

“Project” shall mean, collectively herein, the Project, and shall include the buildings and other improvements on the Land to the extent placed thereon by the Company or any member of the Controlled Group including water, sewer treatment and disposal facilities, and other machinery, apparatus, equipment, office facilities, and furnishings which are necessary, suitable, or useful, including, without limitation, the Equipment; and any Replacement Property.

“Real Property Investment” shall have the meaning ascribed thereto in Section 4.01 hereof.

“Released Property” shall mean any portion of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any portion of the Project stolen, damaged, destroyed, or taken by condemnation or eminent domain proceedings as described in Article VII hereof, and any infrastructure which the Company dedicates to the public use (within the meaning of that phrase as used in Section 12-6-3420(C) of the Code).

“Replacement Property” shall mean all property placed in service in or on the Land in substitution of, or as replacement for, any portion of the Project, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to Section 5.01(f) hereof and Section 12-44-60 of the Code.

“Simplified FILOT Act” shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

“State” shall mean the State of South Carolina.

“Streamlined FILOT Act” shall mean Title 4, Chapter 12 of the Code, as amended through the date hereof.

“Term” shall mean the term of this Agreement, as set forth in Section 10.01 hereof.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the Code, as amended through the date hereof.

Section 1.03. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act and the Multi-County Park Act and to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) The County, based on representations of the Company, has determined that the Project will serve the purposes of the Act, and has made all other findings of fact required by the Act in order to designate the Project (other than the Non-Qualifying Property) as Economic Development Property.

(c) By proper action of the County Council, the County has duly authorized the execution and delivery of this Agreement and any and all actions necessary and appropriate to consummate the transactions contemplated hereby.

(d) This Agreement has been duly executed and delivered on behalf of the County.

(e) The County agrees to use its best faith efforts to cause the Land to be located within the Multi-County Park, and the County will use its best faith efforts to ensure that the Project will continuously be included within the boundaries of the Multi-County Park or another multi-county park in order that the maximum tax benefits afforded by the laws of the State for projects in the County located within multi-county industrial parks will be available to the Company.

(f) The authorization, execution, and delivery of this Agreement and the performance by the county of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County any existing law or provisions of the Constitution of the State.

(g) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the County are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

Section 2.02. Representations and Warranties by Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of South Carolina and authorized to do business in the State; has all requisite power to enter into this Agreement; and by proper action has been duly authorized to execute and deliver this Agreement.

(b) The agreements with the County with respect to the FILOT and the Multi-County Park have been instrumental in inducing the Company to locate the Project within the County and the State.

(c) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the Company are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

(d) For the Project, the Company hereby commits to satisfy, or cause the satisfaction of, the Investment Requirement by the end of the Investment Period. The Investment Requirement shall not include any amount paid by the Company, or any Company Affiliate for real estate improvements placed in service on the Land as of the date of this Agreement. The Company agrees to satisfy, or cause the satisfaction of, and maintain, or cause the maintenance of, the Real Property Investment throughout the entire term of the FILOT.

(e) If the Company fails to meet, or cause to be met by the Controlled Group, the Investment Requirement, then this Agreement shall terminate and the Company and any other Company Affiliate shall repay the benefits received for any of the previous years constituting the Investment Period as if the Investment Requirement was not met.

(f) The income tax year of the Company, and accordingly the property tax year, for federal income tax purposes is December 31.

(g) No event has occurred and no condition currently exists with respect to the Company, which would constitute a default hereunder or an “Event of Default” as defined herein.

(h) **[The Company intends for the Project to serve one or more existing facilities in the County, and to serve such other purposes permitted under the Act as the Company may deem appropriate.]** The Project constitutes a “project” and “economic development property” as provided under the Act.

ARTICLE III

UNDERTAKINGS OF THE COUNTY

Section 3.01. Agreement to Accept FILOT Payments. The County hereby agrees to accept FILOT Payments made by the Company and any Company Affiliate in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

Section 3.02. No Warranties by County. The Company acknowledges that the County has made no warranties or representations, either express or implied, as to the condition or state of the Project or as to the design or capabilities of the Project or that it will be suitable for the Company’s purposes or needs. No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating: (i) the construction or acquisition of the Project; (ii) environmental matters pertaining to the Project; (iii) the offer or sale of any securities; or (iv) the marketability of title to any property.

Section 3.03. Execution of Lease. The parties acknowledge that the intent of this Agreement is to afford the Company and any Company Affiliates the benefits of the Negotiated FILOT Payments and the Multi-County Park in consideration of the Company’s decision to locate the Project within Berkeley County and that this Agreement has been entered into in reliance upon the enactment of the Simplified FILOT Act and the Multi-County Park Act. In the event that a court of competent jurisdiction holds that the Simplified FILOT Act or the Multi-County Park Act is unconstitutional or that this Agreement, the Multi-County Park Agreement, or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect or should the parties determine that there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then the County, upon the provision by the Company of evidence acceptable to the County that the Project is free from environmental contamination and the conveyance of title to the Project to the County at the expense of the Company, agrees to lease the Project to the Company and each other Company Affiliate designated by the Company pursuant to the Streamlined FILOT Act with respect to each such entity’s respective portion of the Project and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company and any Company Affiliate receives the benefits of the Negotiated FILOT and the Multi-County Park Act as contemplated by this Agreement.

In addition to and notwithstanding the foregoing paragraph, the County shall not be obligated to perform any of its obligations or promises under this Section 3.03 unless the Company has otherwise complied with or provides satisfactory evidence to the County that it intends to comply with its obligations and responsibilities under this Agreement.

Section 3.04. Multi-County Park Designation. [The County agrees to use its best efforts to designate the Project, including, but not limited to, the Land, as part of a Multi-County Park, if not already so designated, and agrees to maintain such property within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide for all jobs created at the Project through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks.]

ARTICLE IV

INVESTMENT BY COMPANY IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

Section 4.01. Investment by Company in Project. For the Project, the Company, together with any Company Affiliates, agrees to invest, or cause to be invested, approximately Two Million Dollars (\$2,000,000) (without regard to depreciation or other diminution in value) in land, buildings, and other real property improvements, in the aggregate, (the “Real Property Investment”) and Five Million Dollars (\$5,000,000) (without regard to depreciation or other diminution in value) in machinery, equipment, and other personal property, in the aggregate, at the Project by the end of the initial Investment Period (collectively, the “Investment Requirement”). The Investment Requirement shall not include any amount paid by the Company or any Company Affiliates for real estate improvements placed in service on the Land as of the date of this Agreement. The Company, together with any Company Affiliates, agrees to satisfy, or cause the satisfaction of, and maintain, or cause the maintenance of, the Real Property Investment throughout the entire term of the FILOT.

Section 4.02. Reporting and Filing.

(a) The Company agrees to provide a copy of Form PT-443 filed with the Department of Revenue not later than 30 days after execution and delivery of this Agreement to the County Treasurer, Assessor, Economic Development Director and County Attorney and the auditor and assessor of each other county which is a party to the Multi-County Park Agreement. Each year during the term of this Agreement, the Company and each Company Affiliate shall deliver to the County Auditor, County Treasurer, Assessor, Economic Development Director and County Attorney a copy of their most recent annual filings made with the Department of Revenue with respect to its respective portion of the Project, not later than thirty (30) days following delivery thereof to the Department of Revenue.

(b) The Company agrees to obtain the written consent of the County prior to applying for a reclassification of, or attempting to reclassify, any asset(s) comprising the Project and previously reported to the Department of Revenue pursuant to this Section 4.02 from real property to personal property or, conversely, from personal property to real property.

(c) The Company and each Company Affiliate agrees to maintain such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project placed in service in each property tax year during the Investment Period, the amount of investment with respect thereto and its computations of all FILOT Payments made hereunder and will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the Act, including the reports described in paragraph (a) (collectively, “Filings”).

(d) Notwithstanding any other provision of this Section, the Company and each Company Affiliate may designate with respect to any Filings delivered to the County segments thereof that the Company or such Company Affiliate believes contain proprietary, confidential, or trade secret matters. To the maximum extent permitted by law, the County shall conform to all written requests made by the Company or any such Company Affiliate with respect to maintaining the confidentiality of such designated segments. If the County receives a request for information under Title 30, Chapter 4 of the Code, the County shall notify the Company and each Company Affiliate of the request and, subject to the time constraints imposed by such law, give the Company and such Company Affiliate the opportunity to designate those portions of its respective portion of the Project, which the Company and such Company Affiliate believe to be confidential or proprietary. To the extent permitted by law, the County shall not release information which has been designated as confidential or proprietary by the Company and each Company Affiliate.

Section 4.03 Modification of Project. As long as no Event of Default exists hereunder, the Company and each Company Affiliate shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(a) The Company or any Company Affiliate may, at its own expense, add to the Project any real and personal property as the Company or such Company Affiliate in its discretion deems useful or desirable.

(b) In any instance where the Company or any Company Affiliate in its discretion determines that any items included in the Project have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company or such Company Affiliate may remove such items or portions from the Project and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without the consent of the County, as such may be permitted under the Simplified FILOT Act.

(c) The Company or any Company Affiliate may, at any time in its discretion by written notice to the County, remove any real or personal property from the Negotiated FILOT (as defined in Section 5.01) set forth in this Agreement and thereafter such property will be considered Non-Qualifying Property and will be subject to FILOT Payments as set forth in Section 5.01(b) hereof.

ARTICLE V

PAYMENTS IN LIEU OF TAXES

Section 5.01. Payments in Lieu of *Ad Valorem* Taxes.

(a) In accordance with the Act, the parties hereby agree that, during the Term of the Agreement, the Company and any Company Affiliate shall pay, or cause to be paid, annually, with respect to the Project, a FILOT in the amount calculated as set forth in this Section, on or before the date, and at the places, in the manner, and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes.

(b) The FILOT Payment due for the Project with respect to each property tax year shall equal:

(i) With respect to any portion of the Project consisting of Non-Qualifying Property, as long as such property is located in the Multi-County Park, a payment equal to the *ad valorem* taxes that would otherwise be due on such Non-Qualifying Property were it taxable giving effect to all credits, exemptions, rebates and abatement that would be available if such undeveloped land or Non-Qualifying Property were taxable; plus

(ii) With respect to those portions of the Project consisting of Economic Development Property, for each of the ten (10) consecutive years following the year in which such portion of the Project is placed in service, a payment calculated each year as set forth in paragraph (c) below (a "Negotiated FILOT").

(c) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on: (1) the fair market value (determined in accordance with Section 12-44-50(A)(1)(c) of the Code) of the real property improvements and the Equipment included within the Project theretofore placed in service (less, for Equipment, depreciation allowable for property tax purposes as provided in Section 12-44-50(A)(1)(c) of the Code), (2) a fixed millage rate of 273.7 mills for the entire term of this Agreement, and (3) an assessment ratio of six percent (6%). All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemptions allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(d) The FILOT payments are to be recalculated:

(i) to reduce such payments in the event the Company or any Company Affiliate disposes of any part of the Project within the meaning of Section 12-44-50(B) of the Code and as provided in Section 4.03(b) hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that Project property or any portion thereof is damaged or destroyed, lost or stolen, or subject to condemnation proceedings or otherwise removed from the Project as a result of circumstances beyond the control of the Company or any Company Affiliate, as provided in Section 7.01 hereof;

(iii) to increase such payments in the event the Company or any Company Affiliate adds property (other than Replacement Property) to the Project; or

(iv) to adjust such payments if the Company or any Company Affiliate elects to convert any portion of the Economic Development Property from the Negotiated FILOT to the FILOT required by Section 5.01(b)(i) above, as permitted by Section 4.03(c).

(e) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Company and Company Affiliate to the County in lieu of taxes, it is agreed that said FILOT Payments shall not, as to any year, be in any amount greater than what would otherwise be payable by the Company or such Company Affiliate to the County in property taxes if the Company had not entered into a fee-in-lieu of taxes arrangement with the County (except it is not intended that said FILOT Payments would necessarily be less than such property taxes to the extent that the constitutional abatement of property taxes would otherwise apply).

(f) Upon the placing in service of any Replacement Property for any portion of the Economic Development Property removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company or any Company Affiliate, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Replacement Property does not have to serve the same function as Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same property tax year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of Economic Development Property which it is replacing. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payment for the period of time remaining on the ten-year FILOT period for the property which it is replacing.

(ii) All Replacement Property which qualifies for the Negotiated FILOT Payment shall be recorded using its income tax basis, and the Negotiated FILOT Payment shall be calculated using the millage rate and assessment ratio provided on the original property subject to Negotiated FILOT Payment which the Replacement Property is replacing.

(g) In the event that the Act or the Negotiated FILOT or any portion thereof, are declared, by a court of competent jurisdiction following allowable appeals, invalid or

unenforceable, in whole or in part, for any reason, the Company and the County express their intentions that such payments be reformed so as to afford the Company and any Company Affiliates the maximum benefit then permitted by law, including, without limitation, the benefits afforded under Section 12-44-50 of the Code and, specifically, that the Company may, at the Company's expense, exercise the rights granted by Section 12-44-160 of the Code. If the Project is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County agree that the Company and any Company Affiliate shall pay an alternate fee-in-lieu of tax calculated in the manner set forth in Section 5.01(b)(i) hereof. In such event, the Company shall be entitled, to the extent permitted by law: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Section 3(g) of Article X of the Constitution of the State of South Carolina, and any other exemption allowed by law; and (2) to enjoy all allowable depreciation.

ARTICLE VI

DEFAULT

Section 6.01. Defaulted Payments. In the event the Company should fail to make, or cause to be made, any of the payments required to be made under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, the Company agrees to pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Code.

Section 6.02. Failure to Reach Investment Requirement. If the Company fails to satisfy, or cause the satisfaction of, the Investment Requirement by the end of the Investment Period, then this Agreement shall terminate and the Company shall repay, or cause to be repaid, the benefits received pursuant to this Agreement for any of the previous years constituting the Investment Period as if the minimum investment requirement set forth in the Act was not met.

ARTICLE VII

CASUALTY AND CONDEMNATION

Section 7.01. Adjustments in the Event of Damage and Destruction or Condemnation. In the event that the Project or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, the Company, in its sole discretion, may determine whether or not to repair or replace the same. The parties hereto agree that if the Company decides not to repair or replace all or any portion of the Project pursuant to this Section, the FILOT required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project.

ARTICLE VIII

PARTICULAR COVENANTS AND AGREEMENTS

Section 8.01. Use of Project for Lawful Activities. During the Term of this Agreement, the Company shall use the Project for any lawful purpose authorized pursuant to the Act.

Section 8.02. Assignment. The Company agrees that the County shall, subject to the provisions set forth in the definition of “Company” in Section 1.01 hereof and in Section 9.01 hereof, have the sole discretion to allow, or not allow, the assignment of any of the incentives or benefits identified herein. The Company shall provide the County and the Department of Revenue with notice of any such assignment, transfer, or investment in accordance with the Act, and the County agrees, upon the request of the Company, to take all further action necessary to implement such assignment, transfer, or investment in accordance with the provisions of the Act.

Section 8.03. Indemnification. The Company releases the County, including the members of the governing body of the County, and the employees, officers, attorneys and agents of the County (herein collectively referred to as the “Indemnified Parties”) from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to this Agreement, the Project or the use thereof, except for that occasioned by grossly negligent or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, and claims arising from any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or negligent failure to act where there is a duty to do so by, the Company, or any of its agents, attorneys, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon.

All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and not of any member of the County Council or any officer, agent, attorney, servant, or employee of the County in his or her individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, attorney, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if any Indemnified Party shall incur any such pecuniary liability, then in such event,

the Company shall indemnify and hold them harmless against all claims by or on behalf of any Person, firm, or corporation or other legal entity arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon provided, however, that nothing herein shall absolve the Indemnified Parties from, or entitle the Indemnification Parties to indemnification from, any obligation such Indemnified Party has specifically agreed to undertake (including, without limitation, the obligation to place and maintain the Land within a multi-county park). If any action, suit, or proceeding is brought against any Indemnified Party to which such Indemnified Party is entitled to indemnification, such Indemnified Party shall promptly notify the Company, and the Company shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; provided the Company shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Company reasonably determines that a conflict of interest exists between the County and the Company, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Company shall be liable for the reasonable cost of such counsel.

The indemnity specified in this Section shall be in addition to any heretofore extended by the Company to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination.

ARTICLE IX

FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

Section 9.01. Conveyance of Liens and Interests; Assignment. The Company and each Company Affiliate may at any time: (a) transfer all or any of its rights and interests hereunder or with respect to the Project to any Person; or (b) enter into any lending, financing, security, or similar arrangement or succession of such arrangements with any financing entity with respect to the Agreement or the Project, including without limitation any sale, leaseback, or other financing lease arrangement; provided that, in connection with any of the foregoing transfers: (i) except in connection with any transfer to another member of the Controlled Group, any of the Company Affiliates (collectively, the “Related Entities”), or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company or such Company Affiliate shall first obtain the prior written consent or subsequent ratification of the County; (ii) except where a financing entity, which is the income tax owner of all or part of the Project, is the transferee pursuant to clause (b) above and such transferee or financing entity assumes in writing the obligations of the Company or such Company Affiliate hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company or such Company Affiliate hereunder, but all obligations of the Company or such Company Affiliate hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company, such Company Affiliate, transferee, or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (iv) the Company or such Company Affiliate and the transferee shall comply with all other requirements of the

Transfer Provisions. The County agrees that, to the extent allowed by law, any consent hereunder (such consent shall be in the sole discretion of the County) may be approved and evidenced by a resolution of County Council.

The Company acknowledges that such a transfer of an interest under this Agreement or in the Project may cause the Project to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company or such Company Affiliate with the Transfer Provisions.

Section 9.02. Relative Rights of County and Financing Entities as Secured Parties.

The parties acknowledge the application of the provisions of Section 12-44-90 of the Act, and that the County's right to receive FILOT Payments hereunder shall be the same as its rights conferred under Title 12, Chapter 49 and 54, among others, of the Code relating to the collection and enforcement of *ad valorem* property taxes. The County's rights under this Agreement, except for its rights to receive FILOT revenues, shall be subordinate to the rights of any secured party or parties under any financing arrangements undertaken by the Company or any Company Affiliates with respect to the Project pursuant to Section 9.01 hereof, such subordination to be effective without any additional action on the part of the County; provided, however, that the County hereby agrees, at the Company's expense, to execute such agreements, documents, and instruments as may be reasonably required by such secured party or parties to effectuate or document such subordination.

ARTICLE X

TERM; TERMINATION

Section 10.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the last day of the property tax year in which the last Negotiated FILOT Payment is due hereunder. The Negotiated FILOT arrangement set forth herein has a term of ten (10) years, as calculated pursuant to the respective dates when the relevant portions of the Project are placed in service, and as discussed in greater detail in this Agreement. The County's rights to receive indemnification and payment of Administration Expenses pursuant hereto shall survive the expiration or termination of this Agreement.

Section 10.02. Termination. The County and the Company may agree in writing to terminate this Agreement at any time, or the Company or any Company Affiliate, may, at its option, terminate this Agreement at any time with respect to all, or any part of, its respective portion of the Project upon providing the County thirty (30) days' written notice of such termination, in which event all, or any part of, its respective portion of the Project so terminated shall be subject to *ad valorem* taxes from the date of termination.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

Section 11.01. Events of Default by Company. Any one or more of the following events (herein called an “Event of Default”, or collectively “Events of Default”) shall constitute an Event of Default by the Company:

(a) if default shall be made in the due and punctual payment of any FILOT Payments, indemnification payments, or Administration Expenses, which default shall not have been cured within thirty (30) days following receipt of written notice thereof from the County;

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Company written notice of such default, provided, the Company shall have such longer period of time as necessary to cure such default if the Company proceeds promptly to cure such default and thereafter to prosecute the curing of such default with due diligence; or

(c) a cessation of operations at the Project. For the purposes of this Agreement, a “cessation of operations” means a publicly announced closure of the Project or a cessation in operations, in either case, following commencement of operations, at the Project that continues for a period of twelve (12) consecutive months.

Section 11.02. Remedies on Event of Default by Company. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

(a) terminate this Agreement by delivery of written notice to the Company not less than thirty (30) days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project; or

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Company under this Agreement.

Section 11.03. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation, a suit for mandamus or specific performance. Provided, however, that anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any Company Affiliate provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced; and the exercise by the County or by the Company or any Company Affiliate of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company or any Company Affiliate of any or all such other rights, powers or remedies.

Section 12.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder.

Section 12.03. Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid or via facsimile or other commonly-used electronic transmission or reputable courier service, addressed as follows or to such other persons and places as may be designated in writing by such party.

(a) As to the County:

Berkeley County, South Carolina
Attn: Economic Development Director
1003 Highway 52
P.O. Box 6122
Moncks Corner, South Carolina 29461
Phone: (843) 719-4096

With a copy to (which shall not constitute notice):

Berkeley County, South Carolina
Attn: Berkeley County Attorney
Post Office Box 6122
Moncks Corner, South Carolina 29461
Phone: (843) 719-4010

(b) As to the Company:

Cooper River Partners, LLC DBA Bushy Park
Attn: Kent Fonvielle, President
1588 Bushy Park Road

Goose Creek, South Carolina 29445
Phone: 843-820-6139

With a copy to (which shall not constitute notice):

Nexsen Pruet, LLC
Attn: Tushar V. Chikhliker
1230 Main Street, Suite 700
Columbia, South Carolina 29201
Phone: (803) 540-2188

Section 12.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 12.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 12.06. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 12.07. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 12.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

Section 12.09. Amendments. Subject to the limitations set forth in the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 12.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 12.11. Force Majeure. The Company and/or any Company Affiliate shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, labor shortages, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the reasonable control of the Company and/or such Company Affiliate.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS THEREOF, the parties hereto, each after due authorization, have executed this Fee-in-Lieu of Tax Agreement to be effective as of the [__] day of [____], 2022.

BERKELEY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Name: John P. Cribb
Title: Supervisor/Chairman, Berkeley County
Council

ATTEST:

By: _____
Name: Amanda D. Turner
Title: Clerk to Berkeley County Council

COOPER RIVER PARTNERS, LLC DBA BUSHY
PARK

By: _____

Name: _____

Title: _____

EXHIBIT A

LAND DESCRIPTION

[To be updated]



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: **BILL NO. 22-03, AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING SIXTY-FIVE MILLION DOLLARS (\$65,000,000) GENERAL OBLIGATION BONDS OF 2022 OF BERKELEY COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO. HISTORY: 1/24/2022 - Committee on Finance - Recommendation of Approval; 1/24/2022 - Regular Council - Referred; 2/28/2022 - Committee on Finance - Recommendation of Approval; 2/28/2022 - Regular Council - Approved and Referred**

Prepared By: Amanda Turner, County Council

Date: March 28, 2022

Attachment(s):

[General Obligation Bond Ordinance DM 7108446-v1.doc](#)

[Berkeley County SC Summary of Financing Options 2.11.22 First Tryon.pdf](#)

ORDINANCE NO.

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING SIXTY-FIVE MILLION DOLLARS (\$65,000,000) GENERAL OBLIGATION BONDS OF 2022 OF BERKELEY COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO.

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BE IT ORDAINED BY THE COUNTY COUNCIL OF BERKELEY COUNTY, SOUTH CAROLINA IN MEETING DULY ASSEMBLED:

ARTICLE I

FINDINGS OF FACT

As an incident to the enactment of this Ordinance and the issuance of the bonds provided for herein, the County Council of Berkeley County (the “*Council*”), the governing body of Berkeley County, South Carolina (the “*County*”), finds that the facts set forth in this **Article I** exist, and the statements made with respect thereto are true and correct.

Section 1.01 Objectives

(a) By virtue of Title 4, Chapter 15, as supplemented by Section 11-27-40, Code of Laws of South Carolina, 1976, as amended (the “*South Carolina Code*”), the County is empowered to issue general obligation bonds for any “authorized purpose” as therein defined. The above-referenced title, chapter and section of the South Carolina Code are hereinafter collectively referred to as the “*Enabling Act.*”

(b) After due investigation, the Council has determined that it is in the best interest of the County to provide for the issuance and sale of general obligation bonds in the principal amount of not exceeding \$65,000,000 to defray the costs of expanding, renovating, constructing and equipping certain Berkeley County facilities including the Berkeley County Courthouse and the Berkeley County Detention Center (the “*Project*”) and to pay related costs of issuance, which purposes will serve a public and corporate purpose of the County and benefit the general welfare of the County.

Section 1.02 Recital of Applicable Constitutional Provisions

Section 14 of Article X of the Constitution of the State of South Carolina, 1895, as amended (the “*Constitution*”) provides that the counties of the State of South Carolina (the “*State*”) may issue bonded indebtedness in an amount not exceeding eight percent of the assessed value of all taxable property therein. Paragraph (6) of Section 14 of Article X of the Constitution further provides that general obligation debt authorized by a majority of the qualified electors of the issuer may be issued without consideration of the eight percent limit otherwise imposed by Section 14 of Article X. The Council is informed that the assessed value of all taxable property located within the County as of June 30, 2021, which is the last completed assessment thereof, is not less than the sum of \$1,300,000,000, exclusive of new industrial property exempt from taxation pursuant to Section 3(g) of Article X of the Constitution. Thus, the eight percent debt limit of the County is not less than \$104,000,000. At present, \$36,968,185 in general obligation debt is chargeable against this limit. Thus, with respect to the proposed bonds of the County referred to in Section 1.01(b) hereof, the Council may cause to be issued general obligation bonds in the aggregate principal amount of not exceeding \$65,000,000 based on such assessed value for the purpose of paying the costs of the Project and issuance costs, without the authorization required by Section 14(6) of Article X of the Constitution.

Section 1.03 Holding of Public Hearing and Notice Thereof

Pursuant to the provisions of Section 4-9-130 of the South Carolina Code, a public hearing, after giving reasonable notice, is required to be conducted prior to the third and final reading of this Ordinance by the Council. In accordance with this provision, a public hearing was conducted and due notice and provided all as required by said Section 4-9-130. The form of the notice as published in *The Post and Courier* is set forth in Exhibit A attached hereto.

Section 1.04 Notice of Adoption of Ordinance

Section 4-9-1220 of the South Carolina Code provides that within 60 days following the enactment by the Council of an ordinance authorizing the issuance of general obligation debt, a petition signed by not less than fifteen percent of the qualified electors of the County may be filed with the Clerk to Council requesting that such ordinance be repealed. However, said Section 4-9-1220 does not apply in the event the Council publishes notice of the adoption of such ordinance in accordance with the provisions of Section 11-27-40(8) of the South Carolina Code. Under said Section 11-27-40(8), a notice signed by five qualified electors requesting a referendum on the repeal of such ordinance may be filed with the Clerk to Council and with the Clerk of the Court of Common Pleas of the County within 20 days of the published notice. In accordance with this provision, the notice prescribed thereby may, at the option of the Supervisor, be published subsequent to the third and final reading of this Ordinance. The notice, if published, is to be in substantially the form attached hereto as Exhibit D.

ARTICLE II
DEFINITIONS AND CONSTRUCTION

Section 2.01 Definitions

As used in this Ordinance unless the context otherwise requires, the following terms shall have the following respective meanings:

“Authorized Investments” means any investments that are at the time legal for investment of the County’s funds under the laws of the State and of the United States.

“Authorized Officer” means the Supervisor or the Vice-Chairman of the Council and any other officer or employee of the County designated from time to time as an Authorized Officer by a certificate signed on behalf of the County by the Supervisor, and when used with reference to any act or document also means any other person designated by a certificate signed on behalf of the County by the Supervisor to perform such act or sign such document.

“Beneficial Owner” means, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant or such person’s subrogee.

“Bond” or **“Bonds”** means any of the Bonds of the County authorized by this Ordinance.

“Bondholder” or **“Holder”** or **“Holders of Bonds”** or **“Owner”** or **“Registered Owner”** similar term means, when used with respect to a Bond or Bonds, any person who shall be registered as the owner of any Bond Outstanding; provided, that in the event the Bonds are issued in separate series pursuant to **Section 3.21** hereof, such terms shall refer only to the registered owners of the respective series of Bonds.

“Bond Payment Date” means each March 1 and September 1, or such other dates as may be determined by the Superintendent/Chairman of County Council, on which interest on any of the Bonds shall be payable or on which both a Principal Installment and interest shall be payable on any of the Bonds.

“Clerk to Council” means the Clerk to Council or the Assistant Clerk to Council, Interim Clerk to Council or Acting Clerk to Council, as the case may be.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto.

“**Continuing Disclosure Agreement**” shall mean that certain Continuing Disclosure Agreement in the form attached hereto as Exhibit C as prescribed by United States Securities and Exchange Commission Rule 15c2-12 authorized pursuant to **Section 11.07(b)** hereof, as originally executed and as the same may be amended from time to time in accordance with the terms thereof.

“**Corporate Trust Office**”, when used with respect to any Paying Agent or Registrar, means the office at which its corporate trust business with respect to the Bonds shall be administered.

“**Council**” means the County Council of Berkeley County, South Carolina, the governing body of the County or any successor governing body of the County.

“**County**” means Berkeley County, South Carolina.

“**DTC**” means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

“**Enabling Act**” means Title 4, Chapter 15, as amended, of the South Carolina Code as supplemented by Section 11-27-40 of the South Carolina Code.

“**Fiduciary**” means any financial institution appointed to serve as the Paying Agent and/or the Registrar and their successors and assigns.

“**Financial Advisor**” means an independent financial advisory firm engaged to advise the County in connection with the Bonds.

“**Governmental Unit**” means a state or local governmental unit within the meaning of Section 141(b) of the Code.

“**Government Obligations**” means and includes direct general obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which is fully and unconditionally guaranteed by the United States of America.

“**Nominee**” means the nominee of the Securities Depository which shall be the Holder of Bonds while held under a book-entry only system and any successor appointed by the Securities Depository. The initial Nominee shall be Cede & Co.

“**Nongovernmental Person**” means any Person other than a Governmental Unit.

“**Ordinance**” means this Ordinance as the same may be amended or supplemented from time to time in accordance with the terms hereof.

“**Outstanding**”, when used in this Ordinance with respect to Bonds means, as of any date, all Bonds theretofore authenticated and delivered pursuant to this Ordinance except:

- (a) any Bond cancelled or delivered to the Registrar for cancellation on or before such date;

(b) any Bond (or any portion thereof) deemed to have been paid in accordance with the provisions of **Section 7.01** hereof; and

(c) any Bond in lieu of or in exchange for which another Bond shall have been authenticated and delivered pursuant to **Section 3.11** of this Ordinance.

“Participant” or **“Participants”** means any broker-dealers, banks and other financial institutions for which the Securities Depository holds Bonds as securities depository.

“Paying Agent” means the County or any bank, trust company or national banking association which is authorized to pay the Principal Installment of or interest on any Bonds and having the duties, responsibilities and rights provided for in this Ordinance, and its successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to this Ordinance. The institution named as Paying Agent may also act as Registrar.

“Person” means an individual, a partnership, a corporation, a trust, a trustee, an unincorporated organization, or a government or an agency or political subdivision thereof.

“Principal Installment” means, as of any date of calculation, the principal amount of all Bonds due on a specified date.

“Record Date” means the 15th day of the month immediately preceding each Bond Payment Date.

“Registrar” means the County or any bank, trust company, or national banking association which is authorized to maintain an accurate list of those who from time to time shall be the Holders of the Bonds and shall effect the exchange and transfer of Bonds in accordance with the provisions of this Ordinance and having the duties, responsibilities, and rights provided for in this Ordinance and its successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to this Ordinance. The institution named as Registrar may also act as Paying Agent.

“Representation Letter” means the Blanket Letter of Representations from the County to DTC, which shall be deemed to be a part of this Ordinance and shall be the binding obligation of the County.

“Securities Depository” means the administrator of the book-entry only system for the Bonds, as further described in **Section 3.20** hereof and any successor appointed as provided in **Section 3.20(c)** hereof. The initial Securities Depository shall be DTC.

“South Carolina Code” means the Code of Laws of South Carolina, 1976, as amended.

“State” means the State of South Carolina.

“Supervisor” means the Supervisor/Chairman of County Council or, in the absence or unavailability of the Supervisor/Chairman of County Council for any reason, the Vice Chairman of County Council.

“Term Bonds” has the meaning provided in **Section 3.02** hereof.

Section 1.02 Construction

In this Ordinance, unless the context otherwise requires:

(a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Ordinance.

(b) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms refer to this Ordinance, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of enactment of this Ordinance.

(c) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

(d) Any Fiduciary shall be deemed to hold an Authorized Investment in which money is invested pursuant to the provisions of this Ordinance, even though such Authorized Investment is evidenced only by a book entry or similar record of investment.

ARTICLE III

ISSUANCE OF BONDS

Section 3.01 Ordering the Issuance of Bonds

Pursuant to the provisions of the Enabling Act, and for the purpose of obtaining funds to defray the costs of the Project described in **Section 1.01** hereof, there shall be issued not exceeding \$65,000,000 aggregate principal amount of General Obligation Bonds of the County. Such Bonds shall be designated “General Obligation Bonds of 2022 of Berkeley County, South Carolina” or such other designation determined by the Superintendent/Chairman of County Council. Such Bonds may be issued in one or more series.

Section 3.02 Maturity Schedule of Bonds

(a) Unless determined otherwise by the Supervisor, interest on the Bonds shall be payable on September 1, 2022 and semiannually thereafter on March 1 and September 1 of each year until payment of the principal thereof. Unless determined otherwise by the Supervisor and subject to the requirements of the Enabling Act, the Bonds shall mature on March 1 of such years, ending not later than March 1, 2047, and in such amounts, as shall be determined by the Supervisor upon advice from the Financial Advisor. In this regard, the Supervisor, in his discretion, may determine that certain maturities of the Bonds will be subject to mandatory sinking fund redemption prior to their stated maturity date (such Bonds, the “**Term Bonds**”). In such event, the Supervisor shall also determine the respective principal amounts of such mandatory sinking fund redemptions and the years in which such redemptions shall occur.

(b) In the absence of a determination by the Supervisor that certain Bonds should be made subject to mandatory sinking fund redemption, the purchaser of the Bonds, as determined pursuant to **Sections 3.15** and **5.02** herein, may elect to combine one or more consecutive maturities to create one or more term maturities, each of which will be subject to annual mandatory sinking fund redemption at par plus accrued interest to the redemption date (to the extent not previously redeemed) in the principal amounts and for the years shown in the maturity schedule established by the Supervisor pursuant to this

Section 3.02. To the extent Bonds subject to mandatory sinking fund redemption in a given year have been purchased by the County pursuant to the provisions set forth in **Article IV** herein, the amount of mandatory sinking fund redemption in such year shall be reduced in such manner as the County shall direct, or, absent such direction, on a pro-rata basis.

Section 3.03 Provision for Payment of Interest on the Bonds

The original issue date of the Bonds shall be the date of delivery of the Bonds, or such other date as may be selected by the Supervisor. The Bonds shall be authenticated on such dates as they shall, in each case, be delivered. Each Bond shall bear interest from the original issue date if no interest has yet been paid; otherwise from the last date to which interest has been paid and which date is on or prior to the date of such Bond's authentication. The interest payment on a Bond shall be made in accordance with **Section 3.04(c)** hereof to the Person in whose name such Bond is registered in accordance with **Section 3.08** hereof at the close of business on the Record Date with respect to such payment.

Section 3.04 Medium of Payment; Form and Denomination of Bonds, Place of Payment of Principal

(a) The Bonds shall be payable as to Principal Installment and interest at the rates per annum determined in the manner prescribed by **Section 3.15** hereof (on the basis of a 360-day year of twelve 30-day months) in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) The Bonds shall be issued in the form of fully registered, book-entry Bonds. The Bonds shall be issued in the denomination of \$5,000 or any whole multiple thereof, not exceeding the principal amount of the Bonds maturing in such year. The Bonds shall be identified in such fashion as to maintain a proper record thereof.

(c) The Principal Installment of all Bonds shall be payable at the Corporate Trust Office of the Paying Agent; and payment of the interest on each Bond shall be made by the Paying Agent to the Person appearing on the applicable Record Date on the registration books of the County, which books shall be held by the Registrar as provided in **Section 3.08** hereof, as the registered owner thereof, by check or draft mailed to such registered owner at his address as it appears on such registration books in sufficient time to reach such registered owner on the Bond Payment Date. Payment of the Principal Installment of all Bonds shall be made (i) upon the presentation and surrender for cancellation of such Bonds as the same shall become due and payable or (ii) pursuant to the provisions of **Section 3.11** hereof in the event of destruction, loss or theft of any such Bond.

Section 3.05 Agreement to Maintain Registrar and Paying Agent

As long as any of the Bonds remain Outstanding there shall be a Registrar and a Paying Agent, each of which shall be either the County or a financial institution maintaining Corporate Trust Offices where (i) the Bonds may be presented for registration of transfers and exchanges, (ii) notices and demands to or upon the County in respect of the Bonds may be served, and (iii) the Bonds may be presented for payment, exchange and transfer. In the event the Bonds are sold in separate series pursuant to **Section 3.21** hereof and the County elects not to be the Registrar and Paying Agent, a separate Registrar and Paying Agent shall be maintained for each series (which separate Paying Agent and Registrar may be the same financial institution as shall serve in such capacities with respect to any of the other series of the Bonds).

Section 3.06 Execution and Authentication

(a) The Bonds shall be executed in the name and on behalf of the County by an Authorized Officer, with its corporate seal impressed, imprinted or otherwise reproduced thereon, and attested by the Clerk to Council or other Authorized Officer (other than the officer executing such Bonds). Bonds bearing the manual or facsimile signature of any Person who shall have been such an Authorized Officer at the time such Bonds were so executed shall bind the County notwithstanding the fact that he or she may have ceased to be such Authorized Officer prior to the authentication and delivery of such Bonds or was not such Authorized Officer at the date of the authentication and delivery of the Bonds.

(b) No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless there shall be endorsed on such Bond a certificate of authentication in the form set forth in this Ordinance, duly executed by the Registrar; and such certificate of authentication upon any Bond executed on behalf of the County shall be conclusive evidence that the Bond so authenticated has been duly issued hereunder and that the Holder thereof is entitled to the benefit of the terms and provisions of this Ordinance.

Section 3.07 Exchange of Bonds

Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Holder or his duly authorized attorney, may, at the option of the registered Holder thereof, be exchanged for an equal aggregate principal amount of Bonds in authorized denominations of the same interest rate and maturity. So long as any of the Bonds remain Outstanding, the County shall make all necessary provisions to permit the exchange of Bonds at the Corporate Trust Office of the Registrar.

Section 3.08 Transferability and Registry

All Bonds shall at all times, when the same are Outstanding, be payable, both as to Principal Installment and interest to a Person, and shall be transferable, only in accordance with the provisions for registration and transfer contained in this Ordinance and in the Bonds. So long as any of the Bonds remain Outstanding, the County shall maintain and keep, at the Corporate Trust Office of the Registrar, books for the registration and transfer of Bonds, and, upon presentation thereof for such purpose at the Corporate Trust Office of the Registrar, the County shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it or the Registrar may prescribe, any Bond, except that under no circumstances shall any Bond be registered or transferred to bearer. So long as any of the Bonds remain Outstanding, the County shall make all necessary provisions to permit the transfer of Bonds at the Corporate Trust Office of the Registrar.

Section 3.09 Transfer of Bonds

Each Bond shall be transferable only upon the books of the County, which shall be kept for such purpose at the Corporate Trust Office of the Registrar which shall be maintained for such purpose by the Registrar, upon presentation and surrender thereof by the Holder of such Bond in person or by his attorney duly authorized in writing, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered Holder or his duly authorized attorney. Upon surrender for transfer of any such Bond, the County shall execute and the Registrar shall authenticate and deliver, in the name of the Person who is the transferee, one or more new Bonds of the same aggregate principal amount and maturity and rate of interest as the surrendered Bond. All action taken by the Registrar pursuant to this **Section 3.09** shall be deemed to be the action of the County.

Section 3.10 Regulations with Respect to Exchanges and Transfers

All Bonds surrendered in any exchanges or transfers shall forthwith be cancelled by the Registrar. For each such exchange or transfer of Bonds, the County or the Registrar may make a charge sufficient to reimburse it or them for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The County shall not be obligated to (i) issue, exchange or transfer any Bond after the Record Date with respect to any Bond Payment Date of the Bonds; (ii) issue, exchange or transfer any Bond during a period beginning at the opening of business 15 days next preceding any selection of Bonds to be redeemed and ending at the close of business on the date of the mailing of notice of such redemption; or (iii) transfer or exchange any Bonds called or being called for redemption in whole or in part.

Section 3.11 Mutilated, Destroyed, Lost and Stolen Bonds

(a) If any mutilated Bond is surrendered to the Registrar and the Registrar or the County receives evidence to their satisfaction of the destruction, loss or theft of any Bond, and there is delivered to the Registrar and the County such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice that such Bond has been acquired by a *bona fide* purchaser, the County shall execute, and upon the written request of an Authorized Officer of the County, the Registrar shall authenticate and deliver, in exchange for any such mutilated Bond or in lieu of any such destroyed, lost or stolen Bond, a new Bond of like tenor and principal amount, bearing a number unlike that of a Bond contemporaneously Outstanding. The Registrar shall thereupon cancel any such mutilated Bond so surrendered. In case any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the County in its discretion may, instead of issuing a new Bond, pay such Bond.

(b) Upon the issuance of any new Bond under this **Section 3.11**, the County may require the payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees or other fees, of the County or of the Registrar connected therewith.

(c) Each new Bond issued pursuant to this **Section 3.11** in lieu of any destroyed, lost or stolen Bond, shall constitute an additional contractual obligation of the County, whether or not the destroyed, lost or stolen Bond shall at any time be enforceable by anyone, and shall be entitled to all the benefits hereof equally and proportionately with any and all other Bonds duly issued pursuant to this Ordinance. All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds or securities.

Section 3.12 Holder as Owner of Bond

Subject to the provisions of **Section 3.20** hereof, the County, the Registrar and any Paying Agent may treat the Holder of any Bond as the absolute owner thereof, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the Principal Installment of and interest on such Bond and for all other purposes, and payment of the Principal Installment and interest shall be made only to, or upon the order of, such Holder. All payments to such Holder shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the County nor any Paying Agent shall be affected by any notice to the contrary.

Section 3.13 Cancellation of Bonds

The Registrar shall destroy all Bonds surrendered to it for cancellation and shall deliver a certificate to that effect to the County. No such Bonds shall be deemed Outstanding under this Ordinance and no Bonds shall be issued in lieu thereof.

Section 3.14 Payments Due on Saturdays, Sundays and Holidays

In any case where the Bond Payment Date shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest on or Principal Installment of the Bonds need not be made on such date but may be made on the next succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close, with the same force and effect as if made on the Bond Payment Date and no interest shall accrue for the period after such date.

Section 3.15 Conditions Relating to Naming of Interest Rates

The Bonds shall bear such rate or rates of interest as shall at the sale of such Bonds reflect the lowest true interest cost to the County calculated in the manner hereinafter prescribed in this **Section 3.15** at a price of not less than par, but:

- (a) all bonds of the same maturity shall bear the same rate of interest;
- (b) no rate of interest named shall be more than 3% higher than the lowest rate of interest named;
- (c) each interest rate named shall be a multiple of 1/10th or 1/8th of one per centum (1%); and
- (d) any premium offered must be paid in cash as a part of the purchase price.

provided, however, that the Supervisor, upon the advice of the Financial Advisor, is hereby authorized to make any such adjustments to any of the above criteria except (d) as he shall determine at or prior to offering the Bonds for sale.

The true interest cost will be the nominal interest rate which, when compounded semiannually and used to discount all debt service payments on the bonds (computed at the interest rates specified in the bid and on the basis of a 360-day year of twelve 30-day months) to the dated date of the Bonds, results in an amount equal to the price bid for the Bonds. In the case of a tie bid, the winning bid will be awarded by lot. The right is reserved to waive irregularities in any bid. Bids will be accepted or rejected by 3:00 p.m. (local time) on the day of the sale.

Section 3.16 State Tax Exemption

Both the Principal Installments and interest on said Bonds shall be exempt from all State, county, municipal, school district, and all other taxes or assessments of the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes.

Section 3.17 Order of Tax Levy to Pay Principal and Interest of Bonds

For the payment of the Principal Installments and interest on the Bonds as the same respectively mature and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the County are hereby irrevocably pledged, and there shall be levied annually by the Auditor of the County, and collected by the Treasurer of the County, in the same manner as County taxes are levied and collected, a tax on all taxable property in the County, sufficient to pay the Principal Installment and interest on such Bonds as they respectively mature, and to create such sinking fund as may be necessary therefor.

Section 3.18 Notice to Auditor and Treasurer to Levy Tax

The Auditor and Treasurer of the County shall be notified of this issue of Bonds and directed to levy and collect, respectively, upon all taxable property in the County an annual tax sufficient to meet the payment of the Principal Installments and interest on said Bonds, as the same respectively mature, and to create such sinking fund as may be necessary therefor.

Section 3.19 Form of Bonds

The form of the Bonds, and registration provisions to be endorsed thereon shall be substantially as set forth in Exhibit B attached hereto and made a part of this Ordinance.

Section 3.20 Book-Entry

(a) Except as provided in **Section 3.20(c)**, the Bonds shall be held under a book-entry only system administered by the Securities Depository and shall be registered in the name of the Nominee. Payment of interest on any Bond registered in the name of the Nominee shall be made by New York Clearing House or equivalent next day funds to the account of the Nominee on the interest payment date for the Bonds at the address indicated for the Nominee on the registration books kept by the Registrar.

(b) The Bonds shall be initially issued in the form of separate, single, authenticated fully-registered Bonds in the amount of each separately stated maturity of Bonds of a series. Upon initial issuance, the ownership of each such Bond shall be registered on the registration books kept by the Registrar in the name of the Nominee. The County may treat the Securities Depository (or the Nominee) as the sole and exclusive owner of the Bonds registered in the name of the Nominee for the purposes of (A) paying the principal of or interest on the Bonds, (B) selecting the Bonds or portions thereof to be redeemed, (C) giving any notice permitted or required to be given to Holders of Bonds under the Ordinance, (D) registering the transfer of Bonds, and (E) requesting any consent or other action to be taken by the Holders of the Bonds and for all other purposes whatsoever; and neither the Registrar nor the County shall be affected by any notice to the contrary. Neither the Registrar nor the County shall have any responsibility or obligation to any Participant, any Beneficial Owner or any other person claiming a beneficial ownership interest in the Bonds under or through the Securities Depository or any Participant, or any other person which is not shown on the registration books of the Registrar as being a Holder of Bonds, with respect to (1) the accuracy of any records maintained by the Securities Depository or any Participant, (2) the payment to the Securities Depository, any Participant or any Beneficial Owner of any amounts in respect of the principal of or interest on the Bonds, (3) any notice which is permitted or required to be given to Holders of the Bonds under this Ordinance, or (4) any consent given or other action taken by the Securities Depository as such Holder. The County shall pay all principal of and interest on the Bonds only to the Securities Depository (or the Nominee), and all such payments shall discharge the County's obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Except as provided in **Section 3.20(c)** below, no person other than the

Securities Depository shall receive an authenticated Bond certificate. Upon delivery by the Securities Depository to the County of written notice to the effect that the Securities Depository has determined to substitute a new Nominee in place of Cede & Co., the Bonds shall be transferable to such new Nominee in accordance with the provisions of this Ordinance.

(c) In the event the County determines, consistent with the operating rules of the Securities Depository, that it is in the best interest of the County not to continue the book-entry only system of transfer with respect to the Bonds, or that the interests of the Beneficial Owners might be adversely affected if the book-entry only system of transfer is continued with respect to the Bonds, then the County may notify the Securities Depository of such determination, whereupon the Securities Depository will notify the Participants of the availability through the Securities Depository of Bond certificates. In such event, the Registrar shall issue, transfer and exchange Bond certificates as requested by the Securities Depository and any Participant or Beneficial Owner in appropriate amounts in accordance with this Ordinance. The Securities Depository may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the County and discharging its responsibilities with respect thereto under applicable law or the County may determine that the Securities Depository is incapable of discharging its duties as such and may so advise the Securities Depository. In either such event, the County shall either (A) establish its own book-entry only system, (B) locate another Securities Depository, or (C) deliver Bond certificates as provided herein and as requested by any Participant or Beneficial Owner, subject to the rules and procedures of the Securities Depository.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payment with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

(e) In connection with any notice or other communications to be provided to the Holders of Bonds pursuant to this Ordinance by the County with respect to any consent or other action to be taken by the Holders of Bonds, the County shall establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible. Such early notice to DTC shall be given when DTC is the Securities Depository.

Section 3.21 Separate Series of Bonds

At the discretion of the Supervisor, upon advice from the Financial Advisor, the Bonds authorized herein may be sold and issued in one or more series.

ARTICLE IV

REDEMPTION OR PURCHASE OF BONDS

Section 4.01 Authorization of Redemption

(a) *Optional Redemption.* The Bonds are subject to optional redemption prior to their maturities at such time as the Supervisor, upon the advice of the Financial Advisor, shall determine.

(b) *Mandatory Redemption.* In the event the Supervisor, upon the advice of the Financial Advisor, shall determine that a portion of the Bonds shall be Term Bonds subject to mandatory sinking fund redemption prior to their stated maturity date:

(1) Such Term Bonds, to the extent not previously redeemed, shall be redeemed at a redemption price of 100% of the applicable principal amount, plus interest accrued to the redemption date, on the applicable April 1.

(2) The amount of any such mandatory sinking fund redemptions shall be reduced to the extent Term Bonds of the applicable maturity have been purchased by the County or redeemed by the County pursuant to **Section 4.01(a)** above, in such manner as the County shall direct, or, absent such direction, on a pro rata basis.

(3) At its option, to be exercised on or before the 45th day next preceding any date set for scheduled mandatory redemption with respect to the Term Bonds, the County may (i) deliver to the Paying Agent for cancellation Term Bonds in any aggregate principal amount desired or (ii) receive a credit in respect of its scheduled mandatory redemption payment obligation for any Term Bonds which prior to said date have been redeemed (otherwise than through a scheduled mandatory redemption) and cancelled by the Paying Agent and not theretofore applied as a credit against any scheduled mandatory redemption payment obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Paying Agent at 100% of the principal amount thereof against the obligation of the County on such scheduled mandatory redemption payment date; and the principal amount of such Term Bonds to be redeemed by operation of scheduled mandatory redemption shall be accordingly reduced.

(4) The County will on or before the 45th day next preceding each date set for scheduled mandatory redemption with respect to the Term Bonds, furnish to the Paying Agent a certificate indicating whether or not and to what extent the provisions of (i) and (ii) of the preceding paragraph are to be availed of with respect to such scheduled mandatory redemption and confirm that monies equal to the balance of such redemption payment will be paid on or before the next succeeding date set for scheduled mandatory redemption.

Section 4.02 Purchases of Bonds Outstanding

Purchases of Bonds Outstanding may also be made by the County at any time with money available to it from any source. Upon any such purchase the County shall deliver such Bonds to the Registrar for cancellation.

ARTICLE V

SALE OF BONDS; APPROVAL OF OFFICIAL STATEMENT

Section 5.01 Determination of Time to Receive Bids – Form of Notice of Sale

The Bonds shall be sold at public sale, at a price of not less than par. Bids shall be received not later than the date and time to be selected by the Supervisor. The Bonds shall be advertised for sale as and if required by the Enabling Act and State law, which notice shall appear at least once, not less than seven days before the date set for sale.

Section 5.02 Award of Bonds

Upon the receipt of bids for the purchase of the Bonds, unless all bids are rejected, the Supervisor shall award the Bonds to the bidder offering to purchase them at the lowest true interest cost to the County, as determined pursuant to **Section 3.15** hereof. The Supervisor is further authorized to name the

Registrar and the Paying Agent for the Bonds, in accordance with **Section 3.05** hereof. In the event no bids are received or if all bids are reject, the County reserves its right, at the option of the Supervisor, upon the advice of the Financial Advisor, to pursue a private sale of the Bonds pursuant to Section 11-27-40 of the South Carolina Code.

Section 5.03 Approval of Official Statement

The Council hereby authorizes the preparation and distribution of a Preliminary Official Statement of the County in connection with the sale of the Bonds, in such form as the Supervisor approves, with any modification as the Supervisor approves, and hereby authorizes the Supervisor to deem it final within the meaning of S.E.C. Rule 15(c)(2)-12. The Preliminary Official Statement may be distributed in electronic or printed format or both. The Council further authorizes and approves the distribution and delivery of the final Official Statement in print and electronic format by the successful bidders in connection with the reoffering and sale of the Bonds by the successful bidders.

ARTICLE VI

DISPOSITION OF PROCEEDS OF SALE OF BONDS

Section 6.01 Disposition of Bond Proceeds Including Temporary Investments

The proceeds derived from the sale of the Bonds issued pursuant to this Ordinance shall be paid to the Treasurer of the County, to be deposited in a bond account fund for the County, and shall be expended and made use of by the County as follows:

(a) any premium shall be deposited in the sinking fund established hereunder and applied in accordance with the Enabling Act;

(b) the remaining proceeds shall be expended and made use of by the Council to defray the cost of issuing the Bonds and to defray costs of constructing and acquiring the Project or such other project as approved by supplemental ordinance pursuant to **Section 10.01** hereof. Pending the use of Bond proceeds, the same shall be invested and reinvested by the Treasurer of the County in Authorized Investments. Subject to the obligation of the County to rebate certain investment earnings to the United States Treasury in accordance with Section 148(f) of the Code, earnings from such investments shall be applied, at the direction of the Council, either (i) to defray the cost of the Project and if not required for this purpose, then (ii) to pay the first maturing installments of interest on the Bonds; and

(c) if any balance remains, it shall be held by the Treasurer of the County in a special fund and used to effect the retirement of the Bonds authorized by this Ordinance;

provided, that neither the purchasers nor any Holder of the Bonds shall be liable for the proper application of the proceeds thereof.

ARTICLE VII

DEFEASANCE OF BONDS

Section 7.01 Discharge of Ordinance – Where and How Bonds are Deemed to have been Paid and Defeased

If all of the said Bonds issued pursuant to this Ordinance and all interest thereon shall have been paid and discharged, then the obligations of the County under this Ordinance and all other rights granted hereby shall cease and determine. The Bonds shall be deemed to have been paid and discharged within the meaning of this **Article VII** under each of the following circumstances:

(a) The Paying Agent shall hold, at the stated maturities of the Bonds, in trust and irrevocably appropriated thereto, sufficient moneys for the payment of the Principal Installment and interest thereof; or

(b) If default in the payment of the principal of the Bonds or the interest thereon shall have occurred on any Bond Payment Date, and thereafter tender of such payment shall have been made, and at such time as the Paying Agent shall hold in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of such payment; or

(c) If the County shall elect to provide for the payment of the Bonds prior to their stated maturities and shall have deposited with the Paying Agent in an irrevocable trust moneys which shall be sufficient, or Government Obligations, the principal of and interest on which when due will provide moneys, which together with moneys, if any, deposited with the Paying Agent at the same time, shall be sufficient to pay when due the Principal Installment and interest, due and to become due on the Bonds on and prior to their maturity dates.

Neither the Government Obligations nor moneys deposited with the Paying Agent pursuant to this **Section 7.01** nor the principal or interest payments thereon shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Principal Installment of, and interest on, said Bonds; provided that any cash received from such principal or interest payments on Government Obligations deposited with the Paying Agent, if not then needed for such purpose, shall to the extent practicable, be invested and reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the Principal Installment and interest to become due on said Bonds on the maturity date thereof and interest earned from such reinvestments not required for the payment of the Principal Installment and interest, may be paid over to the County, as received by the Paying Agent, free and clear of any trust, lien or pledge.

In the event any of the Bonds have been issued in separate series as provided in **Section 3.21** hereof, the provisions of this **Section 7.01** shall be deemed to apply to each such series separately.

ARTICLE VIII

CONCERNING THE FIDUCIARIES

Section 8.01 Fiduciary; Appointment and Acceptance of Duties

If the County elects not to be the Registrar and Paying Agent, then the financial institution or institutions chosen pursuant to **Section 3.05** hereof to act as Paying Agent and Registrar hereunder shall

accept the duties and trusts imposed upon it by this Ordinance and shall agree in writing to perform such trusts but only upon the terms and conditions set forth in this **Article VIII**. Similarly, each financial institution appointed as a successor Registrar or as a successor Paying Agent shall signify its acceptance of the duties and trusts imposed by this Ordinance by a written acceptance.

Section 8.02 Responsibilities of Fiduciaries

The recitals of fact herein and in the Bonds shall be taken as the statements of the County and no Fiduciary assumes any responsibility for the correctness of the same except in respect of the authentication certificate of the Registrar endorsed on the Bonds. No Fiduciary makes any representations as to the validity or sufficiency of this Ordinance or of any Bonds or as to the security afforded by this Ordinance, and no Fiduciary shall incur any liability in respect thereof. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid to any other Fiduciary. No Fiduciary shall be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof or to advance any of its own moneys, unless indemnified to its reasonable satisfaction. No Fiduciary shall be liable in connection with the performance of its duties hereunder except for its own negligence or willful misconduct.

Section 8.03 Evidence on Which Fiduciaries May Act

(a) Each Fiduciary, upon receipt of any notice, ordinance, resolution, request, consent order, certificate, report, opinion, bond, or other paper or document furnished to it pursuant to any provision of this Ordinance, shall examine such instrument to determine whether it conforms to the requirements of this Ordinance and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with counsel, who may or may not be counsel to the County, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Ordinance in good faith and in accordance therewith.

(b) Whenever any Fiduciary shall deem it necessary or desirable that a matter to be proved or established prior to taking or suffering any action under this Ordinance, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized Officer, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Ordinance upon the faith thereof; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable.

(c) Except as otherwise expressly provided in this Ordinance any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the County to any Fiduciary shall be sufficiently executed if executed in the name of the County by an Authorized Officer.

Section 8.04 Compensation

The County shall pay to each Fiduciary from time to time reasonable compensation based on the then standard fee schedule of the Fiduciary for all services rendered under this Ordinance, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Ordinance.

Section 8.05 Certain Permitted Acts

Any Fiduciary may become the owner or underwriter of any Bonds, notes or other obligations of the County or conduct any banking activities with respect to the County, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as depositary for, and permit any of its officers or directors to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Ordinance.

Section 8.06 Resignation of Any Fiduciary

Any Fiduciary may at any time resign and be discharged of the duties and obligations created by this Ordinance by giving not less than 60 days written notice to the County and not less than 30 days written notice to the Holders of the Bonds as established by the books of registration prior to the next succeeding Bond Payment Date and such resignation shall take effect upon the date specified in such notice unless previously a successor shall have been appointed by the County pursuant to **Section 8.08** hereof in which event such resignation shall take effect immediately on the appointment of such successor. In no event, however, shall such a resignation take effect until a successor has been appointed.

Section 8.07 Removal of Fiduciary

So long as an event of default has not occurred, the County may remove the Fiduciary without cause. Any Fiduciary may be removed at any time by an instrument or concurrent instruments in writing, filed with the County and such Fiduciary, and signed by the Bondholders representing a majority in principal amount of the applicable series of Bonds then Outstanding or their attorneys in fact duly authorized, excluding any Bonds held by or for the account of the County.

Section 8.08 Appointment of Successor Fiduciaries

In case any Fiduciary hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the County. Every such Fiduciary appointed pursuant to the provisions of this **Section 8.08** shall be a trust company or bank organized under the laws of the United States of America or any state thereof and which is in good standing, within or outside the State, having a stockholders' equity of not less than \$100,000,000 if there be such an institution willing, qualified and able to accept the trust upon reasonable and customary terms.

If in a proper case no appointment of a successor Fiduciary shall be made by the County pursuant to the foregoing provisions of this **Section 8.08** within 45 days after any Fiduciary shall have given to the County written notice as provided in **Section 8.06** hereof or after a vacancy in the office of such Fiduciary shall have occurred by reason of its removal or inability to act, the former Fiduciary or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor.

Section 8.09 Transfer of Rights and Property to Successor

Any successor Fiduciary appointed under this Ordinance shall execute, acknowledge and deliver to its predecessor, and also to the County, an instrument accepting such appointment. Thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Fiduciary, with like effect as if originally named in such capacity. The Fiduciary ceasing to act shall nevertheless, however, on the

written request of the County, or of the successor, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all the right, title and interest of the predecessor Fiduciary in and to any property held by it under this Ordinance, and shall pay over, assign and deliver to the successor Fiduciary any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the County be required by such successor Fiduciary for more fully and certainly vesting in and confirming to such successor any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the County. Any such successor Fiduciary shall promptly notify other Fiduciaries and depositaries, if any, of its appointment as Fiduciary.

Merger or Consolidation

Any company into which any Fiduciary may be merged or converted or with which it may be consolidated, or any company resulting from any merger, conversion or consolidation to which any Fiduciary may be party, or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, and shall be authorized by law to perform all the duties imposed upon it by this Ordinance, shall with the consent of the County be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

Section 8.10 Adoption of Authentication

In case any of the Bonds contemplated to be issued under this Ordinance shall have been authenticated but not delivered, any successor Registrar may adopt the certificate of authentication of any predecessor Registrar so authenticating such Bonds and may deliver such Bonds so authenticated. In case any such Bonds shall not have been authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in the name of the successor Registrar, and in all such cases such certificate shall be of full force and effect.

ARTICLE IX

CERTAIN TAX CONSIDERATIONS

Section 9.01 General Tax Covenant

The County will comply with all requirements of the Code in order to preserve the tax-exempt status of the Bonds, including without limitation, the requirement to file the information report with the Internal Revenue Service. In this connection, the County covenants to execute any and all agreements or other documentation as it may be advised by bond counsel will enable it to comply with this **Section 9.01**, including its certification on reasonable grounds that the Bonds are not “arbitrage bonds” within the meaning of Section 148 of the Code.

Section 9.02 Tax Representations

The County hereby represents and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest on the Bonds to become includable in the gross income of the Holder thereof for federal income tax purposes pursuant to the provisions of the Code and

regulations promulgated thereunder. Without limiting the generality of the foregoing, the County represents and covenants that:

(a) All property provided by the net proceeds of the Bonds will be owned by the County in accordance with the rules governing the ownership of property for federal income tax purposes.

(b) The County shall not permit the proceeds of the Bonds or any facility financed with the proceeds of the Bonds to be used in any manner that would result in (a) 10% or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any Nongovernmental Person, (b) 5% or more of such proceeds being considered as having been used directly or indirectly in any trade or business of any Nongovernmental Person that is either “unrelated” or “disproportionate” to the governmental use of the financed facility by the County or by any other Governmental Unit (as the terms “unrelated” and “disproportionate” are defined for purposes of Section 141(b)(3) of the Code) or (c) 5% or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any Nongovernmental Person.

(c) The County is not a party to, nor will the County enter into, any contracts with any person for the use or management of any facility provided with the proceeds of the Bonds that do not conform to the guidelines set forth in Revenue Procedure 2017-13, as amended or supplemented.

(d) The County will not sell or lease any property provided by the Bonds to any person unless it obtains the opinion of nationally recognized bond counsel that such lease or sale will not affect the tax exemption of interest on the Bonds.

(e) The Bonds will not be federally guaranteed within the meaning of Section 149(b) of the Code. The County will not enter into any leases or sales or service contracts with respect to any facility provided with the proceeds of the Bonds with any federal government agency unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax exemption of the Bonds.

Section 9.03 Rebate

(a) In addition to the covenants contained in **Sections 9.01** and **9.02** hereof, the County covenants that:

(1) It will comply with the provisions of Section 148(f) of the Code and applicable Treasury Regulations pertaining to the rebate of certain investment earnings on the proceeds of the Bonds to the United States Government. In this connection, the County covenants to compute, on or before the dates required of it in Section 148(f) of the Code and the applicable Treasury Regulations, the rebateable amounts, if any, pertaining to the Bonds and to pay to the United States Government in a timely fashion all amounts required to be so paid under said Section 148(f) of the Code and applicable Treasury Regulations with respect to the Bonds. In this respect, the County will pay to the United States Government in the manner described in subparagraph (2) below an amount equal to the sum of:

(i) the excess of:

a. The amount earned on all non-purpose investments (as defined in the Treasury Regulations) with respect to the Bonds over

b. The amount which would have been earned if such non-purpose investments were invested at a rate equal to the yield (as defined in the Treasury Regulations) on the Bonds, plus

(ii) any income attributable to such excess.

(2) Such payments shall be made to the United States Government, at the address prescribed in Section 148(f) of the Code and applicable Treasury Regulations, as follows:

(i) Not less frequently than once each five (5) years after the date of issuance of the Bonds, an amount such that, together with prior amounts paid to the United States Government, the total paid to the United States Government is equal to 90% of the amount due as of the date of such payments, and

(ii) Not later than 60 days after the date on which all of the Bonds have been paid in full, all of the amount due as of the date of payment.

(b) In connection with the above, the Supervisor is hereby authorized to make the necessary findings and elections to enable the County to elect to proceed with any spend down exemptions to rebate as may be permitted under said Section 148(f) of the Code and applicable Treasury Regulations as he shall determine in his discretion to be in the best interests of the County.

ARTICLE X

AMENDING AND SUPPLEMENTING OF ORDINANCE

Section 10.01 Amending and Supplementing of Ordinance Without Consent of Holders of Bonds

(a) The Council, from time to time and at any time and without the consent or concurrence of any Holder of any Bond, may enact an ordinance amendatory hereof or supplemental thereto, if the provisions of such supplemental ordinance shall not materially adversely affect the rights of the Holders of the Bonds then outstanding, for any one or more of the following purposes:

(1) To make any changes or corrections in this Ordinance as to which the Council shall have been advised by counsel that the same are verbal corrections or changes or are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or omission or mistake or manifest error contained in this Ordinance, or to insert in this Ordinance such provisions clarifying matters or questions arising under this Ordinance as are necessary or desirable;

(2) To add additional covenants and agreements of the County for the purpose of further securing the payment of the Bonds;

(3) To surrender any right, power or privilege reserved to or conferred upon the County by the terms of this Ordinance;

(4) To grant or confer upon the Bondholders any additional right, remedies, powers, authority or security that lawfully may be granted to or conferred upon them; or

(5) To make such additions, deletions or modifications as may be necessary to assure compliance with Section 148(f) of the Code relating to required rebate to the United States or otherwise as may be necessary to assure the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(b) The County shall not enact any supplemental ordinance authorized by the foregoing provisions of this **Section 10.01** unless in the opinion of counsel (which opinion may be combined with the opinion required by **Section 10.04** hereof) the enactment of such supplemental ordinance is permitted by the foregoing provisions of this **Section 10.01** and the provisions of such supplemental ordinance do not adversely affect the rights of the Holders of the Bonds then Outstanding.

Section 10.02 Amending and Supplementing of Ordinance With Consent of Holders of Bonds

(a) With the consent of the Holders of not less than a majority in principal amount of the Bonds then Outstanding, the Council from time to time and at any time may enact an ordinance amendatory hereof or supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Ordinance, or modifying or amending the rights and obligations of the County under this Ordinance, or modifying or amending in any manner the rights of the Holders of the Bonds then Outstanding; provided, however, that, without the specific consent of the Holder of each such Bond which would be affected thereby, no supplemental ordinance amending or supplementing the provisions hereof shall: (i) change the fixed maturity date of any Bond or the dates for the payment of interest thereon or the terms of the redemption thereof, or reduce the principal amount of any Bond or the rate of interest thereon or the redemption price (or the redemption premium) payable upon the redemption or prepayment thereof; (ii) reduce the aforesaid percentage of Bonds, the Holders of which are required to consent to any supplemental ordinance amending or supplementing the provisions of this Ordinance; or (iii) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby. Nothing in this paragraph contained, however, shall be construed as making necessary the approval of the Holders of the Bonds of the enactment of any supplemental ordinance authorized by the provisions of **Section 10.01** hereof.

(b) It shall not be necessary that the consents of the Holders of the Bonds approve the particular form of wording of the proposed amendment or supplement or of the supplemental ordinance affecting such amending or supplementing hereof pursuant to this **Section 10.02**. The County shall mail a notice at least once, not more than thirty (30) days after the effective date of such amendment or supplement of such amendment or supplement postage prepaid, to each Holder of Bonds then Outstanding at his address, if any, appearing upon the Books of Registry and to the Paying Agent, but failure to mail copies of such notice to any of the Holders shall not affect the validity of the supplemental ordinance effecting such amendments or supplements or the consents thereto. Nothing in this **Section 10.02(b)** contained, however, shall be construed as requiring the giving of notice of any amendment or supplement of this Ordinance authorized by **Section 10.01** hereof. No action or proceeding to set aside or invalidate such supplemental ordinance or any of the proceedings for its enactment shall be instituted or maintained unless such action or proceeding is commenced within sixty (60) days after the mailing of the notice required by this **Section 10.02(b)**.

Section 10.03 Notation Upon Bonds; New Bonds Issued Upon Amendments

Bonds delivered after the effective date of any action taken as provided in this **Article X** may bear a notation as to such action, by endorsement or otherwise and in form approved by the County. In that case, upon demand of the Holder of any Bond Outstanding after such effective date and upon the presentation of the Bond for such purpose at the office of the Paying Agent, and at such additional offices, if any, as the County may select and designate for that purpose, a suitable notation shall be made on such Bond. If the County shall so determine, new Bonds, so modified as in the opinion of the County upon the advice of counsel to conform to the amendments or supplements made pursuant to this **Article X**, shall be

prepared, executed, and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged without cost to such Holder for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

Section 10.04 Effectiveness of Supplemental Ordinance

Upon the enactment (pursuant to this **Article X** and applicable law) by the Council of any supplemental ordinance amending or supplementing the provisions of this Ordinance and the delivery to the Paying Agent and the Council of an opinion of bond counsel that such supplemental ordinance is in due form and has been duly enacted in accordance with the provisions hereof and applicable law and that the provisions thereof are valid and binding upon the County, or upon such later date as may be specified in such supplemental ordinance, (a) this Ordinance and the Bonds shall be modified and amended in accordance with such supplemental ordinance, (b) the respective rights, limitations of rights, obligations, duties, and immunities under this Ordinance of the County, the Fiduciaries, and the Holders of the Bonds shall thereafter be determined, exercised, and enforced under this Ordinance subject in all respects to such modifications and amendments, and (c) all of the terms and conditions of any such supplemental ordinance shall be a part of the terms and conditions of the Bonds and of this Ordinance for any and all purposes.

Section 10.05 Supplemental Ordinance Affecting Fiduciaries

No supplemental ordinance changing, amending or modifying any of the rights, duties and obligations of any Fiduciary appointed by or pursuant to the provisions of this Ordinance may be enacted by the Council or be consented to by the Holders of the Bonds without written consent of such Fiduciary affected thereby.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Failure to Present Bonds

Anything in this Ordinance to the contrary notwithstanding, any money held by the Paying Agent in trust for the payment and discharge of any of the Bonds, or the interest thereon, which remains unclaimed for such period of time, after the date when such Bonds have become due and payable, that the Holder thereof shall no longer be able to enforce the payment thereof, the Paying Agent shall at the written request of the County pay such money to the County as its absolute property free from trust. The Paying Agent shall thereupon be released and discharged with respect thereto and the Bondholders shall look only to the County for the payment of such Bonds. Provided, however, the Paying Agent shall forward to the County all moneys which remain unclaimed during a period five years from a Bond Payment Date; and further provided, however, that before being required to make any such payment to the County, the Paying Agent, at the expense of the County, may conduct such investigations as may in the opinion of the Paying Agent be necessary to locate the Holders or those who would take if the Holder shall have died.

Section 11.02 Severability of Invalid Provisions

If any one or more of the covenants or agreements provided in this Ordinance should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the

remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Ordinance.

Section 11.03 Successors

Whenever in this Ordinance the County is named or referred to, it shall be deemed to include any entity, which may succeed to the principal functions and powers of the County; and all the covenants and agreements contained in this Ordinance by or on behalf of the County shall bind and inure to the benefit of said successor whether so expressed or not.

Section 11.04 Ordinance to Constitute Contract

In consideration of the purchase and acceptance of the Bonds by those who shall purchase and hold the same from time to time, the provisions of this Ordinance shall be deemed to be and shall constitute a contract between the County and the Holders from time to time of the Bonds. Such provisions are covenants and agreements with such Holders which the County hereby determines to be necessary and desirable for the security and payment thereof. The pledge hereof and the provisions, covenants, and agreements herein set forth to be performed on behalf of the County shall be for the equal benefit, protection, and security of the Holders of any and all of the Bonds, all of which shall be of equal rank without preference, priority or distinction of any Bonds over any other Bonds.

Section 11.05 Filing of Copies of Ordinance

Copies of this Ordinance shall be filed in the office of the Council, the office of the Clerk of Court for the County (as a part of the Transcript of Proceedings) and at the offices of each of the Paying Agent and Registrar.

Section 11.06 Further Action by Officers of County

The proper officers of the County are fully authorized and empowered to take the actions required to implement the provisions of this Ordinance and to furnish such certificates and other proofs as may be required of them, which include but are not limited to providing the notice and conducting the public hearing described in **Section 1.03** hereof.

Section 11.07 Continuing Disclosure

(a) Pursuant to Section 11-1-85 of the South Carolina Code, the County covenants to file with a central repository for availability in the secondary bond market when requested:

- (1) An annual independent audit, within thirty days of the County's receipt of the audit; and
- (2) Event specific information within thirty days of an event adversely affecting more than five percent of revenue or the County's tax base.

The only remedy for failure by the County to comply with the covenant in this **Section 11.07(a)** shall be an action for specific performance of this covenant. The County specifically reserves the right to amend this covenant to reflect any change in (including any repeal of) Section 11-1-85, without the consent of any Bondholder.

(b) In addition, the County hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Ordinance, failure of the County to comply with the Continuing Disclosure Agreement shall not be considered an event of default; however, any Bondholder may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the County to comply with its obligations under this **Section 11.07(b)**. The Continuing Disclosure Agreement shall be executed by an Authorized Officer prior to the delivery of the Bonds and shall be in such form as is set forth in Exhibit C hereto, together with such modifications and amendments thereto as shall be deemed necessary by such Authorized Officer, upon advice of counsel. The execution of the Continuing Disclosure Agreement shall constitute conclusive evidence of the approval by the person executing the same of any and all modifications and amendments thereto.

Section 11.08 Effective Date of this Ordinance

This Bond Ordinance shall take effect upon its third reading.

DONE in meeting duly assembled, this 28th day of March, 2022.

BERKELEY COUNTY, SOUTH CAROLINA

Supervisor/Chairman of County Council

Attest:

Clerk to County Council
Berkeley County, South Carolina

First reading: January 24, 2022
Second reading: February 28, 2022
Third reading: March 28, 2022
Public hearing: March 28, 2022

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Berkeley County Council will conduct a public hearing to receive public comment, written or oral, in regards to an Ordinance entitled “AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING SIXTY-FIVE MILLION DOLLARS (\$65,000,000) GENERAL OBLIGATION BONDS OF 2022 OF BERKELEY COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO” on March 28, 2022, at 6:00 p.m. or as soon thereafter as may be heard following any scheduled committee meetings and other public hearings, in the County Council Chambers located in the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina. The above-referenced Bonds will be used to defray the costs of expanding, renovating, constructing and equipping certain Berkeley County facilities, including the Berkeley County Courthouse and the Berkeley County Detention Center, and to pay related costs of issuance.

Clerk to Council
Berkeley County, South Carolina

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
BERKELEY COUNTY
GENERAL OBLIGATION BONDS OF 2022

No. R-__

INTEREST RATE MATURITY DATE ORIGINAL ISSUE DATE CUSIP
 _____ 1, _____

Registered Holder: _____

Principal Amount: _____ DOLLARS (\$_____)

BERKELEY COUNTY, SOUTH CAROLINA (the “*County*”), a body corporate and politic and a political subdivision of the State of South Carolina (the “*State*”), acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Holder (named above) or registered assigns, the Principal Amount set forth above on the Maturity Date stated above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender of this Bond at _____ (the “*Paying Agent*”), and to pay interest on such Principal Amount at the annual Interest Rate stated above (calculated on the basis of a 360-day year of twelve 30-day months), until the obligation of the County with respect to the payment of such Principal Amount shall be discharged.

This Bond bears interest from the original issue date if no interest has yet been paid; otherwise from the last date to which interest has been paid and which date is on or prior to the date of this Bond’s authentication. Interest on this Bond is payable on _____ 1 and _____ 1 of each year (each a “*Bond Payment Date*”) beginning _____ 1, 202_. The interest so payable on any _____ 1 or _____ 1 shall be payable to the person in whose name this Bond is registered at the close of business on _____ 15 or _____ 15 (each, a “*Record Date*”) next preceding such _____ 1 or _____ 1.

The principal of all Bonds shall be payable at maturity at the Corporate Trust Office of the Paying Agent and payment of the interest on each Bond shall be made on each Bond Payment Date by the Paying Agent. Interest hereon shall be payable by check or draft mailed at the times provided in the Ordinance (as defined below) from the office of the Paying Agent to the person in whose name this Bond is registered on the applicable Record Date at the address shown on the registration books. The principal of, redemption premium, if any, and interest on this Bond are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts; provided, however, that payment of the interest on this Bond shall be effected by check or draft as set forth above.

This Bond is one of an issue of Bonds in the aggregate principal amount of _____ Dollars (\$_____) of like tenor, except as to number, rate of interest, date of maturity and redemption provisions and issued pursuant to and in accordance with the Constitution and statutes of the State, including particularly the provisions of Title 4, Chapter 15, as supplemented by Section 11-27-40, of the Code of Laws of South Carolina, 1976, as amended (collectively, the “*Enabling Act*”), and an Ordinance duly enacted on March 28, 2022 by the County Council of the County (the “*Ordinance*”).

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinance. Certified copies of the Ordinance are on file in the office of the Clerk to County Council, in the offices of the Registrar and Paying Agent and in the office of the Clerk of Court of the County.

For the prompt payment thereof, both principal and interest, as the same shall become due, the full faith, credit and taxing power of the County are irrevocably pledged.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes. The Bonds are issuable only as fully registered Bonds without coupons in the denomination of \$5,000 or any multiple thereof not exceeding the principal amount of the Bonds maturing in each year.

This Bond is transferable, as provided in the Ordinance, only upon the registration books kept for that purpose at the Corporate Trust Office of the Registrar by the Registered Holder in person or by his duly authorized attorney, upon (i) surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or his duly authorized attorney and (ii) payment of the charges, if any, prescribed in the Ordinance. Thereupon a new fully registered Bond or Bonds of like maturity, interest rate and redemption provisions and in a like aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Ordinance. The County, the Registrar and the Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

For every exchange or transfer of the Bonds, the County, the Registrar or the Paying Agent may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

So long as Cede & Co., as nominee of Depository Trust Company (“DTC”) is the Registered Holder of the Bonds, references in this Bond to the Bondholders or Registered Holder of the Bonds shall mean Cede & Co. and shall not mean the beneficial owners.

The County, the Registrar and the Paying Agent may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purpose of paying the principal of or interest or premium, if any, on the Bonds, giving any notice permitted or required to be given to Bondholders under the Ordinance, registering the transfer of Bonds, obtaining any consent or action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The County, the Registrar and the Paying Agent shall not have any responsibility or obligation to any direct participant, any person claiming a beneficial ownership in the Bonds under or through DTC or any Direct Participant or any other person which is not shown on the Registration Books of the County (kept by the Registrar) as being a Bondholder with respect to: the accuracy of any records maintained by DTC or any Direct Participant; the payment by DTC or any Direct Participant of any amount in respect of the principal of or interest or premium, if any, on the Bonds; any notice which is permitted or required to be given to Bondholders thereunder or under the conditions for transfers or exchanges adopted by the County; or any consent given or other action taken by DTC as a Bondholder.

The Bonds maturing on or after _____ 1, 20__, may be redeemed in whole or in part at any time, on or after _____ 1, 20__, by the County at the redemption price of 100% of the principal amount thereof plus accrued interest to such redemption date.

[The Bonds maturing on _____ 1, ____, shall be subject to mandatory sinking fund redemption (to the extent not previously redeemed) at a redemption price of 100% of such principal amount, plus interest accrued to the redemption date, on April 1 of each of the following years in the respective principal amounts for each year specified below:

<u>Year</u>	<u>Amount</u>
-------------	---------------

*Final Maturity

The amount of any mandatory sinking fund redemptions shall be reduced to the extent Bonds of the applicable maturity have been purchased by the County or redeemed by the County pursuant to any optional redemption provisions, in such manner as the County shall direct, or, absent such direction, on a pro rata basis.]

It is hereby certified and recited that all conditions, acts and things required by the Constitution and Statutes of the State to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened, that the amount of this Bond, together with all other indebtedness of the County, does not exceed any limit prescribed by such Constitution or Statutes, and that provision has been made for the allocation, on an annual basis, of sufficient tax revenues to provide for the punctual payment of the principal of and interest on this Bond and the issue of Bonds of which this Bond is one.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Registrar.

IN WITNESS WHEREOF, Berkeley County, South Carolina has caused this Bond to be signed in its name by the Supervisor/Chairman of County Council of Berkeley County, South Carolina, and its corporate seal to be hereunto impressed and attested to by the Clerk to the Berkeley County Council.

(SEAL)

BERKELEY COUNTY, SOUTH CAROLINA

By: _____
Supervisor/Chairman of County Council

Attest:

Clerk to County Council

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Ordinance.

U.S. BANK NATIONAL ASSOCIATION,
as Registrar

By: _____
Its: Authorized Officer

Date: _____

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____
_ (please print or type name and address of Transferee and Social Security or other identifying number of Transferee) the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agents Medallion Program (“**STAMP**”) or similar program enlargement.

Authorized Individual or Officer

NOTICE: The signature to the assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Certificate (the “*Disclosure Certificate*”) is executed and delivered by Berkeley County, South Carolina (the “*Issuer*”) in connection with the issuance of \$_____ General Obligation Bonds of 2022 of Berkeley County, South Carolina (collectively, the “*Bonds*”). The Bonds are being issued pursuant to an Ordinance adopted on March 28, 2022 (the “*Ordinance*”). The Issuer covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the Bondholders and in order to assist the Participating Underwriters in complying with Securities Exchange Commission Rule 15c2-12(b)(5).

SECTION 2. Definitions. In addition to the definitions set forth in the Ordinance, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“Beneficial Owner” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Bondholder” or “Holder” shall mean the registered owner of a Bond and any Beneficial Owner thereof.

“Dissemination Agent” shall mean the Issuer or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

“Participating Underwriter” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean for purposes of the Rule the Municipal Securities Rulemaking Board (through its Electronic Municipal Market Access (“*EMMA*”) system).

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than seven months after the end of each fiscal year of the Issuer (currently June 30), commencing with the fiscal year ending June 30, 2022, provide to the Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 business days prior to said date, the Issuer shall provide the Annual Report to the Dissemination Agent, if other than the Issuer. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-

reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report.

(b) If the Issuer is unable to provide to the Repository an Annual Report by the date required in subsection (a), the Issuer shall send a notice to the Repository in substantially the form attached as Appendix I.

(c) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the Annual Report the name and address of the Repository, if any; and,

(ii) if the Dissemination Agent is other than the Issuer, file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, stating the date it was provided to the Repository.

SECTION 4. Content of Annual Reports. The Issuer's Annual Report shall include the Issuer's complete audited financial statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the Issuer's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available. In addition thereto, the Issuer's Annual Report shall contain or incorporate by reference the following:

- (a) Assessed Value of taxable property in the County;
- (b) Tax levy for the County for current fiscal year;
- (c) Tax collections for the County for preceding fiscal year;
- (d) Ten largest taxpayers for the County for preceding fiscal year;
- (e) Debt service requirements for the next succeeding five years.

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to the Repository or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Repository. The Issuer shall clearly identify each such other document so incorporated by reference.

SECTION 5. Reporting of Significant Events.

Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds within ten business days of the occurrence thereof:

1. "Principal and interest payment delinquencies;"
2. "Non-Payment related defaults, if material;"
3. "Unscheduled draws on debt service reserves reflecting financial difficulties;"

4. “Unscheduled draws on credit enhancements reflecting financial difficulties;”
5. “Substitution of credit or liquidity providers, or their failure to perform;”
6. “Adverse tax opinions, IRS notices or events affecting the tax status of the security;”
7. “Modifications to rights of securities holders, if material;”
8. “Bond calls, if material;”
9. “Defeasances;”
10. “Release, substitution, or sale of property securing repayment of the securities, if material;”
11. “Rating changes;”
12. “Tender offers;”
13. “Bankruptcy, insolvency, receivership or similar event of the obligated person;”
14. “Merger, consolidation, or acquisition of the obligated person, if material;”
15. “Appointment of a successor or additional trustee, or the change of name of a trustee, if material;”
16. “Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material;” and
17. “Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

SECTION 6. Termination of Reporting Obligation. The Issuer's obligations under this Disclosure Certificate shall terminate upon the defeasance, prior redemption or payment in full of all of the Bonds.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be the Issuer.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the Issuer may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws, to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the Issuer shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Certificate, any Bondholder may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Ordinance, and the sole remedy under this Disclosure Certificate in the event of any failure of the Issuer to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the Issuer agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

SECTION 12. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriters and Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

BERKELEY COUNTY, SOUTH CAROLINA

By: _____
Supervisor/Chairman of County Council
Berkeley County, South Carolina

Date: _____, 2022

NOTICE TO REPOSITORY OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Berkeley County, South Carolina

Name of Bond Issue: \$_____ General Obligation Bonds of 2022

Date of Issuance: _____, 2022

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required by an Ordinance adopted on _____, 2022. The Issuer anticipates that the Annual Report will be filed by _____.

BERKELEY COUNTY, SOUTH CAROLINA

By:_____

Title:_____

NOTICE OF ENACTMENT OF ORDINANCE

NOTICE IS HEREBY GIVEN that the County Council of Berkeley County, South Carolina, on March 28, 2022, enacted an Ordinance entitled: “AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING SIXTY-FIVE MILLION DOLLARS (\$65,000,000) GENERAL OBLIGATION BONDS OF 2022 OF BERKELEY COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO” (the “*Ordinance*”) which authorized the issuance of not exceeding \$65,000,000 General Obligation Bonds of 2022 (the “*Bonds*”) of Berkeley County, South Carolina (the “*County*”). The proceeds of the Bonds will be used defray the costs of expanding, renovating, constructing and equipping certain Berkeley County facilities, including the Berkeley County Courthouse and the Berkeley County Detention Center, and to pay related issuance costs.

Unless a notice, signed by not less than five (5) qualified electors of the County, of the intention to seek a referendum is filed in the office of the Clerk of Court of Berkeley County and the Clerk to the County Council in accordance with Section 11-27-40(8), Code of Laws of South Carolina, 1976, as amended, the initiative and referendum provisions of South Carolina law contained in Title 4, Chapter 9, Article 13, Code of Laws of South Carolina, 1976, as amended, shall not be applicable to the Ordinance. The notice of intention to seek a referendum must be filed within 20 days following the publication of this notice.

Supervisor
Berkeley County, South Carolina



Simplifying PUBLIC FINANCE

DAVID CHEATWOOD, Managing Director

6101 Carnegie Blvd, Suite 210

Charlotte, NC 28209

Office: (704) 926-2447

Email: dcheatwood@firsttryon.com

Summary of Financing Options

Berkeley County, South Carolina

February 14, 2022

Overview

- Berkeley County (the “County”) is evaluating its funding options for the following two projects with a total estimated cost of up to approximately \$93 million:
 - New Courthouse: Up to \$55 million
 - Jail Expansion: Up to \$38 million

- To date, the County has approximately \$3.8 million of funds on hand to go towards these projects and has the option of contributing a portion of the following funds on hand going forward:
 - American Rescue Plan Act (“ARPA”)
 - The County was allocated approximately \$44 million and has received its first tranche of \$22 million, with the second tranche due in Summer 2022.
 - Of the total amount, the County has already allocated \$3 million, leaving \$41 million available for permitted uses.
 - General Fund Unassigned Fund Balance
 - Based on audited FY2021 results, the County’s unassigned fund balance in its General Fund is approximately \$43 million which represents 41.8% of the County’s FY2022 General Fund budget.
 - The County’s current fund balance policy requires a minimum unassigned fund balance of 17% of the subsequent year’s budget, which equates to \$17.5 million based on the FY2022 budget and results in \$25.5 million available above its policy.
 - In order to maintain the County’s very high credit ratings (which directly impacts the County’s cost of debt), the County’s financial advisor (First Tryon Advisors) recommends that the County maintain its unassigned fund balance at a minimum range of 30%, which equates to \$30.8 million and results in \$12.1 million available above this target.

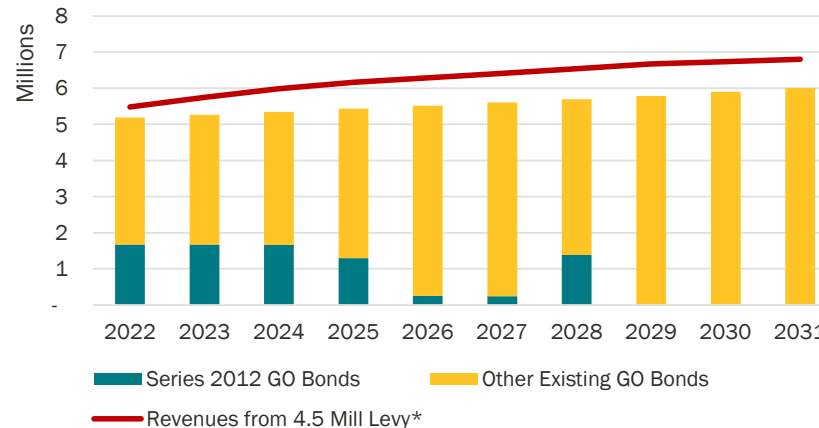
- The County also has the option to fund all or a portion of the courthouse and jail projects with debt.
 - The County currently levies 4.5 debt service mills to service its outstanding General Obligation Bonds.
 - While there is no limit on the amount of debt service mills that can be levied, the County is limited in how much General Obligation Bonds it can issue under its 8% debt limit (currently \$67 million as of March 1, 2022).

Outstanding Debt

- The County has 5 series of General Obligation Bonds outstanding in the current amount of \$47.04 million.

General Obligation Bonds						
Series	Description	Par Outstanding	Final Maturity	Call Provision	Avg. Coupon	Use of Proceeds
Series 2012	General Obligation Refunding Bonds	7,295,000	3/1/2028	3/1/2022 @ 100%	3.569%	Refunded portion of Series 2003 Bonds
Series 2013	General Obligation Refunding Bonds	2,270,000	3/1/2027	3/1/2023 @ 100%	3.020%	Refunding
Series 2015	General Obligation Advance Refunding Bonds	5,630,000	3/1/2031	3/1/2025 @ 100%	3.000%	Refunded Series 2006 Bonds
Series 2016	General Obligation Bonds	22,265,000	3/1/2031	3/1/2026 @ 100%	3.692%	County Facilities
Series 2016A	General Obligation Advance Refunding Bonds	9,580,000	3/1/2029	3/1/2026 @ 100%	2.036%	Refunded Series 2009A Bonds
Total		47,040,000			3.220%	

- Based on the estimated value of a mill and the assumed growth in that value of a mill, the County’s current 4.5 debt service mill levy is sufficient to service the outstanding General Obligation Bonds until all debt is paid off in 2031 but does not leave sufficient capacity in the near term to issue much additional debt.



- The County’s General Obligation Refunding Bonds, Series 2012 (the “2012 Bonds”) become eligible to be refinanced or defeased/paid off on March 1, 2022.
 - The payoff amount on that date is \$5,885,000, which equates to the principal amount of bonds outstanding.
- As the 2012 Bonds mature in the years 2023-2028, paying them off would create some capacity to layer in new debt for the courthouse and/or jail facilities without increasing debt service millage.
 - **County Council passed a resolution in January 2022 authorizing the defeasance / pay off of the 2012 Bonds on March 1, 2022.**

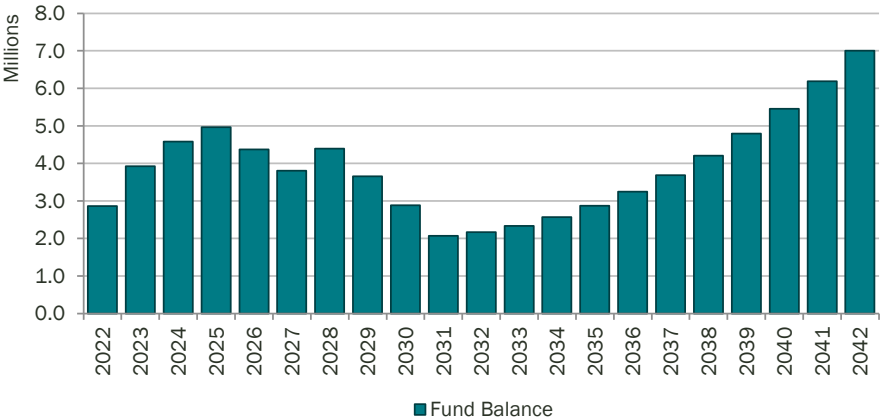
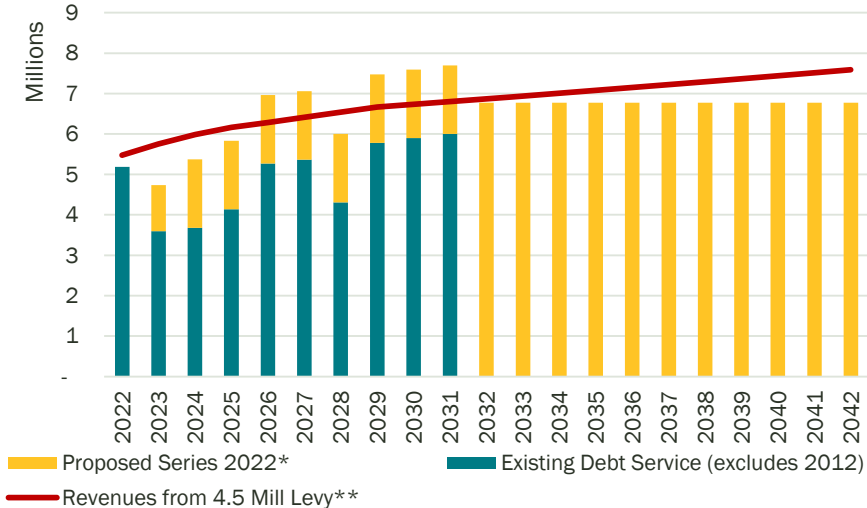
* Note: Revenues from 4.5 mill levy are based on a \$1.16 million value of a mill, 5% growth for 2022 and 2023, 4% growth for 2024, 3% growth for 2025, 2% growth for 2026 – 2029, and 1% growth thereafter.

Potential Funding Plan

- In order to fund the approximately \$93 million courthouse and jail projects, County management/staff is proposing the following combination of funding sources:

Funding Source	Jail	Courthouse	Total
Funds On Hand	\$1,200,150	\$2,600,000	\$3,800,150
ARPA Funds	18,000,000	0	18,000,000
General Fund Unassigned Fund Balance	0	6,199,850	6,199,850
General Obligation Bonds	18,799,850	46,200,150	65,000,000
Total	\$38,000,000	\$55,000,000	\$93,000,000

- This funding plan, coupled with the use of fund balance to pay off the 2012 Bonds, would enable the County to issue \$65,000,000 of General Obligation Bonds without increasing the County’s debt service millage.



* Note: Assumes the issuance of \$65 million of General Obligation Bonds in June 2022. The Bonds are assumed to be amortized over 20 years and the debt service is structured such that the County’s projected debt service balance (\$2.4 million as of 12/31/21) stays at or above \$2 million annually.
 ** Note: Revenues from 4.5 mill levy are based on a \$1.16 million value of a mill, 5% growth for 2022 and 2023, 4% growth for 2024, 3% growth for 2025, 2% growth for 2026 – 2029, and 1% growth thereafter.

Result

- After using \$18 million of ARPA funds, the County would still be left with approximately \$23 million to allocate towards other permitted uses.
- After using approximately \$12.1 million of its General Fund unassigned fund balance (\$5.9 million to pay of the 2012 Bonds and \$6.2 million towards the two projects), the County would still be left with an unassigned fund balance of approximately \$30.9 million representing 30% of the FY2022 budget which helps to maintain its high credit ratings.
 - County management/staff would recommend budgeting \$3.1 million of its unassigned fund balance towards the projects in the FY2023 budget and the remaining \$3.1 million in the FY2024 budget.
- After issuing \$65 million in General Obligation Bonds, the County would still be able to maintain its 4.5 debt service mill levy, have approximately \$2 million of remaining 8% debt capacity (which would increase annually as debt is paid off and assessed value grows) and capacity to issue more debt without a millage increase in 2031.

Utilize ARPA Funds for Portion of Project ✓

Utilize Fund Balance while Maintaining Policy Compliance ✓

Maintain Fund Balance Levels Commensurate with County’s Strong Credit Ratings ✓

Issue \$65 Million of GO Bonds within County’s 8% Debt Limit ✓

Cover Existing and Proposed Debt Service while Maintaining 4.5 Mill Levy ✓

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