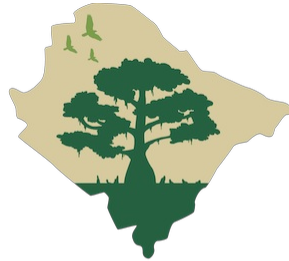


BERKELEY COUNTY GOVERNMENT
COMMITTEE ON FINANCE AGENDA
JULY 25, 2022

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

6:01 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

Caldwell Pinckney

Committee Member

Tommy Newell

Ex-officio

Johnny Cribb

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

Committee on Finance Regular Meeting

Electronic Participation Authorized

1. CALL TO ORDER

2. APPROVAL OF MINUTES

- 2.a Special Committee on Finance - Minutes from June 13, 2022
Regular Committee on Finance - Minutes from June 27, 2022
[2022_0613_F.docx](#)
[2022_0627_F.docx](#)

3. AGENDA ITEMS

- 3.a Sole Source Purchase: Sensus by Xylem for Water & Sanitation
(David Kornahrens, Chief Information Officer)
[Ferguson Sole Source Paperwork](#)
- 3.b 2022 Firehouse Subs Public Safety Foundation Grant
(David Hamilton, Finance Manager)
[APPROVED_ Q3 2022 Firehouse Subs Public Safety Foundation Grant.pdf](#)
- 3.c Award Contract for Eight (8) Explorer Base 4x2 Purchase / IFB-34010-01-22/23
(Sgt. Johnny Hill , Logistics Specialist)
[Bid Tabulation Sheet.pdf](#)
- 3.d FY2022-2023 Tourism Advertising Grant
(David Hamilton, Finance Manager)
[Berkeley County Project Agreement.pdf](#)
[Berkeley County TAG Award Letter.pdf](#)

4. CONSIDERATION PRIOR TO FIRST READING

- 4.a **BILL NO. 22-64, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND PROJECT METALLICA WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH PROJECT METALLICA AND PROVIDING FOR PAYMENT BY PROJECT METALLICA 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.**

(Kristen Lanier, Economic Development Director)
- 4.b **BILL NO. 22-65, AN ORDINANCE TO AMEND ORDINANCE NO. 21-06-37 ADOPTED JUNE 28, 2021, TO PROVIDE FOR SUPPLEMENTAL APPROPRIATIONS AND ALLOCATIONS THEREOF WITHIN THE 2021-2022 BUDGET FOR BERKELEY COUNTY; AND OTHER MATTERS RELATING THERETO.**

(D. Allen Milburn, Chief Financial Officer)

5. REVIEW PRIOR TO SECOND READING

- 5.a **BILL NO. 22-54, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) AND PROVIDING FOR PAYMENT BY VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) 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: 6/27/2022 Regular Finance - Recommendation of Approval; 6/27/2022 Regular Council - Referred

[FILOT Ordinance - Volvo - Berkeley County.DOCX](#)

[FILOT Agreement - Volvo - Berkeley County.DOCX](#)

6. REVIEW PRIOR TO THIRD READING

- 6.a **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. *HISTORY: 3/28/2022 Committee on Finance - HELD; 3/28/2022 Regular Council - Held in Committee; 5/23/2022 - Committee on Finance - Recommendation of Approval; 5/23/2022 Regular Council - Referred; 6/27/2022 Committee on Finance - Recommendation of Approval; 6/27/2022 Regular Council - Approved and Referred***

[DM 7287993-v1 Eighth Supplemental Ordinance \(with Exhibits\).PDF](#)

- 6.b **BILL NO. 22-37, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THAT FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND SC RIDGEVILLE AUTONOMOUS, LLC, AND VALLEY COLD STORAGE & TRANSPORTATION, LLC PURSUANT TO WHICH PERFORMANCE TEAM, LLC WILL BE ADDED AS A REPLACEMENT CO-SPONSOR FOR VALLEY COLD STORAGE & TRANSPORTATION, LLC;**

AND OTHER MATTERS RELATING THERETO. HISTORY: 5/23/2022 Committee on Finance - Recommendation of Approval; 5/23/2022 -Regular Council - Referred; 6/27/2022 Committee on Finance - Recommendation of Approval; 6/27/2022 Regular Council - Approved and Referred
[Project Polar \(Amended\)- Ordinance.docx](#)
[Berkeley County - Amended FILOT Agreement v1.docx](#)
[22-01-02.pdf](#)

7. ADJOURNMENT

Amanda D. Turner

Amanda D. Turner, Clerk To Council



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: Special Committee on Finance - Minutes from June 13, 2022
Regular Committee on Finance - Minutes from June 27, 2022

Prepared By: Shelley Forest, County Council

Date: July 25, 2022

Attachment(s):
[2022_0613_F.docx](#)
[2022_0627_F.docx](#)

COMMITTEE ON FINANCE
(Standing Committee of Berkeley County Council)

Chairman: Mr. Joshua S. Whitley, Council District No. 2

A special **meeting** of the Committee on Finance, Standing Committee of Berkeley County Council, was held on **Monday, June 13, 2022**, at 7:21 p.m., in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

PRESENT: Mr. Joshua Whitley, Chairman, Council District No. 2; Mr. Dan Owens, Committee Member, Council District No. 1; Mr. Phillip Obie, II, Committee Member, Council District No. 3; Mr. Tommy Newell, Committee Member, Council District No. 4; Mr. Brandon Cox, Committee Member, Council District No. 5; Mr. Jack H. Schurlknight, Committee Member, Council District No. 6; Mr. Caldwell Pinckney, Jr., Committee Member, Council District No. 7; Mr. Johnny Cribb, County Council Chairman, *ex-officio* Supervisor; Mr. John O. Williams, II, County Attorney; and Mrs. Amanda D. Turner, Clerk to Council. Mr. Steve Davis, Committee Member, Council District No. 8, was excused.

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.

1. CALL TO ORDER

Chairman Josh Whitley called the meeting to order.

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

2. AGENDA ITEMS

2.a Discuss the Settlement of a Legal Matter regarding Berkeley County Water and Sanitation

Chairman Whitley stated that we had an issue at Berkeley County Water and Sanitation where we flooded a construction site and caused damage, and we are going to pay for that damage, which is approx. \$34,000.00.

It was moved by Committee Member Newell and seconded by Committee Member Obie to approve **Authorizing the County Supervisor to enter into a Settlement of a Legal Matter regarding Berkeley County Water and Sanitation, as discussed in Executive Session.** The motion **passed** by a unanimous voice vote of the Committee.

2.b Discuss the Settlement of Berkeley County v. SGA Architecture, LLC, et al.

After conferring with the County Attorney, Chairman Whitley stated that we will announce the details of this lawsuit to the public once the issue has been executed and finalized.

It was moved by Committee Member Newell and seconded by Committee Member Obie to approve Authorizing the County Supervisor to enter into a Settlement of Berkeley County v. SGA Architecture, LLC, et al., as discussed in Executive Session. The motion passed by a unanimous voice vote of the Committee.

3. REVIEW PRIOR TO SECOND READING

3.a. BILL NO. 22-23, AN ORDINANCE PROVIDING APPROPRIATIONS FOR THE FISCAL YEAR 2022-2023 BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023 FOR BERKELEY COUNTY; TO PROVIDE FOR LEVY OF TAXES ON ALL TAXABLE PROPERTY IN BERKELEY COUNTY FOR ALL COUNTY PURPOSES; TO PROVIDE FOR THE EXPENDITURES OF SAID TAXES AND OTHER REVENUES COMING INTO THE COUNTY FOR THE FISCAL YEAR.

Chairman Whitley stated that Council held their third Budget Workshop this afternoon, and he noted that the Budget is still a work in progress. He stated that there are some numbers that need to be addressed that are not correct, which appear to be a software issue, and he noted that the Budget is still a work in progress.

It was moved by Committee Member Newell and seconded by Committee Member Schurlknight to approve Second Reading, Bill No. 22-23. The motion passed by a unanimous voice vote of the Committee.

3.b BILL NO. 22-24, AN ORDINANCE PROVIDING FOR THE ADOPTION OF FISCAL YEAR 2022-2023 (BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023) BUDGETS FOR BERKELEY COUNTY WATER AND SANITATION SEWER AND WATER AND SOLID WASTE FUND; ESTABLISHING OPERATIONAL, DEBT SERVICE, AND CAPITAL IMPROVEMENT BUDGETS FOR WATER AND SEWER AND SOLID WASTE DIVISIONS; AND TO PROVIDE FOR THE EXPENDITURES OF REVENUES COMING INTO BERKELEY COUNTY WATER AND SANITATION SEWER AND WATER AND SOLID WASTE DIVISIONS DURING THE FISCAL YEAR, AND TO AMEND THE CODE OF ORDINANCES, BERKELEY COUNTY, SOUTH CAROLINA, SETTING RATES, CHARGES AND PENALTIES FOR WATER AND SEWER AND SOLID WASTE SERVICE BY BERKELEY COUNTY WATER AND SANITATION.

It was moved by Committee Member Newell and seconded by Committee Member Schurlknight to **approve Second Reading, Bill No. 22-24.** The motion **passed** by a unanimous voice vote of the Committee.

- 3.c **BILL NO, 22-25, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023, FOR THE DEVON FOREST SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE DEVON FOREST SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Newell and seconded by Committee Member Cox to **approve Second Reading, Bill No. 22-25.** The motion **passed** by a unanimous voice vote of the Committee.

- 3.d **BILL NO. 22-26, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023 FOR THE PIMLICO SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE PIMLICO SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Obie and seconded by Committee Member Cox to **approve Second Reading, Bill No. 22-26.** The motion **passed** by a unanimous voice vote of the Committee.

- 3.e **BILL NO. 22-27, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023 FOR THE SANGAREE SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE SANGAREE SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Newell and seconded by Committee Member Cox to **approve Second Reading, Bill No. 22-27.** The motion **passed** by a unanimous voice vote of the Committee.

- 3.f **BILL NO. 22-28, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023, FOR THE OPERATIONAL BUDGET OF THE BERKELEY COUNTY SPECIAL FIRE TAX DISTRICT WITHIN THE UNINCORPORATED PORTIONS OF BERKELEY COUNTY; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE SPECIAL FIRE TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Schurlknight and seconded by Committee Member Newell to **approve Second Reading, Bill No. 22-28.** The motion **passed** by a unanimous voice vote of the Committee.

3.g BILL NO. 22-29, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023, FOR THE TALL PINES SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE TALL PINES SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.

Chairman Whitley stated that Council will be having discussions with regards to a better system of dealing with special tax district budgets and other processes, and this will be placed on a future agenda.

It was moved by Committee Member Newell and seconded by Committee Member Cox to **approve Second Reading, Bill No. 22-29.** The motion **passed** by a unanimous voice vote of the Committee.

4. ADJOURNMENT

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

The meeting **adjourned** at 7:30 p.m.

July 25, 2022
Approval Date

COMMITTEE ON FINANCE
(Standing Committee of Berkeley County Council)

Chairman: Mr. Joshua S. Whitley, Council District No. 2

A **meeting** of the Committee on Finance, Standing Committee of Berkeley County Council, was held on **Monday, June 27, 2022**, at 6:22 p.m., in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

PRESENT: Mr. Joshua Whitley, Chairman, Council District No. 2; Mr. Dan Owens, Committee Member, Council District No. 1; Mr. Phillip Obie, II, Committee Member, Council District No. 3; Mr. Tommy Newell, Committee Member, Council District No. 4; Mr. Brandon Cox, Committee Member, Council District No. 5; Mr. Jack H. Schurlknight, Committee Member, Council District No. 6; Mr. Steve Davis, Committee Member, Council District No. 8; Mr. Johnny Cribb, County Council Chairman, *ex-officio* Supervisor; Mr. John O. Williams, II, County Attorney; and Mrs. Amanda D. Turner, Clerk to Council. Mr. Caldwell Pinckney, Jr., Committee Member, Council District No. 7, was excused.

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.

1. CALL TO ORDER

Chairman Josh Whitley called the meeting to order.

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

2. INVOCATION

Ms. Taylor James, Assistant Public Information Officer, provided the Invocation.

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

Committee Member Phillip Obie, II, led the Pledge of Allegiance to the Flag of the United States of America.

Chairman Whitley stated that he would like to take a moment of Personal Privilege as he announced the passing of Mr. Jeff Kerns, who was District 2's appointee to the Board of Zoning Appeals. He stated that this is a real loss to the Board, as well as to the County, and we will miss him. He requested a moment of silence, and he asked for everyone to keep the Kerns family in their thoughts and prayers.

4. APPROVAL OF MINUTES

Chairman Whitley asked for approval of minutes from the Regular Committee meeting held on May 23, 2022.

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

5. AGENDA ITEMS

5.a. State School Resource Officer Program Grant Award - SR-75-C0800-23

Chief Deputy Jeremy Baker provided background information regarding the grant, and stated that the grant will provide funding for 6 new Berkeley County School Resource Officers for Berkeley County elementary schools for one year.

It was moved by Committee Member Newell and seconded by Committee Member Davis to **approve Authorizing the Sheriff to accept and sign the State School Resource Officer Program Grant Award - SR-75-C0800-23 Agreement**, in the amount of **\$1,323,600.00**. The motion **passed** by a unanimous voice vote of the Committee.

5.b. State Pilot Grant for Mental Health in Detention Center

Sheriff Duane Lewis and Representative Sylleste Davis provided information on this pilot program for mental health at detention centers. The grant primarily pays for the hiring of mental health professionals to work with those citizens in the jail, and once their sentence is served, the intention is for those services to continue in order to keep the “revolving door” issue at bay.

It was moved by Committee Member Newell and seconded by Committee Member Obie to approve **Authorizing the Sheriff to accept and sign the State Pilot Grant for Mental Health in the Detention Center**, in the amount of **\$373,000.00**. The motion **passed** by a unanimous voice vote of the Committee.

6. CONSIDERATION PRIOR TO FIRST READING

6.a. BILL NO. 22-54, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND PROJECT SPARE WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH PROJECT SPARE AND PROVIDING FOR PAYMENT BY PROJECT SPARE 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.

It was moved by Committee Member Newell and seconded by Committee Member Owens to approve prior to First Reading, Bill No. 22-54. The motion passed by a unanimous voice vote of the Committee.

- 6.b. BILL NO. 22-55, AN ORDINANCE TO LEVY AND IMPOSE A ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN BERKELEY COUNTY PURSUANT TO SECTION 4-37-30 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY BE IMPOSED; TO PROVIDE THE ESTIMATED COST OF THE PROJECTS FUNDED FROM THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM ON THE IMPOSITION OF THE SALES AND USE TAX AND THE ISSUANCE OF GENERAL OBLIGATION BONDS AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTIONS IN THE REFERENDUM; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE BOARD OF ELECTIONS AND VOTER REGISTRATION OF BERKELEY COUNTY; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.**

There will be a workshop scheduled for July 11, 2022 to go over the roads and numbers in more detail. There will be a list of projects, plus dedicated percentage for returns.

Supervisor Cribb stated, for the public's benefit, that there are 1068 miles of State roads in the Berkeley County and 330 miles of County roads. When our voters go to vote on this, they will be voting for funds to go toward whichever roads need addressing. The Councilman know whatever percentage is allocated to Council, and that percentage will be divvied out to each County Council Member.

It was moved by Committee Member Newell and seconded by Committee Member Obie to approve prior to First Reading, Bill No. 22-55. The motion passed by a unanimous voice vote of the Committee.

REVIEW PRIOR TO SECOND READING

- 6.a. 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.

It was moved by Committee Member Newell and seconded by Committee Member Obie to **approve prior to Second Reading, Bill No. 22-20.** The motion **passed** by a unanimous voice vote of the Committee.

- 6.b. BILL NO. 22-37, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THAT FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND SC RIDGEVILLE AUTONOMOUS, LLC, AND VALLEY COLD STORAGE & TRANSPORTATION, LLC PURSUANT TO WHICH PERFORMANCE TEAM, LLC WILL BE ADDED AS A REPLACEMENT CO-SPONSOR FOR VALLEY COLD STORAGE & TRANSPORTATION, LLC; AND OTHER MATTERS RELATING THERETO.**

It was moved by Committee Member Newell and seconded by Committee Member Obie to **approve prior to Second Reading, Bill No. 22-37.** The motion **passed** by a unanimous voice vote of the Committee.

7. REVIEW PRIOR TO THIRD READING

- 7b. BILL NO. 22-23, AN ORDINANCE PROVIDING APPROPRIATIONS FOR THE FISCAL YEAR 2022-2023 BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023 FOR BERKELEY COUNTY; TO PROVIDE FOR LEVY OF TAXES ON ALL TAXABLE PROPERTY IN BERKELEY COUNTY FOR ALL COUNTY PURPOSES; TO PROVIDE FOR THE EXPENDITURES OF SAID TAXES AND OTHER REVENUES COMING INTO THE COUNTY FOR THE FISCAL YEAR.**

Main Motion

It was moved by Committee Member Schurlknight and seconded by Committee Member Owens to **approve prior to Third Reading, Bill No. 22-23.** The motion **passed** by a unanimous voice vote of the Committee.

Amendment to Main Motion

It was moved by Committee Member Whitley and seconded by Committee Member Obie to **approve an amendment to Bill No. 22-23 for it to stated that any department who receives County funds cannot record via audio device, without the approval of County Council.** The motion **passed** by a unanimous voice vote of the Committee.

Main Motion As Amended

It was moved by Committee Member Whitley and seconded by Committee Member Obie to **approve prior to Third Reading, Bill No. 22-23, As Amended.** The motion **passed** by a unanimous voice vote of the Committee.

Supervisor Cribb announced that Bill No. 22-23 includes a 5% raise for all regular full and part-time employees, in a time of hyperinflation, without taxpayers having a tax increase.

- 7c. **BILL NO. 22-24, AN ORDINANCE PROVIDING FOR THE ADOPTION OF FISCAL YEAR 2022-2023 (BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023) BUDGETS FOR BERKELEY COUNTY WATER AND SANITATION SEWER AND WATER AND SOLID WASTE FUND; ESTABLISHING OPERATIONAL, DEBT SERVICE, AND CAPITAL IMPROVEMENT BUDGETS FOR WATER AND SEWER AND SOLID WASTE DIVISIONS; AND TO PROVIDE FOR THE EXPENDITURES OF REVENUES COMING INTO BERKELEY COUNTY WATER AND SANITATION SEWER AND WATER AND SOLID WASTE DIVISIONS DURING THE FISCAL YEAR, AND TO AMEND THE CODE OF ORDINANCES, BERKELEY COUNTY, SOUTH CAROLINA, SETTING RATES, CHARGES AND PENALTIES FOR WATER AND SEWER AND SOLID WASTE SERVICE BY BERKELEY COUNTY WATER AND SANITATION.**

Main Motion

It was moved by Committee Member Newell and seconded by Committee Member Whitley to **approve prior to Third Reading, Bill No. 22-24.** The motion **passed** by a unanimous voice vote of the Committee.

First Amendment to Main Motion

It was moved by Committee Member Newell and seconded by Committee Member Owens to **amend Bill No. 22-24 to Change the C&D Tipping Fees from \$36.00 to \$50.00 to fund heavy equipment.** The motion **passed** by a unanimous voice vote of the Committee.

Main Motion As Amended

It was moved by Committee Member Newell and seconded by Committee Member Owens to **approve prior to Third Reading, Bill No. 22-24, As Amended.** The motion **passed** by a unanimous voice vote of the Committee.

Second Amendment to Main Motion

It was moved by Committee Member Obie and seconded by Committee Member Newell to **amend Bill No. 22-24 to extend the Hours of Operations of Convenience Centers to 7:00 p.m. on Saturdays.** The motion **passed** by a unanimous voice vote of the Committee.

Third Amendment to Main Motion

It was moved by Committee Member Obie and seconded by Committee Member Newell to **amend Bill No. 22-24 to open the Oakley Road Convenience Center on Sundays.** A roll call of vote resulted in the following: Councilmen Owens, Obie, Newell, and Cox voted Aye; Council Members Schurlknight and Davis voted Nay. The motion **passed** by a majority voice vote of the Committee.

Main Motion As Amended

It was moved by Committee Member Obie and seconded by Committee Member Newell to **approve prior to Third Reading, Bill No. 22-24, As Amended.** The motion **passed** by a majority voice vote of the Committee.

- 7d. **BILL NO, 22-25, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023, FOR THE DEVON FOREST SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE DEVON FOREST SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Cox and seconded by Committee Member Newell to **approve prior to Third Reading, Bill No. 22-25.** The motion **passed** by a unanimous voice vote of the Committee.

- 7e. **BILL NO. 22-26, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023 FOR THE PIMLICO SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE PIMLICO SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Obie and seconded by Committee Member Newell to **approve prior to Third Reading, Bill No. 22-26.** The motion **passed** by a unanimous voice vote of the Committee.

- 7f. **BILL NO. 22-27, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023 FOR THE SANGAREE SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE SANGAREE SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Newell and seconded by Committee Member Obie to **approve prior to Third Reading, Bill No. 22-27.** The motion **passed** by a unanimous voice vote of the Committee.

- 7g. BILL NO. 22-28, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023, FOR THE OPERATIONAL BUDGET OF THE BERKELEY COUNTY SPECIAL FIRE TAX DISTRICT WITHIN THE UNINCORPORATED PORTIONS OF BERKELEY COUNTY; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE SPECIAL FIRE TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Schurlknight and seconded by Committee Member Newell to **approve prior to Third Reading, Bill No. 22-28.** The motion **passed** by a unanimous voice vote of the Committee.

- 7h. BILL NO. 22-29, AN ORDINANCE PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AND ENDING JUNE 30, 2023, FOR THE TALL PINES SPECIAL TAX DISTRICT OPERATIONAL BUDGET; AND TO PROVIDE FOR THE EXPENDITURES OF THE REVENUES RECEIVED BY THE TALL PINES SPECIAL TAX DISTRICT DURING THE FISCAL YEAR.**

It was moved by Committee Member Newell and seconded by Committee Member Cox to **approve prior to Third Reading, Bill No. 22-29.** The motion **passed** by a unanimous voice vote of the Committee.

- 7i. BILL NO. 22-30, AN ORDINANCE TO PROVIDE A SPECIAL SOURCE REVENUE CREDIT AGREEMENT FOR JUST PLANE PROPERTIES, LLC, JUST PLANE PROPERTIES 2, LLC, AND GRAND FOREST, INC. (PREVIOUSLY KNOWN AS PROJECT WOOD) AND OTHER MATTERS RELATING THERETO.**

Mr. John O. Williams, II, County Attorney, stated that this company makes safety products for the Forestry industry, and they are located in Summerville.

Chairman Whitley stated, for the public's benefit, that the Company is not being brought below 6%, but that they need a Special Source Revenue Credit to bring them to 6%

It was moved by Committee Member Schurlknight and seconded by Committee Member Cox to **approve prior to Third Reading, Bill No. 22-30.** The motion **passed** by a unanimous voice vote of the Committee.

9. CONSIDERATION OF A RESOLUTION

- 9a. A RESOLUTION APPROVING THE ADDITION OF UNIVERSAL INDUSTRIAL GASES, LLC AS A SPONSOR AFFILIATE TO AN EXISTING FEE AGREEMENT BY AND BETWEEN BERKELEY COUNTY, SOUTH CAROLINA AND NUCOR CORPORATION; AND OTHER RELATED MATTERS.**

It was moved by Committee Member Newell and seconded by Committee Member Obie to approve a **Resolution Approving the addition of Universal Industrial Gases, LLC as a Sponsor Affiliate to an existing Fee Agreement by and between Berkeley County, South Carolina and Nucor Corporation; and Other Related Matters.** The motion *to deny* passed by a unanimous voice vote of the Committee.

10. ADJOURNMENT

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

The meeting **adjourned** at 7:13p.m.

July 25, 2022
Approval Date



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: Sole Source Purchase: Sensus by Xylem for Water & Sanitation

Prepared By: David Kornahrens, Information Technology

Date: July 25, 2022

Financial Impact: \$106,418.00 which has been budgeted in FY 2021-2022.

Background: Sensus is currently being utilized by Water & Sanitation to read 35,300 meters throughout Berkeley County. This information is gathered from 18 tower sites.

Recommendation: Approve contract that renews on a five (5) year term to Ferguson Waterworks. Ferguson is the sole distributor in the State of South Carolina of Sensus by Xylem.

Attachment(s):
[Ferguson Sole Source Paperwork](#)



Sole Source Justification and Approval Form

Procurement Ordinance Section 50-67.

Any purchase that requires Procurement to be restricted to one potential source shall be accompanied by this justification form. A purchase less than or equal to \$50,000 may be awarded for supply, service, or construction by the County Supervisor, or designee, and Procurement Director, or designee. An approved Sole Source Justification must be attached to any and all Purchase Requests made in conjunction with the purchase by the requestor. A sole source or non-competitive purchase or contract greater than \$50,000 is subject to the approval of County Council.

The sole source approval may be valid for up to 12 months.

Date: 06/20/2022

Requested By: Jerri Christmas

Department: Information Technology 

Total Cost (to include freight, tax, etc): \$106418.00

Recommended Vendor Name, Address, and Contact Name and Information:

Ferguson Waterworks #950

Jimmy Bates

PO Box 100286

803-462-0860

Atlanta, GA 30384-0286


Description of Requested Item or Service and the Purpose:

Part of a 5 year contract for equipment and software support for the Water Reading system for BCWS. This includes the approximately 14 TGBs and the Hosted software application.

Explain why this product or service is the only one that will satisfy your requirements, and why other sources are not an option:

This equipment is unique to Sensus and Ferguson is the SC support company. There are 18 Towers with connectivity and approximately 35300 meters connected to the system, with continual growth.

Department Head/ Director Name and Title: Chris Antonopoulos IT OPS MGR

Department Head Signature: 

RESERVED FOR PROCUREMENT USE ONLY

Procurement Department Approval: I have reviewed the attached justification/ documentation requested for sole source non-competitive procurement.

Approved: ___ Not Approved: ___ Explanation: _____

Procurement Signature: _____ Date: _____

June 16, 2022

Re: Sole Source

To Whom It May Concern:

Sensus, a Xylem brand recognizes Ferguson Waterworks as the sole Authorized Distributor of Sensus products for the state of South Carolina. Purchasing Sensus products from an authorized distributor in your area ensures that your products will be properly supported and warranted. Please contact Ferguson Waterworks for all of your Sensus needs.

We look forward to providing your business with quality water products and service in the near future. Please feel free to contact me if you have any questions.

Sincerely,

Trena Simmons

Trena Simmons
Partner Success Specialist
Sensus, Xylem Brand



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: 2022 Firehouse Subs Public Safety Foundation Grant

Prepared By: David Hamilton, Grants Administration

Date: July 25, 2022

Financial Impact: Firehouse Subs Public Safety Foundation Grant will make the purchase of the requested equipment. No required match for acceptance of this grant.

Background: Firehouse Subs Public Safety Foundation has awarded the Berkeley County Emergency Medical Services Department \$40,998.76 grant. This grant award is for the procurement of HAL S3000 Multipurpose Adult Patient Simulator (Including BP Monitor, CO2 Exhalation, 12 Lead ECG, Defibrillation-pacing, & Oxygen Saturation Monitoring, Training & Installation).

Discussion: Berkeley County Emergency Medical Services Department is seeking County Council approval to accept the grant award.

Attachment(s):
[APPROVED_ Q3 2022 Firehouse Subs Public Safety Foundation Grant.pdf](#)

From: [Firehouse Subs Public Safety Foundation](#)
To: [David Hamilton](#); [Michael Shirey](#)
Cc: [Ron Nesbitt](#); bpaquinjr@firehousesubs.com; [Firehouse Subs Public Safety Foundation](#); [Ty Lowry](#)
Subject: APPROVED: Q3 2022 Firehouse Subs Public Safety Foundation Grant
Date: Tuesday, July 5, 2022 1:15:19 PM
Attachments: [FINAL Q3 2022 Social Media Template - 6.21.22.docx](#)
[FINAL Q3 2022 Press Release Template - 6.21.22.docx](#)
[Foundation Logo-VectorCMYK.ai](#)
[Foundation Logo-VectorCMYK.eps](#)

***** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. *****

Dear Sandi & Michael,

We are pleased to announce that the Firehouse Subs Public Safety Foundation Board of Directors has awarded the **Berkeley County Government in Moncks Corner, SC** the requested **HAL S3000 Multipurpose Adult Patient Simulator (Including BP Monitor, CO2 Exhalation, 12 Lead ECG, Defibrillation-pacing, & Oxygen Saturation Monitoring, Training & Installation)** valued at up to **\$40,998.76**. If your grant award must be approved by your city council, please add this item to the agenda immediately, and contact us with the meeting date.

PROCUREMENT:

We will contact you no later than Friday, August 19, 2022 to initiate the procurement process. There are two possible methods for procurement, to be determined by our Foundation:

- Direct Purchase made by the Foundation
OR
- Memo of Understanding, in which funds will be transferred via ACH. NOTE: If we elect to fund your grant via an MOU, you will receive the funding documents through a Virtru secure link.

Do not make advanced purchases, as failure to adhere to our chosen method will jeopardize your grant award. If you have any fulfillment questions, please email Procurementfoundation@firehousesubs.com.

PUBLIC RELATIONS (PR) NOTES

- PR announcements from your organization regarding the grant award are optional. If you choose to share the good news, please use the attached press release template and/or social media post template and send it back to Foundation@firehousesubs.com and FHSPSF@coynepr.com for review and approval (allowing for 72 hours turnaround time). *Please do not pitch or post before receiving approval from the Foundation team.*

Use of the Firehouse Subs Public Safety Foundation logo:

- We ask that your organization acknowledges the grant by displaying our Foundation logo on granted items/equipment whenever possible. Our Foundation logo is attached for your convenience. Please note that the final artwork will need to be approved by our Foundation via Foundation@firehousesubs.com before being displayed.

Did you know?

More than 70% of the funds raised for the Firehouse Subs Public Safety Foundation come from the generosity of Firehouse Subs guests and the restaurant brand? Please consider supporting a Firehouse Subs restaurant near you.

We are very excited to assist your organization and ultimately improve the lifesaving capabilities of your community.

Firehouse Subs Public Safety Foundation

foundation@firehousesubs.com

FirehouseSubsFoundation.org

[Twitter](#) [Facebook](#)

CONFIDENTIALITY NOTICE: The information and attachments contained in this electronic communication are confidential and intended only for the use of the intended recipients. If you are not an intended recipient, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately of the error by return e-mail and please permanently remove any copies of this message from your system and do not retain any copies, whether in electronic or physical form or otherwise.



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: Award Contract for Eight (8) Explorer Base 4x2 Purchase / IFB-34010-01-22/23

Prepared By: Randi Sweatman, Sheriff's Office

Date: July 25, 2022

Recommendation: Award Contract to Santee Automotive, in the amount of \$247,200.00

Resolution/Ordinance Body:

Attachment(s):
[Bid Tabulation Sheet.pdf](#)



Bid Tabulation Sheet
Monday, July 18, 2022 @11:00 AM

IFB NUMBER
34010-01-22/23

IFB NAME
Eight (8) Ford Explorer Base 4X2 Purchase

<u>Bidder Name</u>	<u>Addendum</u>	<u>Total Bid Amount</u>
*Santee Automotive	Yes	\$247,200.00

*Denotes the apparent lowest bidder for the referenced solicitation. A recommendation of award will be presented to County Council following review of each submittal to verify the most responsive and responsible low bidder.



Procurement Official



Witness



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: FY2022-2023 Tourism Advertising Grant

Prepared By: David Hamilton, Grants Administration

Date: July 25, 2022

Financial Impact: South Carolina Department of Parks, Recreation, and Tourism has awarded Berkeley County \$9,164.00 with a required 50% match of \$9,164.00 with total project contribution of \$18,328.00. The match will come out of Tourism, other operating expenses.

Background: Our objectives for the South Carolina Tourism Advertising Grant are to create an awareness of the Berkeley County region and promote it as a destination for our unmatched outdoors scene, attractions, and rich history. We specifically want to see an increase in our overnight lodging accommodations (hotels, short-term rentals, fish camps) and more tourism dollars spent within Berkeley County at attractions, restaurants, stores, gas stations, etc.

Target Audience

Berkeley County Tourism's goal for partnering with SCPRT through the Tourism Advertising Grant opportunity is to attract more travelers to Berkeley County by creating a presence on our major highways that generates interest in our area and captures interstate traffic from outside our primary region.

Audience Reach

Berkeley County Tourism currently markets the County to visitors by utilizing billboards in the greater Charleston area, sponsoring events, and distributing information through visitor centers and hotels. We also partner with the Charleston Visitors Bureau and Santee Cooper Country for exposure in travel magazines and other publications with widespread distribution outside the region and state.

Berkeley County Tourism will expand our direct advertising outside our region as part of our overall marketing initiative. We will use billboard advertising outside a 50-mile radius of the County as a media outlet to best reach the drive-market traffic and create an interest in visiting Berkeley County. We are entering a season of high travel volume (via SC Highways and Interstates) to South Carolina beaches and Charleston (#1 voted City in the U.S.). We hope to capture repeat visitors to Charleston that want to explore Cypress Gardens, Mepkin Abbey, and places in Berkeley County they have heard about but have not visited in-person yet. We also plan to reach audiences as they travel Interstate 95 that may have never heard of Berkeley County or our offerings.

Advertising Timeline

Berkeley County Tourism plans to run our billboard advertisements in two locations along Interstate 95 for twelve months between July 2022 and June 2023.

Discussion:

Target Audience: Berkeley County Tourism's goal for partnering with SCPRT through the Tourism Advertising Grant opportunity is to attract more travelers to Berkeley County by creating a presence on our major highways that generates interest in our area and captures interstate traffic from outside our primary region.

Audience Reach: Berkeley County Tourism currently markets the County to visitors by utilizing billboards in the greater Charleston area, sponsoring events, and distributing information through visitor centers and hotels. We also partner with the Charleston Visitors Bureau and Santee Cooper Country for exposure in travel magazines and other publications with widespread distribution outside the region and state. Berkeley County Tourism will expand our direct advertising outside our region as part of our overall marketing initiative. We will use billboard advertising outside a 50-mile radius of the County as a media outlet to best reach the drive-market traffic and create an interest in visiting Berkeley County. We are entering a season of high travel volume (via SC Highways and Interstates) to South Carolina beaches and Charleston (#1 voted City in the U.S.). We hope to capture repeat visitors to Charleston that want to explore Cypress Gardens, Mepkin Abbey, and places in Berkeley County they have heard about but have not visited in-person yet. We also plan to reach audiences as they travel Interstate 95 that may have never heard of Berkeley County or our offerings.

Advertising Timeline: Berkeley County Tourism plans to run our billboard advertisements in two locations along Interstate 95 for twelve months between July 2022 and June 2023.

Recommendation:

The Berkeley County Tourism Department is seeking County Council approval to accept the grant award

Attachment(s):

[Berkeley County Project Agreement.pdf](#)

[Berkeley County TAG Award Letter.pdf](#)

Project Agreement

2022-2023 Tourism Advertising Grant

South Carolina Department of Parks, Recreation, and Tourism

Organization: Berkeley County	Vendor #:
Project Name: Berkeley County	Project #: 2023004
Project Director: Heather McDowell	PRT Contact: Becky Moore
Phone: (84355)30515	Phone: ()
Fax:	Fax: ()
Email:	Email:

TAG Funds Approved: \$9,164.00
Applicant Spend Requirement: \$18,328.00

Start-Up Date: July 01, 2022
Completion Date: June 30, 2023
Match Rate: 50%

County	Approved Items
Berkeley	Out of Home

ITEMS REQUIRE APPROVAL BY YOUR PRT COORDINATOR PRIOR TO ANY PRODUCTION.

I, the undersigned, certify that I will administer the Tourism Advertising Grant (TAG) Project as outlined in the TAG Guidelines and further agree that these monies will be expended only for those items approved for funding as indicated above. In addition, expenditures and activities associated with this project will be in accordance with all federal and state laws pertaining to non-discrimination based on race, color, religion, sex, national origin, age, or physical handicap.

 Signature of Project Director



 Becky Moore, Manager of Industry Relations

PO Box 612 1003 Highway 52
 Moncks Corner, SC 29461

6-14-22

 Date

OFFICIAL DOCUMENT



June 14, 2022

Heather McDowell
Berkeley County
PO Box 612 1003 Highway 52
Moncks Corner, SC 29461

Dear Heather,

Congratulations! The South Carolina Department of Parks, Recreation & Tourism has completed the review process for the Tourism Advertising Grant (TAG) program for the 2022-2023 fiscal year, and I am pleased to notify you that your organization's application has qualified for funding.

As we approach TAG's eleventh year, I am also pleased to share that SCPRT received 71 qualified grant applications.

All applications were reviewed, judged, and scored by a panel of judges and award amounts were weighted and adjusted based on an averaged panel score. In other words, your award amount is the amount of funding you requested multiplied by your average score percentage. This ensures an objective and equitable approach to spread the benefits of tourism statewide, keeps us on point with SCPRT's strategy to support undiscovered destinations, attractions, experiences and events across the state, and support local efforts to advertise all that makes visitors want to *Discover South Carolina*.

Please review the Project Agreement Form for details about your organization's grant award, specifically the required spend amount and contact information. This year SCPRT has once again decided to **waive the match requirement** for the Tourism Advertising Grant. This means that you are only required to prove that you have spent your total award amount in order to receive 100% of those funds as a reimbursement.

Kindly return a signed copy of the project agreement form to Becky Moore by **Friday, August 1, 2022**. Lastly, note that all projects must be completed, invoiced and paid by June 30, 2023 to qualify for reimbursement.

Congratulations on your award! Our combined efforts in marketing South Carolina as a vacation destination are indeed expanding the economic benefits of tourism across the state.

Sincerely,

A handwritten signature in black ink that reads "Duane Parrish".

Duane Parrish
Director



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic:

BILL NO. 22-64, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND PROJECT METALLICA WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH PROJECT METALLICA AND PROVIDING FOR PAYMENT BY PROJECT METALLICA 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.

Prepared By:

Kristen Lanier, Economic Development

Date:

July 25, 2022

Background:

- Project Metallica, a limited liability company (LLC) taxed as a partnership, will locate a metal processing facility in Berkeley County, South Carolina.
- Project Metallica will be deemed to be a processing facility by the South Carolina Department of Revenue for all South Carolina tax purposes.
- Project Metallica will invest \$30.7 million in the project, of which \$3.45 million will be in real property (land and building)

and \$27.25 million will be in tangible personal property (machinery and equipment).

- The \$3.45 million in real property (land and building) will be used to construct a new facility.
- Of the \$27.25 million in tangible personal property (machinery and equipment), \$16.5 million will be in new production equipment, \$6.5 million will be in used production equipment relocated from another state and \$4.25 million will be in pollution control equipment.
- Project Metallica will create 38 new jobs over 3 years with a weighted average of \$30.32/hr.

Attachment(s):



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic: **BILL NO. 22-65, AN ORDINANCE TO AMEND ORDINANCE NO. 21-06-37 ADOPTED JUNE 28, 2021, TO PROVIDE FOR SUPPLEMENTAL APPROPRIATIONS AND ALLOCATIONS THEREOF WITHIN THE 2021-2022 BUDGET FOR BERKELEY COUNTY; AND OTHER MATTERS RELATING THERETO.**

Prepared By: Allen Milburn, Finance Department

Date: July 25, 2022

Financial Impact: TBD - Finance will develop a budget reconciliation for presentation to County Council at 2nd reading in August.

Background: Each year, a supplemental appropriations ordinance is put before County Council. The supplemental appropriations ordinance essentially provides an annual budget reconciliation. First Reading will be Title only, with the actual budget reconciliation presented at 2nd reading (August Finance committee meeting)

Recommendation: Approve First reading of the Supplemental Ordinance, Title only

Attachment(s):



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic:

BILL NO. 22-54, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) AND PROVIDING FOR PAYMENT BY VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) 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: 6/27/2022 Regular Finance - Recommendation of Approval; 6/27/2022 Regular Council - Referred

Prepared By:

Kristen Lanier, Economic Development

Date:

July 25, 2022

Background:

Project Spare is an existing industry leasing a warehouse which would involve capital investment of approximately \$6 million of which \$3M will be in real property and \$3M in machinery and equipment. No new jobs will be created for this project.

Attachment(s):

[FILOT Ordinance - Volvo - Berkeley County.DOCX](#)

ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) AND PROVIDING FOR PAYMENT BY VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) 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, Volvo Car USA LLC (d/b/a Volvo Car US Operations) (an entity known to the County and referred to herein as the “Company”) proposes to develop a facility in Berkeley County, South Carolina (the “County”) involving acquiring, constructing, equipping and furnishing machinery, equipment and other real and personal property (the “Negotiated FILOT Project”);

WHEREAS, the Company has represented that the Negotiated FILOT Project is expected to involve investment of approximately \$6,000,000 by the Company in the County;

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;

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 “Multi-County Park Act” or, as to Section 4-1-175 thereof, the “Special Source Act”) (collectively, the “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 permit investors to claim special source credits against their FILOT Payments (including Negotiated FILOT Payments) to reimburse such investors for expenditures for infrastructure serving Berkeley County and improved or unimproved real estate and personal property, including machinery and equipment, used or to be used in the operation of manufacturing or commercial enterprise in order to enhance the economic development of the County (“Infrastructure Improvements”); 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 facilitate the grant of special source or infrastructure improvement credits;

WHEREAS, the County would like to enter into a Fee-in-Lieu of Tax Agreement (the

“FILOT Agreement”) with the Company as the Company has expressed its intent to the County to make a capital investment in County, i.e., the project;

WHEREAS, as a result of the Company’s desire to undergo the project, the Company has asked the County to enter into FILOT Agreement by and between the County and the Company in order to encompass the terms of the project;

WHEREAS, the 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;

WHEREAS, the County has made specific proposals to the Company, 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”) in the County;

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 furtherance of such proposals and inducing the Company to conduct the Negotiated FILOT Project in the County, the County Council has caused to be prepared and presented to this meeting the form of the FILOT Agreement that the County proposes to execute and deliver (subject to the terms of this ordinance).

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;
- (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 the County Council. Based upon information provided by and representations of the Company, the 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, the County Council hereby finds that:

- (a) the Negotiated FILOT Project constitutes a “project” as that term is defined in the

FILOT Act;

- (b) the Negotiated FILOT Project will serve the purposes of the FILOT Act;
- (c) The investment by the Company in the Negotiated FILOT Project is anticipated to be approximately \$6,000,000 to be invested within five (5) years from the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date shall not be later than the last day of the property tax year which is three (3) years from the year in which the County and the Company enter into the FILOT Agreement.
- (d) the Negotiated FILOT Project will be located entirely within the County;
- (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;
- (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;
- (g) the purposes to be accomplished by the Negotiated FILOT Project are proper governmental and public purposes;
- (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 hereby designated as “economic development property” under the FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company that provides for Negotiated FILOT Payments to be made with respect to the Negotiated FILOT Project based upon a 6% assessment ratio and a millage of rate of [___] mills, all 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/Chair of the County Council and the Clerk of the County Council are (and each individually is) 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, with any changes thereto as

shall not materially adversely affect the rights of the County thereunder and with the advice of 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/Chair and all other appropriate officials of the County are (and each individually is) hereby authorized to take such actions and 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;
- (b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina;
- (c) This Ordinance shall become effective immediately upon approval following third reading by the County Council;
- (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 the Agreement for the Establishment of Multi-County Industrial/Business Park (the "MCIP Agreement"). Pursuant to the FILOT Agreement, the County will agree to use its best efforts to maintain such designation for a term of at least 30 years.

(b) Pursuant to the terms of the MCIP Act and the MCIP Agreement, the County hereby provides that for 15 years, commencing 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.

[Signature Page to Follow]

ENACTED in meeting duly assembled this ____ day of _____, 2022.

BERKELEY COUNTY, SOUTH CAROLINA

By: _____
John P. Cribb
Supervisor/Chair, Berkeley County Council
Berkeley County, South Carolina

ATTEST:

Amanda D. Turner
Clerk to Council, Berkeley County Council
Berkeley County, South Carolina

FEE-IN-LIEU OF TAX AGREEMENT

by and between

BERKELEY COUNTY, SOUTH CAROLINA,

and

VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS)

Dated as of _____, 2022

FEE-IN-LIEU OF TAX AGREEMENT

THIS FEE-IN-LIEU OF TAX AGREEMENT (this “Agreement”) is dated as of _____, 2022 (the “Effective Date”), 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 VOLVO CAR USA LLC (D/B/A VOLVO CAR US OPERATIONS) (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 expand its manufacturing operations in the County (the “Project”); and

WHEREAS, the Company anticipates that the Project will result in an investment of \$3,000,000 in real property in the County and \$3,000,000 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 its facility 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 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, 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:
Volvo Car USA LLC (d/b/a Volvo Car US Operations) and
Berkeley County, South Carolina.
2. County and street address of the project and property to be subject
to this Agreement:

[to be updated]
3. Minimum investment agreed upon:
\$3,000,000.00 (real property)
\$3,000,000.00 (personal property)
4. Length and term of this Agreement:
15 years
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: ____ 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 property, subject to payments-in-lieu-of-taxes is allowed;
 - (c) Payment will not be modified using a net present value calculation; and
 - (e) 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, including without limitation reasonable and actual attorneys’ fees (for the purposes of this Agreement, such attorneys’ fees included in “Administration Expense” shall not exceed \$5,000.00, in the aggregate, without prior written consent of the Company, which may be given or withheld in its sole discretion); provided, however, that no such expense shall be considered an Administration Expenses 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: (a) any corporation, limited liability company, partnership or other entity which owns all or part of the Company (or with respect to a Company Affiliate, such Company Affiliate) or which is owned in whole or in part by the Company (or with respect to a Company Affiliate, such Company Affiliate) or by any partner, shareholder or owner of the Company (or with respect to a Company Affiliate, such Company Affiliate); as well as (b) any

subsidiary, affiliate, individual or entity who bears a relationship to the Company (or with respect to a Company Affiliate, such Company Affiliate), as described in Section 267(b) of the Internal Revenue Code of 1986, as amended.

“Agreement” shall mean this 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.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date shall not be later than the last day of the property tax year which is three (3) years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean Volvo Car USA LLC (d/b/a Volvo Car US Operations) 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. The Company may designate through written notice to the County an Affiliate as a Company Affiliate, so long as they agree to be bound by the terms and provisions of this Agreement.

“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 the Company or members 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; or (b) modifications which constitute an expansion of Existing Property.

“FILOT” shall mean the fee-in-lieu of taxes, which the Company 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 pursuant to Section 5.01 hereof.

“FILOT Revenues” shall mean the revenues received by the County from the Company’s payment of the FILOT.

“Investment Period” shall mean the period beginning with the first day that the Controlled Group purchased or purchases Economic Development Property and ending on the date that is five years after the Commencement Date, unless extended by written agreement of the County and the Company pursuant to Section 12-44-30(13) of the Code.

“Investment Requirement” shall mean the minimum investment the Company shall make in the Project to receive the incentives described herein.

“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 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 _____ County, dated Month XX, XXXX, 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 Payment” shall mean the FILOT 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(a)(iii) hereof. The Company agrees that the real estate improvements 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 the Equipment; and any Replacement Property.

“Project Commitments” shall mean the investment and job commitments of the Company with respect to the Project as set forth in Section 2.02(d) of this Agreement.

“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 installed 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.

“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 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) 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) Volvo Car USA LLC (d/b/a Volvo Car US Operations) is a limited liability company, validly existing and in good standing under the laws of the State of Delaware 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 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 an Investment Requirement of Three Million Dollars (\$3,000,000.00) in land, buildings, and other real property and Three Million Dollars (\$3,000,000.00) in machinery, equipment, and other personal property at the Project by the end of the Investment Period. The investment amount shall not include any amount paid by the Company for real estate improvements on the land existing as of the date of this Agreement. The Company agrees to meet and maintain the real property investment commitment throughout the entire term of the FILOT.

(e) If the Company fails to meet the Investment Requirement, then the Fee Agreement shall terminate and the sole remedy is the Company 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 calendar year.

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

(h) The Company intends to operate the Project as a manufacturing facility, and for such other purposes permitted under the Act as it 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 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 the 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 the benefits of the Negotiated FILOT Payments 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. In the event that a court of competent jurisdiction holds that the Simplified FILOT Act is unconstitutional or that this Agreement or agreements similar in nature to this 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 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 pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company receives the benefits of the Negotiated FILOT 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.

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 commits to invest approximately Three Million Dollars (\$3,000,000.00) in land, buildings, and other real property and Three Million Dollars (\$3,000,000.00) in machinery, equipment, and other personal property at the Project by the end of the initial Investment Period. The investment amount shall not include any amount paid by the Company for real estate improvements on the Land existing as of the date of this Agreement. The Company agrees to meet and maintain the real property investment commitment 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. Each year during the term of this Agreement, the Company 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 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) previously reported to the Department of Revenue.

(c) The Company agrees to maintain such books and records with respect to 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 may designate with respect to any Filings delivered to the County segments thereof that the Company 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 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 of the request and, subject to the time constraints imposed by such law, give the Company the opportunity to designate those portions of the Project, which the Company believes 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.

Section 4.03 Modification of Project.

(a) As long as no event of default exists hereunder, the Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

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

(ii) In any instance where the Company 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 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.

(iii) The Company 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 shall pay 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 fifteen (15) 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 paragraphs (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 improvements to real property and 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 [____] 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 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 hereof, by the amount applicable to the Released Property;

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

(iii) to adjust such payments if the Company elects to convert any portion of the Project from the Negotiated FILOT to the FILOT required by Section 5.01(b) above, as permitted by Section 4.03(a)(iii).

(e) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Company 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 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 Company's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, 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 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 FILOT payment for the period of time remaining on the fifteen-year FILOT period for the property which it is replacing.

(ii) The new 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 FILOT payment.

(g) In the event that the Act or the 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 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 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 any of the payments required 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 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 meet the Investment Requirement, then the Agreement shall terminate and the Company shall repay the benefits received for any of the previous years constituting the Investment Period as if the Act Minimum Investment Requirement 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 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 Indemnified 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 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 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 hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company hereunder, but all obligations of the Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company, 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 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 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 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 Project has a term of fifteen (15) 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, may, at its option, terminate this Agreement at any time upon providing the County thirty (30) days' written notice of such termination, in which event the Project 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.

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 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 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 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:

[to be updated]

With a copy to:

Stephanie Yarbrough
Womble Bond Dickinson
5 Exchange Street
Charleston, SC 29401

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 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, pandemics, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

[SIGNATURE PAGE 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 Effective Date

BERKELEY COUNTY, SOUTH CAROLINA

(SEAL)

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

ATTEST:

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

Volvo Car USA LLC (d/b/a Volvo Car US Operations)

By: _____
Name: _____
Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

[To be updated]



**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. *HISTORY: 3/28/2022 Committee on Finance - HELD; 3/28/2022 Regular Council - Held in Committee; 5/23/2022 - Committee on Finance - Recommendation of Approval; 5/23/2022 Regular Council - Referred; 6/27/2022 Committee on Finance - Recommendation of Approval; 6/27/2022 Regular Council - Approved and Referred*

Prepared By: Shelley Forest, County Council

Date: July 25, 2022

Attachment(s):

[DM 7287993-v1 Eighth Supplemental Ordinance \(with Exhibits\).PDF](#)

BERKELEY COUNTY, SOUTH CAROLINA

EIGHTEENTH SUPPLEMENTAL ORDINANCE NO. 22-07-__

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.

BE IT ORDAINED BY THE COUNTY COUNCIL OF BERKELEY COUNTY, SOUTH CAROLINA:

SECTION 1. Definitions. The terms in this Section 1 and all words and terms defined in the General Bond Ordinance No. 03-03-12 enacted by the County Council on March 10, 2003 (such Ordinance as from time to time amended or supplemented by Supplemental Ordinances or the hereinafter defined Combining Ordinance being defined herein as the “General Bond Ordinance”) (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this Eighteenth Supplemental Ordinance have the respective meanings given to them in the General Bond Ordinance and in Section 1 hereof.

Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Eighteenth Supplemental Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified, with the definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

“2008B SRF Note” means the \$1,253,812 Promissory Note dated December 16, 2008.

“2020A SRF Note” means the \$1,113,538 principal amount, plus capitalized interest, if any, Promissory Note dated June 30, 2020.

“2020B SRF Note” means the \$1,106,425 principal amount, plus capitalized interest, if any, Promissory Note dated June 30, 2020.

“2020C SRF Note” means the \$7,248,127 principal amount, plus capitalized interest, if any, Promissory Note dated June 30, 2020.

“2020D SRF Note” means the \$8,344,437 principal amount, plus capitalized interest, if any, Promissory Note dated June 30, 2020.

“2020E SRF Note” means the \$10,230,776 principal amount, plus capitalized interest, if any, Promissory Note dated June 30, 2020.

“2020G SRF Note” means the \$17,545,413 principal amount, plus capitalized interest, if any, Promissory Note dated December 17, 2020.

“2020H SRF Note” means the \$5,566,237 principal amount, plus capitalized interest, if any, Promissory Note dated December 17, 2020.

“2021A SRF Note” means the \$19,902,486 principal amount, plus capitalized interest, if any, Promissory Note dated September 30, 2021.

“2021B SRF Note” means the \$6,395,320 principal amount, plus capitalized interest, if any, Promissory Note dated September 30, 2021.

“2021C SRF Note” means the \$3,866,577 principal amount, plus capitalized interest, if any, Promissory Note dated September 30, 2021.

“BCWS” means Berkeley County Water and Sanitation or its successor entity.

“Bond of 2020” means \$73,104,000 Combined Utility System Refunding Revenue Bond, Taxable Series 2020F, dated September 15, 2020.

“Bonds of 2013” means the \$123,615,000 Combined Utility System Refunding Revenue Bonds, Series 2013, dated May 9, 2013.

“Bonds of 2014” means the \$20,340,000 Combined Utility System Revenue Bonds, Series 2014, dated August 21, 2014.

“Bonds of 2019” means the \$24,535,000 Combined Utility System Refunding Revenue Bonds, Series 2019, dated October 9, 2019.

“Central Berkeley Wastewater Treatment Plant Effluent Force Main & Pump Station” means upgrading the existing pump station with four new vertical turbine pumps and installation of 17,500 linear feet of parallel 30-inch effluent force main (project identified as SRF No. 1-153-22-496-22).

“Combining Ordinance” means Ordinance No. 10-08-29 enacted by the Council on August 23, 2010, which combined and expanded the System.

“Loans” means the three separate loans from the South Carolina Water Quality Revolving Fund Authority to Berkeley County, South Carolina, in the aggregate amount of not exceeding \$35,000,000, including capitalized interest, if any. Each Loan is for a specific Project and is limited to the amount shown in each Loan Agreement.

“Loan Agreements” means the three separate Loan Agreements evidencing the Loans to be dated the dates of their respective execution and delivery between the State Authority and the County.

“New SRF Notes” means the three separate Promissory Notes of Berkeley County, South Carolina, to be issued in an aggregate principal amount not exceeding \$35,000,000, payable to the State Authority.

“Projects” means, collectively, the Central Berkeley Wastewater Treatment Plant Effluent Force Main & Pump Station, the Pump Station #001 Force Main Replacement – Phase III and the Red Bank Road Gravity Line Replacement.

“Pump Station #001 Force Main Replacement – Phase III” means the installation of approximately 6,580 linear feet of 30-inch ductile iron pipe with new 42-inch polyvinyl chloride force main (project identified as SRF No. X1-252-22-496-29).

“Red Bank Road Gravity Line Replacement” means the installation of approximately 5,270 linear feet of sewer line, 14 new manholes and seven tie-ins (project identified as SRF No. 1-251-22-496-31).

“Revolving Fund” shall mean the South Carolina Water Pollution Control Revolving Fund created by the State Authority Act.

“Series Debt Service Funds” means the three separate Debt Service Funds established pursuant to Section 6.7 of the General Bond Ordinance and Section 4.1.2 of the Loan Agreements to provide for the payment of the principal and interest on the New SRF Notes. Pursuant to Section 4.1.2 of each Loan Agreement related to a specific New SRF Note, each Series Debt Service Fund shall be further identified or designated to relate to the specific New SRF Note issued thereunder.

“Series Debt Service Reserve Funds” means the three separate Debt Service Reserve Funds which may be established pursuant to Section 6.8 of the General Bond Ordinance and which may be funded pursuant to the requirements of Section 4.2.1 of the Loan Agreements, to insure the timely payment of the principal of and interest on the New SRF Notes. Pursuant to Section 4.1.2 of each Loan Agreement related to a specific New SRF Note, each Series Debt Service Reserve Fund shall be further identified or designated to relate to the specific New SRF Note issued thereunder.

“Series Reserve Requirement” shall have the meaning as set forth in Section 4.2.1 of the Loan Agreements. Pursuant to Section 4.2.1 of each Loan Agreement related to a specific New SRF Note, each Series Reserve Requirement shall be further identified or designated to relate to the specific New SRF Note issued thereunder.

“State Authority” shall mean the South Carolina Water Quality Revolving Fund Authority.

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

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

(a) Pursuant to Section 4-9-10 of the S.C. Code, the Council-Supervisor form of government was selected and the Council constitutes the governing body of the County.

(b) The System is administered by a department of the County known as Berkeley County Water and Sanitation (“BCWS”). BCWS furnishes water and sewer services in certain areas of the County.

(c) The County has all powers granted to counties by the Constitution and the general laws of this State, including the power to possess and operate utility systems and is empowered by the provisions of the Revolving Fund Act (i) to undertake the Project; (ii) to make application for and to receive assistance; (iii) to comply with regulations relating to the receipt and disposition of money of the Revolving Fund; (iv) to apply for and receive state grants; (v) to enter into loan agreements; and (vi) to comply with all terms and conditions of any loan agreement.

(d) The Act permits the incurrence of debt for the purpose of financing facilities for the furnishing of wastewater collection and treatment services and permits the securing of such indebtedness with a pledge of Net Revenues of the System.

(e) Pursuant to the Act, the County has enacted the General Bond Ordinance which sets forth certain conditions which the County must satisfy in order to issue additional indebtedness secured by a pledge of the Net Revenues of the System.

(f) The County Council has determined that it is in the best interest of the citizens of the County to undertake the Projects to be part of the County's System.

(g) On August 23, 2021, the County Council adopted Resolution No. R-21-10 authorizing application to the State Authority for the Loan from the Revolving Fund to provide for the financing of the Central Berkeley Wastewater Treatment Plant Effluent Force Main & Pump Station. On August 23, 2021, the County Council adopted Resolution No. R-21-09 authorizing application to the State Authority for the Loan from the Revolving Fund to provide for the financing of the Pump Station #001 Force Main Replacement – Phase III. On August 23, 2021, the County Council adopted Resolution No. R-21-11 authorizing application to the State Authority for the Loan from the Revolving Fund to provide for the financing of the Red Bank Road Gravity Line Replacement.

(h) The State Authority has upon review of the County's loan applications conditionally approved the Loans.

(i) The Loans must be incurred pursuant to the terms and conditions of the General Bond Ordinance in order for the Loans to be issued on a parity in all respects to the pledge securing the 2008B SRF Note, the Bonds of 2013, the Bonds of 2014, the Bonds of 2019, the 2020A SRF Note, the 2020B SRF Note, the 2020C SRF Note, the 2020D SRF Note, the 2020E SRF Note, the Bond of 2020, the 2020G Note, the 2020H SRF Note, the 2021A Note, the 2021B Note, the 2021C Note (collectively, the "Parity Bonds") and any other Bonds (as defined in the General Bond Ordinance) which may be issued after the date of this Eighteenth Supplemental Ordinance.

(j) The funds are to be loaned and secured pursuant to three Loan Agreements, separate copies of which related to the three New SRF Notes are attached hereto as Exhibits A, B and C, the terms of which Loan Agreements set forth with sufficient particularity the requirements for Bonds set forth in Sections 3.2 and 3.3 of the General Bond Ordinance and the promissory notes to be executed and delivered by the County and registered in the name of the State Authority and herein above defined as the New SRF Notes. Each of the New SRF Notes will constitute a Bond as defined in the General Bond Ordinance. Pursuant to each Loan Agreement, the County will agree to use the proceeds of the related Loan to pay only the actual eligible costs of the applicable Project, plus capitalized interest, if any, on the specific New SRF Note pursuant to the terms of the applicable Loan Agreement, and the County will agree to pay to the State Authority such amounts as shall be required to provide for the payment of all amounts due with respect to the repayment of the related Loan. Upon any failure of the County to make any payments to the State Authority pursuant to the Loan Agreements or the New SRF Notes, the State Authority shall require the State Treasurer to pay to the State Authority, subject to the provisions of the State Authority Act, such amount from state appropriations to which the County may be or become entitled as may be necessary to provide for the payment of all amounts due with respect to the New SRF Notes.

(k) The Council is enacting this Eighteenth Supplemental Ordinance in order to:

(i) authorize the execution and delivery on behalf of the County of the Loan Agreements and the New SRF Notes;

(ii) evidence the approval of the Projects, the New SRF Notes and the Loans by the County; and

(iii) authorize the execution and delivery by the County of such other agreements and certificates and the taking of such other action by the County and its officers as shall be necessary or desirable in connection with the financing of the Projects in order to carry out the intent of this Eighteenth Supplemental Ordinance.

(1) The County Council has determined that the most economical means of financing the Projects is through the Loans from the State Authority.

(m) This Eighteenth Supplemental Ordinance supplements the General Bond Ordinance, constitutes and is a “Supplemental Ordinance” within the meaning of such quoted term as defined and used in the General Bond Ordinance, and is enacted under and pursuant to the General Bond Ordinance.

(n) Each of the New SRF Notes constitutes and is a “Bond” within the meaning of the quoted word as defined and used in the General Bond Ordinance and is designated as “Combined Utility System Revenue Bond” (with such further series designation for identification thereof) for purposes of the General Bond Ordinance.

(o) The Net Revenues pledged under the General Bond Ordinance are not presently encumbered by any lien and charge thereon or pledge thereof, other than the lien and pledge securing the Parity Bonds and the lien and charge thereon and pledge thereof to be created by the General Ordinance and this Eighteenth Supplemental Ordinance for the payment and security of the New SRF Notes.

(p) There does not exist an Event of Default, nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default as defined in Article X of the General Bond Ordinance.

(q) The period of usefulness of the System is in excess of 30 years from the date hereof.

(r) The Projects and Costs of Issuance to be funded with the proceeds of the Loans is not more than \$35,000,000 in the aggregate, including capitalized interest.

(s) Section 3.3 of the General Bond Ordinance provides that one or more Series of Bonds may be issued for such purposes as may be permitted by the Act upon compliance with certain provisions of the General Bond Ordinance for the purpose of paying the Costs of Acquisition and Construction of one or more Projects authorized to be financed under the Act. Bonds issued upon compliance with Section 3.2 and Section 3.3 of the General Bond Ordinance shall be issued on a parity in all respects *inter sese*.

(t) In compliance with the provisions of Section 3.3 of the General Bond Ordinance, the Council further finds and determines:

(i) The issuance of the New SRF Notes is authorized under and pursuant to an ordinance supplemental to the General Bond Ordinance as provided in Article III and Article IX of the General Bond Ordinance.

(ii) Prior to the issuance of the New SRF Notes, there shall be executed by the County Supervisor the certificate required by paragraph A thereof.

(iii) There shall be delivered a report, based on the latest available audit of the System required under Section 7.4 of the General Bond Ordinance, from the County Supervisor or chief administrative officer of the County or Director of BCWS, an Accountant or Consulting Engineer stating that the amount of the Net Revenues of the System is not less than 120% of the Maximum

Debt Service on Bonds then Outstanding and the Bonds (i.e., the New SRF Notes) then proposed to be issued.

(iv) The New SRF Notes are being issued for the purpose of improving, extending, enlarging or repairing the System, i.e., the Projects.

(v) None of the Series Debt Service Reserve Funds is presently required to be funded to the applicable Series Reserve Requirement.

(u) The New SRF Notes are being used for the purposes of (i) defraying the costs of the Projects, including capitalized interest; and (ii) paying the Costs of Issuance of the New SRF Notes.

(v) It is necessary and in the best interest of the County to undertake the Projects and to issue the New SRF Notes in the aggregate principal amount of not exceeding \$35,000,000 in accordance with the General Bond Ordinance, the Act and this Eighteenth Supplemental Ordinance for the purposes set forth above.

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

SECTION 4. Authorization of Loans. The Council hereby authorizes the County's acceptance of the Loans from the State Authority in an aggregate amount of not exceeding \$35,000,000, including capitalized interest, if any, pursuant to and in accordance with the provisions of the Loan Agreements; provided, it is further understood that each Loan Agreement (and each Loan and the New SRF Note related thereto) shall relate solely to the specifically named Project.

SECTION 5. Repayment of Loans by the County. The Council hereby authorizes the repayment of the Loans by the County to the State Authority from the Net Revenues of the System, pursuant to and in accordance with the provisions of the Loan Agreements and the New SRF Notes; provided, it is further understood that each Loan Agreement (and the New SRF Note related thereto) shall relate to the repayment of the specifically identified Loan. Notwithstanding the above, upon any failure of the County to make any payments to the State Authority pursuant to the Loan Agreements or the New SRF Notes, the State Authority shall require the State Treasurer to pay to the State Authority, subject to the provisions of the State Authority Act, such amount from state appropriations to which the County may be or become entitled as may be necessary to provide for all payments with respect to the New SRF Notes related thereto.

SECTION 6. Payment on the New SRF Notes. The New SRF Notes, together with the interest thereon, shall be payable, in such coin or currency of the United States of America which at the time of such payment is legal tender for public and private debts, solely from the Net Revenues of the System, in accordance with the provisions of the General Bond Ordinance and this Eighteenth Supplemental Ordinance. Each of the New SRF Notes is a special obligation of the County payable solely from, and secured by a pledge of and lien upon, the Net Revenues of the System on a parity in all respects with the Parity Bonds and any Series of Bonds hereafter issued under Section 3.3 of the General Bond Ordinance.

The New SRF Notes do not constitute an indebtedness of the County within any State Constitutional provisions (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. The full faith, credit and taxing powers of the County are not pledged to the payment of the principal of and interest on the New SRF Notes.

SECTION 7. Authorization of Loan Agreements and the New SRF Notes. The Loan Agreements including the forms of the New SRF Notes which are attached thereto, separate copies of which related to specific New SRF Notes are in substantially the forms attached hereto as Exhibits A, B and C with such changes as the executing officers shall approve (their execution to be conclusive evidence of such approval) are hereby approved and the execution and delivery of the Loan Agreements and the New SRF Notes, on behalf of the County, are hereby authorized and directed. The Loan Agreements and the New SRF Notes shall be executed in the name of the County by the manual or facsimile signature of the County Supervisor and attested by the manual or facsimile signature of the Clerk to Council under the seal of the County to be affixed thereon. The Council hereby authorizes the incurrence of total indebtedness under the New SRF Notes in an aggregate principal amount not to exceed \$35,000,000 in order to allow the County to elect to capitalize interim interest on each of the New SRF Notes in accordance with the terms of the applicable Loan Agreement. The principal amount of each of the New SRF Notes may be adjusted pursuant to the terms of the applicable Loan Agreement.

SECTION 8. Approval of Debt Service Fund and Debt Service Reserve Fund Agreements. The form, terms and provisions of the Debt Service Fund and Debt Service Reserve Fund Agreement, a copy of which is attached hereto as Exhibit D, is hereby approved; provided, that for the avoidance of doubt, upon the issuance of each of the New SRF Notes, (a) separate funds or accounts shall be established for the payment of debt service or debt service reserves for each New SRF Note, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Debt Service Fund” or “Series Debt Service Reserve Fund” with respect to such New SRF Note and (b) each Debt Service Fund and Debt Service Fund Agreement shall be further identified or designated to relate to the specific New SRF Note issued under each Loan Agreement. The Debt Service Fund and Debt Service Reserve Fund Agreements shall be in substantially the form attached hereto, with such changes as the executing officers shall approve (their execution to be conclusive evidence of such approval), including but not limited to such further identification or designation as described above, and the execution and delivery of the Debt Service Fund and Debt Service Reserve Fund Agreements on behalf of the County is hereby authorized and directed. The Debt Service Fund and Debt Service Reserve Fund Agreements shall be executed on behalf of the County by the County Supervisor and attested by the Clerk to Council.

SECTION 9. Filings with Central Repository. So long and to the extent required pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended, the County covenants that it will file or cause to be filed with a central repository for availability in the secondary bond market when requested: (a) a copy of the annual audit of the County within 30 days of the County’s receipt thereof; and (b) within 30 days of the occurrence thereof, relevant information of an event which, in the opinion of the County, adversely affects more than 5% of the Revenues of the System or the County’s tax base. The County also shall file or cause to be filed with the State Authority the same information filed with the central repository in accordance with the preceding sentence. Failure to file the information required by Section 11-1-85 shall not constitute an Event of Default under the General Bond Ordinance or this Eighteenth Supplemental Ordinance.

The only remedy for failure by the County to comply with the covenant of this Section 9 shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an “Event of Default” under the General Bond Ordinance or this Eighteenth Supplemental Ordinance. The Trustee shall have no responsibility to monitor the County’s compliance with this covenant. The County specifically reserves the right to amend or delete this covenant in order to reflect any change in Section 11-1-85, without the consent of the Trustee, the State Authority or any subsequent holder of the New SRF Notes.

SECTION 10. Designation of Trustee, Registrar and Paying Agent. The County Supervisor is hereby authorized and empowered to select the Trustee, Registrar and the Paying Agent for the New SRF

Notes. The Trustee, Registrar and Paying Agent shall signify their acceptances of their respective duties upon delivery of the New SRF Notes.

SECTION 11. Further Actions. The County Supervisor, the Director of BCWS, the Clerk to County Council, and the Attorney to BCWS are hereby authorized and directed to execute such documents, certificates and instruments as necessary to effect the issuance of the New SRF Notes and to implement the Loan Agreements and to take any and all such further actions as shall be deemed necessary or desirable in order to issue the New SRF Notes and to carry out the intentions of this Eighteenth Supplemental Ordinance. The County hereby retains Haynsworth Sinkler Boyd, P.A., as bond counsel with regard to the matters authorized by this Eighteenth Supplemental Ordinance.

SECTION 12. Notices. All notices, demands or other communications under this Eighteenth Supplemental Ordinance shall be given or made in writing and shall be delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, or overnight delivery service, telex or telecopy to the party to whom they are directed at the following addresses, or at such other addresses as may be designated by notice from such party to all other parties:

If to the County:

Berkeley County
Attn: County Supervisor
1003 Hwy 52
Moncks Corner, South Carolina 29461

If to BCWS:

Berkeley County Water and Sanitation
Attn: Director
212 Oakley Plantation Road
P.O. Box 1529
Moncks Corner, South Carolina 29461

If to the State Authority:

Office of Local Government - State Revolving Fund
Attention: Director
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

The County, BCWS, the State Authority and the Trustee, Registrar and Paying Agent may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 12. Ordinance a Contract. This Eighteenth Supplemental Ordinance shall be a contract between the County and the State Authority and shall be enforceable as such against the County.

SECTION 13. Repeal. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Eighteenth Supplemental Ordinance shall take effect and be in full force from and after its passage and approval.

SECTION 14. Effective Date. This Eighteenth Supplemental Ordinance shall become effective upon its enactment.

Enacted in Council duly assembled this 25th day of July, 2022.

BERKELEY COUNTY, SOUTH CAROLINA

By: _____
John P. Cribb, County Supervisor and
Chairman of County Council

(SEAL)

ATTEST:

Amanda D. Turner, Clerk to Council

First Reading: May 23, 2022
Second Reading: June 27, 2022
Public Hearing: July 25, 2022
Third Reading: July 25, 2022

Approved as to form:

John O. Williams II
County Attorney
Berkeley County, South Carolina

EXHIBIT A

FORM OF LOAN AGREEMENT AND NOTE

RED BANK ROAD GRAVITY LINE REPLACEMENT (No. 1-251-22-496-31)

LOAN AGREEMENT

between

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

and

BERKELEY COUNTY

Dated

_____, 2022

relating to

Red Bank Road Gravity Line Replacement

South Carolina Water Pollution Control Revolving Fund

Loan Number: 1-251-22-496-31

No. ____ of Two Executed Original Counterparts

Draft 6/20/22

TABLE OF CONTENTS

Page

ARTICLE I

LOAN

Section 1.1	Loan Made and Accepted; Repayment	3
Section 1.2	Purpose Limited to Project	3
Section 1.3	Disbursements	3
Section 1.4	Changes in Payment Initiation Date, the Loan Amount and Repayment Schedule	4
Section 1.5	Deadline for Borrowing and Termination of Promise to Lend	6
Section 1.6	Conditions Precedent to Disbursement of Loan Proceeds	6

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1	Status of Project Sponsor	7
Section 2.2	Financial Statements	7
Section 2.3	Pending Litigation	7
Section 2.4	No Conflicting Transactions	7
Section 2.5	Ownership of Premises	7
Section 2.6	Other Project Arrangements	8
Section 2.7	No Construction Default	8
Section 2.8	No Default	8
Section 2.9	Effect of Draw Request	8

ARTICLE III

COVENANTS

Section 3.1	Contract Award, Construction Inspection and Completion	9
Section 3.2	Disbursements	9
Section 3.3	Release of Responsibility	9
Section 3.4	Other Agreements	9
Section 3.5	Accounting and Auditing	10
Section 3.6	Ratings from Rating Agencies	10
Section 3.7	Insurance	10
Section 3.8	Compliance with Governmental Authority	11
Section 3.9	Adequate Rates	11
Section 3.10	Review of Rates	11
Section 3.11	Disclosure of Events to Authority	12
Section 3.12	Procurement Requirements	12

Section 3.13	Inspection and Information	12
Section 3.14	Consent to Changes	12
Section 3.15	Additional Covenants	12

ARTICLE IV

ESTABLISHMENT OF FUNDS AND
DISPOSITION OF REVENUES

Section 4.1	Establishment of Gross Revenue Fund, Debt Service Fund, Operation and Maintenance Fund, and Depreciation and Contingent Fund	14
Section 4.2	Establishment and Funding of Debt Service Reserve Fund	15
Section 4.3	Disposition of Revenues	16
Section 4.4	Concerning the Debt Service Fund and the Debt Service Reserve Fund	18

ARTICLE V

EVENTS OF DEFAULT

Section 5.1	Events of Default	20
-------------	-------------------	----

ARTICLE VI

REMEDIES

Section 6.1	Acceleration	21
Section 6.2	Additional Remedies and Enforcement of Remedies	21
Section 6.3	Remedies Not Exclusive	21
Section 6.4	Termination of Proceedings	21

ARTICLE VII

SECURITY

Section 7.1	Pledge of Revenues	22
Section 7.2	Additional Security	22

ARTICLE VIII

SPECIAL REVOLVING FUND PROVISIONS

Section 8.1	Compliance	23
Section 8.2	Standard Conditions	23

ARTICLE IX

GENERAL CONDITIONS

Section 9.1	No Waiver	24
Section 9.2	Satisfactory Proceedings	24
Section 9.3	Evidence	24
Section 9.4	No Beneficiaries	24
Section 9.5	Review and Inspection of Work	24
Section 9.6	Notices	24
Section 9.7	No Joint Venture, Etc.	25
Section 9.8	Assignment	25
Section 9.9	Entire Agreement	25
Section 9.10	Continuity	25
Section 9.11	South Carolina Contract	25
Section 9.12	Limitations on Actions by Project Sponsor	25
Section 9.13	Counterparts	25
Section 9.14	Appendices	25
Section 9.15	Special Conditions	25
Section 9.16	Time of Essence	25
Section 9.17	Severability	26
APPENDIX "A"	SCOPE OF WORK	A-1
	PROJECT BUDGET	A-2
	PROJECT SCHEDULE	A-3
APPENDIX "B"	REPAYMENT SCHEDULE	B-1
	LOAN CLOSING FEE	B-2
APPENDIX "C"	PROCUREMENT REQUIREMENTS	C-1
APPENDIX "D"	SPECIAL CONDITIONS	D-1
APPENDIX "E"	FORM OF THE PROMISSORY NOTE	E-1
ATTACHMENT #1	DAVIS-BACON WAGE RATES REQUIRED UNDER FEDERAL CLEAN WATER ACT	

LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of the _____ day of _____, 2022, between the SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, a public instrumentality of the State of South Carolina (the "**Authority**") and BERKELEY COUNTY, a political subdivision of the State of South Carolina (the "**Project Sponsor**").

WITNESSETH:

WHEREAS, the Authority is authorized by Title 48, Chapter 5, Code of Laws of South Carolina, 1976, as amended (the "**Act**") to administer the South Carolina Water Pollution Control Revolving Fund (the "**Fund**") for the purpose of assisting Project Sponsors (as defined in the Act) in the construction of, among other things, publicly owned treatment works as defined in the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, as amended; and

WHEREAS, the South Carolina Department of Health and Environmental Control (the "**Department**") is authorized by the Act to, among other things, develop a priority system and prepare an annual plan to insure compliance with the Federal Water Pollution Control Act; and

WHEREAS, the Authority is authorized by the Act to enter into Loan Agreements (as defined in the Act) with Project Sponsors in order to finance Projects (as defined in the Act); and

WHEREAS, the Act authorizes Project Sponsors, among other things, to undertake Projects, to receive assistance in the financing of such Projects by way of loans made from the Fund and to enter into loan agreements providing for the repayment of amounts received from the Fund, together with interest thereon; and

WHEREAS, the Project Sponsor proposes to acquire and construct the facilities described in Appendix "A" hereto (the "**Project**"), which Project will be part of the Project Sponsor's combined utility system comprised of water, sewer and solid waste components (the "**System**"); and

WHEREAS, the Project Sponsor proposes to finance the Project with a loan made from the Fund, such loan to be pursuant to, and on a parity with debt previously issued under, an ordinance enacted by the Project Sponsor on March 10, 2003 entitled "GENERAL BOND ORDINANCE NO. 03-03-12 AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF WATER AND SEWER SYSTEM REVENUE BONDS OF BERKELEY COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; LIMITING THE PAYMENT OF THE BONDS SOLELY TO THE NET REVENUES DERIVED FROM THE OPERATION OF THE SYSTEM AND PLEDGING THE REVENUES TO SUCH PAYMENT; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" as amended on August 23, 2010 and on March 25, 2013 (the "**General Bond Ordinance**");

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

ARTICLE I

LOAN

SECTION 1.1. Loan Made and Accepted; Repayment. In consideration of the mutual promises of this Agreement, and upon and subject to its terms and conditions, the Authority agrees to make, and the Project Sponsor agrees to accept, the loan herein provided for (the "**Loan**"). The obligation of the Project Sponsor to repay the Loan and interest thereon is evidenced by this Agreement and a promissory note (the "**Note**") registered in the name of the Authority. The amount of the Loan (the "**Loan Amount**"), the interest rate on the Loan and the repayment schedule with respect to the Loan (the "**Repayment Schedule**") shall be as set forth in Appendix "B" hereto, as may be changed or modified pursuant to Section 1.4 hereof; the terms and form of the Note are set out in Appendix "E". The Project Sponsor shall make payments with respect to the Loan at the times and in the amounts set forth in Appendix "B", as modified, on the due date of any such payment.

SECTION 1.2. Purpose Limited to Project. The Project Sponsor shall use the proceeds of the Loan only to pay the actual eligible costs of the Project. The Project is described in Appendix "A" and more specifically as approved in the Project files of the Department. Except to the extent otherwise approved in writing by the Authority, only the costs shown in the Project budget set forth in Appendix "A" shall be allowed and only in the amounts provided for each category. Costs of construction shall be allowed only for work called for in plans and specifications approved by the Department. Proceeds may not be used to pay for labor performed by employees of the Project Sponsor but may be used to pay for materials installed by them.

SECTION 1.3. Disbursements.

1.3.1. The Authority shall make and the Project Sponsor shall accept full or partial disbursements only against incurred, actual eligible costs up to the Loan Amount and by category as provided in this Agreement.

1.3.2. For purposes of making requests for disbursement and representing the Project Sponsor in all administrative matters pertaining to administration of this Agreement, the Project Sponsor shall designate a single officer or employee (the "**Sponsor Representative**") prior to the first disbursement request.

1.3.3. In those cases when the Project Sponsor has paid the incurred Project costs and is seeking reimbursement for payment of such costs theretofore paid by the Project Sponsor, any check for disbursement from the Fund for reimbursement to the Project Sponsor shall be drawn and mailed to the Project Sponsor. In those cases when the Project Sponsor is seeking funds with which to pay incurred Project costs, any check for disbursement from the Fund to pay such costs may, at the option of the Authority, be drawn to the Project Sponsor alone or jointly to the Project Sponsor and contractor engaged by the Project Sponsor for the Project. Such check will be mailed to the Project Sponsor.

1.3.4. Before any disbursement, the Project Sponsor shall execute any documents requested by the Authority reasonably necessary or convenient to the foregoing and shall have satisfied all conditions of Section 1.6 hereof.

1.3.5. Requests for disbursement may be made only after the costs for which the draw is requested have been incurred. The Project Sponsor may not request a disbursement until all construction contracts are signed. The first request for disbursement submitted by the Project Sponsor pursuant to this Agreement shall include an amount for incurred construction costs and all amounts requested by the Project Sponsor for payment or reimbursement of amounts set forth in any of the categories "Planning and Design Engineering", "Land Acquisition", and "Legal and Appraisal Fees" which appear in the Project Budget in Appendix "A" hereto. The Project Sponsor shall not request disbursement against retainage until retainage is paid and shall not request disbursement for change orders unless such change orders have been approved by the Department. Unless the Authority otherwise approves, when the Project budget indicates that the Loan shall bear only a portion of the eligible costs of the Project, or a portion of certain itemized costs, any draw shall not exceed the same proportion of such costs reported for disbursement.

1.3.6. Requests for disbursement shall be made on forms of the Department unless the Authority or Department otherwise directs, and shall be accompanied by such invoices and other proofs as the Authority and Department may reasonably require. The final disbursement shall not be released until the Department issues its approval to place the Project into operation (the "**Permit to Operate**"). No disbursement requests will be accepted more than one hundred eighty (180) days after the date of such Permit to Operate.

1.3.7. The Authority may require that each draw request shall be submitted to the Authority and Department at least twenty-one (21) days before the day disbursement is needed and may limit draw requests to one per month. The Authority will exert its best efforts to disburse funds in response to a draw request within twenty-one (21) days of receiving such request, but no assurance is given by the Authority that such schedule will be met and the Authority shall incur no liability to any Project Sponsor. Processing on shorter notice or faster schedule shall not amend this provision.

SECTION 1.4. Changes in Payment Initiation Date, the Loan Amount and Repayment Schedule.

1.4.1. The Loan Amount has been determined, in part, upon the basis of the projected cost of the Project as shown in Appendix "A". The Payment Initiation Date shown in Appendix "B" (the "**Payment Initiation Date**") is determined by a combination of factors, including, but not limited to the expected Project schedule shown in Appendix "A". Appendix "B" shows the Repayment Schedule anticipated by the parties on this basis and provides for repayment of the Loan, including interest thereon, in eighty (80) equal, or substantially equal, quarterly payments beginning on the first day of the third month after the month of the Payment Initiation Date. The Loan Amount, the Payment Initiation Date and the Repayment Schedule may be changed but only as provided in the following Section 1.4.2. The

Interest Rate is fixed for the term of the Loan and may not be changed from the rate originally established in Appendix "B" hereof.

1.4.2. (a) At the written request of the Project Sponsor, submitted to the Authority no later than sixty (60) days prior to the original Payment Initiation Date in Appendix "B", the Payment Initiation Date may be extended once by the Authority to any date not later than the earlier to occur of (i) six (6) months from the original Payment Initiation Date in Appendix "B", or (ii) thirty (30) months from the first day of the month following the date of this Agreement, or (iii) the first day of the month following the date of the Permit to Operate issued by the Department for the operation of the Project.

(b) In the event the Permit to Operate the Project is issued by the Department more than one (1) month prior to the Payment Initiation Date stated in Appendix "B", the Authority may require that either the Payment Initiation Date be accelerated to the first day of the month following the date of the Permit to Operate, or the term of the Loan be shortened by a minimum of three (3) months.

(c) The Project Sponsor may request that the Loan Amount be increased by including in principal on the Payment Initiation Date the interest which has accrued on amounts theretofore advanced from the Fund. Any such request shall be submitted in writing to the Authority by the Project Sponsor not less than thirty (30) days prior to the Payment Initiation Date.

(d) The Authority or the Project Sponsor may initiate a reduction to the Loan Amount at any time there is a determination that a lesser amount is required for completion of the Project.

(e) The initial Repayment Schedule with respect to the Loan set forth in Appendix "B" shall be modified to reflect (i) changes in the Loan Amount, (ii) extension or acceleration of the Payment Initiation Date, and (iii) any other modification thereto agreed to by the Authority and the Project Sponsor.

(f) Modification of the Repayment Schedule resulting from a change in the Loan Amount subsequent to the Payment Initiation Date shall be made such that:

(i) at the time of final disbursement pursuant to Section 1.3 the Authority shall determine the final Loan Amount;

(ii) a revised Repayment Schedule shall be calculated by the Authority based on the final Loan Amount, the interest rate set forth in Appendix "B" and payment in eighty (80) equal, or substantially equal, quarterly installments beginning on the first day of the third month after the month of the Payment Initiation Date; and

(iii) any difference between the amount theretofore paid by the Project Sponsor prior to the revision of the Repayment Schedule and the amount which would have been paid had the revised schedule been in effect from and after the Payment Initiation Date shall be credited against the next payment, or payments, due under the revised Repayment Schedule.

(g) For purposes of the Repayment Schedule, any amounts disbursed subsequent to the Payment Initiation Date shall be considered to have been advanced on the Payment Initiation Date.

1.4.3. Any change in the Loan Amount, extension or acceleration of the Payment Initiation Date or modification of the Repayment Schedule shall be documented administratively by notice under this Agreement and shall be reflected in the substitution of a revised Appendix "B" hereto reflecting any such change or modification. In connection with any such change or modification, the Authority may, but need not, impose new terms and conditions, including cancellation of the Note and execution of a new Note.

SECTION 1.5. Deadline for Borrowing and Termination of Promise to Lend. The Authority, in its sole discretion, may terminate its promise to lend all of, or any unadvanced portion of, the Loan Amount which has not been advanced if:

1.5.1. The Project Sponsor has not entered into all construction contracts applicable to the Project within six (6) months of the date of this Agreement; or

1.5.2. The Project Sponsor does not request disbursement of the unborrowed balance of the Loan Amount on or before the one hundred eightieth (180th) day following the date of the Permit to Operate issued by the Department for the Project; or

1.5.3. An Event of Default (as defined in Section 5.1 hereof) occurs (in which event the remedies for default likewise shall be available); or

1.5.4. A circumstance arises or becomes known which, in the Authority's sole discretion and opinion, (a) substantially impairs the ability of the Project Sponsor to complete the Project, to operate the Project or to repay the Loan, or (b) substantially impairs the merit of the Project.

SECTION 1.6. Conditions Precedent to Disbursement of Loan Proceeds. In addition to any other conditions herein provided, the Authority's obligation hereunder to make disbursements from the Fund for advances on the Loan shall be subject to satisfaction of the following conditions:

1.6.1. The Project Sponsor's representations and warranties shall remain true and correct;

1.6.2. No Event of Default shall have occurred under this Agreement or the Note;

1.6.3. The Project Sponsor has complied with the requirements of Sections 1.3, 1.4 and 1.5;
and

1.6.4. There shall be on deposit in any debt service reserve fund required by this Agreement the amount required at such time to be on deposit therein.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

The Project Sponsor represents and warrants to the Authority as follows:

SECTION 2.1. Status of Project Sponsor. The Project Sponsor is a political subdivision of the State of South Carolina (the "*State*"), authorized to acquire and construct the Project and to operate the Project and provide wastewater treatment/stormwater services.

SECTION 2.2. Financial Statements. The financial statements of the Project Sponsor delivered to the Authority are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles for units of government, consistently applied, and fairly present the respective financial condition of the subjects thereof as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected in the statements since their date and no additional borrowing has been made by the Project Sponsor since then other than borrowing specifically disclosed and approved by the Authority. All other information submitted by the Project Sponsor in support of its application for this Loan is true and correct as of the date of this Agreement, and no material adverse change with respect to the Project Sponsor has occurred.

SECTION 2.3. Pending Litigation. There are no actions, suits or proceedings, at law or in equity, in court or before any governmental or administrative agency, either pending or to the knowledge of the Project Sponsor reasonably to be considered threatened, which may impair the validity or enforceability of the Note or this Agreement or the Project Sponsor's ability to repay the Loan or to construct and operate the Project for revenue.

SECTION 2.4. No Conflicting Transactions. Consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any deed to secure debt, mortgage, deed of trust, indenture, security agreement, lease, bank loan or credit agreement, municipal charter, ordinances, contracts or other instruments to which the Project Sponsor is a party or by which it may be bound or affected.

SECTION 2.5. Ownership of Premises. The Project Sponsor owns in fee simple the real property which presently constitutes or which will constitute the main operating facilities of the Project and of the System as a whole, and further owns in fee simple or by sufficient easement the real property upon, across or under which the Project Sponsor has or will have its collection or trunk lines, manholes, pump stations and the like, including those to be a part of the Project and otherwise. Property of which the Project Sponsor has taken possession pursuant to Section 28-2-90 of the South Carolina Eminent Domain Procedure Act (Title 28, Chapter 2, Code of Laws of South Carolina, 1976, as amended), and in connection with which no action pursuant to Section 28-2-470 of such statute has been instituted within thirty (30) days of the condemnation notice with respect to such property, shall be deemed owned in fee simple by the Project Sponsor pursuant to this Section 2.5. The Project Sponsor has good record title to

the real property described above (or has possession pursuant to the Eminent Domain Procedure Act, as described above) with only such exceptions of record as do not limit the fee simple ownership and do not and will not interfere with the full use and enjoyment of the premises by the Project Sponsor. With respect to the personal property and fixtures of the Project Sponsor necessary or convenient to the System and its operation, there are no liens or other claims of record against such property or other evidence of adverse ownership, and the Project Sponsor owns such personal property and fixtures in fee simple without conflicting claim of ownership, except as previously disclosed by the Project Sponsor in its application for this Loan.

SECTION 2.6. Other Project Arrangements. The Project Sponsor has secured the utilities, access, governmental approvals and other arrangements reasonably to be considered necessary for the undertaking of the Project.

SECTION 2.7. No Construction Default. Neither the Project Sponsor nor its contractor, architect or engineer for the Project or any related project is in default of any agreement respecting the Project or a related project.

SECTION 2.8. No Default. There is no default on the part of the Project Sponsor under this Agreement or the Note, and no event has occurred and is continuing, which, with notice or the passage of time would constitute a default under any part of this Agreement or the Note.

SECTION 2.9. Effect of Draw Request. Each request for and acceptance of disbursement by the Project Sponsor shall be affirmation that the representations and warranties of this Agreement remain true and correct as of the date of the request and acceptance, that no breach of other provisions hereof has occurred, and that no adverse developments affecting the financial condition of the Project Sponsor or its ability to complete the Project or to repay the Loan plus interest thereon have occurred since the date of this Agreement unless specifically disclosed in writing by the Project Sponsor in the request for disbursement. Unless the Authority is notified to the contrary, such affirmations shall continue thereafter.

ARTICLE III

COVENANTS

SECTION 3.1. Contract Award, Construction Inspection and Completion.

3.1.1 The Project Sponsor should not execute construction contracts or issue the notice to proceed with respect to the Project prior to receiving written approval from the Department to award construction contracts.

3.1.2 The Project Sponsor shall provide and maintain competent and adequate engineering supervision and continuous inspection of the Project to ensure that the construction conforms with the plans and specifications approved by the Department. A monthly inspection report shall accompany each disbursement request.

3.1.3 The Project Sponsor shall cause the Scope of Work identified in Appendix "A" to be completed pursuant to the Project Schedule also defined in Appendix "A" hereto. The Project Sponsor shall require all contractors to satisfactorily complete all work within the time stated in the executed construction contract. Extension of any contract completion date requires the Department's approval. Any costs incurred as a result of a time extension which has not received approval by the Department shall not be eligible for Loan participation.

3.1.4 The Project Sponsor shall pay all costs to complete the Project not covered by the Loan and commits itself to complete the construction of the operable treatment works and to complete the treatment system of which this Project is a part.

SECTION 3.2. Disbursements. The Project Sponsor shall receive and promptly disburse the funds to be provided hereunder as trust funds for the purpose of paying the eligible costs of the Project and for no other purpose.

SECTION 3.3. Release of Responsibility. The Project Sponsor shall undertake the Project on its own responsibility and, to the extent permitted by law, shall release and hold harmless the Authority, the Department, the State and their officers, members and employees from any claim arising in connection with the design, construction or operation of the Project or any other aspect of the System including any matter due solely to their negligence.

SECTION 3.4. Other Agreements. The Project Sponsor shall comply with all terms and conditions of any construction contracts, architectural or engineering agreements, trust indentures, security deeds, promissory notes, loan agreements, or the like affecting the Project, the premises of the System and its operation. The Project Sponsor shall require its construction contractor to furnish both a performance bond and payment bond in the full amount of the construction contract. The requirement of such bonds shall be for the convenience of the Authority only and shall not be an undertaking by the Authority to the Project Sponsor or any third party.

SECTION 3.5. Accounting and Auditing.

3.5.1. Accounting. The Project Sponsor shall account for the Project and System in accordance with generally accepted accounting principles (GAAP), including financial, statistical, property, and supporting documentation. All accounting records shall be kept using GAAP accounting, and applying all relevant Government Accounting Standards Board (GASB) pronouncements, including GASB Statement No. 34 relating to the reporting of infrastructure assets.

3.5.2. Audit. Within six (6) months of the end of each fiscal year of the Project Sponsor, the Project Sponsor shall tender to the Authority an annual financial audit by a certified public accountant. The conduct of the audit and the audit shall be in accordance with Generally Accepted Auditing Standards as defined in Government Auditing Standards, Comptroller General of the United States, December 1, 2011, and revisions, updates or successors thereto. A Single Audit, as required by OMB under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200, Subpart F, may be necessary for each year federal funds are disbursed to the Project Sponsor under CFDA Number 66.458. If the Project Sponsor conducts a Single Audit when federal money disbursed from the Fund is less than the threshold required for such audit, the Project Sponsor shall submit to the Authority, within sixty (60) days of its completion, any findings and recommendations pertaining to money from the Fund contained in such Single Audit.

SECTION 3.6. Ratings from Rating Agencies. If the Reserve Requirement, as defined in Section 4.2.1 herein, is initially, or at any time during the term of the Loan, set at a level that is less than the maximum amount due on the Note during any full calendar year, the Project Sponsor shall submit to the Authority a copy of its latest long-term, unenhanced underlying rating, affirmation thereof, and any new or updated credit report on the System and/or any Parity Debt, as defined in Section 4.3.2 herein, from S&P Global Ratings, or its respective successors and assigns, ("**S&P**") or Moody's Investors Service, Inc., or its respective successors and assigns, ("**Moody's**"), and from each, if both S&P and Moody's issued ratings. Additionally, the Project Sponsor shall immediately notify, and submit to, the Authority any commentaries, updated outlooks/reports, CreditWatch placements, ratings changes or downgrades, or other actions from S&P and/or Moody's with respect to the System and/or any Parity Debt.

SECTION 3.7. Insurance. The Project Sponsor covenants and agrees that so long as any amount remains unpaid on the Note:

(A) It will insure and at all times keep the Project insured against physical loss or damage with a responsible insurance company or companies, authorized and qualified under the laws of the State, to assume the risks insured against, in an amount equal to the replacement cost of the Project;

(B) It will secure adequate fidelity bonds (blanket or individual) of a surety company doing business in the State, indemnifying the Project Sponsor against defalcation of all persons handling money derived from the System or signing checks on any bank accounts relating to the System;

(C) All insurance policies shall be open to the inspection of the Authority at any reasonable time; and

(D) All money received by the Project Sponsor as a consequence of any defalcation, covered by any fidelity bond, shall be used to restore the fund depleted by the defalcation. All sums received by the Project Sponsor from insurance policies covering the Project may, to the extent necessary, be applied to the repair and replacement of the damaged or destroyed property, but, in the event that such money is not used for such purposes, then the same shall be applied to payment of the Note.

SECTION 3.8. Compliance with Governmental Authority. The Project Sponsor shall comply with all environmental laws, rules and other provisions of legal force and effect and all such other provisions which govern the construction or operation of the Project or the System.

SECTION 3.9. Adequate Rates. The Project Sponsor shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System as shall be sufficient to meet the requirements of this Agreement, and the Project Sponsor specifically covenants and agrees to maintain rates and charges for all services furnished by the System which shall at all times be sufficient:

3.9.1. To provide for the punctual payment of the principal of and interest on the Note and any other indebtedness of the Project Sponsor payable from revenues of the System that may from time to time hereafter be outstanding;

3.9.2. To maintain any Debt Service Reserve Fund required by this Agreement in accordance with the provisions hereof;

3.9.3. To provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as may be necessary to preserve the same in good repair and working order;

3.9.4. To build and maintain a reserve for depreciation of the System, for contingencies and for improvements, betterments and extensions to the System other than those necessary to maintain the same in good repair and working order; and

3.9.5. To discharge all other obligations imposed by the Act, by this Agreement and by the General Bond Ordinance.

The Project Sponsor further covenants and agrees that it shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System which, together with other income, are reasonably expected to yield annual Net Revenues, as defined in the General Bond Ordinance, in any fiscal year equal to the greater of (i) one hundred ten percent (110%) of the annual principal and interest on all debt paid from or secured by revenues of the System; or (ii) such other percentage of the annual principal and interest on all debt secured by revenues of the System as the Project Sponsor shall have covenanted that its Net Revenues would meet with respect to other outstanding indebtedness of the System.

SECTION 3.10. Review of Rates. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will review the adequacy of its rates and charges to comply with the

requirements of this Agreement promptly upon any material changes in circumstances, but not less frequently than once in each fiscal year of the Project Sponsor. The Project Sponsor shall submit any adjustments to its rates and charges to the Authority immediately upon adoption.

SECTION 3.11. Disclosure of Events to Authority. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will submit to the Authority event specific information within thirty (30) days of an event adversely affecting more than five (5) percent of revenues of the System and any other information which is otherwise required to be released to a municipal bond information repository service.

SECTION 3.12. Procurement Requirements. The Project Sponsor shall comply with all procurement requirements of law and, to the extent compliance therewith does not contravene any provision of law applicable to the Project Sponsor, shall comply with the procurement requirements set forth in Appendix "C" hereto.

SECTION 3.13. Inspection and Information. On reasonable notice, the Authority or the Department shall have for its own convenience and benefit, and without obligation to the Project Sponsor or any third party, the right to audit the books and records of the Project Sponsor as they may pertain to or affect the System and this Agreement and to enter upon the premises to inspect the Project. The Project Sponsor shall cause its architects, engineers, contractors, and auditors to cooperate during such inspections including making available any documents, records, reports or other materials pertinent to the Project and the inspection. The Project Sponsor shall comply with all reasonable requests by the Authority or the Department for information pertaining to the Project Sponsor's compliance with this Agreement.

SECTION 3.14. Consent to Changes. Without consent of the Authority and Department, the Project Sponsor shall make no modifications or changes to the Project, or allow to continue any defect, which would damage or reduce the value of the Project or the System. The Project Sponsor shall not divide the Project into component projects in order or in effect, so as to defeat the provisions of this Agreement. The Project Sponsor covenants that it shall remain the owner of the Project and agrees that it will not convey, transfer, mortgage or otherwise encumber the Project, the System or the revenues derived therefrom during the term of this Agreement without the express prior written approval of the Authority.

SECTION 3.15. Additional Covenants. The Project Sponsor further covenants and agrees that:

3.15.1. Neither the System, nor any part thereof, nor any of the revenues derived from the System, have been or will be hypothecated, mortgaged, otherwise pledged or encumbered, save and except as disclosed and provided for herein or in the General Bond Ordinance;

3.15.2. It will permit no free service to be rendered, or use to be made of the services and facilities of the System and for the services and facilities of the System used by the Project Sponsor, the reasonable cost and value of such services and facilities shall be paid as such services accrue. The revenue so received from the Project Sponsor shall be deemed revenue derived from the operation of the System, and shall be accounted for in the same manner as other revenues of the System;

3.15.3. It will permit no customer to be connected to the System, or to receive any service afforded by the System, unless such customer shall become obligated to pay for the service rendered at the appropriate rate according to the rate schedule then in force;

3.15.4. It will maintain in effect rules and regulations requiring connection to the System by all persons within the jurisdiction of the Project Sponsor to whom the services of the System shall be available and shall impose availability fees and charges with respect to customers and properties to which or whom service is available but which or who have not connected into the System; and

3.15.5. So long as any amount due with respect to the Note is unpaid, it will perform all duties with reference to the System required by the Constitution and statutes of the State, and the Project Sponsor hereby irrevocably covenants, binds and obligates itself not to pledge, mortgage or otherwise encumber the System or any part thereof, or any revenues therefrom, except in the manner authorized herein or in the General Bond Ordinance, and it will not sell, lease or dispose of any portion of the System, necessary or useful except as expressly permitted in the General Bond Ordinance, and the Project Sponsor further obligates itself and covenants and agrees with the Authority to maintain in good condition and to operate said System, and to collect and charge such rates for the services and facilities of the System so that the income and revenues of the System will be sufficient at all times to meet the requirements of this Agreement.

ARTICLE IV
ESTABLISHMENT OF FUNDS AND
DISPOSITION OF REVENUES

SECTION 4.1. Establishment of Gross Revenue Fund, Debt Service Fund, Operation and Maintenance Fund, and Depreciation and Contingent Fund. Beginning on the first day of the month following the delivery of the Note, except with respect to the Debt Service Fund, and continuing until all amounts due with respect to the Note have been paid in full, the following funds shall be established and maintained:

4.1.1. The Project Sponsor shall establish a Gross Revenue Fund, defined as the Revenue Fund in the General Bond Ordinance, into which shall be placed all receipts, income and revenue that the Project Sponsor shall derive, directly or indirectly, from the ownership of the System. Moneys in the Gross Revenue Fund may be withdrawn on order of the Project Sponsor, but shall be made use of only in the manner and in the order of priority specified in Section 4.3 hereof.

4.1.2. Beginning in the month of the Payment Initiation Date, the Project Sponsor shall provide for the establishment of a Series 2022A Debt Service Fund (the "***Debt Service Fund***") as a means of providing for the payment of the principal and interest on the Note as the same shall fall due. Moneys in the Debt Service Fund shall be used solely to pay the principal of and interest on the Note, and for no other purpose. The Debt Service Fund shall be kept in the complete custody and control of the Trustee, as defined in Section 4.4 herein and as provided in the General Bond Ordinance. Withdrawals from the Debt Service Fund shall be made only by the Trustee who shall transmit to the Authority the sums required to pay principal and interest on the Note.

4.1.3. The Project Sponsor shall establish an Operation and Maintenance Fund in order to provide for the payment of all expenses incurred in connection with the administration and operation of the System, and such expenses as may be reasonably necessary to preserve the System in good repair and working order.

4.1.4. The Project Sponsor shall establish a Depreciation and Contingent Fund, defined as the Capital Improvements Fund in the General Bond Ordinance. Moneys in this fund shall be used solely for the purpose of restoring or replacing depreciated or obsolete properties of the System, paying the cost of improvements, betterments and extensions to the System, other than those necessary to maintain the System in good repair and working order, and for the payment of extraordinary maintenance and repairs, provided, however, if necessary, moneys in the Depreciation and Contingent Fund may be used to fund any deficiency in a Debt Service Fund or Debt Service Reserve Fund, as such terms are defined in the General Bond Ordinance, and used for any of the purposes for which such funds were established.

4.1.5. In the event the Project Sponsor shall have established funds analogous to, or serving the purpose of, the funds required to be established by this Article IV, such funds may be continued and employed for the purposes of this Agreement, and the Project Sponsor shall not be required to establish duplicate funds.

SECTION 4.2. Establishment and Funding of Debt Service Reserve Fund.

4.2.1. Based on the Project Sponsor's receipt of a long-term underlying rating on the System and/or any Parity Debt in at least the "A" category from S&P or Moody's respectively, and from each, if both S&P and Moody's issued ratings, and the submission of such with its Loan application to the Authority, the Debt Service Reserve Fund requirement with respect to the Note (the "**Reserve Requirement**") shall initially equal zero and shall continue to be zero subject to provisions of the following Section 4.2.2. At such time as the Reserve Requirement is greater than zero as provided in Section 4.2.2, the Project Sponsor shall fund a Series 2022A Debt Service Reserve Fund (the "**Debt Service Reserve Fund**") to provide a reserve for payment of principal of and interest on the Note.

4.2.2. (a) The Reserve Requirement shall continue to be zero if the Project Sponsor fully complies with all requirements of Section 3.6 herein for submitting S&P/Moody's ratings/affirmations/credit reports and for immediately providing any other rating agency actions related to the System and/or any Parity Debt, and all such ratings are maintained in at least the "A" category.

(b) If there is no longer any current rating or if either the S&P or Moody's rating is downgraded below the "A" category, the Reserve Requirement shall immediately increase to the maximum annual amount due on the Note, and the Project Sponsor shall meet the new requirement within one year through twelve (12) equal monthly deposits, beginning in the month following any such downgrade or loss of the rating for the System and/or any Parity Debt.

(c) In the event the Reserve Requirement is ever increased as provided in Section 4.2.2(b) above due to a ratings downgrade or loss and is subsequently upgraded to the level established in Section 4.2.2 (a), then the Reserve Requirement shall revert to zero and any excess money in the Debt Service Reserve Fund shall be applied as provided in Section 4.4.3 hereof.

4.2.3. The Debt Service Reserve Fund is intended to insure the timely payment of the principal of and interest on the Note. Money in the Debt Service Reserve Fund shall be used only to prevent a default in the payment of the Note, by reason of the fact that money in the Debt Service Fund is insufficient for such purposes.

4.2.4. Prior to the delivery of this Agreement to the Authority, the Project Sponsor shall deposit, or cause to be deposited, in the Debt Service Reserve Fund, if required to be funded pursuant to Section 4.2.1, funds in an amount, or investments permitted by Section 4.4.3 having a value, equal to the Reserve Requirement. In the event that the Reserve Requirement shall increase due to an increase in the Loan Amount pursuant to Section 1.4.2(c), the Project Sponsor shall immediately deposit, or cause to be

deposited, in the Debt Service Reserve Fund, if required to be funded pursuant to Section 4.2.2, funds in an amount equal to such increase in the Reserve Requirement.

SECTION 4.3. Disposition of Revenues. All revenues derived from the operation of the System shall be deposited in the Gross Revenue Fund. Beginning in the month following the delivery of this Agreement with respect to payments pursuant to Sections 4.3.1 and 4.3.3 to 4.3.7, inclusive, and beginning in the month of the Payment Initiation Date with respect to payments pursuant to Section 4.3.2, withdrawals from the Gross Revenue Fund shall be made in the following order of priority:

4.3.1. There shall be deposited into the Operation and Maintenance Fund that sum which has been currently determined by the Project Sponsor to be the cost of operating and maintaining the System for the next ensuing month.

4.3.2. The monthly fraction of the next payment of principal and interest to become due on the Note on the next succeeding payment date shall be deposited in the Debt Service Fund not later than the fifth (5th) Business Day (defined in the General Bond Ordinance) preceding the end of the month. At such times as required by, and in accordance with provisions of, Section 6.7 of the General Bond Ordinance and any Supplemental Ordinance (defined in the General Bond Ordinance), the Project Sponsor shall deposit (a) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority from the South Carolina Drinking Water Revolving Loan Fund (the "**Drinking Water Fund**") relating to loan number 3-033-08-0820002-03 (the "**2008B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2008B SRF Note; (b) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bonds, Series 2013 (the "**2013 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2013 Revenue Bonds; (c) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Revenue Bonds, Series 2014 (the "**2014 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2014 Revenue Bonds; (d) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bonds, Series 2019 (the "**2019 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2019 Revenue Bonds; (e) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X3-085-19-0820002-08 from the Drinking Water Fund (the "**2020A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020A SRF Note; (f) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-216-19-496-24 from the Fund (the "**2020B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020B SRF Note; (g) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-222-19-496-20 from the Fund (the "**2020C SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020C SRF Note; (h) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-223-19-496-25 from

the Fund (the "**2020D SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020D SRF Note; (i) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-229-20-496-22 from the Fund (the "**2020E SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020E SRF Note; (j) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bond, Taxable Series 2020F (the "**2020F Revenue Bond**"), the amount required for the next payment of principal and interest to become due on the 2020F Revenue Bond; (k) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-215-20-496-23 from the Fund (the "**2020G SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020G SRF Note; (l) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-234-20-496-19 from the Fund (the "**2020H SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020H SRF Note; (m) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-243-21-496-26 from the Fund (the "**2021A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2021A SRF Note; (n) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X3-092-21-0820002-09 from the Drinking Water Fund (the "**2021B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2021B SRF Note; (o) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-252-22-496-29 from the Fund (the "**2022B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2022B SRF Note; (p) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-253-22-496-28 from the Fund (the "**2022C SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2022C SRF Note; and (q) into a fund or funds for the payment of amounts due with respect to any obligations of the Project Sponsor (the "**Obligations**") secured by a pledge of revenues on a parity with the pledge securing the Note, the 2008B SRF Note, the 2013 Revenue Bonds, the 2014 Revenue Bonds, the 2019 Revenue Bonds, the 2020A SRF Note, the 2020B SRF Note, the 2020C SRF Note, the 2020D SRF Note, the 2020E SRF Note, the 2020F Revenue Bond, the 2020G SRF Note, the 2020H SRF Note, the 2021A SRF Note, and the 2021B SRF Note, the 2022B SRF Note, and the 2022C SRF Note, the amount or amounts required for the next payment or payments due on any such Obligation or Obligations. The 2008B SRF Note, the 2013 Revenue Bonds, the 2014 Revenue Bonds, the 2019 Revenue Bonds, the 2020A SRF Note, the 2020B SRF Note, the 2020C SRF Note, the 2020D SRF Note, the 2020E SRF Note, the 2020F Revenue Bond, the 2020G SRF Note, the 2020H SRF Note, the 2021A SRF Note, the 2021B SRF Note, the 2022B SRF Note, the 2022C SRF Note, and the Obligations are hereinafter sometimes referred to as "**Parity Debt**". In the event amounts available for payments into the funds with respect to the Note and all Parity Debt are not sufficient to make all payments then required to be made, such available amounts shall be deposited into such funds on a pro rata basis.

4.3.3. (a) In the event any amounts shall be withdrawn from the Debt Service Reserve Fund in order to provide for payment of any amounts due with respect to the Note, there shall be deposited in the Debt Service Reserve Fund not less than one-twelfth (1/12) of the amount of any such withdrawal and such deposits with respect to any such withdrawal shall begin in the month following such withdrawal and shall continue in each month thereafter until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

(b) In the event the Reserve Requirement for the Debt Service Reserve Fund is increased pursuant to any provision of Section 4.2.2 herein, there shall be deposited in the Debt Service Reserve Fund not less than one-twelfth (1/12) of the amount necessary to fully meet the Reserve Requirement, and such deposits shall begin in the month following a ratings downgrade or loss and shall continue in each month thereafter until the amount on deposit in the Debt Service Reserve Fund shall equal such increased Reserve Requirement.

(c) If the value of the Debt Service Reserve Fund is ever less than the Reserve Requirement, other than as provided in (a) or (b) above, or as provided in Section 4.2.4 with respect to any increase in the Loan Amount, there shall be deposited in the Debt Service Reserve Fund not less than one-fourth (1/4) of an amount equal to the total Reserve Requirement deficiency, beginning in the month following such a determination. Such deposits shall continue to be made until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

(d) Nothing in this Section 4.3.3 (a), (b) or (c) shall preclude the Project Sponsor from fully funding the Reserve Requirement in a more timely fashion than so prescribed.

4.3.4. If, in any month, for any reason, the Project Sponsor shall fail to pay all or any part of the money it has herein agreed to pay into said Debt Service Fund or Debt Service Reserve Fund, the amount of any such deficiency shall be added to and shall become a part of the amount due and payable into said Debt Service Fund or Debt Service Reserve Fund in the next succeeding month.

4.3.5. Provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy of letter of credit as contemplated in Section 6.8 of the General Bond Ordinance.

4.3.6. Provision shall be made for the payment of any Junior Bonds, as defined in the General Bond Ordinance.

4.3.7. There shall be deposited from time to time into the Depreciation and Contingent Fund an amount determined by the Project Sponsor in the annual budget prepared for the System.

4.3.8. Any revenues remaining after the foregoing deposits have been made shall be disposed of by the Project Sponsor as it may determine to be for any lawful purposes of the System.

SECTION 4.4. Concerning the Debt Service Fund and the Debt Service Reserve Fund. The Debt Service Fund created pursuant to Section 4.1.2 hereof and the Debt Service Reserve Fund created

pursuant to Section 4.2 hereof, shall be established with a bank whose deposits are insured by the Federal Deposit Insurance Corporation (the "*Trustee*") chosen by the Project Sponsor with the written approval of the Authority. The Debt Service Fund and the Debt Service Reserve Fund, if required to be funded, shall be held and administered by the Trustee in accordance with the following provisions of this Section 4.4. The Trustee shall acknowledge and accept its duties and responsibilities with respect to the Debt Service Fund and the Debt Service Reserve Fund, if funded, in one or more written instruments delivered to the Authority with this Agreement.

4.4.1. The Trustee shall notify the Authority in writing of the date of the initial amount deposited into the Debt Service Fund and the initial amount deposited into the Debt Service Reserve Fund, if required to be funded. If the Project Sponsor fails to deposit the amount required by this Agreement in either fund at the time required for such deposit, the Trustee, no later than the fifth day after the date on which such deposit is to be made, shall provide written notification to the Project Sponsor, with a copy to the Authority, of the amount required for deposit into the Debt Service Fund or the Debt Service Reserve Fund pursuant to the provisions of this Agreement. If the Reserve Requirement is greater than zero, the Trustee shall also verify balances in the Debt Service Reserve Fund, as requested by the Authority, but no less often than semiannually during any period of monthly deposits and no less often than annually when the full Reserve Requirement is met and maintained.

4.4.2. From sums deposited in the Debt Service Fund by the Project Sponsor, the Trustee shall transmit to the Authority an electronic funds transfer or a check made payable to "Office of Local Government - SRF" in the amount, and at the times, required by the Agreement and Note. If insufficient sums exist in the Debt Service Fund for any payment then due and the Reserve Requirement is zero, the Trustee shall immediately notify the Project Sponsor of the amount to be transmitted to the Trustee for the payment then due. If insufficient sums exist in the Debt Service Fund for any payment then due and the Reserve Requirement is greater than zero, the Trustee shall transfer the amount needed for payment from the Debt Service Reserve Fund and the Trustee shall notify the Project Sponsor of the amounts required to be deposited in the Debt Service Reserve Fund in order to replenish such a withdrawal and have on deposit therein the amount required by this Agreement. A copy of any such notice shall be provided to the Authority by the Trustee.

4.4.3. Pending disbursement pursuant to this Section 4.4, any money in the Debt Service Reserve Fund shall be invested and reinvested in Permitted Investments, as defined in the General Bond Ordinance. Subject to the remaining provisions of this Section 4.4.3, the earnings from such investments shall be added to and become a part of the Debt Service Reserve Fund. Whenever, and as of any date of calculation, the value of the securities and money in the Debt Service Reserve Fund shall exceed the Reserve Requirement, such excess shall, at the direction of the Project Sponsor, either be used to effect partial prepayment of the Note, or shall be removed from the Debt Service Reserve Fund and transferred into the Debt Service Fund; provided, if such excess is solely as a result of a reduction in the required level of the Reserve Requirement in accordance with Section 4.2.2, which excess shall be evidenced to

the Trustee in writing by the Authority, the Trustee shall pay over such excess in the Debt Service Reserve Fund to the Project Sponsor.

4.4.4. Upon payment in full of all amounts due with respect to the Note, which payment shall be evidenced to the Trustee in writing by the Authority, the Trustee shall pay over all amounts remaining in the Debt Service Fund and the Debt Service Reserve Fund, if funded, to the Project Sponsor upon the receipt of written directions from the Project Sponsor and the Trustee shall thereafter have no further responsibilities under this Agreement.

ARTICLE V
EVENTS OF DEFAULT

SECTION 5.1. Events of Default. The following occurrences shall constitute Events of Default hereunder:

(A) The Project Sponsor fails to comply with any of the covenants, terms and conditions made in this Agreement;

(B) The Project Sponsor fails to pay any amount due on the Note at the time and in the manner provided in the Note and this Agreement;

(C) Any representation, warranty or statement made by the Project Sponsor in this Agreement or in connection with it or the Loan shall be or become untrue, incorrect or misleading in any material respect;

(D) The Project Sponsor makes an assignment for benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions for appointment of a receiver or trustee for any substantial part of its property or is the subject of such a petition or commences or has commenced against it or its property (a) any similar proceeding under any bankruptcy law or other debtor-relief or similar law or (b) any foreclosure of any mortgage or similar implementation of a trust indenture or like instrument;

(E) Dissolution of the existence of the Project Sponsor; and

(F) The Authority reasonably suspects the occurrence of any Event of Default by the Project Sponsor, and following request by the Authority, the Project Sponsor fails to provide evidence reasonably satisfactory to the Authority that such default or Event of Default has not in fact occurred.

ARTICLE VI

REMEDIES

SECTION 6.1. Acceleration. Upon the occurrence of an Event of Default, the principal balance of the Note may be declared immediately due and payable in the manner prescribed by and in accordance with the terms of the General Bond Ordinance. In such event, there shall be due and payable on the Note an amount equal to the total principal amount disbursed on the Note, plus all interest accrued thereon and which will accrue thereon to the date of payment.

SECTION 6.2. Additional Remedies and Enforcement of Remedies. Upon the occurrence and continuance of any Event of Default, and subject to the limitations of the General Bond Ordinance, the Authority may proceed forthwith to protect and enforce its rights by such suits, actions or proceedings as the Authority shall deem expedient, including but not limited to:

(A) Requiring the Project Sponsor to carry out its duties and obligations under the terms of this Agreement and under the Act;

(B) Suit upon all or any part of the Note;

(C) Civil action to require the Project Sponsor to account as if it were the trustee of an express trust for the Authority;

(D) Civil action to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority; and

(E) Enforcement of any other right of the Authority including the right to make application for the appointment of a receiver to administer and operate the System.

SECTION 6.3. Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity or by statute (including the Act) on or after the date hereof.

SECTION 6.4. Termination of Proceedings. In case any proceeding taken by the Authority on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Authority, the Authority and the Project Sponsor shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Authority shall continue as if no such proceeding had been taken.

ARTICLE VII

SECURITY

SECTION 7.1. Pledge of Revenues. For the payment of the Note and as security for its other obligations under this Agreement, the Project Sponsor hereby grants to the Authority a pledge of, and lien upon, the Net Revenues of the System, as defined in the General Bond Ordinance. Such pledge and lien upon the Net Revenues shall be on a parity in all respects to the pledge and lien securing any Parity Debt (as defined in Section 4.3.2) and shall at all times and in all respects be and remain superior to any pledges made to secure any other obligations of the Project Sponsor payable from the Net Revenues of the System. Parity Debt may be issued only in compliance with Article III of the General Bond Ordinance or, if the General Bond Ordinance is no longer in effect, only with the prior written approval of the Authority.

SECTION 7.2. Additional Security. Upon any failure of the Project Sponsor to make any payment to the Authority in accordance with the provisions of the Note and this Agreement, the Authority shall, without further action, require the State Treasurer to pay to the Authority, subject to the provisions of the Act, the amount of state appropriations as the Project Sponsor may become entitled to until all delinquent payments under the Note have been paid.

ARTICLE VIII

SPECIAL REVOLVING FUND PROVISIONS

SECTION 8.1. Compliance. The Project Sponsor agrees that no date reflected in this Agreement, or in the project completion schedule, or extension of any such date, shall modify any compliance date established in a National Pollutant Discharge Elimination System permit (the "*NPDES Permit*"). It is the Project Sponsor's obligation to request any required modification of applicable permit terms or other enforceable requirements.

SECTION 8.2. Standard Conditions. The Project Sponsor acknowledges and agrees to comply with the following Federal and/or State requirements:

(A) The Project Sponsor shall provide access to the Project work whenever it is in preparation or progress and provide proper facilities for access and inspection. The Project Sponsor shall allow the Regional Administrator of the Environmental Protection Agency, the Comptroller General of the United States, the Department and the Authority, or any authorized representative, to have access to any books, documents, plans, reports, papers, and other records of the contractor which are pertinent to the Project for the purpose of making audit, examination, excerpts, copies, and transcriptions.

(B) Civil Rights and Labor Standards Requirements and use of Disadvantaged Business Enterprise (DBE) firms and Debarment or Suspension Prevention. (Executive Order 12549)

(1) Positive efforts shall be made by the Project Sponsor and its consultants to utilize DBE firms as sources of supplies, services and construction. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts and subcontracts to be performed utilizing Loan funds. Documentation of efforts made to utilize DBE firms shall be maintained by the Project Sponsor and its consulting firms and construction contractors and approved by the Department.

(2) The Project Sponsor shall not be presently debarred for noncompliance with Federal Law and shall not award contracts to any firm that is presently debarred for noncompliance with Federal Law where the contract amount equals or exceeds the federal small purchase procurement threshold.

(3) The Project Sponsor shall require all prime construction contractors to certify that subcontracts have not and will not be awarded to any firm that is presently debarred for noncompliance with Federal Law, where the subcontract amount is expected to equal or exceed the Federal small purchase procurement threshold.

(4) The Project Sponsor agrees to comply with all the requirements of 41 CFR Part 60-4 which implements Executive Order 11246 as amended (Equal Employment Opportunity).

(5) The Project Sponsor agrees to require all construction contractors and their subcontractors to comply with the Affirmative Action, Equal Opportunity Clause, Goals and Timetables, if the amount of the contract or subcontract is in excess of \$10,000.

(6) The Project Sponsor shall require all contractors on the Project to comply with the Department of Labor's Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-956) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).

(C) The Project Sponsor shall comply with all applicable provisions of the Uniform Relocation and Real Property Acquisition Act of 1970 (PL 92-646) in regard to acquisition of real property (including easements) for the Project and any resulting relocation of persons, business and farm operations.

(D) Pursuant to requirements of the Federal Water Pollution Control Act, as amended on June 10, 2014 (the "**Federal Act**"), the Project Sponsor shall comply with the Davis-Bacon Act and certify that all laborers and mechanics employed by prime contractors and subcontractors are paid wages at rates not less than those listed on the prevailing wage rate contained in the Project's contract documents and that all applicable provisions of the Davis-Bacon Act have been met. The Project Sponsor shall require the prime contractor to comply with the Davis-Bacon Act. (see Attachment #1)

(E) The Project shall comply with "American Iron and Steel" provisions, as set forth in the Federal Act and related American Iron and Steel implementation guidance, requiring that all of the iron and steel products used in the Project be produced in the United States unless a waiver is granted by the U.S. Environmental Protection Agency. The Project Sponsor shall require all bidders to comply with the American Iron and Steel provisions.

(F) Pursuant to requirements of Section 603(d)(1)(E) of the Federal Act, the Project Sponsor of a project involving the repair, replacement or expansion of a publicly owned treatment works shall develop and implement a fiscal sustainability plan ("**FSP**") or certify that it has developed and implemented such a plan. Sponsors with an existing and implemented FSP shall certify to that effect before the loan closing date. Sponsors developing an FSP must submit a certification that an FSP has been developed, and will be implemented, by the date of the final loan disbursement.

(G) Pursuant to "EPA Memorandum of June 3, 2015; SUBJECT: Guidelines for Enhancing Public Awareness of SRF Assistance Agreements", the Project Sponsor shall publish the information about the project and project funding (assistance made possible in whole or in part from EPA through the State). A document entitled, "Signage to Increase Public Awareness of SRF Assistance Agreements" is posted to the Department's SRF Guidance webpage that contains information on the options that may be used to comply with the signage requirement.

ARTICLE IX
GENERAL CONDITIONS

SECTION 9.1. No Waiver. No disbursements shall waive any provision of this Agreement or the Note or preclude the Authority from declaring a default if the Project Sponsor is unable to satisfy any such provisions or perform hereunder.

SECTION 9.2. Satisfactory Proceedings. All proceedings taken in connection with transactions provided for in this Agreement shall be satisfactory to the Authority.

SECTION 9.3. Evidence. Any condition of this Agreement which requires a submission of evidence of the existence or nonexistence of facts shall imply as a condition the existence or nonexistence, as the case may be, of such fact or facts, and the Authority shall, at all times, be free independently to establish to its satisfaction and in its absolute discretion such existence or nonexistence.

SECTION 9.4. No Beneficiaries. All conditions of the obligations of the Authority to make disbursements are imposed solely and exclusively for its benefit, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or to assume that the Authority will refuse to make disbursements in the absence of strict compliance. No person shall be deemed the beneficiary of any such conditions or any other provisions of this Agreement.

SECTION 9.5. Review and Inspection of Work. Any audit or review of plans and specifications and any inspection of the work shall be for the convenience of the Authority and Department only in order to determine that they are within the approved scope of the Project. No such review and inspection, approvals and disapprovals shall be an undertaking by the Authority or Department of responsibility for design or construction.

SECTION 9.6. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail to the other party hereto, with instruction to show to whom delivered and return receipt requested addressed as follows:

If to the Project Sponsor:

Berkeley County
c/o Berkeley County Water and Sanitation
212 Oakley Plantation Drive
Moncks Corner, South Carolina 29461

Attention: Director

If to the Authority:

South Carolina Water Quality Revolving Fund
Authority
c/o Office of Local Government - SRF
South Carolina Rural Infrastructure Authority
1201 Main Street
Suite 1600
Columbia, South Carolina 29201

Attention: Patricia A. Comp

Each party may notify the other by the same process of any change of such address. Loan requests and disbursements and other routine loan administration may be conducted by regular mail.

SECTION 9.7. No Joint Venture, Etc. The Authority is not a partner, joint venturer, or in any other way a party to the Project or the operation of the System of the Project Sponsor. The Authority shall not be in any way liable or responsible by reason of the provisions hereof, to the Project Sponsor or any third party, for the payment of any claims in connection therewith.

SECTION 9.8. Assignment. This Agreement may not be assigned by the Project Sponsor without the prior written consent of the Authority. The Authority may assign the Note and this Agreement, and any such holder and assignee of same shall succeed to and be possessed of the same rights as the Authority under both to the extent so transferred or assigned.

SECTION 9.9. Entire Agreement. This Agreement and the Note contain the entire terms of this Agreement and transaction. They may not be changed, waived or discharged in whole or in part, except by written instrument executed by the party sought to be charged therewith.

SECTION 9.10. Continuity. This Agreement shall be binding upon the legal representatives, successors and assigns of each party and shall inure to their benefit; provided, however, that nothing herein said shall be deemed to limit any restriction on assignment impressed upon the Project Sponsor.

SECTION 9.11. South Carolina Contract. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 9.12. Limitations on Actions by Project Sponsor. No action shall be commenced by the Project Sponsor against the Authority for any claim under this Agreement unless notice thereof specifically setting forth the claim shall have been given to the Authority within thirty (30) days after the occurrence of the event or omission which the Project Sponsor alleges gave rise to such claim. Failure to give such notice shall constitute a waiver of any such claim. Liability of the Authority to the Project Sponsor for any breach of the terms of this Agreement shall not exceed a sum equal to the amount which the Authority shall have failed to disburse in consequence of a breach by the Authority of its obligations under this Agreement. Upon the making of any such payment by the Authority to the Project Sponsor, it shall be treated as a disbursement under this Agreement.

SECTION 9.13. Counterparts. This Agreement is executed in two counterparts, which are separately numbered, but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

SECTION 9.14. Appendices. The appendices attached to this Agreement are a part of it.

SECTION 9.15. Special Conditions. The Statements of Special Conditions in Appendix "D" shall govern the matters they address.

SECTION 9.16. Time of Essence. Time is of the essence of this Agreement.

SECTION 9.17. Severability. If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, any remaining provisions of this Agreement shall survive and be applied, and together with the invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

IN WITNESS WHEREOF, the Project Sponsor and the Authority have caused these presents to be signed, sealed and delivered all as of the date hereof.

BERKELEY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____

Name: _____

Title: _____

Attest:

Its: _____

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

By: _____

Bonnie Ammons, Director,
Office of Local Government,
South Carolina Rural Infrastructure Authority

SCOPE OF WORK

Project Sponsor: Berkeley County
Project Name: Red Bank Road Gravity Line Replacement
Loan Number: 1-251-22-496-31

Installation of approximately 88 linear feet (LF) of 36-inch polyvinyl (PVC) gravity sewer pipe, 4,418 LF of 42-inch high density polyethylene (HDPE) gravity sewer pipe, 632 LF of 30-inch PVC sewer force main, and 130 LF of 4-inch PVC sewer force main, along with 14 new manholes, one air release valve, 6 tie-ins of existing 8-inch sanitary sewer laterals and one tie-in of 4-inch sanitary force main; pipe abandonment; sedimentation and erosion control; flowable fill and pumpable fill; and all associated appurtenances located along Red Bank Road (SC-8-29) in the City of Goose Creek.

PROJECT BUDGET

Project Sponsor: Berkeley County
Project Name: Red Bank Road Gravity Line Replacement
Loan Number: 1-251-22-496-31

<u>ITEM</u>	<u>CWSRF LOAN</u>	<u>TOTAL ELIGIBLE COSTS</u>
Planning and Design Engineering	\$ 300,600	\$ 300,600
Construction	8,360,302	8,360,302
Construction Contingency	836,030	836,030
Construction Oversight/Engineering	<u>230,450</u>	<u>230,450</u>
Total	\$9,727,382	\$9,727,382

PROJECT SCHEDULE

Project Sponsor: Berkeley County
Project Name: Red Bank Road Gravity Line Replacement
Loan Number: 1-251-22-496-31

<u>ACTION</u>	<u>DATE</u>
Bid Opening	June 24, 2021
Contract Execution	November 30, 2021
Notice to Proceed	March 15, 2022
Start of Construction	March 15, 2022
DHEC Permit to Operate	October 10, 2022

REPAYMENT SCHEDULE

Project Sponsor: Berkeley County

Project Name: Red Bank Road Gravity Line Replacement

Loan Number: 1-251-22-496-31

Loan Amount: \$9,727,382

Payment Initiation Date: November 1, 2022

Interest Rate: 1.50% per annum

First Payment Due Date: February 1, 2023

- (1) Prior to the Payment Initiation Date, amounts disbursed shall bear interest from the date of the Authority's check for each disbursement and accrued interest only shall be due on the Payment Initiation Date.
- (2) Repayment of the principal and interest shall be due in 80 installments, commencing on the first day of the third month after the month of the Payment Initiation Date and continuing quarterly on the first day of each third month thereafter.
- (3) Repayment shall be in 79 equal installments in the amount of One Hundred Forty Thousand Nine Hundred Sixty-Seven and 84/100 Dollars (\$140,967.84) each, and one final installment in the amount of One Hundred Forty Thousand Nine Hundred Sixty-Seven and 66/100 Dollars (\$140,967.66).

LOAN CLOSING FEE

Project Sponsor: Berkeley County

Project Name: Red Bank Road Gravity Line Replacement

Loan Number: 1-251-22-496-31

Loan Amount: \$9,727,382

.35% Loan Closing Fee: \$34,046

The Loan Closing Fee identified above shall be due and paid at the time of delivery of the Loan Agreement, Note and other required Loan closing documents. Such fee is not reimbursable through the Loan.

Project Sponsor: Berkeley County

Loan Number: 1-251-22-496-31

PROCUREMENT REQUIREMENTS

- I. Prior to construction contract award, the Project Sponsor shall:
 - A. Advertise the Project for a minimum of thirty (30) days in advance of bid opening using at least one of the following methods:
 - 1. Local newspapers of general circulation.
 - 2. MBE/WBE publications.
 - 3. Statewide or regional newspapers of general circulation.
 - 4. The South Carolina Business Opportunities (SCBO).
 - B. Modify bid documents only by written addenda, which require prior Department approval.
 - C. Hold a public bid opening.
 - D. Utilize competitive sealed construction bids.
 - E. Require at least a five percent (5%) bid bond or certified check.
 - F. Require one hundred percent (100%) payment and performance bonds.
 - G. Require the contractor, during construction, to provide fire, extended coverage, vandalism and malicious mischief insurance equal to the actual value of the insured property.
 - H. Follow, and require the prime contractor to follow, Davis-Bacon and Related Acts provisions.
 - I. Follow, and require the prime contractor to follow, American Iron and Steel Provisions.
 - J. Follow, and require the prime contractor to follow, the "Good Faith Efforts" to aid in meeting Disadvantaged Business Enterprise (DBE) requirements.
 - K. Create and maintain a list of all firms that bid or quote on prime contracts and/or subcontracts (Bidders List) including both disadvantaged business enterprises and non-disadvantaged business enterprises. The Bidders List must be kept until Project completion.
 - L. If other funding sources are included which have stricter bidding requirements or if applicable Federal, State or local laws or ordinances have stricter requirements, these stricter requirements govern.
 - M. After bid opening, provide the Department with the following:
 - 1. Project Construction Summary Form (DHEC Form #3589).
 - 2. A certified copy of the advertisement with date(s) of publication.
 - 3. A copy of the Project Sponsor's Bidders List.
 - 4. Detailed bid tabulation certified by Project Sponsor's engineer.
 - 5. Proposal of successful bidder(s).
 - 6. Bid Bond with associated Power of Attorney.
 - 7. Engineer's award recommendation of low bidder(s) to Project Sponsor. If the award is recommended to other than the low bidder(s), provide justification for decision.
 - 8. Certified copy of Project Sponsor's tentative award resolution listing the proposed contractor(s) and contract amount(s).
 - 9. Davis-Bacon wage rate(s) used in bidding the project.

10. A copy of the proposed prime contractor's Bidders American Iron and Steel Certification (DHEC Form 2556).
 11. Evidence that the low bidder(s) complied with the Disadvantaged Business Enterprise (DBE) requirements listed in the bid documents. DBE approval must precede bid package approval.
 12. A copy of the prime contractor's Bidders List.
 13. Prime Contractor's Subagreement Certification (DHEC Form #3591).
 14. DBE Program Subcontractor Utilization Form (EPA Form 6100-4) from the prime contractor(s).
 15. DBE Subcontractor Performance Form (EPA Form 6100-3) from all DBE firms.
 16. EEO Documentation Form (DHEC Form #2323), with all required attachments, including Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity (DHEC Form #3592) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$10,000.
 17. Certification Regarding Debarment, Suspension and Other Responsibility Matters (DHEC Form #3590) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$25,000.
 18. Project Inspection Designation Form (DHEC Form #2324), with all required attachments, indicating the selected method of providing continuous inspection during construction.
- N. Receive Department approval to award the construction contract(s).
- II. Subsequent to construction contract award, the Project Sponsor shall submit the following to the Department as proof of compliance with procurement requirements:
- A. Executed contract documents.
 - B. Notice to Proceed.
 - C. Semi-annual MBE/WBE Utilization Reports (EPA Form 5700-52A).
 - D. Monthly Construction Inspection Reports.
 - E. Davis-Bacon Certification (DHEC Form #2557) with each draw request.
 - F. American Iron and Steel Certification (DHEC Form #0962) with each draw request.
 - G. Evidence of compliance with the EPA "Signage Requirement" (i.e. picture of or printed sample).
- III. Subsequent to contract award, the Project Sponsor shall submit the following, for Department review and approval, on any proposed change orders:
- A. Need for the change.
 - B. Clear description of the change.
 - C. Cost and pricing data.
 - D. Documentation of negotiation.
 - E. For claims, information showing the claim did not result from the Project Sponsor's or contractor's mismanagement.

SPECIAL CONDITIONS

Project Sponsor: Berkeley County

Project Name: Red Bank Road Gravity Line Replacement

Loan Number: 1-251-22-496-31

None.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

**PROMISSORY NOTE TO SOUTH CAROLINA
WATER QUALITY REVOLVING FUND AUTHORITY FOR
SOUTH CAROLINA WATER POLLUTION CONTROL
REVOLVING FUND LOAN**

BERKELEY COUNTY, SOUTH CAROLINA
COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2022A

FOR VALUE RECEIVED, Berkeley County (the "*Project Sponsor*") promises to pay to the order of the South Carolina Water Quality Revolving Fund Authority (the "*Authority*") the principal sum owing from time to time by the Project Sponsor pursuant to, and in accordance with, the Loan Agreement (the "*Agreement*"), the terms of which are incorporated herein by reference, between the Project Sponsor and the Authority relating to Loan Number 1-251-22-496-31, Red Bank Road Gravity Line Replacement, principal sum, rate of interest and amount and due date of payments thereunder being set forth in Appendix "B" to the Agreement. The records of the Authority with respect to the date and amount of payments on this Note shall be conclusive as to such matters. Interest shall be computed on a three hundred sixty-five-day year basis and compounded annually; the principal of this Note and any installment thereof shall bear interest until paid in full.

Time is of the essence of this Note.

This Note has been issued under the provisions of Title 6, Chapter 17, Code of Laws of South Carolina, 1976, as amended, and does not constitute an indebtedness of the Project Sponsor within the meaning of any state constitutional provision (other than Article X, Section 14, paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation. No recourse shall be had for the payment of this Note or the interest thereon against the general fund of the Project Sponsor and neither the credit nor the taxing power of the Project Sponsor shall be deemed to be pledged thereto. The full faith, credit and taxing powers of the Project Sponsor are not pledged for the payment of the principal and interest on this Note.

The Project Sponsor may prepay the outstanding principal balance of this Note in whole or in part, together with any accrued interest thereon, at any time without penalty or premium; all such prepayments shall be applied against principal installments due on this Note in the inverse order of the

maturity dates thereof.

All payments of principal and interest shall be made in money of the United States at the office of the Authority in Columbia, South Carolina, or at such place as the Authority may designate in writing, and shall be made in funds immediately available in Columbia, South Carolina.

The Project Sponsor agrees to pay at the time any such late payment hereunder is made a late charge of three percent (3%) of any payment not made on or before the tenth day of the month in which such payment is due. Interest which accrues after maturity of this Note or after its earlier acceleration shall be due and payable upon demand.

Payments shall be applied first to any late charge, then to interest, then to principal. There is no intent for any payment to exceed any legal limit on interest, if any such legal limit applies. If an excess sum occurs, it shall be applied to principal unless the Project Sponsor elects its return in writing.

If the Project Sponsor fails to make any payment of principal or interest within thirty (30) days of the date when due, or if the Project Sponsor defaults in the performance of any of the terms, covenants or conditions of any agreement or other documents concerning this Note, including without limitation the Agreement, the principal balance of this Note and all unpaid interest accrued on it may be declared immediately due and payable in accordance with the terms of the General Bond Ordinance.

The failure of the Project Sponsor to make any payment of principal or interest or both shall not constitute a default until thirty (30) days following the due date but the Authority shall have no obligation to give the Project Sponsor notice of any failure to make such payments. Upon any such payment default, the Authority shall immediately avail itself of the provisions of Section 7.2 of the Agreement relating to additional security for payment of amounts due on this Note.

The Project Sponsor waives presentment for payment, demand, protest, and notice of non-payment. Neither a failure to accelerate for default nor acceptance of a past due installment shall be a novation of this Note or constitute a waiver of the right to insist upon strict compliance with it and any related agreements and documents.

The Project Sponsor shall pay all costs of collection, including but not limited to reasonable attorney's fees if the Authority endeavors to collect this Note in any manner through an attorney at law. The rights and remedies of the Authority provided in this Note are cumulative and not exclusive of any other rights and remedies afforded the Authority by law or by any other document.

This Note shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the Project Sponsor has caused this Note to be executed under its seal and to be registered in the name of the South Carolina Water Quality Revolving Fund Authority as of this _____ day of _____, 2022.

BERKELEY COUNTY, SOUTH CAROLINA

[SEAL]

By: _____

Typed Name: _____

Title: _____

Attest:

Its _____

CERTIFICATE OF AUTHENTICATION

This Promissory Note is the obligation issued pursuant to the Project Sponsor's General Bond Ordinance enacted on March 10, 2003, as authorized by the Project Sponsor's Eighteenth Supplemental Ordinance enacted on _____, 2022.

REGIONS BANK, REGISTRAR

By: _____, Authorized Officer

Typed Name: _____

**Davis-Bacon Wage Rates Required Under Federal Clean Water Act
For Subrecipients (Project Sponsors)**

1. Applicability of the Davis-Bacon (DB) Prevailing Wage Requirements

Under the Federal Clean Water Act, as amended on June 10, 2014, DB prevailing wage requirements were permanently applied to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$2,000. Available from the Department.

4. Contract Provisions for Contracts in Excess of \$100,000

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$100,000. Available from the Department.

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

EXHIBIT B

FORM OF LOAN AGREEMENT AND NOTE

PUMP STATION #101 IMPROVEMENTS (No. X1-252-22-496-29)

LOAN AGREEMENT

between

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

and

BERKELEY COUNTY

Dated

_____, 2022

relating to

Pump Station 001 Force Main Replacement – Phase III

South Carolina Water Pollution Control Revolving Fund

Loan Number: X1-252-22-496-29

No. ____ of Two Executed Original Counterparts

Draft 6/20/22

TABLE OF CONTENTS

Page

ARTICLE I

LOAN

Section 1.1	Loan Made and Accepted; Repayment	3
Section 1.2	Purpose Limited to Project	3
Section 1.3	Disbursements	3
Section 1.4	Changes in Payment Initiation Date, the Loan Amount and Repayment Schedule	4
Section 1.5	Deadline for Borrowing and Termination of Promise to Lend	6
Section 1.6	Conditions Precedent to Disbursement of Loan Proceeds	6

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1	Status of Project Sponsor	7
Section 2.2	Financial Statements	7
Section 2.3	Pending Litigation	7
Section 2.4	No Conflicting Transactions	7
Section 2.5	Ownership of Premises	7
Section 2.6	Other Project Arrangements	8
Section 2.7	No Construction Default	8
Section 2.8	No Default	8
Section 2.9	Effect of Draw Request	8

ARTICLE III

COVENANTS

Section 3.1	Contract Award, Construction Inspection and Completion	9
Section 3.2	Disbursements	9
Section 3.3	Release of Responsibility	9
Section 3.4	Other Agreements	9
Section 3.5	Accounting and Auditing	10
Section 3.6	Ratings from Rating Agencies	10
Section 3.7	Insurance	10
Section 3.8	Compliance with Governmental Authority	11
Section 3.9	Adequate Rates	11
Section 3.10	Review of Rates	11
Section 3.11	Disclosure of Events to Authority	12
Section 3.12	Procurement Requirements	12

Section 3.13	Inspection and Information	12
Section 3.14	Consent to Changes	12
Section 3.15	Additional Covenants	12

ARTICLE IV

ESTABLISHMENT OF FUNDS AND DISPOSITION OF REVENUES

Section 4.1	Establishment of Gross Revenue Fund, Debt Service Fund, Operation and Maintenance Fund, and Depreciation and Contingent Fund	14
Section 4.2	Establishment and Funding of Debt Service Reserve Fund	15
Section 4.3	Disposition of Revenues	16
Section 4.4	Concerning the Debt Service Fund and the Debt Service Reserve Fund	18

ARTICLE V

EVENTS OF DEFAULT

Section 5.1	Events of Default	20
-------------	-------------------	----

ARTICLE VI

REMEDIES

Section 6.1	Acceleration	21
Section 6.2	Additional Remedies and Enforcement of Remedies	21
Section 6.3	Remedies Not Exclusive	21
Section 6.4	Termination of Proceedings	21

ARTICLE VII

SECURITY

Section 7.1	Pledge of Revenues	22
Section 7.2	Additional Security	22

ARTICLE VIII

SPECIAL REVOLVING FUND PROVISIONS

Section 8.1	Compliance	23
Section 8.2	Standard Conditions	23

ARTICLE IX

GENERAL CONDITIONS

Section 9.1	No Waiver	24
Section 9.2	Satisfactory Proceedings	24
Section 9.3	Evidence	24
Section 9.4	No Beneficiaries	24
Section 9.5	Review and Inspection of Work	24
Section 9.6	Notices	24
Section 9.7	No Joint Venture, Etc.	25
Section 9.8	Assignment	25
Section 9.9	Entire Agreement	25
Section 9.10	Continuity	25
Section 9.11	South Carolina Contract	25
Section 9.12	Limitations on Actions by Project Sponsor	25
Section 9.13	Counterparts	25
Section 9.14	Appendices	25
Section 9.15	Special Conditions	25
Section 9.16	Time of Essence	25
Section 9.17	Severability	26
APPENDIX "A"	SCOPE OF WORK	A-1
	PROJECT BUDGET	A-2
	PROJECT SCHEDULE	A-3
APPENDIX "B"	REPAYMENT SCHEDULE	B-1
	LOAN CLOSING FEE	B-2
APPENDIX "C"	PROCUREMENT REQUIREMENTS	C-1
APPENDIX "D"	SPECIAL CONDITIONS	D-1
APPENDIX "E"	FORM OF THE PROMISSORY NOTE	E-1
ATTACHMENT #1	DAVIS-BACON WAGE RATES REQUIRED UNDER FEDERAL CLEAN WATER ACT	

LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of the ____ day of _____, 2022, between the SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, a public instrumentality of the State of South Carolina (the "**Authority**") and BERKELEY COUNTY, a political subdivision of the State of South Carolina (the "**Project Sponsor**").

WITNESSETH:

WHEREAS, the Authority is authorized by Title 48, Chapter 5, Code of Laws of South Carolina, 1976, as amended (the "**Act**") to administer the South Carolina Water Pollution Control Revolving Fund (the "**Fund**") for the purpose of assisting Project Sponsors (as defined in the Act) in the construction of, among other things, publicly owned treatment works as defined in the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, as amended; and

WHEREAS, the South Carolina Department of Health and Environmental Control (the "**Department**") is authorized by the Act to, among other things, develop a priority system and prepare an annual plan to insure compliance with the Federal Water Pollution Control Act; and

WHEREAS, the Authority is authorized by the Act to enter into Loan Agreements (as defined in the Act) with Project Sponsors in order to finance Projects (as defined in the Act); and

WHEREAS, the Act authorizes Project Sponsors, among other things, to undertake Projects, to receive assistance in the financing of such Projects by way of loans made from the Fund and to enter into loan agreements providing for the repayment of amounts received from the Fund, together with interest thereon; and

WHEREAS, the Project Sponsor proposes to acquire and construct the facilities described in Appendix "A" hereto (the "**Project**"), which Project will be part of the Project Sponsor's combined utility system comprised of water, sewer and solid waste components (the "**System**"); and

WHEREAS, the Project Sponsor proposes to finance the Project with a loan made from the Fund, such loan to be pursuant to, and on a parity with debt previously issued under, an ordinance enacted by the Project Sponsor on March 10, 2003 entitled "GENERAL BOND ORDINANCE NO. 03-03-12 AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF WATER AND SEWER SYSTEM REVENUE BONDS OF BERKELEY COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; LIMITING THE PAYMENT OF THE BONDS SOLELY TO THE NET REVENUES DERIVED FROM THE OPERATION OF THE SYSTEM AND PLEDGING THE REVENUES TO SUCH PAYMENT; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" as amended on August 23, 2010 and on March 25, 2013 (the "**General Bond Ordinance**");

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

ARTICLE I

LOAN

SECTION 1.1. Loan Made and Accepted; Repayment. In consideration of the mutual promises of this Agreement, and upon and subject to its terms and conditions, the Authority agrees to make, and the Project Sponsor agrees to accept, the loan herein provided for (the "**Loan**"). The obligation of the Project Sponsor to repay the Loan and interest thereon is evidenced by this Agreement and a promissory note (the "**Note**") registered in the name of the Authority. The amount of the Loan (the "**Loan Amount**"), the interest rate on the Loan and the repayment schedule with respect to the Loan (the "**Repayment Schedule**") shall be as set forth in Appendix "B" hereto, as may be changed or modified pursuant to Section 1.4 hereof; the terms and form of the Note are set out in Appendix "E". The Project Sponsor shall make payments with respect to the Loan at the times and in the amounts set forth in Appendix "B", as modified, on the due date of any such payment.

SECTION 1.2. Purpose Limited to Project. The Project Sponsor shall use the proceeds of the Loan only to pay the actual eligible costs of the Project. The Project is described in Appendix "A" and more specifically as approved in the Project files of the Department. Except to the extent otherwise approved in writing by the Authority, only the costs shown in the Project budget set forth in Appendix "A" shall be allowed and only in the amounts provided for each category. Costs of construction shall be allowed only for work called for in plans and specifications approved by the Department. Proceeds may not be used to pay for labor performed by employees of the Project Sponsor but may be used to pay for materials installed by them.

SECTION 1.3. Disbursements.

1.3.1. The Authority shall make and the Project Sponsor shall accept full or partial disbursements only against incurred, actual eligible costs up to the Loan Amount and by category as provided in this Agreement.

1.3.2. For purposes of making requests for disbursement and representing the Project Sponsor in all administrative matters pertaining to administration of this Agreement, the Project Sponsor shall designate a single officer or employee (the "**Sponsor Representative**") prior to the first disbursement request.

1.3.3. In those cases when the Project Sponsor has paid the incurred Project costs and is seeking reimbursement for payment of such costs theretofore paid by the Project Sponsor, any check for disbursement from the Fund for reimbursement to the Project Sponsor shall be drawn and mailed to the Project Sponsor. In those cases when the Project Sponsor is seeking funds with which to pay incurred Project costs, any check for disbursement from the Fund to pay such costs may, at the option of the Authority, be drawn to the Project Sponsor alone or jointly to the Project Sponsor and contractor engaged by the Project Sponsor for the Project. Such check will be mailed to the Project Sponsor.

1.3.4. Before any disbursement, the Project Sponsor shall execute any documents requested by the Authority reasonably necessary or convenient to the foregoing and shall have satisfied all conditions of Section 1.6 hereof.

1.3.5. Requests for disbursement may be made only after the costs for which the draw is requested have been incurred. The Project Sponsor may not request a disbursement until all construction contracts are signed. The first request for disbursement submitted by the Project Sponsor pursuant to this Agreement shall include an amount for incurred construction costs and all amounts requested by the Project Sponsor for payment or reimbursement of amounts set forth in any of the categories "Planning and Design Engineering", "Land Acquisition", and "Legal and Appraisal Fees" which appear in the Project Budget in Appendix "A" hereto. The Project Sponsor shall not request disbursement against retainage until retainage is paid and shall not request disbursement for change orders unless such change orders have been approved by the Department. Unless the Authority otherwise approves, when the Project budget indicates that the Loan shall bear only a portion of the eligible costs of the Project, or a portion of certain itemized costs, any draw shall not exceed the same proportion of such costs reported for disbursement.

1.3.6. Requests for disbursement shall be made on forms of the Department unless the Authority or Department otherwise directs, and shall be accompanied by such invoices and other proofs as the Authority and Department may reasonably require. The final disbursement shall not be released until the Department issues its approval to place the Project into operation (the "**Permit to Operate**"). No disbursement requests will be accepted more than one hundred eighty (180) days after the date of such Permit to Operate.

1.3.7. The Authority may require that each draw request shall be submitted to the Authority and Department at least twenty-one (21) days before the day disbursement is needed and may limit draw requests to one per month. The Authority will exert its best efforts to disburse funds in response to a draw request within twenty-one (21) days of receiving such request, but no assurance is given by the Authority that such schedule will be met and the Authority shall incur no liability to any Project Sponsor. Processing on shorter notice or faster schedule shall not amend this provision.

SECTION 1.4. Changes in Payment Initiation Date, the Loan Amount and Repayment Schedule.

1.4.1. The Loan Amount has been determined, in part, upon the basis of the projected cost of the Project as shown in Appendix "A". The Payment Initiation Date shown in Appendix "B" (the "**Payment Initiation Date**") is determined by a combination of factors, including, but not limited to the expected Project schedule shown in Appendix "A". Appendix "B" shows the Repayment Schedule anticipated by the parties on this basis and provides for repayment of the Loan, including interest thereon, in eighty (80) equal, or substantially equal, quarterly payments beginning on the first day of the third month after the month of the Payment Initiation Date. The Loan Amount, the Payment Initiation Date and the Repayment Schedule may be changed but only as provided in the following Section 1.4.2. The

Interest Rate is fixed for the term of the Loan and may not be changed from the rate originally established in Appendix "B" hereof.

1.4.2. (a) At the written request of the Project Sponsor, submitted to the Authority no later than sixty (60) days prior to the original Payment Initiation Date in Appendix "B", the Payment Initiation Date may be extended once by the Authority to any date not later than the earlier to occur of (i) six (6) months from the original Payment Initiation Date in Appendix "B", or (ii) thirty (30) months from the first day of the month following the date of this Agreement, or (iii) the first day of the month following the date of the Permit to Operate issued by the Department for the operation of the Project.

(b) In the event the Permit to Operate the Project is issued by the Department more than one (1) month prior to the Payment Initiation Date stated in Appendix "B", the Authority may require that either the Payment Initiation Date be accelerated to the first day of the month following the date of the Permit to Operate, or the term of the Loan be shortened by a minimum of three (3) months.

(c) The Project Sponsor may request that the Loan Amount be increased by including in principal on the Payment Initiation Date the interest which has accrued on amounts theretofore advanced from the Fund. Any such request shall be submitted in writing to the Authority by the Project Sponsor not less than thirty (30) days prior to the Payment Initiation Date.

(d) The Authority or the Project Sponsor may initiate a reduction to the Loan Amount at any time there is a determination that a lesser amount is required for completion of the Project.

(e) The initial Repayment Schedule with respect to the Loan set forth in Appendix "B" shall be modified to reflect (i) changes in the Loan Amount, (ii) extension or acceleration of the Payment Initiation Date, and (iii) any other modification thereto agreed to by the Authority and the Project Sponsor.

(f) Modification of the Repayment Schedule resulting from a change in the Loan Amount subsequent to the Payment Initiation Date shall be made such that:

(i) at the time of final disbursement pursuant to Section 1.3 the Authority shall determine the final Loan Amount;

(ii) a revised Repayment Schedule shall be calculated by the Authority based on the final Loan Amount, the interest rate set forth in Appendix "B" and payment in eighty (80) equal, or substantially equal, quarterly installments beginning on the first day of the third month after the month of the Payment Initiation Date; and

(iii) any difference between the amount theretofore paid by the Project Sponsor prior to the revision of the Repayment Schedule and the amount which would have been paid had the revised schedule been in effect from and after the Payment Initiation Date shall be credited against the next payment, or payments, due under the revised Repayment Schedule.

(g) For purposes of the Repayment Schedule, any amounts disbursed subsequent to the Payment Initiation Date shall be considered to have been advanced on the Payment Initiation Date.

1.4.3. Any change in the Loan Amount, extension or acceleration of the Payment Initiation Date or modification of the Repayment Schedule shall be documented administratively by notice under this Agreement and shall be reflected in the substitution of a revised Appendix "B" hereto reflecting any such change or modification. In connection with any such change or modification, the Authority may, but need not, impose new terms and conditions, including cancellation of the Note and execution of a new Note.

SECTION 1.5. Deadline for Borrowing and Termination of Promise to Lend. The Authority, in its sole discretion, may terminate its promise to lend all of, or any unadvanced portion of, the Loan Amount which has not been advanced if:

1.5.1. The Project Sponsor has not entered into all construction contracts applicable to the Project within six (6) months of the date of this Agreement; or

1.5.2. The Project Sponsor does not request disbursement of the unborrowed balance of the Loan Amount on or before the one hundred eightieth (180th) day following the date of the Permit to Operate issued by the Department for the Project; or

1.5.3. An Event of Default (as defined in Section 5.1 hereof) occurs (in which event the remedies for default likewise shall be available); or

1.5.4. A circumstance arises or becomes known which, in the Authority's sole discretion and opinion, (a) substantially impairs the ability of the Project Sponsor to complete the Project, to operate the Project or to repay the Loan, or (b) substantially impairs the merit of the Project.

SECTION 1.6. Conditions Precedent to Disbursement of Loan Proceeds. In addition to any other conditions herein provided, the Authority's obligation hereunder to make disbursements from the Fund for advances on the Loan shall be subject to satisfaction of the following conditions:

1.6.1. The Project Sponsor's representations and warranties shall remain true and correct;

1.6.2. No Event of Default shall have occurred under this Agreement or the Note;

1.6.3. The Project Sponsor has complied with the requirements of Sections 1.3, 1.4 and 1.5;
and

1.6.4. There shall be on deposit in any debt service reserve fund required by this Agreement the amount required at such time to be on deposit therein.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

The Project Sponsor represents and warrants to the Authority as follows:

SECTION 2.1. Status of Project Sponsor. The Project Sponsor is a political subdivision of the State of South Carolina (the "*State*"), authorized to acquire and construct the Project and to operate the Project and provide wastewater treatment/stormwater services.

SECTION 2.2. Financial Statements. The financial statements of the Project Sponsor delivered to the Authority are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles for units of government, consistently applied, and fairly present the respective financial condition of the subjects thereof as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected in the statements since their date and no additional borrowing has been made by the Project Sponsor since then other than borrowing specifically disclosed and approved by the Authority. All other information submitted by the Project Sponsor in support of its application for this Loan is true and correct as of the date of this Agreement, and no material adverse change with respect to the Project Sponsor has occurred.

SECTION 2.3. Pending Litigation. There are no actions, suits or proceedings, at law or in equity, in court or before any governmental or administrative agency, either pending or to the knowledge of the Project Sponsor reasonably to be considered threatened, which may impair the validity or enforceability of the Note or this Agreement or the Project Sponsor's ability to repay the Loan or to construct and operate the Project for revenue.

SECTION 2.4. No Conflicting Transactions. Consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any deed to secure debt, mortgage, deed of trust, indenture, security agreement, lease, bank loan or credit agreement, municipal charter, ordinances, contracts or other instruments to which the Project Sponsor is a party or by which it may be bound or affected.

SECTION 2.5. Ownership of Premises. The Project Sponsor owns in fee simple the real property which presently constitutes or which will constitute the main operating facilities of the Project and of the System as a whole, and further owns in fee simple or by sufficient easement the real property upon, across or under which the Project Sponsor has or will have its collection or trunk lines, manholes, pump stations and the like, including those to be a part of the Project and otherwise. Property of which the Project Sponsor has taken possession pursuant to Section 28-2-90 of the South Carolina Eminent Domain Procedure Act (Title 28, Chapter 2, Code of Laws of South Carolina, 1976, as amended), and in connection with which no action pursuant to Section 28-2-470 of such statute has been instituted within thirty (30) days of the condemnation notice with respect to such property, shall be deemed owned in fee simple by the Project Sponsor pursuant to this Section 2.5. The Project Sponsor has good record title to

the real property described above (or has possession pursuant to the Eminent Domain Procedure Act, as described above) with only such exceptions of record as do not limit the fee simple ownership and do not and will not interfere with the full use and enjoyment of the premises by the Project Sponsor. With respect to the personal property and fixtures of the Project Sponsor necessary or convenient to the System and its operation, there are no liens or other claims of record against such property or other evidence of adverse ownership, and the Project Sponsor owns such personal property and fixtures in fee simple without conflicting claim of ownership, except as previously disclosed by the Project Sponsor in its application for this Loan.

SECTION 2.6. Other Project Arrangements. The Project Sponsor has secured the utilities, access, governmental approvals and other arrangements reasonably to be considered necessary for the undertaking of the Project.

SECTION 2.7. No Construction Default. Neither the Project Sponsor nor its contractor, architect or engineer for the Project or any related project is in default of any agreement respecting the Project or a related project.

SECTION 2.8. No Default. There is no default on the part of the Project Sponsor under this Agreement or the Note, and no event has occurred and is continuing, which, with notice or the passage of time would constitute a default under any part of this Agreement or the Note.

SECTION 2.9. Effect of Draw Request. Each request for and acceptance of disbursement by the Project Sponsor shall be affirmation that the representations and warranties of this Agreement remain true and correct as of the date of the request and acceptance, that no breach of other provisions hereof has occurred, and that no adverse developments affecting the financial condition of the Project Sponsor or its ability to complete the Project or to repay the Loan plus interest thereon have occurred since the date of this Agreement unless specifically disclosed in writing by the Project Sponsor in the request for disbursement. Unless the Authority is notified to the contrary, such affirmations shall continue thereafter.

ARTICLE III

COVENANTS

SECTION 3.1. Contract Award, Construction Inspection and Completion.

3.1.1 The Project Sponsor should not execute construction contracts or issue the notice to proceed with respect to the Project prior to receiving written approval from the Department to award construction contracts.

3.1.2 The Project Sponsor shall provide and maintain competent and adequate engineering supervision and continuous inspection of the Project to ensure that the construction conforms with the plans and specifications approved by the Department. A monthly inspection report shall accompany each disbursement request.

3.1.3 The Project Sponsor shall cause the Scope of Work identified in Appendix "A" to be completed pursuant to the Project Schedule also defined in Appendix "A" hereto. The Project Sponsor shall require all contractors to satisfactorily complete all work within the time stated in the executed construction contract. Extension of any contract completion date requires the Department's approval. Any costs incurred as a result of a time extension which has not received approval by the Department shall not be eligible for Loan participation.

3.1.4 The Project Sponsor shall pay all costs to complete the Project not covered by the Loan and commits itself to complete the construction of the operable treatment works and to complete the treatment system of which this Project is a part.

SECTION 3.2. Disbursements. The Project Sponsor shall receive and promptly disburse the funds to be provided hereunder as trust funds for the purpose of paying the eligible costs of the Project and for no other purpose.

SECTION 3.3. Release of Responsibility. The Project Sponsor shall undertake the Project on its own responsibility and, to the extent permitted by law, shall release and hold harmless the Authority, the Department, the State and their officers, members and employees from any claim arising in connection with the design, construction or operation of the Project or any other aspect of the System including any matter due solely to their negligence.

SECTION 3.4. Other Agreements. The Project Sponsor shall comply with all terms and conditions of any construction contracts, architectural or engineering agreements, trust indentures, security deeds, promissory notes, loan agreements, or the like affecting the Project, the premises of the System and its operation. The Project Sponsor shall require its construction contractor to furnish both a performance bond and payment bond in the full amount of the construction contract. The requirement of such bonds shall be for the convenience of the Authority only and shall not be an undertaking by the Authority to the Project Sponsor or any third party.

SECTION 3.5. Accounting and Auditing.

3.5.1. Accounting. The Project Sponsor shall account for the Project and System in accordance with generally accepted accounting principles (GAAP), including financial, statistical, property, and supporting documentation. All accounting records shall be kept using GAAP accounting, and applying all relevant Government Accounting Standards Board (GASB) pronouncements, including GASB Statement No. 34 relating to the reporting of infrastructure assets.

3.5.2. Audit. Within six (6) months of the end of each fiscal year of the Project Sponsor, the Project Sponsor shall tender to the Authority an annual financial audit by a certified public accountant. The conduct of the audit and the audit shall be in accordance with Generally Accepted Auditing Standards as defined in Government Auditing Standards, Comptroller General of the United States, December 1, 2011, and revisions, updates or successors thereto.

SECTION 3.6. Ratings from Rating Agencies. If the Reserve Requirement, as defined in Section 4.2.1 herein, is initially, or at any time during the term of the Loan, set at a level that is less than the maximum amount due on the Note during any full calendar year, the Project Sponsor shall submit to the Authority a copy of its latest long-term, unenhanced underlying rating, affirmation thereof, and any new or updated credit report on the System and/or any Parity Debt, as defined in Section 4.3.2 herein, from S&P Global Ratings, or its respective successors and assigns, ("**S&P**") or Moody's Investors Service, Inc., or its respective successors and assigns, ("**Moody's**"), and from each, if both S&P and Moody's issued ratings. Additionally, the Project Sponsor shall immediately notify, and submit to, the Authority any commentaries, updated outlooks/reports, CreditWatch placements, ratings changes or downgrades, or other actions from S&P and/or Moody's with respect to the System and/or any Parity Debt.

SECTION 3.7. Insurance. The Project Sponsor covenants and agrees that so long as any amount remains unpaid on the Note:

(A) It will insure and at all times keep the Project insured against physical loss or damage with a responsible insurance company or companies, authorized and qualified under the laws of the State, to assume the risks insured against, in an amount equal to the replacement cost of the Project;

(B) It will secure adequate fidelity bonds (blanket or individual) of a surety company doing business in the State, indemnifying the Project Sponsor against defalcation of all persons handling money derived from the System or signing checks on any bank accounts relating to the System;

(C) All insurance policies shall be open to the inspection of the Authority at any reasonable time; and

(D) All money received by the Project Sponsor as a consequence of any defalcation, covered by any fidelity bond, shall be used to restore the fund depleted by the defalcation. All sums received by the Project Sponsor from insurance policies covering the Project may, to the extent necessary, be applied to the repair and replacement of the damaged or destroyed property, but, in the event that such money is not used for such purposes, then the same shall be applied to payment of the Note.

SECTION 3.8. Compliance with Governmental Authority. The Project Sponsor shall comply with all environmental laws, rules and other provisions of legal force and effect and all such other provisions which govern the construction or operation of the Project or the System.

SECTION 3.9. Adequate Rates. The Project Sponsor shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System as shall be sufficient to meet the requirements of this Agreement, and the Project Sponsor specifically covenants and agrees to maintain rates and charges for all services furnished by the System which shall at all times be sufficient:

3.9.1. To provide for the punctual payment of the principal of and interest on the Note and any other indebtedness of the Project Sponsor payable from revenues of the System that may from time to time hereafter be outstanding;

3.9.2. To maintain any Debt Service Reserve Fund required by this Agreement in accordance with the provisions hereof;

3.9.3. To provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as may be necessary to preserve the same in good repair and working order;

3.9.4. To build and maintain a reserve for depreciation of the System, for contingencies and for improvements, betterments and extensions to the System other than those necessary to maintain the same in good repair and working order; and

3.9.5. To discharge all other obligations imposed by the Act, by this Agreement and by the General Bond Ordinance.

The Project Sponsor further covenants and agrees that it shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System which, together with other income, are reasonably expected to yield annual Net Revenues, as defined in the General Bond Ordinance, in any fiscal year equal to the greater of (i) one hundred ten percent (110%) of the annual principal and interest on all debt paid from or secured by revenues of the System; or (ii) such other percentage of the annual principal and interest on all debt secured by revenues of the System as the Project Sponsor shall have covenanted that its Net Revenues would meet with respect to other outstanding indebtedness of the System.

SECTION 3.10. Review of Rates. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will review the adequacy of its rates and charges to comply with the requirements of this Agreement promptly upon any material changes in circumstances, but not less frequently than once in each fiscal year of the Project Sponsor. The Project Sponsor shall submit any adjustments to its rates and charges to the Authority immediately upon adoption.

SECTION 3.11. Disclosure of Events to Authority. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will submit to the Authority event specific information

within thirty (30) days of an event adversely affecting more than five (5) percent of revenues of the System and any other information which is otherwise required to be released to a municipal bond information repository service.

SECTION 3.12. Procurement Requirements. The Project Sponsor shall comply with all procurement requirements of law and, to the extent compliance therewith does not contravene any provision of law applicable to the Project Sponsor, shall comply with the procurement requirements set forth in Appendix "C" hereto.

SECTION 3.13. Inspection and Information. On reasonable notice, the Authority or the Department shall have for its own convenience and benefit, and without obligation to the Project Sponsor or any third party, the right to audit the books and records of the Project Sponsor as they may pertain to or affect the System and this Agreement and to enter upon the premises to inspect the Project. The Project Sponsor shall cause its architects, engineers, contractors, and auditors to cooperate during such inspections including making available any documents, records, reports or other materials pertinent to the Project and the inspection. The Project Sponsor shall comply with all reasonable requests by the Authority or the Department for information pertaining to the Project Sponsor's compliance with this Agreement.

SECTION 3.14. Consent to Changes. Without consent of the Authority and Department, the Project Sponsor shall make no modifications or changes to the Project, or allow to continue any defect, which would damage or reduce the value of the Project or the System. The Project Sponsor shall not divide the Project into component projects in order or in effect, so as to defeat the provisions of this Agreement. The Project Sponsor covenants that it shall remain the owner of the Project and agrees that it will not convey, transfer, mortgage or otherwise encumber the Project, the System or the revenues derived therefrom during the term of this Agreement without the express prior written approval of the Authority.

SECTION 3.15. Additional Covenants. The Project Sponsor further covenants and agrees that:

3.15.1. Neither the System, nor any part thereof, nor any of the revenues derived from the System, have been or will be hypothecated, mortgaged, otherwise pledged or encumbered, save and except as disclosed and provided for herein or in the General Bond Ordinance;

3.15.2. It will permit no free service to be rendered, or use to be made of the services and facilities of the System and for the services and facilities of the System used by the Project Sponsor, the reasonable cost and value of such services and facilities shall be paid as such services accrue. The revenue so received from the Project Sponsor shall be deemed revenue derived from the operation of the System, and shall be accounted for in the same manner as other revenues of the System;

3.15.3. It will permit no customer to be connected to the System, or to receive any service afforded by the System, unless such customer shall become obligated to pay for the service rendered at the appropriate rate according to the rate schedule then in force;

3.15.4. It will maintain in effect rules and regulations requiring connection to the System by all persons within the jurisdiction of the Project Sponsor to whom the services of the System shall be available and shall impose availability fees and charges with respect to customers and properties to which or whom service is available but which or who have not connected into the System; and

3.15.5. So long as any amount due with respect to the Note is unpaid, it will perform all duties with reference to the System required by the Constitution and statutes of the State, and the Project Sponsor hereby irrevocably covenants, binds and obligates itself not to pledge, mortgage or otherwise encumber the System or any part thereof, or any revenues therefrom, except in the manner authorized herein or in the General Bond Ordinance, and it will not sell, lease or dispose of any portion of the System, necessary or useful except as expressly permitted in the General Bond Ordinance, and the Project Sponsor further obligates itself and covenants and agrees with the Authority to maintain in good condition and to operate said System, and to collect and charge such rates for the services and facilities of the System so that the income and revenues of the System will be sufficient at all times to meet the requirements of this Agreement.

ARTICLE IV
ESTABLISHMENT OF FUNDS AND
DISPOSITION OF REVENUES

SECTION 4.1. Establishment of Gross Revenue Fund, Debt Service Fund, Operation and Maintenance Fund, and Depreciation and Contingent Fund. Beginning on the first day of the month following the delivery of the Note, except with respect to the Debt Service Fund, and continuing until all amounts due with respect to the Note have been paid in full, the following funds shall be established and maintained:

4.1.1. The Project Sponsor shall establish a Gross Revenue Fund, defined as the Revenue Fund in the General Bond Ordinance, into which shall be placed all receipts, income and revenue that the Project Sponsor shall derive, directly or indirectly, from the ownership of the System. Moneys in the Gross Revenue Fund may be withdrawn on order of the Project Sponsor, but shall be made use of only in the manner and in the order of priority specified in Section 4.3 hereof.

4.1.2. Beginning in the month of the Payment Initiation Date, the Project Sponsor shall provide for the establishment of a Series 2022B Debt Service Fund (the "*Debt Service Fund*") as a means of providing for the payment of the principal and interest on the Note as the same shall fall due. Moneys in the Debt Service Fund shall be used solely to pay the principal of and interest on the Note, and for no other purpose. The Debt Service Fund shall be kept in the complete custody and control of the Trustee, as defined in Section 4.4 herein and as provided in the General Bond Ordinance. Withdrawals from the Debt Service Fund shall be made only by the Trustee who shall transmit to the Authority the sums required to pay principal and interest on the Note.

4.1.3. The Project Sponsor shall establish an Operation and Maintenance Fund in order to provide for the payment of all expenses incurred in connection with the administration and operation of the System, and such expenses as may be reasonably necessary to preserve the System in good repair and working order.

4.1.4. The Project Sponsor shall establish a Depreciation and Contingent Fund, defined as the Capital Improvements Fund in the General Bond Ordinance. Moneys in this fund shall be used solely for the purpose of restoring or replacing depreciated or obsolete properties of the System, paying the cost of improvements, betterments and extensions to the System, other than those necessary to maintain the System in good repair and working order, and for the payment of extraordinary maintenance and repairs, provided, however, if necessary, moneys in the Depreciation and Contingent Fund may be used to fund any deficiency in a Debt Service Fund or Debt Service Reserve Fund, as such terms are defined in the General Bond Ordinance, and used for any of the purposes for which such funds were established.

4.1.5. In the event the Project Sponsor shall have established funds analogous to, or serving the purpose of, the funds required to be established by this Article IV, such funds may be continued and

employed for the purposes of this Agreement, and the Project Sponsor shall not be required to establish duplicate funds.

SECTION 4.2. Establishment and Funding of Debt Service Reserve Fund.

4.2.1. Based on the Project Sponsor's receipt of a long-term underlying rating on the System and/or any Parity Debt in at least the "A" category from S&P or Moody's respectively, and from each, if both S&P and Moody's issued ratings, and the submission of such with its Loan application to the Authority, the Debt Service Reserve Fund requirement with respect to the Note (the "**Reserve Requirement**") shall initially equal zero and shall continue to be zero subject to provisions of the following Section 4.2.2. At such time as the Reserve Requirement is greater than zero as provided in Section 4.2.2, the Project Sponsor shall fund a Series 2022B Debt Service Reserve Fund (the "**Debt Service Reserve Fund**") to provide a reserve for payment of principal of and interest on the Note.

4.2.2. (a) The Reserve Requirement shall continue to be zero if the Project Sponsor fully complies with all requirements of Section 3.6 herein for submitting S&P/Moody's ratings/affirmations/credit reports and for immediately providing any other rating agency actions related to the System and/or any Parity Debt, and all such ratings are maintained in at least the "A" category.

(b) If there is no longer any current rating or if either the S&P or Moody's rating is downgraded below the "A" category, the Reserve Requirement shall immediately increase to the maximum annual amount due on the Note, and the Project Sponsor shall meet the new requirement within one year through twelve (12) equal monthly deposits, beginning in the month following any such downgrade or loss of the rating for the System and/or any Parity Debt.

(c) In the event the Reserve Requirement is ever increased as provided in Section 4.2.2(b) above due to a ratings downgrade or loss and is subsequently upgraded to the level established in Section 4.2.2 (a), then the Reserve Requirement shall revert to zero and any excess money in the Debt Service Reserve Fund shall be applied as provided in Section 4.4.3 hereof.

4.2.3. The Debt Service Reserve Fund is intended to insure the timely payment of the principal of and interest on the Note. Money in the Debt Service Reserve Fund shall be used only to prevent a default in the payment of the Note, by reason of the fact that money in the Debt Service Fund is insufficient for such purposes.

4.2.4. Prior to the delivery of this Agreement to the Authority, the Project Sponsor shall deposit, or cause to be deposited, in the Debt Service Reserve Fund, if required to be funded pursuant to Section 4.2.1, funds in an amount, or investments permitted by Section 4.4.3 having a value, equal to the Reserve Requirement. In the event that the Reserve Requirement shall increase due to an increase in the Loan Amount pursuant to Section 1.4.2(c), the Project Sponsor shall immediately deposit, or cause to be deposited, in the Debt Service Reserve Fund, if required to be funded pursuant to Section 4.2.2, funds in an amount equal to such increase in the Reserve Requirement.

SECTION 4.3. Disposition of Revenues. All revenues derived from the operation of the System shall be deposited in the Gross Revenue Fund. Beginning in the month following the delivery of this Agreement with respect to payments pursuant to Sections 4.3.1 and 4.3.3 to 4.3.7, inclusive, and beginning in the month of the Payment Initiation Date with respect to payments pursuant to Section 4.3.2, withdrawals from the Gross Revenue Fund shall be made in the following order of priority:

4.3.1. There shall be deposited into the Operation and Maintenance Fund that sum which has been currently determined by the Project Sponsor to be the cost of operating and maintaining the System for the next ensuing month.

4.3.2. The monthly fraction of the next payment of principal and interest to become due on the Note on the next succeeding payment date shall be deposited in the Debt Service Fund not later than the fifth (5th) Business Day (defined in the General Bond Ordinance) preceding the end of the month. At such times as required by, and in accordance with provisions of, Section 6.7 of the General Bond Ordinance and any Supplemental Ordinance (defined in the General Bond Ordinance), the Project Sponsor shall deposit (a) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority from the South Carolina Drinking Water Revolving Loan Fund (the "**Drinking Water Fund**") relating to loan number 3-033-08-0820002-03 (the "**2008B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2008B SRF Note; (b) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bonds, Series 2013 (the "**2013 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2013 Revenue Bonds; (c) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Revenue Bonds, Series 2014 (the "**2014 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2014 Revenue Bonds; (d) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bonds, Series 2019 (the "**2019 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2019 Revenue Bonds; (e) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X3-085-19-0820002-08 from the Drinking Water Fund (the "**2020A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020A SRF Note; (f) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-216-19-496-24 from the Fund (the "**2020B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020B SRF Note; (g) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-222-19-496-20 from the Fund (the "**2020C SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020C SRF Note; (h) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-223-19-496-25 from the Fund (the "**2020D SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020D SRF Note; (i) in a fund for the payment of amounts due with respect to the

promissory note of the Project Sponsor to the Authority relating to loan number X1-229-20-496-22 from the Fund (the "**2020E SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020E SRF Note; (j) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bond, Taxable Series 2020F (the "**2020F Revenue Bond**"), the amount required for the next payment of principal and interest to become due on the 2020F Revenue Bond; (k) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-215-20-496-23 from the Fund (the "**2020G SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020G SRF Note; (l) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-234-20-496-19 from the Fund (the "**2020H SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020H SRF Note; (m) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-243-21-496-26 from the Fund (the "**2021A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2021A SRF Note; (n) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X3-092-21-0820002-09 from the Drinking Water Fund (the "**2021B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2021B SRF Note; (o) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-251-22-496-31 from the Fund (the "**2022A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2022A SRF Note; (p) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-253-22-496-28 from the Fund (the "**2022C SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2022C SRF Note; and (q) into a fund or funds for the payment of amounts due with respect to any obligations of the Project Sponsor (the "**Obligations**") secured by a pledge of revenues on a parity with the pledge securing the Note, the 2008B SRF Note, the 2013 Revenue Bonds, the 2014 Revenue Bonds, the 2019 Revenue Bonds, the 2020A SRF Note, the 2020B SRF Note, the 2020C SRF Note, the 2020D SRF Note, the 2020E SRF Note, the 2020F Revenue Bond, the 2020G SRF Note, the 2020H SRF Note, the 2021A SRF Note, and the 2021B SRF Note, the 2022A SRF Note, and the 2022C SRF Note, the amount or amounts required for the next payment or payments due on any such Obligation or Obligations. The 2008B SRF Note, the 2013 Revenue Bonds, the 2014 Revenue Bonds, the 2019 Revenue Bonds, the 2020A SRF Note, the 2020B SRF Note, the 2020C SRF Note, the 2020D SRF Note, the 2020E SRF Note, the 2020F Revenue Bond, the 2020G SRF Note, the 2020H SRF Note, the 2021A SRF Note, the 2021B SRF Note, the 2022A SRF Note, the 2022C SRF Note, and the Obligations are hereinafter sometimes referred to as "**Parity Debt**". In the event amounts available for payments into the funds with respect to the Note and all Parity Debt are not sufficient to make all payments then required to be made, such available amounts shall be deposited into such funds on a pro rata basis.

4.3.3. (a) In the event any amounts shall be withdrawn from the Debt Service Reserve Fund in order to provide for payment of any amounts due with respect to the Note, there shall be deposited in

the Debt Service Reserve Fund not less than one-twelfth (1/12) of the amount of any such withdrawal and such deposits with respect to any such withdrawal shall begin in the month following such withdrawal and shall continue in each month thereafter until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

(b) In the event the Reserve Requirement for the Debt Service Reserve Fund is increased pursuant to any provision of Section 4.2.2 herein, there shall be deposited in the Debt Service Reserve Fund not less than one-twelfth (1/12) of the amount necessary to fully meet the Reserve Requirement, and such deposits shall begin in the month following a ratings downgrade or loss and shall continue in each month thereafter until the amount on deposit in the Debt Service Reserve Fund shall equal such increased Reserve Requirement.

(c) If the value of the Debt Service Reserve Fund is ever less than the Reserve Requirement, other than as provided in (a) or (b) above, or as provided in Section 4.2.4 with respect to any increase in the Loan Amount, there shall be deposited in the Debt Service Reserve Fund not less than one-fourth (1/4) of an amount equal to the total Reserve Requirement deficiency, beginning in the month following such a determination. Such deposits shall continue to be made until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

(d) Nothing in this Section 4.3.3 (a), (b) or (c) shall preclude the Project Sponsor from fully funding the Reserve Requirement in a more timely fashion than so prescribed.

4.3.4. If, in any month, for any reason, the Project Sponsor shall fail to pay all or any part of the money it has herein agreed to pay into said Debt Service Fund or Debt Service Reserve Fund, the amount of any such deficiency shall be added to and shall become a part of the amount due and payable into said Debt Service Fund or Debt Service Reserve Fund in the next succeeding month.

4.3.5. Provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy of letter of credit as contemplated in Section 6.8 of the General Bond Ordinance.

4.3.6. Provision shall be made for the payment of any Junior Bonds, as defined in the General Bond Ordinance.

4.3.7. There shall be deposited from time to time into the Depreciation and Contingent Fund an amount determined by the Project Sponsor in the annual budget prepared for the System.

4.3.8. Any revenues remaining after the foregoing deposits have been made shall be disposed of by the Project Sponsor as it may determine to be for any lawful purposes of the System.

SECTION 4.4. Concerning the Debt Service Fund and the Debt Service Reserve Fund. The Debt Service Fund created pursuant to Section 4.1.2 hereof and the Debt Service Reserve Fund created pursuant to Section 4.2 hereof, shall be established with a bank whose deposits are insured by the Federal Deposit Insurance Corporation (the "*Trustee*") chosen by the Project Sponsor with the written approval

of the Authority. The Debt Service Fund and the Debt Service Reserve Fund, if required to be funded, shall be held and administered by the Trustee in accordance with the following provisions of this Section 4.4. The Trustee shall acknowledge and accept its duties and responsibilities with respect to the Debt Service Fund and the Debt Service Reserve Fund, if funded, in one or more written instruments delivered to the Authority with this Agreement.

4.4.1. The Trustee shall notify the Authority in writing of the date of the initial amount deposited into the Debt Service Fund and the initial amount deposited into the Debt Service Reserve Fund, if required to be funded. If the Project Sponsor fails to deposit the amount required by this Agreement in either fund at the time required for such deposit, the Trustee, no later than the fifth day after the date on which such deposit is to be made, shall provide written notification to the Project Sponsor, with a copy to the Authority, of the amount required for deposit into the Debt Service Fund or the Debt Service Reserve Fund pursuant to the provisions of this Agreement. If the Reserve Requirement is greater than zero, the Trustee shall also verify balances in the Debt Service Reserve Fund, as requested by the Authority, but no less often than semiannually during any period of monthly deposits and no less often than annually when the full Reserve Requirement is met and maintained.

4.4.2. From sums deposited in the Debt Service Fund by the Project Sponsor, the Trustee shall transmit to the Authority an electronic funds transfer or a check made payable to "Office of Local Government - SRF" in the amount, and at the times, required by the Agreement and Note. If insufficient sums exist in the Debt Service Fund for any payment then due and the Reserve Requirement is zero, the Trustee shall immediately notify the Project Sponsor of the amount to be transmitted to the Trustee for the payment then due. If insufficient sums exist in the Debt Service Fund for any payment then due and the Reserve Requirement is greater than zero, the Trustee shall transfer the amount needed for payment from the Debt Service Reserve Fund and the Trustee shall notify the Project Sponsor of the amounts required to be deposited in the Debt Service Reserve Fund in order to replenish such a withdrawal and have on deposit therein the amount required by this Agreement. A copy of any such notice shall be provided to the Authority by the Trustee.

4.4.3. Pending disbursement pursuant to this Section 4.4, any money in the Debt Service Reserve Fund shall be invested and reinvested in Permitted Investments, as defined in the General Bond Ordinance. Subject to the remaining provisions of this Section 4.4.3, the earnings from such investments shall be added to and become a part of the Debt Service Reserve Fund. Whenever, and as of any date of calculation, the value of the securities and money in the Debt Service Reserve Fund shall exceed the Reserve Requirement, such excess shall, at the direction of the Project Sponsor, either be used to effect partial prepayment of the Note, or shall be removed from the Debt Service Reserve Fund and transferred into the Debt Service Fund; provided, if such excess is solely as a result of a reduction in the required level of the Reserve Requirement in accordance with Section 4.2.2, which excess shall be evidenced to the Trustee in writing by the Authority, the Trustee shall pay over such excess in the Debt Service Reserve Fund to the Project Sponsor.

4.4.4. Upon payment in full of all amounts due with respect to the Note, which payment shall be evidenced to the Trustee in writing by the Authority, the Trustee shall pay over all amounts remaining in the Debt Service Fund and the Debt Service Reserve Fund, if funded, to the Project Sponsor upon the receipt of written directions from the Project Sponsor and the Trustee shall thereafter have no further responsibilities under this Agreement.

ARTICLE V
EVENTS OF DEFAULT

SECTION 5.1. Events of Default. The following occurrences shall constitute Events of Default hereunder:

(A) The Project Sponsor fails to comply with any of the covenants, terms and conditions made in this Agreement;

(B) The Project Sponsor fails to pay any amount due on the Note at the time and in the manner provided in the Note and this Agreement;

(C) Any representation, warranty or statement made by the Project Sponsor in this Agreement or in connection with it or the Loan shall be or become untrue, incorrect or misleading in any material respect;

(D) The Project Sponsor makes an assignment for benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions for appointment of a receiver or trustee for any substantial part of its property or is the subject of such a petition or commences or has commenced against it or its property (a) any similar proceeding under any bankruptcy law or other debtor-relief or similar law or (b) any foreclosure of any mortgage or similar implementation of a trust indenture or like instrument;

(E) Dissolution of the existence of the Project Sponsor; and

(F) The Authority reasonably suspects the occurrence of any Event of Default by the Project Sponsor, and following request by the Authority, the Project Sponsor fails to provide evidence reasonably satisfactory to the Authority that such default or Event of Default has not in fact occurred.

ARTICLE VI

REMEDIES

SECTION 6.1. Acceleration. Upon the occurrence of an Event of Default, the principal balance of the Note may be declared immediately due and payable in the manner prescribed by and in accordance with the terms of the General Bond Ordinance. In such event, there shall be due and payable on the Note an amount equal to the total principal amount disbursed on the Note, plus all interest accrued thereon and which will accrue thereon to the date of payment.

SECTION 6.2. Additional Remedies and Enforcement of Remedies. Upon the occurrence and continuance of any Event of Default, and subject to the limitations of the General Bond Ordinance, the Authority may proceed forthwith to protect and enforce its rights by such suits, actions or proceedings as the Authority shall deem expedient, including but not limited to:

(A) Requiring the Project Sponsor to carry out its duties and obligations under the terms of this Agreement and under the Act;

(B) Suit upon all or any part of the Note;

(C) Civil action to require the Project Sponsor to account as if it were the trustee of an express trust for the Authority;

(D) Civil action to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority; and

(E) Enforcement of any other right of the Authority including the right to make application for the appointment of a receiver to administer and operate the System.

SECTION 6.3. Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity or by statute (including the Act) on or after the date hereof.

SECTION 6.4. Termination of Proceedings. In case any proceeding taken by the Authority on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Authority, the Authority and the Project Sponsor shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Authority shall continue as if no such proceeding had been taken.

ARTICLE VII

SECURITY

SECTION 7.1. Pledge of Revenues. For the payment of the Note and as security for its other obligations under this Agreement, the Project Sponsor hereby grants to the Authority a pledge of, and lien upon, the Net Revenues of the System, as defined in the General Bond Ordinance. Such pledge and lien upon the Net Revenues shall be on a parity in all respects to the pledge and lien securing any Parity Debt (as defined in Section 4.3.2) and shall at all times and in all respects be and remain superior to any pledges made to secure any other obligations of the Project Sponsor payable from the Net Revenues of the System. Parity Debt may be issued only in compliance with Article III of the General Bond Ordinance or, if the General Bond Ordinance is no longer in effect, only with the prior written approval of the Authority.

SECTION 7.2. Additional Security. Upon any failure of the Project Sponsor to make any payment to the Authority in accordance with the provisions of the Note and this Agreement, the Authority shall, without further action, require the State Treasurer to pay to the Authority, subject to the provisions of the Act, the amount of state appropriations as the Project Sponsor may become entitled to until all delinquent payments under the Note have been paid.

ARTICLE VIII

SPECIAL REVOLVING FUND PROVISIONS

SECTION 8.1. Compliance. The Project Sponsor agrees that no date reflected in this Agreement, or in the project completion schedule, or extension of any such date, shall modify any compliance date established in a National Pollutant Discharge Elimination System permit (the "*NPDES Permit*"). It is the Project Sponsor's obligation to request any required modification of applicable permit terms or other enforceable requirements.

SECTION 8.2. Standard Conditions. The Project Sponsor acknowledges and agrees to comply with the following Federal and/or State requirements:

(A) The Project Sponsor shall provide access to the Project work whenever it is in preparation or progress and provide proper facilities for access and inspection. The Project Sponsor shall allow the Regional Administrator of the Environmental Protection Agency, the Comptroller General of the United States, the Department and the Authority, or any authorized representative, to have access to any books, documents, plans, reports, papers, and other records of the contractor which are pertinent to the Project for the purpose of making audit, examination, excerpts, copies, and transcriptions.

(B) Pursuant to requirements of the Federal Water Pollution Control Act, as amended on June 10, 2014 (the "*Federal Act*"), the Project Sponsor shall comply with the Davis-Bacon Act and certify that all laborers and mechanics employed by prime contractors and subcontractors are paid wages at rates not less than those listed on the prevailing wage rate contained in the Project's contract documents and that all applicable provisions of the Davis-Bacon Act have been met. The Project Sponsor shall require the prime contractor to comply with the Davis-Bacon Act. See Attachment #1.

(C) The Project Sponsor shall not presently be debarred for noncompliance with Federal Law and shall not award contracts to any firm that is presently debarred for noncompliance with Federal Law where the contract amount equals or exceeds the federal small purchase procurement threshold.

(D) The Project shall comply with "American Iron and Steel" provisions, as set forth in the Federal Act and related American Iron and Steel implementation guidance, requiring that all of the iron and steel products used in the Project be produced in the United States unless a waiver is granted by the U.S. Environmental Protection Agency. The Project Sponsor shall require all bidders to comply with the American Iron and Steel provisions.

(E) Pursuant to requirements of Section 603(d)(1)(E) of the Federal Act, the Project Sponsor of a project involving the repair, replacement or expansion of a publicly owned treatment works shall develop and implement a fiscal sustainability plan ("*FSP*") or certify that it has developed and implemented such a plan. Sponsors with an existing and implemented FSP shall certify to that effect before the loan closing date. Sponsors developing an FSP must submit a certification that an FSP has been developed, and will be implemented, by the date of the final loan disbursement.

ARTICLE IX
GENERAL CONDITIONS

SECTION 9.1. No Waiver. No disbursements shall waive any provision of this Agreement or the Note or preclude the Authority from declaring a default if the Project Sponsor is unable to satisfy any such provisions or perform hereunder.

SECTION 9.2. Satisfactory Proceedings. All proceedings taken in connection with transactions provided for in this Agreement shall be satisfactory to the Authority.

SECTION 9.3. Evidence. Any condition of this Agreement which requires a submission of evidence of the existence or nonexistence of facts shall imply as a condition the existence or nonexistence, as the case may be, of such fact or facts, and the Authority shall, at all times, be free independently to establish to its satisfaction and in its absolute discretion such existence or nonexistence.

SECTION 9.4. No Beneficiaries. All conditions of the obligations of the Authority to make disbursements are imposed solely and exclusively for its benefit, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or to assume that the Authority will refuse to make disbursements in the absence of strict compliance. No person shall be deemed the beneficiary of any such conditions or any other provisions of this Agreement.

SECTION 9.5. Review and Inspection of Work. Any audit or review of plans and specifications and any inspection of the work shall be for the convenience of the Authority and Department only in order to determine that they are within the approved scope of the Project. No such review and inspection, approvals and disapprovals shall be an undertaking by the Authority or Department of responsibility for design or construction.

SECTION 9.6. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail to the other party hereto, with instruction to show to whom delivered and return receipt requested addressed as follows:

If to the Project Sponsor:

Berkeley County
c/o Berkeley County Water and Sanitation
212 Oakley Plantation Drive
Moncks Corner, South Carolina 29461

Attention: Director

If to the Authority:

South Carolina Water Quality Revolving Fund
Authority
c/o Office of Local Government - SRF
South Carolina Rural Infrastructure Authority
1201 Main Street
Suite 1600
Columbia, South Carolina 29201

Attention: Patricia A. Comp

Each party may notify the other by the same process of any change of such address. Loan requests and disbursements and other routine loan administration may be conducted by regular mail.

SECTION 9.7. No Joint Venture, Etc. The Authority is not a partner, joint venturer, or in any other way a party to the Project or the operation of the System of the Project Sponsor. The Authority shall not be in any way liable or responsible by reason of the provisions hereof, to the Project Sponsor or any third party, for the payment of any claims in connection therewith.

SECTION 9.8. Assignment. This Agreement may not be assigned by the Project Sponsor without the prior written consent of the Authority. The Authority may assign the Note and this Agreement, and any such holder and assignee of same shall succeed to and be possessed of the same rights as the Authority under both to the extent so transferred or assigned.

SECTION 9.9. Entire Agreement. This Agreement and the Note contain the entire terms of this Agreement and transaction. They may not be changed, waived or discharged in whole or in part, except by written instrument executed by the party sought to be charged therewith.

SECTION 9.10. Continuity. This Agreement shall be binding upon the legal representatives, successors and assigns of each party and shall inure to their benefit; provided, however, that nothing herein said shall be deemed to limit any restriction on assignment impressed upon the Project Sponsor.

SECTION 9.11. South Carolina Contract. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 9.12. Limitations on Actions by Project Sponsor. No action shall be commenced by the Project Sponsor against the Authority for any claim under this Agreement unless notice thereof specifically setting forth the claim shall have been given to the Authority within thirty (30) days after the occurrence of the event or omission which the Project Sponsor alleges gave rise to such claim. Failure to give such notice shall constitute a waiver of any such claim. Liability of the Authority to the Project Sponsor for any breach of the terms of this Agreement shall not exceed a sum equal to the amount which the Authority shall have failed to disburse in consequence of a breach by the Authority of its obligations under this Agreement. Upon the making of any such payment by the Authority to the Project Sponsor, it shall be treated as a disbursement under this Agreement.

SECTION 9.13. Counterparts. This Agreement is executed in two counterparts, which are separately numbered, but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

SECTION 9.14. Appendices. The appendices attached to this Agreement are a part of it.

SECTION 9.15. Special Conditions. The Statements of Special Conditions in Appendix "D" shall govern the matters they address.

SECTION 9.16. Time of Essence. Time is of the essence of this Agreement.

SECTION 9.17. Severability. If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, any remaining provisions of this Agreement shall survive and be applied, and together with the invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

IN WITNESS WHEREOF, the Project Sponsor and the Authority have caused these presents to be signed, sealed and delivered all as of the date hereof.

BERKELEY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____

Name: _____

Title: _____

Attest:

Its: _____

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

By: _____

Bonnie Ammons, Director,
Office of Local Government,
South Carolina Rural Infrastructure Authority

SCOPE OF WORK

Project Sponsor: Berkeley County

Project Name: Pump Station 001 Force Main Replacement – Phase III

Loan Number: X1-252-22-496-29

Replacement of approximately 6,580 linear feet of 30-inch ductile iron pipe force main with new 42-inch polyvinyl chloride force main to include all appurtenances to the end of the Phase I replacement (outside of Berkeley County Water and Sanitation Pump Station 001) to the beginning of Phase II by means of jack and bore and open-cut methods.

PROJECT BUDGET

Project Sponsor: Berkeley County
Project Name: Pump Station 001 Force Main Replacement – Phase III
Loan Number: X1-252-22-496-29

<u>ITEM</u>	<u>CWSRF LOAN</u>	<u>TOTAL ELIGIBLE COSTS</u>
Planning and Design Engineering	\$ 255,172	\$ 255,172
Construction	9,989,772	9,989,772
Construction Contingency	499,489	499,489
Construction Oversight/Engineering	<u>150,078</u>	<u>150,078</u>
Total	\$10,894,511	\$10,894,511

PROJECT SCHEDULE

Project Sponsor: Berkeley County
Project Name: Pump Station 001 Force Main Replacement – Phase III
Loan Number: X1-252-22-496-29

<u>ACTION</u>	<u>DATE</u>
Bid Opening	March 30, 2022
Contract Execution	May 15, 2022
Notice to Proceed	June 1, 2022
Start of Construction	June 15, 2022
DHEC Permit to Operate	May 1, 2023

REPAYMENT SCHEDULE

Project Sponsor: Berkeley County

Project Name: Pump Station 001 Force Main Replacement – Phase III

Loan Number: X1-252-22-496-29

Loan Amount: \$10,894,511

Payment Initiation Date: June 1, 2023

Interest Rate: 1.50% per annum

First Payment Due Date: September 1, 2023

- (1) Prior to the Payment Initiation Date, amounts disbursed shall bear interest from the date of the Authority's check for each disbursement and accrued interest only shall be due on the Payment Initiation Date.
- (2) Repayment of the principal and interest shall be due in 80 installments, commencing on the first day of the third month after the month of the Payment Initiation Date and continuing quarterly on the first day of each third month thereafter.
- (3) Repayment shall be in 79 equal installments in the amount of One Hundred Fifty-Seven Thousand Eight Hundred Eighty-One and 71/100 Dollars (\$157,881.71) each, and one final installment in the amount of One Hundred Fifty-Seven Thousand Eight Hundred Eighty-One and 41/100 Dollars (\$157,881.41).

LOAN CLOSING FEE

Project Sponsor: Berkeley County

Project Name: Pump Station 001 Force Main Replacement – Phase III

Loan Number: X1-252-22-496-29

Loan Amount: \$10,894,511

.35% Loan Closing Fee: \$38,131

The Loan Closing Fee identified above shall be due and paid at the time of delivery of the Loan Agreement, Note and other required Loan closing documents. Such fee is not reimbursable through the Loan.

Project Sponsor: Berkeley County

Loan Number: X1-252-22-496-29

PROCUREMENT REQUIREMENTS

Recycled Funds

- I. Prior to construction contract award, the Project Sponsor shall:
 - A. Advertise the Project for a minimum of thirty (30) days in advance of bid opening using at least one of the following methods:
 - 1. Local newspapers of general circulation.
 - 2. Statewide or regional newspapers of general circulation.
 - 3. The South Carolina Business Opportunities (SCBO).
 - B. Modify bid documents only by written addenda, which require prior Department approval.
 - C. Hold a public bid opening.
 - D. Utilize competitive sealed construction bids.
 - E. Require at least a five percent (5%) bid bond or certified check.
 - F. Require one hundred percent (100%) payment and performance bonds.
 - G. Require the contractor, during construction, to provide fire, extended coverage, vandalism and malicious mischief insurance equal to the actual value of the insured property.
 - H. Follow, and require the prime contractor to follow, Davis-Bacon and Related Acts provisions.
 - I. Follow, and require the prime contractor to follow, American Iron and Steel Provisions.
 - J. If other funding sources are included which have stricter bidding requirements or if applicable Federal, State or local laws or ordinances have stricter requirements, these stricter requirements govern.
 - K. After bid opening, provide the Department with the following:
 - 1. Project Construction Summary For Recycled Projects (DHEC Form #1295).
 - 2. A certified copy of the advertisement with date(s) of publication.
 - 3. Detailed bid tabulation certified by Project Sponsor's engineer.
 - 4. Proposal of successful bidder(s).
 - 5. Bid bond with associated Power of Attorney.
 - 6. Engineer's award recommendation of low bidder(s) to Project Sponsor. If the award is recommended to other than the low bidder(s), provide justification for decision.
 - 7. Certified copy of Project Sponsor's tentative award resolution listing the proposed contractor(s) and contractor amount(s).
 - 8. Davis-Bacon wage rate(s) used in bidding the project.
 - 9. A copy of the proposed prime contractor's Bidders American Iron and Steel Certification (DHEC Form 2556).
 - 10. Certification Regarding Debarment, Suspension and Other Responsibility Matters (DHEC Form #3590) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$25,000.

11. Project Inspection Designation Form (DHEC Form #2324), with all required attachments, indicating the selected method of providing continuous inspection during construction.
 - L. Receive Department approval to award the construction contract(s).
- II. Subsequent to construction contract award, the Project Sponsor shall submit the following to the Department as proof of compliance with procurement requirements:
- A. Executed contract documents.
 - B. Notice to Proceed.
 - C. Monthly Construction Inspection Reports.
 - D. Davis-Bacon Certification (DHEC Form #2557) with each draw request.
 - E. American Iron and Steel Certification (DHEC Form #0962) with each draw request.
- III. Subsequent to contract award, the Project Sponsor shall submit the following, for Department review and approval, on any proposed change orders:
- A. Need for the change.
 - B. Clear description of the change.
 - C. Cost and pricing data.
 - D. Documentation of negotiation.
 - E. For claims, information showing the claim did not result from the Project Sponsor's or contractor's mismanagement.

SPECIAL CONDITIONS

Project Sponsor: Berkeley County
Project Name: Pump Station 001 Force Main Replacement – Phase III
Loan Number: X1-252-22-496-29

The Project Sponsor's eligibility to receive any funds under this Loan Agreement and Note is contingent upon the following.

Submission of evidence to the Authority, in the form of copies of all recorded easements or a title opinion from its attorney, that the Project Sponsor has all interests in land whether by ownership, right-of-way or easement necessary for the construction and operation of the Project or that the Project Sponsor is in possession of such pursuant to provisions of Section 28-2-90 of the South Carolina Eminent Domain Procedure Act, and in connection with which no action pursuant to Section 28-2-240 of such Act has been instituted within 30 days of the Condemnation Notice with respect to such property.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

**PROMISSORY NOTE TO SOUTH CAROLINA
WATER QUALITY REVOLVING FUND AUTHORITY FOR
SOUTH CAROLINA WATER POLLUTION CONTROL
REVOLVING FUND LOAN**

BERKELEY COUNTY, SOUTH CAROLINA
COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2022B

FOR VALUE RECEIVED, Berkeley County (the "*Project Sponsor*") promises to pay to the order of the South Carolina Water Quality Revolving Fund Authority (the "*Authority*") the principal sum owing from time to time by the Project Sponsor pursuant to, and in accordance with, the Loan Agreement (the "*Agreement*"), the terms of which are incorporated herein by reference, between the Project Sponsor and the Authority relating to Loan Number X1-252-22-496-29, Pump Station 001 Force Main Replacement – Phase III , principal sum, rate of interest and amount and due date of payments thereunder being set forth in Appendix "B" to the Agreement. The records of the Authority with respect to the date and amount of payments on this Note shall be conclusive as to such matters. Interest shall be computed on a three hundred sixty-five-day year basis and compounded annually; the principal of this Note and any installment thereof shall bear interest until paid in full.

Time is of the essence of this Note.

This Note has been issued under the provisions of Title 6, Chapter 17, Code of Laws of South Carolina, 1976, as amended, and does not constitute an indebtedness of the Project Sponsor within the meaning of any state constitutional provision (other than Article X, Section 14, paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation. No recourse shall be had for the payment of this Note or the interest thereon against the general fund of the Project Sponsor and neither the credit nor the taxing power of the Project Sponsor shall be deemed to be pledged thereto. The full faith, credit and taxing powers of the Project Sponsor are not pledged for the payment of the principal and interest on this Note.

The Project Sponsor may prepay the outstanding principal balance of this Note in whole or in part, together with any accrued interest thereon, at any time without penalty or premium; all such prepayments shall be applied against principal installments due on this Note in the inverse order of the

maturity dates thereof.

All payments of principal and interest shall be made in money of the United States at the office of the Authority in Columbia, South Carolina, or at such place as the Authority may designate in writing, and shall be made in funds immediately available in Columbia, South Carolina.

The Project Sponsor agrees to pay at the time any such late payment hereunder is made a late charge of three percent (3%) of any payment not made on or before the tenth day of the month in which such payment is due. Interest which accrues after maturity of this Note or after its earlier acceleration shall be due and payable upon demand.

Payments shall be applied first to any late charge, then to interest, then to principal. There is no intent for any payment to exceed any legal limit on interest, if any such legal limit applies. If an excess sum occurs, it shall be applied to principal unless the Project Sponsor elects its return in writing.

If the Project Sponsor fails to make any payment of principal or interest within thirty (30) days of the date when due, or if the Project Sponsor defaults in the performance of any of the terms, covenants or conditions of any agreement or other documents concerning this Note, including without limitation the Agreement, the principal balance of this Note and all unpaid interest accrued on it may be declared immediately due and payable in accordance with the terms of the General Bond Ordinance.

The failure of the Project Sponsor to make any payment of principal or interest or both shall not constitute a default until thirty (30) days following the due date but the Authority shall have no obligation to give the Project Sponsor notice of any failure to make such payments. Upon any such payment default, the Authority shall immediately avail itself of the provisions of Section 7.2 of the Agreement relating to additional security for payment of amounts due on this Note.

The Project Sponsor waives presentment for payment, demand, protest, and notice of non-payment. Neither a failure to accelerate for default nor acceptance of a past due installment shall be a novation of this Note or constitute a waiver of the right to insist upon strict compliance with it and any related agreements and documents.

The Project Sponsor shall pay all costs of collection, including but not limited to reasonable attorney's fees if the Authority endeavors to collect this Note in any manner through an attorney at law. The rights and remedies of the Authority provided in this Note are cumulative and not exclusive of any other rights and remedies afforded the Authority by law or by any other document.

This Note shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the Project Sponsor has caused this Note to be executed under its seal and to be registered in the name of the South Carolina Water Quality Revolving Fund Authority as of this _____ day of _____, 2022.

BERKELEY COUNTY, SOUTH CAROLINA

[SEAL]

By: _____

Typed Name: _____

Title: _____

Attest:

Its _____

CERTIFICATE OF AUTHENTICATION

This Promissory Note is the obligation issued pursuant to the Project Sponsor's General Bond Ordinance enacted on March 10, 2003, as authorized by the Project Sponsor's Eighteenth Supplemental Ordinance enacted on _____, 2022.

REGIONS BANK, REGISTRAR

By: _____, Authorized Officer

Typed Name: _____

**Davis-Bacon Wage Rates Required Under Federal Clean Water Act
For Subrecipients (Project Sponsors)**

1. Applicability of the Davis-Bacon (DB) Prevailing Wage Requirements

Under the Federal Clean Water Act, as amended on June 10, 2014, DB prevailing wage requirements were permanently applied to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$2,000. Available from the Department.

4. Contract Provisions for Contracts in Excess of \$100,000

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$100,000. Available from the Department.

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

EXHIBIT C

FORM OF LOAN AGREEMENT AND NOTE

CENTRAL BERKELEY WWTP (No. 1-253-22-496-28)

LOAN AGREEMENT

between

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

and

BERKELEY COUNTY

Dated

_____, 2022

relating to

Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station

South Carolina Water Pollution Control Revolving Fund

Loan Number: 1-253-22-496-28

No. ____ of Two Executed Original Counterparts

Draft 6/20/22

TABLE OF CONTENTS

Page

ARTICLE I

LOAN

Section 1.1	Loan Made and Accepted; Repayment	3
Section 1.2	Purpose Limited to Project	3
Section 1.3	Disbursements	3
Section 1.4	Changes in Payment Initiation Date, the Loan Amount and Repayment Schedule	4
Section 1.5	Deadline for Borrowing and Termination of Promise to Lend	6
Section 1.6	Conditions Precedent to Disbursement of Loan Proceeds	6

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1	Status of Project Sponsor	7
Section 2.2	Financial Statements	7
Section 2.3	Pending Litigation	7
Section 2.4	No Conflicting Transactions	7
Section 2.5	Ownership of Premises	7
Section 2.6	Other Project Arrangements	8
Section 2.7	No Construction Default	8
Section 2.8	No Default	8
Section 2.9	Effect of Draw Request	8

ARTICLE III

COVENANTS

Section 3.1	Contract Award, Construction Inspection and Completion	9
Section 3.2	Disbursements	9
Section 3.3	Release of Responsibility	9
Section 3.4	Other Agreements	9
Section 3.5	Accounting and Auditing	10
Section 3.6	Ratings from Rating Agencies	10
Section 3.7	Insurance	10
Section 3.8	Compliance with Governmental Authority	11
Section 3.9	Adequate Rates	11
Section 3.10	Review of Rates	11
Section 3.11	Disclosure of Events to Authority	12
Section 3.12	Procurement Requirements	12

Section 3.13	Inspection and Information	12
Section 3.14	Consent to Changes	12
Section 3.15	Additional Covenants	12

ARTICLE IV

ESTABLISHMENT OF FUNDS AND DISPOSITION OF REVENUES

Section 4.1	Establishment of Gross Revenue Fund, Debt Service Fund, Operation and Maintenance Fund, and Depreciation and Contingent Fund	14
Section 4.2	Establishment and Funding of Debt Service Reserve Fund	15
Section 4.3	Disposition of Revenues	16
Section 4.4	Concerning the Debt Service Fund and the Debt Service Reserve Fund	18

ARTICLE V

EVENTS OF DEFAULT

Section 5.1	Events of Default	20
-------------	-------------------	----

ARTICLE VI

REMEDIES

Section 6.1	Acceleration	21
Section 6.2	Additional Remedies and Enforcement of Remedies	21
Section 6.3	Remedies Not Exclusive	21
Section 6.4	Termination of Proceedings	21

ARTICLE VII

SECURITY

Section 7.1	Pledge of Revenues	22
Section 7.2	Additional Security	22

ARTICLE VIII

SPECIAL REVOLVING FUND PROVISIONS

Section 8.1	Compliance	23
Section 8.2	Standard Conditions	23

ARTICLE IX

GENERAL CONDITIONS

Section 9.1	No Waiver	24
Section 9.2	Satisfactory Proceedings	24
Section 9.3	Evidence	24
Section 9.4	No Beneficiaries	24
Section 9.5	Review and Inspection of Work	24
Section 9.6	Notices	24
Section 9.7	No Joint Venture, Etc.	25
Section 9.8	Assignment	25
Section 9.9	Entire Agreement	25
Section 9.10	Continuity	25
Section 9.11	South Carolina Contract	25
Section 9.12	Limitations on Actions by Project Sponsor	25
Section 9.13	Counterparts	25
Section 9.14	Appendices	25
Section 9.15	Special Conditions	25
Section 9.16	Time of Essence	25
Section 9.17	Severability	26
APPENDIX "A"	SCOPE OF WORK	A-1
	PROJECT BUDGET	A-2
	PROJECT SCHEDULE	A-3
APPENDIX "B"	REPAYMENT SCHEDULE	B-1
	LOAN CLOSING FEE	B-2
APPENDIX "C"	PROCUREMENT REQUIREMENTS	C-1
APPENDIX "D"	SPECIAL CONDITIONS	D-1
APPENDIX "E"	FORM OF THE PROMISSORY NOTE	E-1
ATTACHMENT #1	DAVIS-BACON WAGE RATES REQUIRED UNDER FEDERAL CLEAN WATER ACT	

LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of the ____ day of _____, 2022, between the SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, a public instrumentality of the State of South Carolina (the "**Authority**") and BERKELEY COUNTY, a political subdivision of the State of South Carolina (the "**Project Sponsor**").

WITNESSETH:

WHEREAS, the Authority is authorized by Title 48, Chapter 5, Code of Laws of South Carolina, 1976, as amended (the "**Act**") to administer the South Carolina Water Pollution Control Revolving Fund (the "**Fund**") for the purpose of assisting Project Sponsors (as defined in the Act) in the construction of, among other things, publicly owned treatment works as defined in the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, as amended; and

WHEREAS, the South Carolina Department of Health and Environmental Control (the "**Department**") is authorized by the Act to, among other things, develop a priority system and prepare an annual plan to insure compliance with the Federal Water Pollution Control Act; and

WHEREAS, the Authority is authorized by the Act to enter into Loan Agreements (as defined in the Act) with Project Sponsors in order to finance Projects (as defined in the Act); and

WHEREAS, the Act authorizes Project Sponsors, among other things, to undertake Projects, to receive assistance in the financing of such Projects by way of loans made from the Fund and to enter into loan agreements providing for the repayment of amounts received from the Fund, together with interest thereon; and

WHEREAS, the Project Sponsor proposes to acquire and construct the facilities described in Appendix "A" hereto (the "**Project**"), which Project will be part of the Project Sponsor's combined utility system comprised of water, sewer and solid waste components (the "**System**"); and

WHEREAS, the Project Sponsor proposes to finance the Project with a loan made from the Fund, such loan to be pursuant to, and on a parity with debt previously issued under, an ordinance enacted by the Project Sponsor on March 10, 2003 entitled "GENERAL BOND ORDINANCE NO. 03-03-12 AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF WATER AND SEWER SYSTEM REVENUE BONDS OF BERKELEY COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; LIMITING THE PAYMENT OF THE BONDS SOLELY TO THE NET REVENUES DERIVED FROM THE OPERATION OF THE SYSTEM AND PLEDGING THE REVENUES TO SUCH PAYMENT; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" as amended on August 23, 2010 and on March 25, 2013 (the "**General Bond Ordinance**");

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

ARTICLE I

LOAN

SECTION 1.1. Loan Made and Accepted; Repayment. In consideration of the mutual promises of this Agreement, and upon and subject to its terms and conditions, the Authority agrees to make, and the Project Sponsor agrees to accept, the loan herein provided for (the "**Loan**"). The obligation of the Project Sponsor to repay the Loan and interest thereon is evidenced by this Agreement and a promissory note (the "**Note**") registered in the name of the Authority. The amount of the Loan (the "**Loan Amount**"), the interest rate on the Loan and the repayment schedule with respect to the Loan (the "**Repayment Schedule**") shall be as set forth in Appendix "B" hereto, as may be changed or modified pursuant to Section 1.4 hereof; the terms and form of the Note are set out in Appendix "E". The Project Sponsor shall make payments with respect to the Loan at the times and in the amounts set forth in Appendix "B", as modified, on the due date of any such payment.

SECTION 1.2. Purpose Limited to Project. The Project Sponsor shall use the proceeds of the Loan only to pay the actual eligible costs of the Project. The Project is described in Appendix "A" and more specifically as approved in the Project files of the Department. Except to the extent otherwise approved in writing by the Authority, only the costs shown in the Project budget set forth in Appendix "A" shall be allowed and only in the amounts provided for each category. Costs of construction shall be allowed only for work called for in plans and specifications approved by the Department. Proceeds may not be used to pay for labor performed by employees of the Project Sponsor but may be used to pay for materials installed by them.

SECTION 1.3. Disbursements.

1.3.1. The Authority shall make and the Project Sponsor shall accept full or partial disbursements only against incurred, actual eligible costs up to the Loan Amount and by category as provided in this Agreement.

1.3.2. For purposes of making requests for disbursement and representing the Project Sponsor in all administrative matters pertaining to administration of this Agreement, the Project Sponsor shall designate a single officer or employee (the "**Sponsor Representative**") prior to the first disbursement request.

1.3.3. In those cases when the Project Sponsor has paid the incurred Project costs and is seeking reimbursement for payment of such costs theretofore paid by the Project Sponsor, any check for disbursement from the Fund for reimbursement to the Project Sponsor shall be drawn and mailed to the Project Sponsor. In those cases when the Project Sponsor is seeking funds with which to pay incurred Project costs, any check for disbursement from the Fund to pay such costs may, at the option of the Authority, be drawn to the Project Sponsor alone or jointly to the Project Sponsor and contractor engaged by the Project Sponsor for the Project. Such check will be mailed to the Project Sponsor.

1.3.4. Before any disbursement, the Project Sponsor shall execute any documents requested by the Authority reasonably necessary or convenient to the foregoing and shall have satisfied all conditions of Section 1.6 hereof.

1.3.5. Requests for disbursement may be made only after the costs for which the draw is requested have been incurred. The Project Sponsor may not request a disbursement until all construction contracts are signed. The first request for disbursement submitted by the Project Sponsor pursuant to this Agreement shall include an amount for incurred construction costs and all amounts requested by the Project Sponsor for payment or reimbursement of amounts set forth in any of the categories "Planning and Design Engineering", "Land Acquisition", and "Legal and Appraisal Fees" which appear in the Project Budget in Appendix "A" hereto. The Project Sponsor shall not request disbursement against retainage until retainage is paid and shall not request disbursement for change orders unless such change orders have been approved by the Department. Unless the Authority otherwise approves, when the Project budget indicates that the Loan shall bear only a portion of the eligible costs of the Project, or a portion of certain itemized costs, any draw shall not exceed the same proportion of such costs reported for disbursement.

1.3.6. Requests for disbursement shall be made on forms of the Department unless the Authority or Department otherwise directs, and shall be accompanied by such invoices and other proofs as the Authority and Department may reasonably require. The final disbursement shall not be released until the Department issues its approval to place the Project into operation (the "**Permit to Operate**"). No disbursement requests will be accepted more than one hundred eighty (180) days after the date of such Permit to Operate.

1.3.7. The Authority may require that each draw request shall be submitted to the Authority and Department at least twenty-one (21) days before the day disbursement is needed and may limit draw requests to one per month. The Authority will exert its best efforts to disburse funds in response to a draw request within twenty-one (21) days of receiving such request, but no assurance is given by the Authority that such schedule will be met and the Authority shall incur no liability to any Project Sponsor. Processing on shorter notice or faster schedule shall not amend this provision.

SECTION 1.4. Changes in Payment Initiation Date, the Loan Amount and Repayment Schedule.

1.4.1. The Loan Amount has been determined, in part, upon the basis of the projected cost of the Project as shown in Appendix "A". The Payment Initiation Date shown in Appendix "B" (the "**Payment Initiation Date**") is determined by a combination of factors, including, but not limited to the expected Project schedule shown in Appendix "A". Appendix "B" shows the Repayment Schedule anticipated by the parties on this basis and provides for repayment of the Loan, including interest thereon, in eighty (80) equal, or substantially equal, quarterly payments beginning on the first day of the third month after the month of the Payment Initiation Date. The Loan Amount, the Payment Initiation Date and the Repayment Schedule may be changed but only as provided in the following Section 1.4.2. The

Interest Rate is fixed for the term of the Loan and may not be changed from the rate originally established in Appendix "B" hereof.

1.4.2. (a) At the written request of the Project Sponsor, submitted to the Authority no later than sixty (60) days prior to the original Payment Initiation Date in Appendix "B", the Payment Initiation Date may be extended once by the Authority to any date not later than the earlier to occur of (i) six (6) months from the original Payment Initiation Date in Appendix "B", or (ii) thirty (30) months from the first day of the month following the date of this Agreement, or (iii) the first day of the month following the date of the Permit to Operate issued by the Department for the operation of the Project.

(b) In the event the Permit to Operate the Project is issued by the Department more than one (1) month prior to the Payment Initiation Date stated in Appendix "B", the Authority may require that either the Payment Initiation Date be accelerated to the first day of the month following the date of the Permit to Operate, or the term of the Loan be shortened by a minimum of three (3) months.

(c) The Project Sponsor may request that the Loan Amount be increased by including in principal on the Payment Initiation Date the interest which has accrued on amounts theretofore advanced from the Fund. Any such request shall be submitted in writing to the Authority by the Project Sponsor not less than thirty (30) days prior to the Payment Initiation Date.

(d) The Authority or the Project Sponsor may initiate a reduction to the Loan Amount at any time there is a determination that a lesser amount is required for completion of the Project.

(e) The initial Repayment Schedule with respect to the Loan set forth in Appendix "B" shall be modified to reflect (i) changes in the Loan Amount, (ii) extension or acceleration of the Payment Initiation Date, and (iii) any other modification thereto agreed to by the Authority and the Project Sponsor.

(f) Modification of the Repayment Schedule resulting from a change in the Loan Amount subsequent to the Payment Initiation Date shall be made such that:

(i) at the time of final disbursement pursuant to Section 1.3 the Authority shall determine the final Loan Amount;

(ii) a revised Repayment Schedule shall be calculated by the Authority based on the final Loan Amount, the interest rate set forth in Appendix "B" and payment in eighty (80) equal, or substantially equal, quarterly installments beginning on the first day of the third month after the month of the Payment Initiation Date; and

(iii) any difference between the amount theretofore paid by the Project Sponsor prior to the revision of the Repayment Schedule and the amount which would have been paid had the revised schedule been in effect from and after the Payment Initiation Date shall be credited against the next payment, or payments, due under the revised Repayment Schedule.

(g) For purposes of the Repayment Schedule, any amounts disbursed subsequent to the Payment Initiation Date shall be considered to have been advanced on the Payment Initiation Date.

1.4.3. Any change in the Loan Amount, extension or acceleration of the Payment Initiation Date or modification of the Repayment Schedule shall be documented administratively by notice under this Agreement and shall be reflected in the substitution of a revised Appendix "B" hereto reflecting any such change or modification. In connection with any such change or modification, the Authority may, but need not, impose new terms and conditions, including cancellation of the Note and execution of a new Note.

SECTION 1.5. Deadline for Borrowing and Termination of Promise to Lend. The Authority, in its sole discretion, may terminate its promise to lend all of, or any unadvanced portion of, the Loan Amount which has not been advanced if:

1.5.1. The Project Sponsor has not entered into all construction contracts applicable to the Project within six (6) months of the date of this Agreement; or

1.5.2. The Project Sponsor does not request disbursement of the unborrowed balance of the Loan Amount on or before the one hundred eightieth (180th) day following the date of the Permit to Operate issued by the Department for the Project; or

1.5.3. An Event of Default (as defined in Section 5.1 hereof) occurs (in which event the remedies for default likewise shall be available); or

1.5.4. A circumstance arises or becomes known which, in the Authority's sole discretion and opinion, (a) substantially impairs the ability of the Project Sponsor to complete the Project, to operate the Project or to repay the Loan, or (b) substantially impairs the merit of the Project.

SECTION 1.6. Conditions Precedent to Disbursement of Loan Proceeds. In addition to any other conditions herein provided, the Authority's obligation hereunder to make disbursements from the Fund for advances on the Loan shall be subject to satisfaction of the following conditions:

1.6.1. The Project Sponsor's representations and warranties shall remain true and correct;

1.6.2. No Event of Default shall have occurred under this Agreement or the Note;

1.6.3. The Project Sponsor has complied with the requirements of Sections 1.3, 1.4 and 1.5;
and

1.6.4. There shall be on deposit in any debt service reserve fund required by this Agreement the amount required at such time to be on deposit therein.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

The Project Sponsor represents and warrants to the Authority as follows:

SECTION 2.1. Status of Project Sponsor. The Project Sponsor is a political subdivision of the State of South Carolina (the "*State*"), authorized to acquire and construct the Project and to operate the Project and provide wastewater treatment/stormwater services.

SECTION 2.2. Financial Statements. The financial statements of the Project Sponsor delivered to the Authority are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles for units of government, consistently applied, and fairly present the respective financial condition of the subjects thereof as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected in the statements since their date and no additional borrowing has been made by the Project Sponsor since then other than borrowing specifically disclosed and approved by the Authority. All other information submitted by the Project Sponsor in support of its application for this Loan is true and correct as of the date of this Agreement, and no material adverse change with respect to the Project Sponsor has occurred.

SECTION 2.3. Pending Litigation. There are no actions, suits or proceedings, at law or in equity, in court or before any governmental or administrative agency, either pending or to the knowledge of the Project Sponsor reasonably to be considered threatened, which may impair the validity or enforceability of the Note or this Agreement or the Project Sponsor's ability to repay the Loan or to construct and operate the Project for revenue.

SECTION 2.4. No Conflicting Transactions. Consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any deed to secure debt, mortgage, deed of trust, indenture, security agreement, lease, bank loan or credit agreement, municipal charter, ordinances, contracts or other instruments to which the Project Sponsor is a party or by which it may be bound or affected.

SECTION 2.5. Ownership of Premises. The Project Sponsor owns in fee simple the real property which presently constitutes or which will constitute the main operating facilities of the Project and of the System as a whole, and further owns in fee simple or by sufficient easement the real property upon, across or under which the Project Sponsor has or will have its collection or trunk lines, manholes, pump stations and the like, including those to be a part of the Project and otherwise. Property of which the Project Sponsor has taken possession pursuant to Section 28-2-90 of the South Carolina Eminent Domain Procedure Act (Title 28, Chapter 2, Code of Laws of South Carolina, 1976, as amended), and in connection with which no action pursuant to Section 28-2-470 of such statute has been instituted within thirty (30) days of the condemnation notice with respect to such property, shall be deemed owned in fee simple by the Project Sponsor pursuant to this Section 2.5. The Project Sponsor has good record title to

the real property described above (or has possession pursuant to the Eminent Domain Procedure Act, as described above) with only such exceptions of record as do not limit the fee simple ownership and do not and will not interfere with the full use and enjoyment of the premises by the Project Sponsor. With respect to the personal property and fixtures of the Project Sponsor necessary or convenient to the System and its operation, there are no liens or other claims of record against such property or other evidence of adverse ownership, and the Project Sponsor owns such personal property and fixtures in fee simple without conflicting claim of ownership, except as previously disclosed by the Project Sponsor in its application for this Loan.

SECTION 2.6. Other Project Arrangements. The Project Sponsor has secured the utilities, access, governmental approvals and other arrangements reasonably to be considered necessary for the undertaking of the Project.

SECTION 2.7. No Construction Default. Neither the Project Sponsor nor its contractor, architect or engineer for the Project or any related project is in default of any agreement respecting the Project or a related project.

SECTION 2.8. No Default. There is no default on the part of the Project Sponsor under this Agreement or the Note, and no event has occurred and is continuing, which, with notice or the passage of time would constitute a default under any part of this Agreement or the Note.

SECTION 2.9. Effect of Draw Request. Each request for and acceptance of disbursement by the Project Sponsor shall be affirmation that the representations and warranties of this Agreement remain true and correct as of the date of the request and acceptance, that no breach of other provisions hereof has occurred, and that no adverse developments affecting the financial condition of the Project Sponsor or its ability to complete the Project or to repay the Loan plus interest thereon have occurred since the date of this Agreement unless specifically disclosed in writing by the Project Sponsor in the request for disbursement. Unless the Authority is notified to the contrary, such affirmations shall continue thereafter.

ARTICLE III

COVENANTS

SECTION 3.1. Contract Award, Construction Inspection and Completion.

3.1.1 The Project Sponsor should not execute construction contracts or issue the notice to proceed with respect to the Project prior to receiving written approval from the Department to award construction contracts.

3.1.2 The Project Sponsor shall provide and maintain competent and adequate engineering supervision and continuous inspection of the Project to ensure that the construction conforms with the plans and specifications approved by the Department. A monthly inspection report shall accompany each disbursement request.

3.1.3 The Project Sponsor shall cause the Scope of Work identified in Appendix "A" to be completed pursuant to the Project Schedule also defined in Appendix "A" hereto. The Project Sponsor shall require all contractors to satisfactorily complete all work within the time stated in the executed construction contract. Extension of any contract completion date requires the Department's approval. Any costs incurred as a result of a time extension which has not received approval by the Department shall not be eligible for Loan participation.

3.1.4 The Project Sponsor shall pay all costs to complete the Project not covered by the Loan and commits itself to complete the construction of the operable treatment works and to complete the treatment system of which this Project is a part.

SECTION 3.2. Disbursements. The Project Sponsor shall receive and promptly disburse the funds to be provided hereunder as trust funds for the purpose of paying the eligible costs of the Project and for no other purpose.

SECTION 3.3. Release of Responsibility. The Project Sponsor shall undertake the Project on its own responsibility and, to the extent permitted by law, shall release and hold harmless the Authority, the Department, the State and their officers, members and employees from any claim arising in connection with the design, construction or operation of the Project or any other aspect of the System including any matter due solely to their negligence.

SECTION 3.4. Other Agreements. The Project Sponsor shall comply with all terms and conditions of any construction contracts, architectural or engineering agreements, trust indentures, security deeds, promissory notes, loan agreements, or the like affecting the Project, the premises of the System and its operation. The Project Sponsor shall require its construction contractor to furnish both a performance bond and payment bond in the full amount of the construction contract. The requirement of such bonds shall be for the convenience of the Authority only and shall not be an undertaking by the Authority to the Project Sponsor or any third party.

SECTION 3.5. Accounting and Auditing.

3.5.1. Accounting. The Project Sponsor shall account for the Project and System in accordance with generally accepted accounting principles (GAAP), including financial, statistical, property, and supporting documentation. All accounting records shall be kept using GAAP accounting, and applying all relevant Government Accounting Standards Board (GASB) pronouncements, including GASB Statement No. 34 relating to the reporting of infrastructure assets.

3.5.2. Audit. Within six (6) months of the end of each fiscal year of the Project Sponsor, the Project Sponsor shall tender to the Authority an annual financial audit by a certified public accountant. The conduct of the audit and the audit shall be in accordance with Generally Accepted Auditing Standards as defined in Government Auditing Standards, Comptroller General of the United States, December 1, 2011, and revisions, updates or successors thereto. A Single Audit, as required by OMB under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200, Subpart F, may be necessary for each year federal funds are disbursed to the Project Sponsor under CFDA Number 66.458. If the Project Sponsor conducts a Single Audit when federal money disbursed from the Fund is less than the threshold required for such audit, the Project Sponsor shall submit to the Authority, within sixty (60) days of its completion, any findings and recommendations pertaining to money from the Fund contained in such Single Audit.

SECTION 3.6. Ratings from Rating Agencies. If the Reserve Requirement, as defined in Section 4.2.1 herein, is initially, or at any time during the term of the Loan, set at a level that is less than the maximum amount due on the Note during any full calendar year, the Project Sponsor shall submit to the Authority a copy of its latest long-term, unenhanced underlying rating, affirmation thereof, and any new or updated credit report on the System and/or any Parity Debt, as defined in Section 4.3.2 herein, from S&P Global Ratings, or its respective successors and assigns, ("**S&P**") or Moody's Investors Service, Inc., or its respective successors and assigns, ("**Moody's**"), and from each, if both S&P and Moody's issued ratings. Additionally, the Project Sponsor shall immediately notify, and submit to, the Authority any commentaries, updated outlooks/reports, CreditWatch placements, ratings changes or downgrades, or other actions from S&P and/or Moody's with respect to the System and/or any Parity Debt.

SECTION 3.7. Insurance. The Project Sponsor covenants and agrees that so long as any amount remains unpaid on the Note:

(A) It will insure and at all times keep the Project insured against physical loss or damage with a responsible insurance company or companies, authorized and qualified under the laws of the State, to assume the risks insured against, in an amount equal to the replacement cost of the Project;

(B) It will secure adequate fidelity bonds (blanket or individual) of a surety company doing business in the State, indemnifying the Project Sponsor against defalcation of all persons handling money derived from the System or signing checks on any bank accounts relating to the System;

(C) All insurance policies shall be open to the inspection of the Authority at any reasonable time; and

(D) All money received by the Project Sponsor as a consequence of any defalcation, covered by any fidelity bond, shall be used to restore the fund depleted by the defalcation. All sums received by the Project Sponsor from insurance policies covering the Project may, to the extent necessary, be applied to the repair and replacement of the damaged or destroyed property, but, in the event that such money is not used for such purposes, then the same shall be applied to payment of the Note.

SECTION 3.8. Compliance with Governmental Authority. The Project Sponsor shall comply with all environmental laws, rules and other provisions of legal force and effect and all such other provisions which govern the construction or operation of the Project or the System.

SECTION 3.9. Adequate Rates. The Project Sponsor shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System as shall be sufficient to meet the requirements of this Agreement, and the Project Sponsor specifically covenants and agrees to maintain rates and charges for all services furnished by the System which shall at all times be sufficient:

3.9.1. To provide for the punctual payment of the principal of and interest on the Note and any other indebtedness of the Project Sponsor payable from revenues of the System that may from time to time hereafter be outstanding;

3.9.2. To maintain any Debt Service Reserve Fund required by this Agreement in accordance with the provisions hereof;

3.9.3. To provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as may be necessary to preserve the same in good repair and working order;

3.9.4. To build and maintain a reserve for depreciation of the System, for contingencies and for improvements, betterments and extensions to the System other than those necessary to maintain the same in good repair and working order; and

3.9.5. To discharge all other obligations imposed by the Act, by this Agreement and by the General Bond Ordinance.

The Project Sponsor further covenants and agrees that it shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System which, together with other income, are reasonably expected to yield annual Net Revenues, as defined in the General Bond Ordinance, in any fiscal year equal to the greater of (i) one hundred ten percent (110%) of the annual principal and interest on all debt paid from or secured by revenues of the System; or (ii) such other percentage of the annual principal and interest on all debt secured by revenues of the System as the Project Sponsor shall have covenanted that its Net Revenues would meet with respect to other outstanding indebtedness of the System.

SECTION 3.10. Review of Rates. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will review the adequacy of its rates and charges to comply with the

requirements of this Agreement promptly upon any material changes in circumstances, but not less frequently than once in each fiscal year of the Project Sponsor. The Project Sponsor shall submit any adjustments to its rates and charges to the Authority immediately upon adoption.

SECTION 3.11. Disclosure of Events to Authority. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will submit to the Authority event specific information within thirty (30) days of an event adversely affecting more than five (5) percent of revenues of the System and any other information which is otherwise required to be released to a municipal bond information repository service.

SECTION 3.12. Procurement Requirements. The Project Sponsor shall comply with all procurement requirements of law and, to the extent compliance therewith does not contravene any provision of law applicable to the Project Sponsor, shall comply with the procurement requirements set forth in Appendix "C" hereto.

SECTION 3.13. Inspection and Information. On reasonable notice, the Authority or the Department shall have for its own convenience and benefit, and without obligation to the Project Sponsor or any third party, the right to audit the books and records of the Project Sponsor as they may pertain to or affect the System and this Agreement and to enter upon the premises to inspect the Project. The Project Sponsor shall cause its architects, engineers, contractors, and auditors to cooperate during such inspections including making available any documents, records, reports or other materials pertinent to the Project and the inspection. The Project Sponsor shall comply with all reasonable requests by the Authority or the Department for information pertaining to the Project Sponsor's compliance with this Agreement.

SECTION 3.14. Consent to Changes. Without consent of the Authority and Department, the Project Sponsor shall make no modifications or changes to the Project, or allow to continue any defect, which would damage or reduce the value of the Project or the System. The Project Sponsor shall not divide the Project into component projects in order or in effect, so as to defeat the provisions of this Agreement. The Project Sponsor covenants that it shall remain the owner of the Project and agrees that it will not convey, transfer, mortgage or otherwise encumber the Project, the System or the revenues derived therefrom during the term of this Agreement without the express prior written approval of the Authority.

SECTION 3.15. Additional Covenants. The Project Sponsor further covenants and agrees that:

3.15.1. Neither the System, nor any part thereof, nor any of the revenues derived from the System, have been or will be hypothecated, mortgaged, otherwise pledged or encumbered, save and except as disclosed and provided for herein or in the General Bond Ordinance;

3.15.2. It will permit no free service to be rendered, or use to be made of the services and facilities of the System and for the services and facilities of the System used by the Project Sponsor, the reasonable cost and value of such services and facilities shall be paid as such services accrue. The revenue so received from the Project Sponsor shall be deemed revenue derived from the operation of the System, and shall be accounted for in the same manner as other revenues of the System;

3.15.3. It will permit no customer to be connected to the System, or to receive any service afforded by the System, unless such customer shall become obligated to pay for the service rendered at the appropriate rate according to the rate schedule then in force;

3.15.4. It will maintain in effect rules and regulations requiring connection to the System by all persons within the jurisdiction of the Project Sponsor to whom the services of the System shall be available and shall impose availability fees and charges with respect to customers and properties to which or whom service is available but which or who have not connected into the System; and

3.15.5. So long as any amount due with respect to the Note is unpaid, it will perform all duties with reference to the System required by the Constitution and statutes of the State, and the Project Sponsor hereby irrevocably covenants, binds and obligates itself not to pledge, mortgage or otherwise encumber the System or any part thereof, or any revenues therefrom, except in the manner authorized herein or in the General Bond Ordinance, and it will not sell, lease or dispose of any portion of the System, necessary or useful except as expressly permitted in the General Bond Ordinance, and the Project Sponsor further obligates itself and covenants and agrees with the Authority to maintain in good condition and to operate said System, and to collect and charge such rates for the services and facilities of the System so that the income and revenues of the System will be sufficient at all times to meet the requirements of this Agreement.

ARTICLE IV
ESTABLISHMENT OF FUNDS AND
DISPOSITION OF REVENUES

SECTION 4.1. Establishment of Gross Revenue Fund, Debt Service Fund, Operation and Maintenance Fund, and Depreciation and Contingent Fund. Beginning on the first day of the month following the delivery of the Note, except with respect to the Debt Service Fund, and continuing until all amounts due with respect to the Note have been paid in full, the following funds shall be established and maintained:

4.1.1. The Project Sponsor shall establish a Gross Revenue Fund, defined as the Revenue Fund in the General Bond Ordinance, into which shall be placed all receipts, income and revenue that the Project Sponsor shall derive, directly or indirectly, from the ownership of the System. Moneys in the Gross Revenue Fund may be withdrawn on order of the Project Sponsor, but shall be made use of only in the manner and in the order of priority specified in Section 4.3 hereof.

4.1.2. Beginning in the month of the Payment Initiation Date, the Project Sponsor shall provide for the establishment of a Series 2022C Debt Service Fund (the "***Debt Service Fund***") as a means of providing for the payment of the principal and interest on the Note as the same shall fall due. Moneys in the Debt Service Fund shall be used solely to pay the principal of and interest on the Note, and for no other purpose. The Debt Service Fund shall be kept in the complete custody and control of the Trustee, as defined in Section 4.4 herein and as provided in the General Bond Ordinance. Withdrawals from the Debt Service Fund shall be made only by the Trustee who shall transmit to the Authority the sums required to pay principal and interest on the Note.

4.1.3. The Project Sponsor shall establish an Operation and Maintenance Fund in order to provide for the payment of all expenses incurred in connection with the administration and operation of the System, and such expenses as may be reasonably necessary to preserve the System in good repair and working order.

4.1.4. The Project Sponsor shall establish a Depreciation and Contingent Fund, defined as the Capital Improvements Fund in the General Bond Ordinance. Moneys in this fund shall be used solely for the purpose of restoring or replacing depreciated or obsolete properties of the System, paying the cost of improvements, betterments and extensions to the System, other than those necessary to maintain the System in good repair and working order, and for the payment of extraordinary maintenance and repairs, provided, however, if necessary, moneys in the Depreciation and Contingent Fund may be used to fund any deficiency in a Debt Service Fund or Debt Service Reserve Fund, as such terms are defined in the General Bond Ordinance, and used for any of the purposes for which such funds were established.

4.1.5. In the event the Project Sponsor shall have established funds analogous to, or serving the purpose of, the funds required to be established by this Article IV, such funds may be continued and employed for the purposes of this Agreement, and the Project Sponsor shall not be required to establish duplicate funds.

SECTION 4.2. Establishment and Funding of Debt Service Reserve Fund.

4.2.1. Based on the Project Sponsor's receipt of a long-term underlying rating on the System and/or any Parity Debt in at least the "A" category from S&P or Moody's respectively, and from each, if both S&P and Moody's issued ratings, and the submission of such with its Loan application to the Authority, the Debt Service Reserve Fund requirement with respect to the Note (the "**Reserve Requirement**") shall initially equal zero and shall continue to be zero subject to provisions of the following Section 4.2.2. At such time as the Reserve Requirement is greater than zero as provided in Section 4.2.2, the Project Sponsor shall fund a Series 2022C Debt Service Reserve Fund (the "**Debt Service Reserve Fund**") to provide a reserve for payment of principal of and interest on the Note.

4.2.2. (a) The Reserve Requirement shall continue to be zero if the Project Sponsor fully complies with all requirements of Section 3.6 herein for submitting S&P/Moody's ratings/affirmations/credit reports and for immediately providing any other rating agency actions related to the System and/or any Parity Debt, and all such ratings are maintained in at least the "A" category.

(b) If there is no longer any current rating or if either the S&P or Moody's rating is downgraded below the "A" category, the Reserve Requirement shall immediately increase to the maximum annual amount due on the Note, and the Project Sponsor shall meet the new requirement within one year through twelve (12) equal monthly deposits, beginning in the month following any such downgrade or loss of the rating for the System and/or any Parity Debt.

(c) In the event the Reserve Requirement is ever increased as provided in Section 4.2.2(b) above due to a ratings downgrade or loss and is subsequently upgraded to the level established in Section 4.2.2 (a), then the Reserve Requirement shall revert to zero and any excess money in the Debt Service Reserve Fund shall be applied as provided in Section 4.4.3 hereof.

4.2.3. The Debt Service Reserve Fund is intended to insure the timely payment of the principal of and interest on the Note. Money in the Debt Service Reserve Fund shall be used only to prevent a default in the payment of the Note, by reason of the fact that money in the Debt Service Fund is insufficient for such purposes.

4.2.4. Prior to the delivery of this Agreement to the Authority, the Project Sponsor shall deposit, or cause to be deposited, in the Debt Service Reserve Fund, if required to be funded pursuant to Section 4.2.1, funds in an amount, or investments permitted by Section 4.4.3 having a value, equal to the Reserve Requirement. In the event that the Reserve Requirement shall increase due to an increase in the Loan Amount pursuant to Section 1.4.2(c), the Project Sponsor shall immediately deposit, or cause to be

deposited, in the Debt Service Reserve Fund, if required to be funded pursuant to Section 4.2.2, funds in an amount equal to such increase in the Reserve Requirement.

SECTION 4.3. Disposition of Revenues. All revenues derived from the operation of the System shall be deposited in the Gross Revenue Fund. Beginning in the month following the delivery of this Agreement with respect to payments pursuant to Sections 4.3.1 and 4.3.3 to 4.3.7, inclusive, and beginning in the month of the Payment Initiation Date with respect to payments pursuant to Section 4.3.2, withdrawals from the Gross Revenue Fund shall be made in the following order of priority:

4.3.1. There shall be deposited into the Operation and Maintenance Fund that sum which has been currently determined by the Project Sponsor to be the cost of operating and maintaining the System for the next ensuing month.

4.3.2. The monthly fraction of the next payment of principal and interest to become due on the Note on the next succeeding payment date shall be deposited in the Debt Service Fund not later than the fifth (5th) Business Day (defined in the General Bond Ordinance) preceding the end of the month. At such times as required by, and in accordance with provisions of, Section 6.7 of the General Bond Ordinance and any Supplemental Ordinance (defined in the General Bond Ordinance), the Project Sponsor shall deposit (a) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority from the South Carolina Drinking Water Revolving Loan Fund (the "**Drinking Water Fund**") relating to loan number 3-033-08-0820002-03 (the "**2008B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2008B SRF Note; (b) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bonds, Series 2013 (the "**2013 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2013 Revenue Bonds; (c) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Revenue Bonds, Series 2014 (the "**2014 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2014 Revenue Bonds; (d) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bonds, Series 2019 (the "**2019 Revenue Bonds**"), the amount required for the next payment of principal and interest to become due on the 2019 Revenue Bonds; (e) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X3-085-19-0820002-08 from the Drinking Water Fund (the "**2020A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020A SRF Note; (f) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-216-19-496-24 from the Fund (the "**2020B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020B SRF Note; (g) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-222-19-496-20 from the Fund (the "**2020C SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020C SRF Note; (h) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-223-19-496-25 from

the Fund (the "**2020D SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020D SRF Note; (i) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-229-20-496-22 from the Fund (the "**2020E SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020E SRF Note; (j) in a fund for the payment of amounts due with respect to the Project Sponsor's Combined Utility System Refunding Revenue Bond, Taxable Series 2020F (the "**2020F Revenue Bond**"), the amount required for the next payment of principal and interest to become due on the 2020F Revenue Bond; (k) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-215-20-496-23 from the Fund (the "**2020G SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020G SRF Note; (l) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-234-20-496-19 from the Fund (the "**2020H SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2020H SRF Note; (m) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-243-21-496-26 from the Fund (the "**2021A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2021A SRF Note; (n) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X3-092-21-0820002-09 from the Drinking Water Fund (the "**2021B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2021B SRF Note; (o) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number 1-251-22-496-31 from the Fund (the "**2022A SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2022A SRF Note; (p) in a fund for the payment of amounts due with respect to the promissory note of the Project Sponsor to the Authority relating to loan number X1-252-22-496-29 from the Fund (the "**2022B SRF Note**"), the monthly fraction of the next payment of principal and interest to become due on the 2022B SRF Note; and (q) into a fund or funds for the payment of amounts due with respect to any obligations of the Project Sponsor (the "**Obligations**") secured by a pledge of revenues on a parity with the pledge securing the Note, the 2008B SRF Note, the 2013 Revenue Bonds, the 2014 Revenue Bonds, the 2019 Revenue Bonds, the 2020A SRF Note, the 2020B SRF Note, the 2020C SRF Note, the 2020D SRF Note, the 2020E SRF Note, the 2020F Revenue Bond, the 2020G SRF Note, the 2020H SRF Note, the 2021A SRF Note, and the 2021B SRF Note, the 2022A SRF Note, the 2022B SRF Note, the amount or amounts required for the next payment or payments due on any such Obligation or Obligations. The 2008B SRF Note, the 2013 Revenue Bonds, the 2014 Revenue Bonds, the 2019 Revenue Bonds, the 2020A SRF Note, the 2020B SRF Note, the 2020C SRF Note, the 2020D SRF Note, the 2020E SRF Note, the 2020F Revenue Bond, the 2020G SRF Note, the 2020H SRF Note, the 2021A SRF Note, the 2021B SRF Note, the 2022A SRF Note, the 2022B SRF Note, and the Obligations are hereinafter sometimes referred to as "**Parity Debt**". In the event amounts available for payments into the funds with respect to the Note and all Parity Debt are not sufficient to make all payments then required to be made, such available amounts shall be deposited into such funds on a pro rata basis.

4.3.3. (a) In the event any amounts shall be withdrawn from the Debt Service Reserve Fund in order to provide for payment of any amounts due with respect to the Note, there shall be deposited in the Debt Service Reserve Fund not less than one-twelfth (1/12) of the amount of any such withdrawal and such deposits with respect to any such withdrawal shall begin in the month following such withdrawal and shall continue in each month thereafter until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

(b) In the event the Reserve Requirement for the Debt Service Reserve Fund is increased pursuant to any provision of Section 4.2.2 herein, there shall be deposited in the Debt Service Reserve Fund not less than one-twelfth (1/12) of the amount necessary to fully meet the Reserve Requirement, and such deposits shall begin in the month following a ratings downgrade or loss and shall continue in each month thereafter until the amount on deposit in the Debt Service Reserve Fund shall equal such increased Reserve Requirement.

(c) If the value of the Debt Service Reserve Fund is ever less than the Reserve Requirement, other than as provided in (a) or (b) above, or as provided in Section 4.2.4 with respect to any increase in the Loan Amount, there shall be deposited in the Debt Service Reserve Fund not less than one-fourth (1/4) of an amount equal to the total Reserve Requirement deficiency, beginning in the month following such a determination. Such deposits shall continue to be made until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

(d) Nothing in this Section 4.3.3 (a), (b) or (c) shall preclude the Project Sponsor from fully funding the Reserve Requirement in a more timely fashion than so prescribed.

4.3.4. If, in any month, for any reason, the Project Sponsor shall fail to pay all or any part of the money it has herein agreed to pay into said Debt Service Fund or Debt Service Reserve Fund, the amount of any such deficiency shall be added to and shall become a part of the amount due and payable into said Debt Service Fund or Debt Service Reserve Fund in the next succeeding month.

4.3.5. Provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy of letter of credit as contemplated in Section 6.8 of the General Bond Ordinance.

4.3.6. Provision shall be made for the payment of any Junior Bonds, as defined in the General Bond Ordinance.

4.3.7. There shall be deposited from time to time into the Depreciation and Contingent Fund an amount determined by the Project Sponsor in the annual budget prepared for the System.

4.3.8. Any revenues remaining after the foregoing deposits have been made shall be disposed of by the Project Sponsor as it may determine to be for any lawful purposes of the System.

SECTION 4.4. Concerning the Debt Service Fund and the Debt Service Reserve Fund. The Debt Service Fund created pursuant to Section 4.1.2 hereof and the Debt Service Reserve Fund created

pursuant to Section 4.2 hereof, shall be established with a bank whose deposits are insured by the Federal Deposit Insurance Corporation (the "*Trustee*") chosen by the Project Sponsor with the written approval of the Authority. The Debt Service Fund and the Debt Service Reserve Fund, if required to be funded, shall be held and administered by the Trustee in accordance with the following provisions of this Section 4.4. The Trustee shall acknowledge and accept its duties and responsibilities with respect to the Debt Service Fund and the Debt Service Reserve Fund, if funded, in one or more written instruments delivered to the Authority with this Agreement.

4.4.1. The Trustee shall notify the Authority in writing of the date of the initial amount deposited into the Debt Service Fund and the initial amount deposited into the Debt Service Reserve Fund, if required to be funded. If the Project Sponsor fails to deposit the amount required by this Agreement in either fund at the time required for such deposit, the Trustee, no later than the fifth day after the date on which such deposit is to be made, shall provide written notification to the Project Sponsor, with a copy to the Authority, of the amount required for deposit into the Debt Service Fund or the Debt Service Reserve Fund pursuant to the provisions of this Agreement. If the Reserve Requirement is greater than zero, the Trustee shall also verify balances in the Debt Service Reserve Fund, as requested by the Authority, but no less often than semiannually during any period of monthly deposits and no less often than annually when the full Reserve Requirement is met and maintained.

4.4.2. From sums deposited in the Debt Service Fund by the Project Sponsor, the Trustee shall transmit to the Authority an electronic funds transfer or a check made payable to "Office of Local Government - SRF" in the amount, and at the times, required by the Agreement and Note. If insufficient sums exist in the Debt Service Fund for any payment then due and the Reserve Requirement is zero, the Trustee shall immediately notify the Project Sponsor of the amount to be transmitted to the Trustee for the payment then due. If insufficient sums exist in the Debt Service Fund for any payment then due and the Reserve Requirement is greater than zero, the Trustee shall transfer the amount needed for payment from the Debt Service Reserve Fund and the Trustee shall notify the Project Sponsor of the amounts required to be deposited in the Debt Service Reserve Fund in order to replenish such a withdrawal and have on deposit therein the amount required by this Agreement. A copy of any such notice shall be provided to the Authority by the Trustee.

4.4.3. Pending disbursement pursuant to this Section 4.4, any money in the Debt Service Reserve Fund shall be invested and reinvested in Permitted Investments, as defined in the General Bond Ordinance. Subject to the remaining provisions of this Section 4.4.3, the earnings from such investments shall be added to and become a part of the Debt Service Reserve Fund. Whenever, and as of any date of calculation, the value of the securities and money in the Debt Service Reserve Fund shall exceed the Reserve Requirement, such excess shall, at the direction of the Project Sponsor, either be used to effect partial prepayment of the Note, or shall be removed from the Debt Service Reserve Fund and transferred into the Debt Service Fund; provided, if such excess is solely as a result of a reduction in the required level of the Reserve Requirement in accordance with Section 4.2.2, which excess shall be evidenced to

the Trustee in writing by the Authority, the Trustee shall pay over such excess in the Debt Service Reserve Fund to the Project Sponsor.

4.4.4. Upon payment in full of all amounts due with respect to the Note, which payment shall be evidenced to the Trustee in writing by the Authority, the Trustee shall pay over all amounts remaining in the Debt Service Fund and the Debt Service Reserve Fund, if funded, to the Project Sponsor upon the receipt of written directions from the Project Sponsor and the Trustee shall thereafter have no further responsibilities under this Agreement.

ARTICLE V
EVENTS OF DEFAULT

SECTION 5.1. Events of Default. The following occurrences shall constitute Events of Default hereunder:

(A) The Project Sponsor fails to comply with any of the covenants, terms and conditions made in this Agreement;

(B) The Project Sponsor fails to pay any amount due on the Note at the time and in the manner provided in the Note and this Agreement;

(C) Any representation, warranty or statement made by the Project Sponsor in this Agreement or in connection with it or the Loan shall be or become untrue, incorrect or misleading in any material respect;

(D) The Project Sponsor makes an assignment for benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions for appointment of a receiver or trustee for any substantial part of its property or is the subject of such a petition or commences or has commenced against it or its property (a) any similar proceeding under any bankruptcy law or other debtor-relief or similar law or (b) any foreclosure of any mortgage or similar implementation of a trust indenture or like instrument;

(E) Dissolution of the existence of the Project Sponsor; and

(F) The Authority reasonably suspects the occurrence of any Event of Default by the Project Sponsor, and following request by the Authority, the Project Sponsor fails to provide evidence reasonably satisfactory to the Authority that such default or Event of Default has not in fact occurred.

ARTICLE VI

REMEDIES

SECTION 6.1. Acceleration. Upon the occurrence of an Event of Default, the principal balance of the Note may be declared immediately due and payable in the manner prescribed by and in accordance with the terms of the General Bond Ordinance. In such event, there shall be due and payable on the Note an amount equal to the total principal amount disbursed on the Note, plus all interest accrued thereon and which will accrue thereon to the date of payment.

SECTION 6.2. Additional Remedies and Enforcement of Remedies. Upon the occurrence and continuance of any Event of Default, and subject to the limitations of the General Bond Ordinance, the Authority may proceed forthwith to protect and enforce its rights by such suits, actions or proceedings as the Authority shall deem expedient, including but not limited to:

(A) Requiring the Project Sponsor to carry out its duties and obligations under the terms of this Agreement and under the Act;

(B) Suit upon all or any part of the Note;

(C) Civil action to require the Project Sponsor to account as if it were the trustee of an express trust for the Authority;

(D) Civil action to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority; and

(E) Enforcement of any other right of the Authority including the right to make application for the appointment of a receiver to administer and operate the System.

SECTION 6.3. Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity or by statute (including the Act) on or after the date hereof.

SECTION 6.4. Termination of Proceedings. In case any proceeding taken by the Authority on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Authority, the Authority and the Project Sponsor shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Authority shall continue as if no such proceeding had been taken.

ARTICLE VII

SECURITY

SECTION 7.1. Pledge of Revenues. For the payment of the Note and as security for its other obligations under this Agreement, the Project Sponsor hereby grants to the Authority a pledge of, and lien upon, the Net Revenues of the System, as defined in the General Bond Ordinance. Such pledge and lien upon the Net Revenues shall be on a parity in all respects to the pledge and lien securing any Parity Debt (as defined in Section 4.3.2) and shall at all times and in all respects be and remain superior to any pledges made to secure any other obligations of the Project Sponsor payable from the Net Revenues of the System. Parity Debt may be issued only in compliance with Article III of the General Bond Ordinance or, if the General Bond Ordinance is no longer in effect, only with the prior written approval of the Authority.

SECTION 7.2. Additional Security. Upon any failure of the Project Sponsor to make any payment to the Authority in accordance with the provisions of the Note and this Agreement, the Authority shall, without further action, require the State Treasurer to pay to the Authority, subject to the provisions of the Act, the amount of state appropriations as the Project Sponsor may become entitled to until all delinquent payments under the Note have been paid.

ARTICLE VIII

SPECIAL REVOLVING FUND PROVISIONS

SECTION 8.1. Compliance. The Project Sponsor agrees that no date reflected in this Agreement, or in the project completion schedule, or extension of any such date, shall modify any compliance date established in a National Pollutant Discharge Elimination System permit (the "*NPDES Permit*"). It is the Project Sponsor's obligation to request any required modification of applicable permit terms or other enforceable requirements.

SECTION 8.2. Standard Conditions. The Project Sponsor acknowledges and agrees to comply with the following Federal and/or State requirements:

(A) The Project Sponsor shall provide access to the Project work whenever it is in preparation or progress and provide proper facilities for access and inspection. The Project Sponsor shall allow the Regional Administrator of the Environmental Protection Agency, the Comptroller General of the United States, the Department and the Authority, or any authorized representative, to have access to any books, documents, plans, reports, papers, and other records of the contractor which are pertinent to the Project for the purpose of making audit, examination, excerpts, copies, and transcriptions.

(B) Civil Rights and Labor Standards Requirements and use of Disadvantaged Business Enterprise (DBE) firms and Debarment or Suspension Prevention. (Executive Order 12549)

(1) Positive efforts shall be made by the Project Sponsor and its consultants to utilize DBE firms as sources of supplies, services and construction. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts and subcontracts to be performed utilizing Loan funds. Documentation of efforts made to utilize DBE firms shall be maintained by the Project Sponsor and its consulting firms and construction contractors and approved by the Department.

(2) The Project Sponsor shall not be presently debarred for noncompliance with Federal Law and shall not award contracts to any firm that is presently debarred for noncompliance with Federal Law where the contract amount equals or exceeds the federal small purchase procurement threshold.

(3) The Project Sponsor shall require all prime construction contractors to certify that subcontracts have not and will not be awarded to any firm that is presently debarred for noncompliance with Federal Law, where the subcontract amount is expected to equal or exceed the Federal small purchase procurement threshold.

(4) The Project Sponsor agrees to comply with all the requirements of 41 CFR Part 60-4 which implements Executive Order 11246 as amended (Equal Employment Opportunity).

(5) The Project Sponsor agrees to require all construction contractors and their subcontractors to comply with the Affirmative Action, Equal Opportunity Clause, Goals and Timetables, if the amount of the contract or subcontract is in excess of \$10,000.

(6) The Project Sponsor shall require all contractors on the Project to comply with the Department of Labor's Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-956) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).

(C) The Project Sponsor shall comply with all applicable provisions of the Uniform Relocation and Real Property Acquisition Act of 1970 (PL 92-646) in regard to acquisition of real property (including easements) for the Project and any resulting relocation of persons, business and farm operations.

(D) Pursuant to requirements of the Federal Water Pollution Control Act, as amended on June 10, 2014 (the "**Federal Act**"), the Project Sponsor shall comply with the Davis-Bacon Act and certify that all laborers and mechanics employed by prime contractors and subcontractors are paid wages at rates not less than those listed on the prevailing wage rate contained in the Project's contract documents and that all applicable provisions of the Davis-Bacon Act have been met. The Project Sponsor shall require the prime contractor to comply with the Davis-Bacon Act. (see Attachment #1)

(E) The Project shall comply with "American Iron and Steel" provisions, as set forth in the Federal Act and related American Iron and Steel implementation guidance, requiring that all of the iron and steel products used in the Project be produced in the United States unless a waiver is granted by the U.S. Environmental Protection Agency. The Project Sponsor shall require all bidders to comply with the American Iron and Steel provisions.

(F) Pursuant to requirements of Section 603(d)(1)(E) of the Federal Act, the Project Sponsor of a project involving the repair, replacement or expansion of a publicly owned treatment works shall develop and implement a fiscal sustainability plan ("**FSP**") or certify that it has developed and implemented such a plan. Sponsors with an existing and implemented FSP shall certify to that effect before the loan closing date. Sponsors developing an FSP must submit a certification that an FSP has been developed, and will be implemented, by the date of the final loan disbursement.

(G) Pursuant to "EPA Memorandum of June 3, 2015; SUBJECT: Guidelines for Enhancing Public Awareness of SRF Assistance Agreements", the Project Sponsor shall publish the information about the project and project funding (assistance made possible in whole or in part from EPA through the State). A document entitled, "Signage to Increase Public Awareness of SRF Assistance Agreements" is posted to the Department's SRF Guidance webpage that contains information on the options that may be used to comply with the signage requirement.

ARTICLE IX
GENERAL CONDITIONS

SECTION 9.1. No Waiver. No disbursements shall waive any provision of this Agreement or the Note or preclude the Authority from declaring a default if the Project Sponsor is unable to satisfy any such provisions or perform hereunder.

SECTION 9.2. Satisfactory Proceedings. All proceedings taken in connection with transactions provided for in this Agreement shall be satisfactory to the Authority.

SECTION 9.3. Evidence. Any condition of this Agreement which requires a submission of evidence of the existence or nonexistence of facts shall imply as a condition the existence or nonexistence, as the case may be, of such fact or facts, and the Authority shall, at all times, be free independently to establish to its satisfaction and in its absolute discretion such existence or nonexistence.

SECTION 9.4. No Beneficiaries. All conditions of the obligations of the Authority to make disbursements are imposed solely and exclusively for its benefit, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or to assume that the Authority will refuse to make disbursements in the absence of strict compliance. No person shall be deemed the beneficiary of any such conditions or any other provisions of this Agreement.

SECTION 9.5. Review and Inspection of Work. Any audit or review of plans and specifications and any inspection of the work shall be for the convenience of the Authority and Department only in order to determine that they are within the approved scope of the Project. No such review and inspection, approvals and disapprovals shall be an undertaking by the Authority or Department of responsibility for design or construction.

SECTION 9.6. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail to the other party hereto, with instruction to show to whom delivered and return receipt requested addressed as follows:

If to the Project Sponsor:

Berkeley County
c/o Berkeley County Water and Sanitation
212 Oakley Plantation Drive
Moncks Corner, South Carolina 29461

Attention: Director

If to the Authority:

South Carolina Water Quality Revolving Fund
Authority
c/o Office of Local Government - SRF
South Carolina Rural Infrastructure Authority
1201 Main Street
Suite 1600
Columbia, South Carolina 29201

Attention: Patricia A. Comp

Each party may notify the other by the same process of any change of such address. Loan requests and disbursements and other routine loan administration may be conducted by regular mail.

SECTION 9.7. No Joint Venture, Etc. The Authority is not a partner, joint venturer, or in any other way a party to the Project or the operation of the System of the Project Sponsor. The Authority shall not be in any way liable or responsible by reason of the provisions hereof, to the Project Sponsor or any third party, for the payment of any claims in connection therewith.

SECTION 9.8. Assignment. This Agreement may not be assigned by the Project Sponsor without the prior written consent of the Authority. The Authority may assign the Note and this Agreement, and any such holder and assignee of same shall succeed to and be possessed of the same rights as the Authority under both to the extent so transferred or assigned.

SECTION 9.9. Entire Agreement. This Agreement and the Note contain the entire terms of this Agreement and transaction. They may not be changed, waived or discharged in whole or in part, except by written instrument executed by the party sought to be charged therewith.

SECTION 9.10. Continuity. This Agreement shall be binding upon the legal representatives, successors and assigns of each party and shall inure to their benefit; provided, however, that nothing herein said shall be deemed to limit any restriction on assignment impressed upon the Project Sponsor.

SECTION 9.11. South Carolina Contract. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 9.12. Limitations on Actions by Project Sponsor. No action shall be commenced by the Project Sponsor against the Authority for any claim under this Agreement unless notice thereof specifically setting forth the claim shall have been given to the Authority within thirty (30) days after the occurrence of the event or omission which the Project Sponsor alleges gave rise to such claim. Failure to give such notice shall constitute a waiver of any such claim. Liability of the Authority to the Project Sponsor for any breach of the terms of this Agreement shall not exceed a sum equal to the amount which the Authority shall have failed to disburse in consequence of a breach by the Authority of its obligations under this Agreement. Upon the making of any such payment by the Authority to the Project Sponsor, it shall be treated as a disbursement under this Agreement.

SECTION 9.13. Counterparts. This Agreement is executed in two counterparts, which are separately numbered, but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

SECTION 9.14. Appendices. The appendices attached to this Agreement are a part of it.

SECTION 9.15. Special Conditions. The Statements of Special Conditions in Appendix "D" shall govern the matters they address.

SECTION 9.16. Time of Essence. Time is of the essence of this Agreement.

SECTION 9.17. Severability. If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, any remaining provisions of this Agreement shall survive and be applied, and together with the invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

IN WITNESS WHEREOF, the Project Sponsor and the Authority have caused these presents to be signed, sealed and delivered all as of the date hereof.

BERKELEY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____

Name: _____

Title: _____

Attest:

Its: _____

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

By: _____

Bonnie Ammons, Director,
Office of Local Government,
South Carolina Rural Infrastructure Authority

SCOPE OF WORK

Project Sponsor: Berkeley County

Project Name: Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station

Loan Number: 1-253-22-496-28

Upgrade of existing Central Berkeley Wastewater Treatment Plant Effluent Pump Station with four new 125 horsepower vertical turbine pumps, variable pump drives, piping, etc. and construction of 17,500 linear feet of parallel 30-inch effluent force main to the existing Cooper River outfall.

PROJECT BUDGET

Project Sponsor: Berkeley County

Project Name: Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station

Loan Number: 1-253-22-496-28

<u>ITEM</u>	<u>CWSRF LOAN</u>	<u>TOTAL ELIGIBLE COSTS</u>
Planning and Design Engineering	\$ 503,645	\$ 503,645
Construction	12,908,112	12,908,112
Construction Contingency	821,120	821,120
Construction Oversight/Engineering	<u>145,230</u>	<u>145,230</u>
Total	\$ 14,378,107	\$ 14,378,107

PROJECT SCHEDULE

Project Sponsor: Berkeley County
Project Name: Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station
Loan Number: 1-253-22-496-28

<u>ACTION</u>	<u>DATE</u>
Bid Opening	May 4, 2022
Contract Execution	June 20, 2022
Notice to Proceed	July 5, 2022
Start of Construction	July 5, 2022
DHEC Permit to Operate	February 2, 2023

REPAYMENT SCHEDULE

Project Sponsor: Berkeley County

Project Name: Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station

Loan Number: 1-253-22-496-28

Loan Amount: \$14,378,107

Payment Initiation Date: March 1, 2023

Interest Rate: 1.50% per annum

First Payment Due Date: June 1, 2023

- (1) Prior to the Payment Initiation Date, amounts disbursed shall bear interest from the date of the Authority's check for each disbursement and accrued interest only shall be due on the Payment Initiation Date.
- (2) Repayment of the principal and interest shall be due in 80 installments, commencing on the first day of the third month after the month of the Payment Initiation Date and continuing quarterly on the first day of each third month thereafter.
- (3) Repayment shall be in 79 equal installments in the amount of Two Hundred Eight Thousand Three Hundred Sixty-Five and 48/100 Dollars (\$208,365.48) each, and one final installment in the amount of Two Hundred Eight Thousand Three Hundred Sixty-Five and 95/100 Dollars (\$208,365.95).

LOAN CLOSING FEE

Project Sponsor: Berkeley County

Project Name: Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station

Loan Number: 1-253-22-496-28

Loan Amount: \$14,378,107

.35% Loan Closing Fee: \$50,323

The Loan Closing Fee identified above shall be due and paid at the time of delivery of the Loan Agreement, Note and other required Loan closing documents. Such fee is not reimbursable through the Loan.

Project Sponsor: Berkeley County

Loan Number: 1-253-22-496-28

PROCUREMENT REQUIREMENTS

- I. Prior to construction contract award, the Project Sponsor shall:
 - A. Advertise the Project for a minimum of thirty (30) days in advance of bid opening using at least one of the following methods:
 - 1. Local newspapers of general circulation.
 - 2. MBE/WBE publications.
 - 3. Statewide or regional newspapers of general circulation.
 - 4. The South Carolina Business Opportunities (SCBO).
 - B. Modify bid documents only by written addenda, which require prior Department approval.
 - C. Hold a public bid opening.
 - D. Utilize competitive sealed construction bids.
 - E. Require at least a five percent (5%) bid bond or certified check.
 - F. Require one hundred percent (100%) payment and performance bonds.
 - G. Require the contractor, during construction, to provide fire, extended coverage, vandalism and malicious mischief insurance equal to the actual value of the insured property.
 - H. Follow, and require the prime contractor to follow, Davis-Bacon and Related Acts provisions.
 - I. Follow, and require the prime contractor to follow, American Iron and Steel Provisions.
 - J. Follow, and require the prime contractor to follow, the "Good Faith Efforts" to aid in meeting Disadvantaged Business Enterprise (DBE) requirements.
 - K. Create and maintain a list of all firms that bid or quote on prime contracts and/or subcontracts (Bidders List) including both disadvantaged business enterprises and non-disadvantaged business enterprises. The Bidders List must be kept until Project completion.
 - L. If other funding sources are included which have stricter bidding requirements or if applicable Federal, State or local laws or ordinances have stricter requirements, these stricter requirements govern.
 - M. After bid opening, provide the Department with the following:
 - 1. Project Construction Summary Form (DHEC Form #3589).
 - 2. A certified copy of the advertisement with date(s) of publication.
 - 3. A copy of the Project Sponsor's Bidders List.
 - 4. Detailed bid tabulation certified by Project Sponsor's engineer.
 - 5. Proposal of successful bidder(s).
 - 6. Bid Bond with associated Power of Attorney.
 - 7. Engineer's award recommendation of low bidder(s) to Project Sponsor. If the award is recommended to other than the low bidder(s), provide justification for decision.
 - 8. Certified copy of Project Sponsor's tentative award resolution listing the proposed contractor(s) and contract amount(s).
 - 9. Davis-Bacon wage rate(s) used in bidding the project.

10. A copy of the proposed prime contractor's Bidders American Iron and Steel Certification (DHEC Form 2556).
 11. Evidence that the low bidder(s) complied with the Disadvantaged Business Enterprise (DBE) requirements listed in the bid documents. DBE approval must precede bid package approval.
 12. A copy of the prime contractor's Bidders List.
 13. Prime Contractor's Subagreement Certification (DHEC Form #3591).
 14. DBE Program Subcontractor Utilization Form (EPA Form 6100-4) from the prime contractor(s).
 15. DBE Subcontractor Performance Form (EPA Form 6100-3) from all DBE firms.
 16. EEO Documentation Form (DHEC Form #2323), with all required attachments, including Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity (DHEC Form #3592) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$10,000.
 17. Certification Regarding Debarment, Suspension and Other Responsibility Matters (DHEC Form #3590) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$25,000.
 18. Project Inspection Designation Form (DHEC Form #2324), with all required attachments, indicating the selected method of providing continuous inspection during construction.
- N. Receive Department approval to award the construction contract(s).
- II. Subsequent to construction contract award, the Project Sponsor shall submit the following to the Department as proof of compliance with procurement requirements:
- A. Executed contract documents.
 - B. Notice to Proceed.
 - C. Semi-annual MBE/WBE Utilization Reports (EPA Form 5700-52A).
 - D. Monthly Construction Inspection Reports.
 - E. Davis-Bacon Certification (DHEC Form #2557) with each draw request.
 - F. American Iron and Steel Certification (DHEC Form #0962) with each draw request.
 - G. Evidence of compliance with the EPA "Signage Requirement" (i.e. picture of or printed sample).
- III. Subsequent to contract award, the Project Sponsor shall submit the following, for Department review and approval, on any proposed change orders:
- A. Need for the change.
 - B. Clear description of the change.
 - C. Cost and pricing data.
 - D. Documentation of negotiation.
 - E. For claims, information showing the claim did not result from the Project Sponsor's or contractor's mismanagement.

SPECIAL CONDITIONS

Project Sponsor: Berkeley County

Project Name: Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station

Loan Number: 1-253-22-496-28

None.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

**PROMISSORY NOTE TO SOUTH CAROLINA
WATER QUALITY REVOLVING FUND AUTHORITY FOR
SOUTH CAROLINA WATER POLLUTION CONTROL
REVOLVING FUND LOAN**

BERKELEY COUNTY, SOUTH CAROLINA
COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2022C

FOR VALUE RECEIVED, Berkeley County (the "*Project Sponsor*") promises to pay to the order of the South Carolina Water Quality Revolving Fund Authority (the "*Authority*") the principal sum owing from time to time by the Project Sponsor pursuant to, and in accordance with, the Loan Agreement (the "*Agreement*"), the terms of which are incorporated herein by reference, between the Project Sponsor and the Authority relating to Loan Number 1-253-22-496-28, Central Berkeley Wastewater Treatment Plant Effluent Force Main and Pump Station, principal sum, rate of interest and amount and due date of payments thereunder being set forth in Appendix "B" to the Agreement. The records of the Authority with respect to the date and amount of payments on this Note shall be conclusive as to such matters. Interest shall be computed on a three hundred sixty-five-day year basis and compounded annually; the principal of this Note and any installment thereof shall bear interest until paid in full.

Time is of the essence of this Note.

This Note has been issued under the provisions of Title 6, Chapter 17, Code of Laws of South Carolina, 1976, as amended, and does not constitute an indebtedness of the Project Sponsor within the meaning of any state constitutional provision (other than Article X, Section 14, paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation. No recourse shall be had for the payment of this Note or the interest thereon against the general fund of the Project Sponsor and neither the credit nor the taxing power of the Project Sponsor shall be deemed to be pledged thereto. The full faith, credit and taxing powers of the Project Sponsor are not pledged for the payment of the principal and interest on this Note.

The Project Sponsor may prepay the outstanding principal balance of this Note in whole or in part, together with any accrued interest thereon, at any time without penalty or premium; all such prepayments shall be applied against principal installments due on this Note in the inverse order of the

maturity dates thereof.

All payments of principal and interest shall be made in money of the United States at the office of the Authority in Columbia, South Carolina, or at such place as the Authority may designate in writing, and shall be made in funds immediately available in Columbia, South Carolina.

The Project Sponsor agrees to pay at the time any such late payment hereunder is made a late charge of three percent (3%) of any payment not made on or before the tenth day of the month in which such payment is due. Interest which accrues after maturity of this Note or after its earlier acceleration shall be due and payable upon demand.

Payments shall be applied first to any late charge, then to interest, then to principal. There is no intent for any payment to exceed any legal limit on interest, if any such legal limit applies. If an excess sum occurs, it shall be applied to principal unless the Project Sponsor elects its return in writing.

If the Project Sponsor fails to make any payment of principal or interest within thirty (30) days of the date when due, or if the Project Sponsor defaults in the performance of any of the terms, covenants or conditions of any agreement or other documents concerning this Note, including without limitation the Agreement, the principal balance of this Note and all unpaid interest accrued on it may be declared immediately due and payable in accordance with the terms of the General Bond Ordinance.

The failure of the Project Sponsor to make any payment of principal or interest or both shall not constitute a default until thirty (30) days following the due date but the Authority shall have no obligation to give the Project Sponsor notice of any failure to make such payments. Upon any such payment default, the Authority shall immediately avail itself of the provisions of Section 7.2 of the Agreement relating to additional security for payment of amounts due on this Note.

The Project Sponsor waives presentment for payment, demand, protest, and notice of non-payment. Neither a failure to accelerate for default nor acceptance of a past due installment shall be a novation of this Note or constitute a waiver of the right to insist upon strict compliance with it and any related agreements and documents.

The Project Sponsor shall pay all costs of collection, including but not limited to reasonable attorney's fees if the Authority endeavors to collect this Note in any manner through an attorney at law. The rights and remedies of the Authority provided in this Note are cumulative and not exclusive of any other rights and remedies afforded the Authority by law or by any other document.

This Note shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the Project Sponsor has caused this Note to be executed under its seal and to be registered in the name of the South Carolina Water Quality Revolving Fund Authority as of this _____ day of _____, 2022.

BERKELEY COUNTY, SOUTH CAROLINA

[SEAL]

By: _____

Typed Name: _____

Title: _____

Attest:

Its _____

CERTIFICATE OF AUTHENTICATION

This Promissory Note is the obligation issued pursuant to the Project Sponsor's General Bond Ordinance enacted on March 10, 2003, as authorized by the Project Sponsor's Eighteenth Supplemental Ordinance enacted on _____, 2022.

REGIONS BANK, REGISTRAR

By: _____, Authorized Officer

Typed Name: _____

**Davis-Bacon Wage Rates Required Under Federal Clean Water Act
For Subrecipients (Project Sponsors)**

1. Applicability of the Davis-Bacon (DB) Prevailing Wage Requirements

Under the Federal Clean Water Act, as amended on June 10, 2014, DB prevailing wage requirements were permanently applied to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$2,000. Available from the Department.

4. Contract Provisions for Contracts in Excess of \$100,000

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$100,000. Available from the Department.

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

EXHIBIT D

FORM OF DEBT SERVICE FUND AND
DEBT SERVICE RESERVE FUND AGREEMENT

2022_ DEBT SERVICE FUND AND
2022_ DEBT SERVICE RESERVE FUND AGREEMENT

between

BERKELEY COUNTY, SOUTH CAROLINA

and

REGIONS BANK

Dated: _____, 2022

relating to

Berkeley County, South Carolina

Combined Utility System Revenue Bond, Series 2022_

STATE WATER POLLUTION CONTROL REVOLVING FUND

LOAN NUMBER: _____

2022 DEBT SERVICE FUND AND
2022 DEBT SERVICE RESERVE FUND AGREEMENT

This 2022_ DEBT SERVICE FUND AND 2022_ DEBT SERVICE RESERVE FUND AGREEMENT, dated as of _____, 2022, by and between Berkeley County, South Carolina (the "Project Sponsor") and Regions Bank, as Trustee (the "Trustee");

W I T N E S E T H:

WHEREAS, the South Carolina Water Quality Revolving Fund Authority (the "State Authority") and the Project Sponsor have entered into a Loan Agreement (the "Loan Agreement") relating to State Water Pollution Control Revolving Fund Loan Number: _____ (the "Loan") in order to finance construction of publicly owned wastewater treatment facilities as more fully described in the Loan Agreement; and

WHEREAS, pursuant to the Loan Agreement, and to evidence the Project Sponsor's obligation to repay the Loan, the Project Sponsor has delivered its promissory note (the "Note") in the principal amount of not exceeding \$_____, or such lesser principal sum as may be disbursed pursuant to the Loan Agreement; and

WHEREAS, Section 4.1.2 of the Loan Agreement requires the Project Sponsor to establish and maintain a Series 2022_ Debt Service Fund (the "2022_ Debt Service Fund") to provide for the payment of principal and interest on the Note; and

WHEREAS, Section 4.2.1 of the Loan Agreement requires the Project Sponsor to establish and maintain a Series 2022_ Debt Service Reserve Fund (the "Debt Service Reserve Fund") at such time as the Reserve Requirement (as defined in the Loan Agreement) is greater than \$0.00 as provided in Section 4.2.2 of the Loan Agreement to provide a reserve for payment of principal of and interest on the Note; and

WHEREAS, the Project Sponsor has requested that the Trustee act as trustee with respect to the 2022_ Debt Service Fund and the Debt Service Reserve Fund and the Trustee has agreed to so act;

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

SECTION 1. ACCEPTANCE OF TRUST. The Trustee hereby acknowledges and accepts the duties and responsibilities of the Trustee with respect to the 2022_ Debt Service Fund and the Debt Service Reserve Fund as set forth in the Loan Agreement and particularly in Section 4.4 thereof. The Trustee acknowledges that, in accordance with Article IV of the Loan Agreement, it has established or will establish the 2022_ Debt Service Fund and the Debt Service Reserve Fund at the times required by the Loan Agreement and that it will make payments from the 2022_ Debt Service Fund to the State Authority in accordance with the schedule of payments presented to the Trustee by the State Authority, as such schedule may be amended by the State Authority from time to time. The Reserve Requirement, pursuant to the Loan Agreement, is initially \$0.00 and, accordingly, no funds will be deposited to the Debt Service Reserve Fund on the date of the closing of the Note. In the event the Reserve Requirement is greater than \$0.00 in accordance with the provisions of the Loan Agreement while the Note remains outstanding, the Reserve Fund Requirement shall be satisfied by the deposit of funds of the Combined Utility System of the Project Sponsor into the Debt Service Reserve Fund in the amount of the Reserve Requirement set forth in the provisions of the Loan Agreement. The Trustee shall invest the funds it holds in the 2022_ Debt Service Fund and the Debt Service Reserve Fund as directed in writing by the Project Sponsor and as such shall be fully protected in relying on such written direction as to the legality of such directed investments. If the

Project Sponsor does not provide the Trustee with written investment directions the Trustee shall hold such funds uninvested in cash, without liability for interest.

SECTION 2. INDEMNITY. To the extent permitted by law, the Project Sponsor hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Trustee and its respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against at any time, the Trustee (whether or not also indemnified against the same by the Project Sponsor or any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the 2022_ Debt Service Fund and the Debt Service Reserve Fund, the acceptance of the money deposited therein, and any investment, payment, transfer or other application of funds or securities by the Trustee in accordance with the provisions of this Agreement; provided, however, that the Project Sponsor shall not be required to indemnify the Trustee against its own negligence or willful misconduct. The indemnities contained in this section shall survive the termination of this Agreement.

SECTION 3. RESPONSIBILITIES OF TRUSTEE. The Trustee and its respective successors, assigns, agents and servants shall not be held to any liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the 2022_ Debt Service Fund or the Debt Service Reserve Fund, the acceptance of the money deposited in the 2022_ Debt Service Fund or the Debt Service Reserve Fund, or any investment, payment, transfer or other application of money or securities by the Trustee or any act, omission or error of the Trustee made in good faith in the conduct of its duties and not constituting negligence. The Trustee shall, however, be liable to the Project Sponsor for its negligent or willful acts, omissions or errors which violate or fail to comply with the terms of this Agreement. The duties and obligations of the Trustee shall be determined by the express provisions of the Loan Agreement and this Agreement. The Trustee may consult with counsel, who may be counsel to the Project Sponsor, and in reliance upon the opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Project Sponsor.

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

SECTION 5. REMOVAL OF TRUSTEE.

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

(b) The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this

Agreement with respect to the duties and obligations of the Trustee, by any court of competent jurisdiction upon the application of the Project Sponsor or the State Authority.

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

SECTION 7. TERM. This Agreement shall commence upon its execution and delivery and shall terminate when the Note has been paid and discharged in accordance with the Loan Agreement, at which time all money and securities in the 2022_ Debt Service Fund and the Debt Service Reserve Fund shall be delivered to the Project Sponsor.

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

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

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

SECTION 11. BROKERAGE CONFIRMATIONS. The Project Sponsor acknowledges that regulations of the Comptroller of the Currency grant the Project Sponsor the right to receive brokerage confirmations of security transactions as they occur. The Project Sponsor specifically waives such right to notification to the extent permitted by law and acknowledges that, to the extent it directs the investment of funds held by the Trustee, it will receive periodic transaction statements that will detail all investment transactions.

SECTION 12. GOVERNING LAW. This Agreement shall be construed under the laws of the State of South Carolina.

SECTION 13. SECURITY FOR ACCOUNTS AND FUNDS. All accounts and funds maintained or held pursuant to this Agreement shall be continuously secured in the same manner as other deposits of trust funds are secured by the Trustee.

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

BERKELEY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
John P. Cribb, County Supervisor and
Chairman of County Council

ATTEST:

Amanda T. Turner, Clerk to County Council

REGIONS BANK

By: _____

Its: _____

The South Carolina Water Quality Revolving Fund Authority hereby approves Regions Bank as Trustee of the 2022_ Debt Service Fund and the Debt Service Reserve Fund.

SOUTH CAROLINA WATER QUALITY
REVOLVING FUND AUTHORITY

By: _____
Director, Office of Local Government, SC Rural
Infrastructure Authority



**STAFF SUMMARY
FOR COMMITTEE ON FINANCE**

Topic:

BILL NO. 22-37, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THAT FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND SC RIDGEVILLE AUTONOMOUS, LLC, AND VALLEY COLD STORAGE & TRANSPORTATION, LLC PURSUANT TO WHICH PERFORMANCE TEAM, LLC WILL BE ADDED AS A REPLACEMENT CO-SPONSOR FOR VALLEY COLD STORAGE & TRANSPORTATION, LLC; AND OTHER MATTERS RELATING THERETO. HISTORY: 5/23/2022 Committee on Finance - Recommendation of Approval; 5/23/2022 -Regular Council - Referred; 6/27/2022 Committee on Finance - Recommendation of Approval; 6/27/2022 Regular Council - Approved and Referred

Prepared By:

Kristen Lanier, Economic Development

Date:

July 25, 2022

Background:

BACKGROUND: Berkeley County, SC Ridgeville Autonomous, LLC, and Valley Cold Storage & Transportation LLC entered into a Fee-in-lieu of Tax Agreement (FILOT) by council approved ordinance enacted on January 24, 2022 whereby the company proposed to construct an approximately 293,000 SF cold storage warehouse facility resulting in the creation of approximately 75 new, full time jobs and an investment of \$95,000,000 of real and personal property in the County of which at least \$64,458,000 will be real property.

Company ask for consideration of amendment to the FILOT to

substitute Valley Cold Storage & Transportation LLC for a different tenant/operator.

Attachment(s):

[Project Polar \(Amended\)- Ordinance.docx](#)

[Berkeley County - Amended FILOT Agreement v1.docx](#)

[22-01-02.pdf](#)

ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THAT FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND SC RIDGEVILLE AUTONOMOUS, LLC, AND VALLEY COLD STORAGE & TRANSPORTATION, LLC PURSUANT TO WHICH PERFORMANCE TEAM, LLC WILL BE ADDED AS A REPLACEMENT CO-SPONSOR FOR VALLEY COLD STORAGE & TRANSPORTATION, LLC; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Berkeley County (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; and (ii) to covenant with such investors to accept certain payments in lieu of ad valorem taxes with respect to the project (a “FILOT”); and

WHEREAS, Council approved an Ordinance enacted on January 24, 2022 authorizing the County to enter into a Fee-in-Lieu of Tax Agreement (the “Original FILOT Agreement”) with SC Ridgeville Autonomous, LLC (“SC Ridgeville”) and Valley Cold Storage & Transportation, LLC (“Valley Cold Storage”); and

WHEREAS, SC Ridgeville requests that the Original FILOT Agreement be amended to provide that Performance Team LLC, a Delaware limited liability company (“Performance Team”) be added as an additional party (an additional co-sponsor) to the Original FILOT Agreement and Valley Cold Storage be removed as a party to the Original FILOT Agreement, so that each reference to Valley Cold Storage in the Original FILOT Agreement be replaced with a reference to Performance Team;

WHEREAS, S.C. Code Section 12-44-170(B) provides with the consent of the governing body of the County that a new fee agreement may be entered into between the county and the sponsors reflecting the appropriate handling and cancellation of existing fee agreements subject to the new fee agreement 1) continuing the same fee payments as required under the existing fee agreement, 2) a continuation of the same fee in lieu of tax payments only for the time required for payments under the existing fee agreement, 3) a carryover over of minimum investment or employment requirements of the existing fee agreement and 4) continuing the provisions and limitations of the prior fee agreement;

WHEREAS, SC Ridgeville and Performance Team desire to enter into an Amended and Restated Fee-In-Lieu of Tax Agreement (the “Amended and Restated FILOT Agreement”)

with the County with financial and investment terms identical to the Original FILOT Agreement, with the sole change being the substitution of Performance Team for Valley Cold Storage in each instance of the Original FILOT Agreement; and

WHEREAS, the Amended and Restated FILOT Agreement will not result in any changes to 1) the payments required to be made, 2) the length of the term, 3) the minimum required investment or 4) the other provisions and limitation of the Original FILOT Agreement.

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

Section 1. Evaluation of Substitute Co-Sponsor. County Council has evaluated the request to amend the Original FILOT Agreement by means of the Amended and Restated FILOT Agreement which substitutes Performance Team LLC in place of Valley Cold Storage in each instance in which Valley Cold Storage was referenced in the Original FILOT Agreement, and has determined that the Amended and Restated FILOT Agreement does not make any other change to the terms of the Original FILOT Agreement, including any change to the financial terms or limitations of the Original FILOT Agreement.

Section 2. Execution of the Amended and Restated Fee Agreement. The form, terms and provisions of the Amended and Restated FILOT Agreement presented to this meeting and filed with the Clerk of County Council be and are hereby approved, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if such Amended and Restated 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 Amended and Restated FILOT Agreement in the name and on behalf of the County, and thereupon to cause the Amended and Restated FILOT Agreement to be delivered to the Company. The Amended and Restated 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 Amended and Restated FILOT Agreement now before this meeting.

Section 3. Miscellaneous.

(a) The Supervisor/Chairman 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;

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina;

(c) This Ordinance shall become effective immediately upon approval following third reading by the County Council;

(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.

[Signature Page to Follow]

BERKELEY COUNTY, SOUTH CAROLINA

By: _____
John P. Cribb
Supervisor/Chairman, Berkeley County Council
Berkeley County, South Carolina

ATTEST:

Amanda D. Turner
Clerk to Council, Berkeley County Council
Berkeley County, South Carolina

AMENDED AND RESTATED
FEE-IN-LIEU OF TAX AGREEMENT

by and between

BERKELEY COUNTY, SOUTH CAROLINA,

and

SC RIDGEVILLE AUTONOMOUS, LLC and
PERFORMANCE TEAM LLC

Dated as of _____, 2022

AMENDED AND RESTATED
FEE-IN-LIEU OF TAX AGREEMENT

THIS AMENDED AND RESTATED FEE-IN-LIEU OF TAX AGREEMENT (the “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 SC Ridgeville Autonomous, LLC, a South Carolina limited liability company (“SC Ridgeville”) and Performance Team LLC, a Delaware limited liability company (“Performance Team”, which together with SC Ridgeville are 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 an approximately 293,000 square foot cold storage warehouse facility in the Camp Hall Commerce Park in the County (the “Project”); and

WHEREAS, the Company anticipates that the Project will result in the creation of approximately 75 new, full-time jobs and an investment of \$95,000,000 of real and personal property in the County of which at least \$64,458,000 will be real property; and

WHEREAS, the Council approved an Ordinance enacted on January 24, 2022 authorizing the County to enter into a Fee-in-Lieu of Tax Agreement (the “Original FILOT Agreement”) with SC Ridgeville and Valley Cold Storage & Transportation, LLC (“Valley Cold Storage”); and

WHEREAS, the Council approved an Ordinance enacted on _____, 2022 authorizing the addition of Performance Team as a co-sponsor and the removal of Valley Cold Storage as a co-sponsor to the Original FILOT Agreement and authorizing the County to enter into this Agreement with the Company; and

WHEREAS, except for the substitution of Performance Team for Valley Cold Storage as a co-sponsor, the terms, conditions and obligations of the Original FILOT Agreement remain unchanged by this Agreement; and

WHEREAS, as a result of the Company contemplating locating its facility 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 January 24, 2022 and the substitution of Performance Team for Valley Cold Storage in that certain Ordinance described above and approved by County Council on _____, 2022, by entering into this Amended and Restated 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 Amended and Restated 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) As permitted by 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, to the extent that and so long as the Company and any Sponsor Affiliate(s) timely provide the County with copies of all filings required by the Act to be made by the Company and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) noncompliance that are within the County’s control. The following is a summary of the key provisions of this Fee-in-Lieu of Tax Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee-in-Lieu of Tax Agreement or a summary compliant with Section 12-44-55 of the Code.

(b) Agreement Summary.

1. Legal name of each initial party to this Agreement:
SC Ridgeville Autonomous, LLC, Performance Team LLC and Berkeley County, South Carolina.
2. County and street address of the project and property to be subject to this Agreement:

732 Autonomous Drive
Ridgeville, SC 29473
3. Minimum investment agreed upon:
\$95,000,000.00 (total)
\$64,458,000.00 (real property)
4. Length and term of this Agreement:
30 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 property, subject to Payments-in-Lieu-of-Taxes is allowed;
 - (c) Special Source Revenue Credits shall be given to the Economic Development Property in an amount equal to 20% for initial 5 years then in an amount equal to 10% for 5 years.
 - (d) Payment will not be modified using a net present value calculation; and
 - (e) 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, including without limitation reasonable and actual attorneys’ fees (such attorneys’ fees will not exceed \$5,000.00 without prior written consent of the Company); provided, however, that no such expense shall be considered an Administration Expenses 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 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 each of SC Ridgeville Autonomous, LLC, a South Carolina limited liability company (“SC Ridgeville”) and Performance Team LLC, a Delaware limited liability company (“Performance Team”) 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 SC Ridgeville or Performance Team 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.

“Enhanced Investment Requirement” shall mean an investment by the Company and any Sponsor Affiliate(s) in the Project, which the parties agree is \$95,000,000 of which \$64,458,000 must be real property, to receive the enhanced amount of Special Source Revenue Credits described in Section 5.01(b)(ii)(A) herein.

“Equipment” shall mean all machinery, equipment, furnishings, and other personal property acquired by the Controlled Group and any Sponsor Affiliate(s) 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 the Company and any Sponsor Affiliate(s) or members 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; or (b) modifications which constitute an expansion of Existing Property.

“FILOT” shall mean the fee-in-lieu of taxes, which the Company and any Sponsor Affiliate(s) 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 any Sponsor Affiliate(s) pursuant to Section 5.01 hereof.

“FILOT Revenues” shall mean the revenues received by the County from the Company’s and any Sponsor Affiliate(s)’ payment of the FILOT.

“Investment Period” shall mean the period beginning with the first day that the Controlled Group purchased or purchases Economic Development Property and ending on the date that is five years from the end of the property tax year in which this Agreement is executed by the Company and the County, unless extended by written agreement of the County and the Company pursuant to Section 12-44-30(13) of the Code.

“Investment Requirement” shall mean the minimum investment the Company and any Sponsor Affiliate(s) shall make in the Project to receive the incentives described herein, which the parties agree is \$67,364,000.

“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 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 Payment” shall mean the FILOT 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) has terminated the Negotiated FILOT pursuant to Section 4.03(a)(iii) hereof. The Company and any Sponsor Affiliate(s) agree that the real estate improvements 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 and any Sponsor Affiliate(s) 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 the Equipment; and any Replacement Property.

“Project Commitments” shall mean the investment commitment of the Company and any Sponsor Affiliate(s) with respect to the Project as set forth in Section 2.02(d) of this Agreement.

“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 installed 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.

“Special Source Revenue Credits” shall mean the Special Source Revenue Credits described in Section 5.01 hereof.

“Sponsor Affiliate(s)” shall mean an entity that joins with the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“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.

Section 1.04. Project-Related Investments. The term “investment” or “invest” as used in this Agreement shall include not only investments made by the Company, any Sponsor Affiliate(s) and any Company Affiliates, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company or any Company Affiliate with respect to the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company or any Company Affiliate.

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 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) 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) SC Ridgeville Autonomous, LLC 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. Performance Team LLC is a limited liability company, validly existing and in good

standing under the laws of the state of Delaware, is 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 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 and any Sponsor Affiliate(s) hereby commit to an Enhanced Investment Requirement of NINETY-FIVE MILLION Dollars (\$95,000,000.00) of which at least SIXTY-FOUR MILLION FOUR HUNDRED FIFTY-EIGHT THOUSAND Dollars (\$64,458,000.00) will be in land, buildings, and other real property by the end of the Investment Period in order to receive the maximum amount of incentives provided for herein. The investment amount shall not include any amount paid by the Company and any Sponsor Affiliate(s) for real estate improvements on the land existing as of the date of this Agreement. The Company and any Sponsor Affiliate(s) agree to meet and maintain the real property investment commitment throughout the entire term of the FILOT as provided in Section 4.01, below.

(e) If the Company fails to meet the Investment Requirement, then the Fee Agreement shall terminate and the Company and any Sponsor Affiliate(s) 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 the calendar year which ends on December 31.

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

(h) The Company intends to operate the Project as a cold storage warehouse facility, and for such other purposes permitted under the Act as it 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 Sponsor Affiliate(s) 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 Sponsor Affiliate(s) the benefits of the Negotiated FILOT Payments 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. In the event that a court of competent jurisdiction holds that the Simplified FILOT Act is unconstitutional or that this Agreement or agreements similar in nature to this 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 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 pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company receives the benefits of the Negotiated FILOT 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 and any Sponsor Affiliate(s) have otherwise complied with or provides satisfactory evidence to the County that it intends to comply with its obligations and responsibilities under this Agreement.

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 and any Sponsor Affiliate(s) agree to invest i) approximately \$95,000,000.00, of which at least \$64,458,000.00 will be land, buildings, and other real property, at the Project by the end of the initial Investment Period in order to receive the enhanced Special Source Revenue Credits provided for in Section 5.01(b)(ii)(A), below, or ii) \$67,364,000.00, of which at least \$42,164,000.00 will be land, buildings, and other real property, at the Project by the end of the initial Investment Period in order to receive the reduced amount of the Special Source Revenue Credits provided for in Section 5.01(b)(ii)(B), below. The investment amount shall not include any amount paid by the Company or any Sponsor Affiliate(s) for real estate improvements on the

Land existing as of the date of this Agreement. The Company agrees to meet and maintain the real property investment commitment 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. Each year during the term of this Agreement, the Company and any Sponsor Affiliate(s) 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 the Project, not later than thirty (30) days following delivery thereof to the Department of Revenue.

(b) The Company and any Sponsor Affiliate(s) agree to obtain the written consent of the County prior to applying for a reclassification of, or attempting to reclassify, for property tax purposes any asset(s) previously reported to the Department of Revenue that would result in a decrease in the amount of real property previously reported to the Department of Revenue.

(c) The Company and any Sponsor Affiliate(s) agree to maintain such books and records with respect to 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 may designate with respect to any Filings delivered to the County segments thereof that the Company 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 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 of the request and, subject to the time constraints imposed by such law, give the Company the opportunity to designate those portions of the Project, which the Company believes 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.

Section 4.03 Modification of Project.

(a) As long as no event of default exists hereunder, the Company and any Sponsor Affiliate(s) shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

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

(ii) In any instance where the Company 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 and any Sponsor Affiliate(s) 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.

(iii) The Company and any Sponsor Affiliate(s) 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 Sponsor Affiliate(s) shall pay 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 30 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 paragraphs (c) below (a "Negotiated FILOT"); less (A) Special Source Revenue Credits given to the Economic Development Property in amounts equal to twenty percent (20%) for the initial five (5) years of the Term and ten percent (10%) for the next five (5) years of the Term if the Enhanced Investment Requirement is satisfied or (B) Special Source Revenue Credits given to the

Economic Development Property in amounts equal to ten percent (10%) for the initial ten (10) years of the Term if the Enhanced Investment Requirement is not satisfied but the Investment Requirement is satisfied.

(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 improvements to real property and 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 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 and any Sponsor Affiliate(s) dispose 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 hereof, by the amount applicable to the Released Property;

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

(iii) to adjust such payments if the Company and any Sponsor Affiliate(s) elect to convert any portion of the Project from the Negotiated FILOT to the FILOT required by Section 5.01(b) above, as permitted by Section 4.03(a)(iii).

(e) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Company and any Sponsor Affiliate(s) 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 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 Company's and any Sponsor Affiliate(s)' installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, 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 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 FILOT payment for the period of time remaining on the thirty-year FILOT period for the property which it is replacing.

(ii) The new 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 FILOT payment.

(g) In the event that the Act or the 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 Sponsor Affiliate(s) 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 Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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 or any Sponsor Affiliate(s) should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company or the Sponsor Affiliate(s) until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT Payments hereunder, the Company and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) fails to meet the Investment Requirement, then the Agreement shall terminate and the Company and any Sponsor Affiliate(s) shall repay the benefits received for any of the previous years constituting the Investment Period as if the Act Minimum Investment Requirement 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. Except as provided in Article IX, the Company agrees that the County shall 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 and any Sponsor Affiliate(s) release 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 and any Sponsor Affiliate(s) in the performance of any covenant or agreement on the part of the Company and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s), or any

of their 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 and any Sponsor Affiliate(s), 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 any Sponsor Affiliate(s) 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 all or any part of the Project, including without limitation any sale, leaseback, synthetic lease, nordic lease, defeased tax benefit or transfer lease 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company and any Sponsor Affiliate(s) hereunder, but all obligations of the Company and any Sponsor Affiliate(s) hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company and any Sponsor Affiliate(s), 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) acknowledge 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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.

Section 9.03. Leased Property. The Company may designate from time to time any Sponsor Affiliate(s) pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the Act, which Sponsor Affiliate(s) shall join with the Company and make investments with respect to the Project, or participate in the financing of such investments, and shall agree to be

bound by the terms and provisions of this Agreement. The Company shall provide the County and the Department with written notice of any Sponsor Affiliate(s) designated pursuant to this Section within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate(s) has placed in service any portion of the Project, in accordance with Section 12-44-130(B) of the Act.

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 Project has a term of thirty (30) 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, may, at its option, terminate this Agreement at any time upon providing the County thirty (30) days' written notice of such termination, in which event the Project 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) shall have such longer period of time as necessary to cure such default if the Company and any Sponsor Affiliate(s) 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, which means the closure of the facility or the cessation of business at the facility for a continuous period of twelve (12) 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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:

SC Ridgeville Autonomous, LLC
Attn: Legal Department
201 Riverplace, Suite 400
Greenville, South Carolina 29601
(864) 242-4008

and

Performance Team LLC
2240 E. Maple Avenue
El Segundo, California 90245

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

Maersk Services USA Inc.
Attn: Legal Department
180 Park Avenue
Florham Park, New Jersey 17932

and

Graeme F. Philp
Graybill, Lansche & Vinzani, LLC
225 Seven Farms Dr., Suite 207
Daniel Island, South Carolina 29492
Phone: (843) 377-5339

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 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 Company's reasonable control.

[SIGNATURE PAGE 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

SC RIDGEVILLE AUTONOMOUS, LLC,
a South Carolina limited liability company

By: _____

Name:

Title:

PERFORMANCE TEAM LLC,
a Delaware limited liability company

By: _____

Name:

Title:

EXHIBIT A

PROPERTY DESCRIPTION

[To be updated]

ORDINANCE NO. 22-01-02

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND SC RIDGEVILLE AUTONOMOUS, LLC, AND VALLEY COLD STORAGE & TRANSPORTATION, LLC (PREVIOUSLY IDENTIFIED AS PROJECT POLAR) ACTING FOR ITSELF AND ONE OR MORE OTHER PROJECT SPONSORS (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 SPECIAL SOURCE REVENUE OR INFRASTRUCTURE IMPROVEMENT CREDITS; 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 SC Ridgeville Autonomous, LLC, a South Carolina limited liability company and Valley Cold Storage & Transportation, LLC, a New Mexico limited liability company (collectively the “Company”), as the Company has expressed its intent to the County to make a capital investment in Berkeley County and to hire full time employees in Berkeley County, i.e., the project;

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 in order to encompass the terms of the project;

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 “Multi-County Park Act” or, as to Section 4-1-175 thereof, the “Special Source Act”) (collectively, the “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 permit investors to claim special source credits against their FILOT Payments (including Negotiated FILOT Payments) to reimburse such investors for expenditures for infrastructure serving Berkeley County and improved or unimproved real estate

and personal property, including machinery and equipment, used or to be used in the operation of manufacturing or commercial enterprise in order to enhance the economic development of Berkeley County (“Infrastructure Improvements”); 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 facilitate the grant of special source or infrastructure improvement credits; and

WHEREAS, the Company proposes to develop a cold storage facility 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 approximately \$95,000,000 and creating employment for approximately 75 new, full-time employees; and

WHEREAS, the 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;

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;
- (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 hereby find that:

- (a) the Negotiated FILOT Project continues to constitute a “project” as that term is defined in the FILOT Act;

- (b) the Negotiated FILOT Project will continue to serve the purposes of the FILOT Act;
- (c) The investment by the Company in the Negotiated FILOT Project is anticipated to be approximately \$95,000,000.00 (Ninety-Five Million Dollars) to be invested within five (5) years from the end of the property tax year in which the Company and the County execute the FILOT Agreement (as defined herein).
- (d) the Negotiated FILOT Project will be located entirely within the County;
- (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;
- (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;
- (g) the purposes to be accomplished by the Negotiated FILOT Project are proper governmental and public purposes;
- (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 Negotiated FILOT Payments to be made with respect to the Negotiated FILOT Project based upon a 6% assessment ratio and a millage of rate of 273.7 mills, all as more fully set forth in the Fee-in-Lieu of Tax Agreement by and between the County and the Company (the “FILOT Agreement”).

Section 4. Special Source Revenue Credits. After the identification of qualifying Infrastructure Improvements located solely within the County and the costs thereof to the satisfaction of the County, the County will provide to the Company special source revenue or infrastructure improvement credits (“SSRCs”) under the Special Source Act as follows:

For the Negotiated FILOT Project, the Company shall be entitled to claim special source credits against the annual Negotiated FILOT Payments with respect to the Negotiated FILOT Project in an amount equal to twenty percent (20%) of such annual Negotiated FILOT Payments for the first five (5) years beginning in the year after the year in which the Project is first placed in service and then ten percent (10%) of such annual Negotiated FILOT Payments for the following five (5) years.

Section 5. Execution of the Fee 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 6. Miscellaneous.

- (a) The Supervisor/Chairman 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;
- (b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina;
- (c) This Ordinance shall become effective immediately upon approval following third reading by the County Council;
- (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 7. 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 the Agreement for the Establishment of Multi-County Industrial/Business Park (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 30 years.

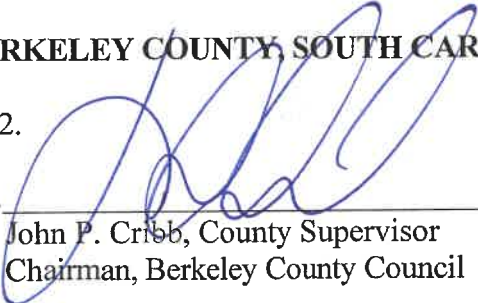
(b) Pursuant to the terms of the MCIP Act and the MCIP Agreement, the County hereby provides that for 30 years, commencing the first year in which property that is a part of the

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 as follows:

- (1) To the County, for providing the SSRCs, an amount equal to the annual SSRC with respect to the property as provided in Section 4 of this Ordinance and in the FILOT Agreement; and
- (2) 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.

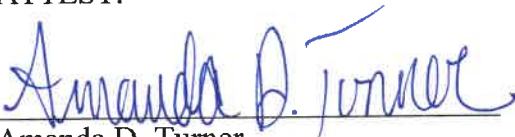
BERKELEY COUNTY, SOUTH CAROLINA

ADOPTED this 24th day of January, 2022.


By: 
 John P. Crabb, County Supervisor
 Chairman, Berkeley County Council

[SEAL]

ATTEST:

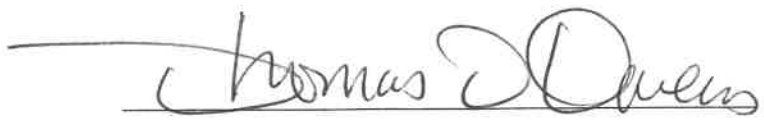

 Amanda D. Turner
 Clerk to Berkeley County Council

Approved as to form:


 John O. Williams
 Berkeley County Attorney

First Reading: October 25, 2021
 Second Reading: December 13, 2021
 Public Hearing: January 24, 2022
 Third Reading: January 24, 2022

MEMBERS OF COUNTY COUNCIL



THOMAS D. OWENS Voting Aye

Brandon Cox - elec. participation
BRANDON COX Voting Aye


JOSHUA S. WHITLEY Voting Aye


JACK H. SCHURLKNIGHT Voting Aye


PHILLIP OBIE, II Voting Recusal


CALDWELL PINCKNEY, JR. Voting Aye


JOE T. NEWELL Voting Aye

Excused
STEVE C. DAVIS Voting _____

FEE-IN-LIEU OF TAX AGREEMENT

by and between

BERKELEY COUNTY, SOUTH CAROLINA,

and

SC RIDGEVILLE AUTONOMOUS, LLC and
VALLEY COLD STORAGE & TRANSPORTATION, LLC

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 SC Ridgeville Autonomous, LLC, a South Carolina limited liability company and Valley Cold Storage & Transportation, LLC, a New Mexico limited liability company (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 an approximately 293,000 square foot cold storage warehouse facility in the Camp Hall Commerce Park in the County (the “Project”); and

WHEREAS, the Company anticipates that the Project will result in the creation of approximately 75 new, full-time jobs and an investment of \$95,000,000 of real and personal property in the County of which at least \$64,458,000 will be real property; and

WHEREAS, the Council approved an Ordinance enacted on January 24, 2022 authorizing the County to enter into this Agreement with the Company; and

WHEREAS, as a result of the Company contemplating locating its facility 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 January 24, 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) As permitted by 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, to the extent that and so long as the Company and any Sponsor Affiliate(s) timely provide the County with copies of all filings required by the Act to be made by the Company and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) noncompliance that are within the County’s control. The following is a summary of the key provisions of this Fee-in-Lieu of Tax Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee-in-Lieu of Tax Agreement or a summary compliant with Section 12-44-55 of the Code.

(b) Agreement Summary.

1. Legal name of each initial party to this Agreement:
SC Ridgeville Autonomous, LLC, Valley Cold Storage & Transportation, LLC and Berkeley County, South Carolina.
2. County and street address of the project and property to be subject to this Agreement:

732 Autonomous Drive
Ridgeville, SC 29473
3. Minimum investment agreed upon:
\$95,000,000.00 (total)
\$64,458,000.00 (real property)

4. Length and term of this Agreement:
30 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 property, subject to Payments-in-Lieu-of-Taxes is allowed;
 - (c) Special Source Revenue Credits shall be given to the Economic Development Property in an amount equal to 20% for initial 5 years then in an amount equal to 10% for 5 years.
 - (d) Payment will not be modified using a net present value calculation; and
 - (e) 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, including without limitation reasonable and actual attorneys’ fees (such attorneys’ fees will not exceed \$5,000.00 without prior written consent of the Company); provided, however, that no such expense shall be considered an Administration Expenses 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 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 each of SC Ridgeville Autonomous, LLC, a South Carolina limited liability company (“SC Ridgeville”) and Valley Cold Storage & Transportation, LLC, a New Mexico limited liability company (“Valley Cold Storage) 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 SC Ridgeville or Valley Cold Storage 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.

“Enhanced Investment Requirement” shall mean an investment by the Company and any Sponsor Affiliate(s) in the Project, which the parties agree is \$95,000,000 of which \$64,458,000 must be real property, to receive the enhanced amount of Special Source Revenue Credits described in Section 5.01(b)(ii)(A) herein.

“Equipment” shall mean all machinery, equipment, furnishings, and other personal property acquired by the Controlled Group and any Sponsor Affiliate(s) 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 the Company and any Sponsor Affiliate(s) or members 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; or (b) modifications which constitute an expansion of Existing Property.

“FILOT” shall mean the fee-in-lieu of taxes, which the Company and any Sponsor Affiliate(s) 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 any Sponsor Affiliate(s) pursuant to Section 5.01 hereof.

“FILOT Revenues” shall mean the revenues received by the County from the Company’s and any Sponsor Affiliate(s)’ payment of the FILOT.

“Investment Period” shall mean the period beginning with the first day that the Controlled Group purchased or purchases Economic Development Property and ending on the date that is five years from the end of the property tax year in which this Agreement is executed by the Company and the County, unless extended by written agreement of the County and the Company pursuant to Section 12-44-30(13) of the Code.

“Investment Requirement” shall mean the minimum investment the Company and any Sponsor Affiliate(s) shall make in the Project to receive the incentives described herein, which the parties agree is \$67,364,000.

“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 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 Payment” shall mean the FILOT 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) has terminated the Negotiated FILOT pursuant to Section 4.03(a)(iii) hereof. The Company and any Sponsor Affiliate(s) agree that the real estate improvements 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 and any Sponsor Affiliate(s) 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 the Equipment; and any Replacement Property.

“Project Commitments” shall mean the investment commitment of the Company and any Sponsor Affiliate(s) with respect to the Project as set forth in Section 2.02(d) of this Agreement.

“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 installed 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.

“Special Source Revenue Credits” shall mean the Special Source Revenue Credits described in Section 5.01 hereof.

“Sponsor Affiliate(s)” shall mean an entity that joins with the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“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.

Section 1.04. Project-Related Investments. The term “investment” or “invest” as used in this Agreement shall include not only investments made by the Company, any Sponsor Affiliate(s) and any Company Affiliates, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company or any Company Affiliate with respect to the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company or any Company Affiliate.

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 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) 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) SC Ridgeville Autonomous, LLC 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. Valley Cold Storage & Transportation, LLC is a limited liability company, validly existing and in good standing under the laws of the state of New Mexico, is 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 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 and any Sponsor Affiliate(s) hereby commit to an Enhanced Investment Requirement of NINETY-FIVE MILLION Dollars (\$95,000,000.00) of which at least SIXTY-FOUR MILLION FOUR HUNDRED FIFTY-EIGHT THOUSAND Dollars (\$64,458,000.00) will be in land, buildings, and other real

property by the end of the Investment Period in order to receive the maximum amount of incentives provided for herein. The investment amount shall not include any amount paid by the Company and any Sponsor Affiliate(s) for real estate improvements on the land existing as of the date of this Agreement. The Company and any Sponsor Affiliate(s) agree to meet and maintain the real property investment commitment throughout the entire term of the FILOT as provided in Section 4.01, below.

(e) If the Company fails to meet the Investment Requirement, then the Fee Agreement shall terminate and the Company and any Sponsor Affiliate(s) 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 the calendar year which ends on December 31.

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

(h) The Company intends to operate the Project as a cold storage warehouse facility, and for such other purposes permitted under the Act as it 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 Sponsor Affiliate(s) 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 Sponsor Affiliate(s) the benefits of the Negotiated FILOT Payments 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. In the event that a court of competent jurisdiction holds that the Simplified FILOT Act is unconstitutional or that this Agreement or agreements similar in nature to this 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 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 pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company receives the benefits of the Negotiated FILOT 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 and any Sponsor Affiliate(s) have otherwise complied with or provides satisfactory evidence to the County that it intends to comply with its obligations and responsibilities under this Agreement.

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 and any Sponsor Affiliate(s) agree to invest i) approximately \$95,000,000.00, of which at least \$64,458,000.00 will be land, buildings, and other real property, at the Project by the end of the initial Investment Period in order to receive the enhanced Special Source Revenue Credits provided for in Section 5.01(b)(ii)(A), below, or ii) \$67,364,000.00, of which at least \$42,164,000.00 will be land, buildings, and other real property, at the Project by the end of the initial Investment Period in order to receive the reduced amount of the Special Source Revenue Credits provided for in Section 5.01(b)(ii)(B), below. The investment amount shall not include any amount paid by the Company or any Sponsor Affiliate(s) for real estate improvements on the Land existing as of the date of this Agreement. The Company agrees to meet and maintain the real property investment commitment 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. Each year during the term of this Agreement, the Company and any Sponsor Affiliate(s) 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 the Project, not later than thirty (30) days following delivery thereof to the Department of Revenue.

(b) The Company and any Sponsor Affiliate(s) agree to obtain the written consent of the County prior to applying for a reclassification of, or attempting to reclassify, for property tax purposes any asset(s) previously reported to the Department of Revenue that would result in a decrease in the amount of real property previously reported to the Department of Revenue.

(c) The Company and any Sponsor Affiliate(s) agree to maintain such books and records with respect to 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 may designate with respect to any Filings delivered to the County segments thereof that the Company 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 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 of the request and, subject to the time constraints imposed by such law, give the Company the opportunity to designate those portions of the Project, which the Company believes 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.

Section 4.03 Modification of Project.

(a) As long as no event of default exists hereunder, the Company and any Sponsor Affiliate(s) shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

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

(ii) In any instance where the Company 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 and any Sponsor Affiliate(s) 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.

(iii) The Company and any Sponsor Affiliate(s) 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 Sponsor Affiliate(s) shall pay 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 30 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 paragraphs (c) below (a "Negotiated FILOT"); less (A) Special Source Revenue Credits given to the Economic Development Property in amounts equal to twenty percent (20%) for the initial five (5) years of the Term and ten percent (10%) for the next five (5) years of the Term if the Enhanced Investment Requirement is satisfied or (B) Special Source Revenue Credits given to the Economic Development Property in amounts equal to ten percent (10%) for the initial ten (10) years of the Term if the Enhanced Investment Requirement is not satisfied but the Investment Requirement is satisfied.

(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 improvements to real property and 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 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 and any Sponsor Affiliate(s) dispose 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 hereof, by the amount applicable to the Released Property;

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

(iii) to adjust such payments if the Company and any Sponsor Affiliate(s) elect to convert any portion of the Project from the Negotiated FILOT to the FILOT required by Section 5.01(b) above, as permitted by Section 4.03(a)(iii).

(e) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Company and any Sponsor Affiliate(s) 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 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 Company's and any Sponsor Affiliate(s)' installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, 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 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 FILOT payment for the period of time remaining on the thirty-year FILOT period for the property which it is replacing.

(ii) The new 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 FILOT payment.

(g) In the event that the Act or the 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 Sponsor Affiliate(s) 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 Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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 or any Sponsor Affiliate(s) should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company or the Sponsor Affiliate(s) until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT Payments hereunder, the Company and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) fails to meet the Investment Requirement, then the Agreement shall terminate and the Company and any Sponsor Affiliate(s) shall repay the benefits received for any of the previous years constituting the Investment Period as if the Act Minimum Investment Requirement 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. Except as provided in Article IX, the Company agrees that the County shall 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 and any Sponsor Affiliate(s) release 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 and any Sponsor Affiliate(s) in the performance of any covenant or agreement on the part of the Company and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s), or any of their 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 and any Sponsor Affiliate(s), 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 any Sponsor Affiliate(s) 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 all or any part of the Project, including without limitation any sale, leaseback, synthetic lease, nordic lease, defeased tax benefit or transfer lease 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company and any Sponsor Affiliate(s) hereunder, but all obligations of the Company and any Sponsor Affiliate(s) hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company and any Sponsor Affiliate(s), 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) acknowledge 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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.

Section 9.03. Leased Property.

The Company may designate from time to time any Sponsor Affiliate(s) pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the Act, which Sponsor Affiliate(s) shall join with the Company and make investments with respect to the Project, or participate in the financing of such investments, and shall agree to be bound by the terms and provisions of this Agreement. The Company shall provide the County and the Department with written notice of any Sponsor Affiliate(s) designated pursuant to this Section within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate(s) has placed in service any portion of the Project, in accordance with Section 12-44-130(B) of the Act.

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 Project has a term of thirty (30) 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, may, at its option, terminate this Agreement at any time upon providing the County thirty (30) days' written notice of such termination, in which event the Project 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) shall have such longer period of time as necessary to cure such default if the Company and any Sponsor Affiliate(s) 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, which means the closure of the facility or the cessation of business at the facility for a continuous period of twelve (12) 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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 and any Sponsor Affiliate(s) 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:

SC Ridgeville Autonomous, LLC
Attn: Legal Department
201 Riverplace, Suite 400
Greenville, South Carolina 29601
(864) 242-4008

and

Valley Cold Storage & Transportation, LLC
Attn: Clay Bush
101 Watson Lane
Las Cruces, New Mexico 88005
Phone:

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

Graeme F. Philp
Graybill, Lansche & Vinzani, LLC
225 Seven Farms Dr., Suite 207
Daniel Island, South Carolina 29492
Phone: (843) 377-5339

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 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 Company's reasonable control.

[SIGNATURE PAGE 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 _____, 2021.

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

SC RIDGEVILLE AUTONOMOUS, LLC

By: _____
Name:
Title:

VALLEY COLD STORAGE &
TRANSPORTATION, LLC

By: _____
Name:
Title:

EXHIBIT A
PROPERTY DESCRIPTION

[To be updated]