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# AGENDA ITEM:

## XI-F

Ordinance item F



**STATE OF SOUTH CAROLINA  
COUNTY OF JASPER**

**ORDINANCE #2021-16**

**AN ORDINANCE  
OF JASPER COUNTY COUNCIL  
TO AMEND CERTAIN PROVISIONS TO THE JASPER COUNTY CODE OF  
ORDINANCES TO AUTHORIZE MEETINGS TO BE HELD BY TELEPHONIC OR  
OTHER ELECTRONIC MEANS, AND MATTERS RELATED THERETO.**

**WHEREAS**, Jasper County, South Carolina (the “County”) is a political subdivision of the State of South Carolina (the “State”), and as such possesses all general powers granted by the Constitution and statutes of the State to such public entities; and

**WHEREAS**, , the Freedom of Information Act, which is codified at Title 30, Chapter 4 of the S.C. Code of Laws of South Carolina 1976, as amended (the “S.C. Code”), in Section 30-4-20(e) of the S.C. Code provides that “ ‘Quorum’ unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body;” and

**WHEREAS** the S.C. Code in Section 30-4-20(d) defines a meeting as “convening a quorum of the constituent membership of the public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power” [emphasis added]; and

**WHEREAS**, in keeping with the provisions of the S.C. Code, Section 2-35 et. seq. of Jasper County’s Code of Ordinances (the “Code of Ordinances”) defines and describes the requirements for a “quorum” of the County Council of Jasper County, the governing body thereof (the “Town Council”) and further defines and describes the rules of procedure for meetings; and

**WHEREAS**, in response to the COVID-19 pandemic and a State Declaration of Emergency, County Council declared a local state of emergency, in Resolution/Proclamation 2020-19 adopted on March 16, 2020, and subsequently enacted an emergency ordinance on April 6, 2020, provisions of which temporarily suspended certain procedural rules of the County Council in response to social-distancing guidelines and executive orders, and allowing for electronic and telephonic meetings, whose provisions have been renewed from time to time by adoption of subsequent Emergency Ordinances (collectively, the “Emergency Ordinances”); and

**WHEREAS**, such telephonic and other electronic meetings have proven successful and effective under the Emergency Ordinances and in light of the current public safety considerations associated with 2019 novel coronavirus, and the potential for future public safety considerations, including those attendant to the adverse weather events that seasonally affect coastal cities, the County Council finds that great benefit may be realized from authorizing meeting by telephonic or other electronic means whenever necessary and convenient for carrying out the business of the County, to include County Council-appointed boards, commissions and committees.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE JASPER COUNTY COUNCIL**, in accordance with the foregoing, the Council hereby amends the Code of Ordinances for Jasper County as follows:

**SECTION 1. AMENDMENT.** Jasper County hereby amends Chapter 2 of the Code of Ordinances for Jasper County, South Carolina, by amending and adding text to allow for the conduct of meetings of the County Council and its Council-appointed boards, commissions and committees electronically and/or telephonically, as shown in Exhibit "A" attached hereto and fully incorporated by reference.

**SECTION 2. REPEAL OF CONFLICTING ORDINANCES.** All ordinances or parts of ordinances that are inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall take effect upon approval by Council.

**ATTEST:**

\_\_\_\_\_  
**Barbara B. Clark**  
**Chair**

\_\_\_\_\_  
**Wanda Simmons**  
**Clerk to Council**

**First Reading:** May 3, 2021  
**Second Reading:** June 7, 2021  
**Public Hearing:** June 7, 2021  
**Adopted:** July 19, 2021

Reviewed for form and draftsmanship by the Jasper County Attorney.

\_\_\_\_\_  
**David Tedder**

\_\_\_\_\_  
**Date**

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# AGENDA ITEM:

## XI-G

Ordinance item G



**JASPER COUNTY  
ORDINANCE NO.2021-23**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN JASPER COUNTY, SOUTH CAROLINA (THE “COUNTY”), A COMPANY KNOWN TO THE COUNTY AS PROJECT LITE, ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE “COMPANY”), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF CERTAIN FACILITIES IN THE COUNTY (THE “PROJECT”); AND (2) OTHER MATTERS RELATING THERETO.

WHEREAS, Jasper County, South Carolina (the “County”), acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), and particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”): (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and

WHEREAS, a company known to the County as Project Lite, acting for itself, one or more affiliates, and/or project sponsors (collectively, the “Company”), are considering the establishment and/or expansion of certain commercial and related facilities at one or more locations in the County (the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or caused to be invested, at least \$45,000,000, in the aggregate, in the Project; and

WHEREAS, based solely on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Negotiated FILOT Act and has made certain findings pertaining thereto in accordance with the Negotiated FILOT Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on June 21, 2021 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a negotiated FILOT with respect to the Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Company with respect to the Project (the “Incentive Agreement”), the

form of which is presented to this meeting, which Incentive Agreement is to be dated as of \_\_\_\_\_, 2021, or such other date as the parties thereto may agree; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

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

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Incentive Agreement, the terms and provisions of this Ordinance and the Incentive Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, based on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

- (a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and
- (b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and
- (c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and
- (d) The Project gives rise to no pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project are greater than the costs.

Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the “Negotiated FILOT”), as set forth in **Section 2(b)** hereof and in accordance with the terms of the Incentive Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the lowest millage rate allowed with respect to the Project pursuant to Section 12-44-50(a)(1)(d) of the Negotiated FILOT Act as set forth in greater detail in the Incentive Agreement; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) such other terms and conditions as are or will be specified in the Incentive Agreement including, but not limited to, that the Company and the Project shall be entitled to the maximum benefits allowable under the Negotiated FILOT Act with respect to the disposal and replacement of Project property.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as part of the Project during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years based on the initial Investment Period of five (5) years, or, if the Investment Period is extended as set forth in the Incentive Agreement, up to an aggregate of forty (40) years.

Section 3. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to the Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 4. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement.

Section 5. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent

jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 6. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]



Enacted and approved, in a meeting duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2021.

**JASPER COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Barbara B. Clark, Chairperson, County Council  
Jasper County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Wanda Simmons, Clerk to County Council  
Jasper County, South Carolina

First Reading:            June 21, 2021  
Second Reading:  
Public Hearing:  
Third Reading:

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and between

JASPER COUNTY, SOUTH CAROLINA,

and

PROJECT LITE

Dated as of September \_\_\_\_, 2021

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of September \_\_\_\_\_, 2021, by and between JASPER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and a company known to the County as PROJECT LITE, and its affiliates and subsidiaries, acting for themselves, one or more affiliates, and/or other project sponsors (collectively the "Company").

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act", or, the "Act"): (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and, (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, the Company and has committed to establish and/or expand certain commercial and related facilities at one or more locations in the County (the "Project"), and anticipate that, should their plans proceed as expected, they will invest, or cause to be invested, collectively, approximately \$45,000,000 or more in the Project by the end of the Compliance Period (as defined herein), as set forth in greater detail herein; and

WHEREAS, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on June 21, 2021 (the "Inducement Resolution"), whereby the County agreed to provide the benefits of a negotiated FILOT with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, 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 set forth herein, and, by Ordinance No. \_\_\_\_\_ enacted by the Council on \_\_\_\_\_, 2021, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the above recitals which are incorporated herein by reference, and the potential investment to be made, or caused to be made, by the Company which contributes to the tax base and the economic welfare of the County, the respective representations and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. 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*” shall mean the Negotiated FILOT Act and the Multi-County Park Act.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the negotiation and approval of the terms and provisions of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney’s fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the Company, or other Co-Investor required to pay such expense hereunder, shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and the County shall have furnished to the Company, or such other Co-Investor, as the case may be, a statement including a general explanation of such expenses incurred.

“*Affiliate*” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other Sponsor or Sponsor Affiliate, as the case may be, or which is now or hereafter owned in whole or in part by the Company or any other Sponsor or Sponsor Affiliate, or by any partner, shareholder or owner of the Company or any other Sponsor or Sponsor Affiliate, as the case may be, and shall also include any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company or any other Sponsor or Sponsor Affiliate as described in Section 267(b) of the Internal Revenue Code.

“*Agreement*” shall mean this Fee in Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“*Co-Investor*” shall mean the Company and any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such other Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in, or providing funds for, the Project. The Company shall notify the County in writing of the identity of any other Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such other Sponsor, Sponsor Affiliate, or other Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by any such other entity pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of the original execution and delivery of this Agreement, the Company is the only Co-Investors.

“*Company*” shall mean Project Lite, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.04 or 6.01** hereof or any other assignee or transferee hereunder which is designated by the Company and approved by the County.

“*Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required, that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, 2021, and, in such event, the Compliance Period will end on December 31, 2026.

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

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

“*Credit Eligible Entity*” shall have the meaning specified in **Section 3.02(a)** hereof.

“*Deficiency Payment*” shall have the meaning specified in **Section 5.01(e)** hereof.

“*Department of Revenue*” shall mean the South Carolina Department of Revenue and any successor thereof.

“*Event of Default*” shall mean an Event of Default, as set forth in **Section 8.01** hereof.

“*Existing Property*” shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or

modification of property which is not economic development property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company and other Co-Investors, in the aggregate, invest at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (b); or, (d) modifications which constitute an expansion of real property or real property improvement portions of Existing Property. As used in the immediately preceding sentence, expansion shall include all modifications, alterations, additions, and improvements that are considered necessary, suitable, or useful by the Company.

“*FILOT*” shall mean fee in lieu of *ad valorem* property taxes.

“*FILOT Payment*” or “*FILOT Payments*” shall mean the FILOT payments to be made by the Company with respect to the Project, whether made as Negotiated FILOT Payments pursuant to **Section 5.01** hereof.

“*Investment Period*” shall initially mean a period equal to the Compliance Period; provided, however, that, if the Minimum Contractual Investment Requirement is satisfied by the end of the Compliance Period, the Investment Period shall be automatically extended, without further action or proceedings of the County or the Council, by five (5) years beyond the Compliance Period to end on the tenth (10<sup>th</sup>) anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all in accordance with Section 12-44-30(13) of the Negotiated FILOT Act. In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as presently anticipated, placed in service in the Property Tax Year ending on December 31, 2021, upon any such extension, the Investment Period will end on December 31, 2031.

“*Land*” shall mean the land, that has been or will be acquired, whether in fee simple or by easement, upon which the Project has been or will be constructed and equipped, as described on **Exhibit A** attached hereto, as **Exhibit A** may be revised, modified, or supplemented from time to time in accordance with the provisions hereof.

“*Minimum Contractual Investment Requirement*” shall mean investment in Negotiated FILOT Property, within the period commencing on the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending at the end of the Compliance Period, by the Company and all Co-Investors, in the aggregate, of at least



\$45,000,000 (without regard to depreciation or other diminution in value), as reported by the Company and any Co-Investors, if any, on their respective PT-300S form or comparable forms filed with the Department of Revenue.

“*Minimum Statutory Investment Requirement*” shall mean investment in the Project of not less than \$2,500,000 within the Compliance Period, as set forth in Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the Negotiated FILOT Act.

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate or rates described in **Section 5.01(b)(ii)** hereof.

“*Negotiated FILOT Act*” shall mean Title 12, Chapter 44 of the Code.

“*Negotiated FILOT Property*” shall mean all Project property qualifying for the Negotiated FILOT as “economic development property” within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property, and any Released Property.

“*Non-Qualifying Property*” shall mean that portion of the real and personal property located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and, (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act or under this Agreement, including without limitation property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.01(d)(iii)** hereof.

“*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: (i) all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (ii) all utility and broadband property and improvements including, but not limited to improvements or modifications to, or expansions of property already existing on the Land which have become obsolete or are being updated or improved by the Company, machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of the Company for use on or about the Land; and, (iii) any Replacement Property, including property intended to replace property already existing on the Land which has become obsolete or is being updated or improved by the Company; provided,

however, except as to Replacement Property, the term Project shall be deemed to include any such real property improvements and personal property, whether now existing or hereafter constructed, improved, acquired or equipped, only to the extent placed in service within a period commencing on January 1, 2021 and ending at the end of the Investment Period.

*“Property Tax Year”* shall mean the annual period which is equal to the fiscal year of the Company, *i.e.*, with respect to the Company, the annual period ending on December 31 of each year.

*“Released Property”* shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(d)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, any portion of the Negotiated FILOT Property constituting infrastructure which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

*“Replacement Property”* shall mean all property placed in service on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece of such property replaces a single piece of the Negotiated FILOT Property, to the maximum extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

*“Sponsor”* and *“Sponsor Affiliate”* shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. As of the original execution and delivery of this Agreement, the only Sponsor is the Company, and there are no Sponsor Affiliates.

*“State”* shall mean the State of South Carolina.

*“Term”* shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

*“Transfer Provisions”* shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act.

**Section 1.02. 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 the 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 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. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and has duly approved the Negotiated FILOT, as set forth herein, as well as any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) Solely on the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

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

(d) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which, to the best knowledge of the County, could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

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

(a) The Company is a corporation validly existing and in good standing under the laws of the State of South Carolina, has all requisite power to enter into this Agreement and to carry out its obligations hereunder, and by proper action has been duly authorized

to execute and deliver this Agreement. The Company has a fiscal year end of December 31, and the Company will notify the County of any changes in its respective fiscal year.

(b) The Company intends to operate the Project as facilities primarily to provide services to its members and customers.

(c) The agreements with the County with respect to the Negotiated FILOT, as set forth herein, were factors in inducing the Company to locate the Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

(e) The Company has retained legal counsel to advise, or has had a reasonable opportunity to consult legal counsel to advise, of its eligibility for the Negotiated FILOT and other incentives granted by this Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the Negotiated FILOT and other incentives granted by this Agreement.

### ARTICLE III

#### COVENANTS OF THE COUNTY

Section 3.01. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with the provisions of **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Commensurate Benefits. The parties hereto acknowledge the intent of this Agreement, in part, is to afford the Company and each Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is, in whole or in part, unconstitutional or this Agreement, or agreements similar in nature to this Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then, at the request of the Company, the County agrees to use its best efforts, and to take such other steps as may be necessary, to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT and agrees, if requested by the Company, to enter into a lease purchase agreement with the Company and each other Sponsor or Sponsor Affiliate pursuant

to Section 12-44-160 of the Negotiated FILOT Act, the terms of which shall be mutually agreeable to the County and the Company. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Act or this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT Payments be reformed so as to best afford the Company and each other Sponsor or Sponsor Affiliate benefits commensurate with, but not in excess of, those intended under this Agreement, including, without limitation, any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law.

## ARTICLE IV

### COVENANTS OF THE COMPANY

#### Section 4.01. Investment in the Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve, or cause to be acquired, constructed, equipped, or improved, the Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three (3) years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, 2024.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment in Negotiated FILOT Property in the County at the Project by any and all other permitted Co-Investors shall together with investment in Negotiated FILOT Property in the County at the Project by the Company, count toward achievement of the Minimum Statutory Investment Requirement and the Minimum Contractual Investment Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and all other permitted Co-Investors filed with respect to the Project, including without limitation, each such entity's assets listed on a SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, without regard to depreciation or other diminution in value.

(c) Subject to the provisions of **Sections 4.04 and 6.01** hereof, the Company shall, retain title to, or other property rights in, its respective portion of the Project throughout the Term of this Agreement, and the Company shall have full right to mortgage, lease, or encumber all or any portion of the Project, including without limitation, in connection with any financing transactions, all without the consent of the County.

(d) 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 all such real and personal property as the Company, in its discretion deem useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 5.01(f)(iii)** hereof, in any instance when the Company, in its discretion, determines any property included in the Project, including without limitation, any Negotiated FILOT Property, has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such property 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.

(iii) The Company may, at any time and in their discretion by written notice to the County, remove any Project property including, but not limited to, Negotiated FILOT Property, real or personal, from the Project or from the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains as part of the Project, and effective as of the date of any such removal, such property will be subject to *ad valorem* taxes; provided, that, any such notice requirement may be satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, and in such event, any such removal reflected by any such written notice shall be deemed to be effective as of the date of such removal.

(iv) If the Company sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project while retaining such property for use as part of its operations in the County, all as permitted herein, the Company shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to **Exhibit A** reflecting any such addition, disposal or removal and such revised or supplemented **Exhibit A** shall, effective as of the date of any such transaction, addition, disposal, or removal, be automatically made a part of this Agreement without further action or proceedings by the County or the Council; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act, and in such event, any such addition, disposal, or removal reflected by any such return, shall be

automatically deemed effective as of the date of any such addition, disposal, or removal.

(v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 4.02. Payment of Administration Expenses. The Company or any other Sponsor or Sponsor Affiliate will reimburse, or cause reimbursement of, the County from time to time for the County's Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the negotiation or implementation of this Agreement's terms and provisions, with respect to the Company or any other Sponsor or Sponsor Affiliate, as the case may be, promptly upon written request therefor, but in no event later than ninety (90) days after receiving written notice from the County specifying the general nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement, and, aside from the attorneys' fees set forth below, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby. The parties hereto understand that the County has incurred, and will incur, legal fees and other expenses for review of the Inducement Resolution, this Agreement and all resolutions, ordinances and other documentation related thereto in an amount not to exceed \$5,000, and the Company and its Subsidiary agree to reimburse the County for the same. The \$5,000 limit in the immediately preceding sentence shall only apply up through the execution of this Agreement by the County, and County Council passing the Jasper County Ordinance authorizing the County to enter into this Agreement.

Section 4.03. Use of the Project for Lawful Activities. During the Term of this Agreement, the Company may use the Project as it deems fit for any lawful purpose.

Section 4.04. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company, an Affiliate, or a company with which the Company shares common management, as to which such consolidation, merger, or transfer, the County, to the extent allowed by law, hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets, as applicable, shall: (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and, (iii)

expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed; and

(b) immediately after giving effect to such transaction, no Event of Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company, as appropriate, shall have delivered to the County: (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above; and, (ii) an opinion of counsel for the Company, and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this **Section 4.04**, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this **Section 4.04**.

The Company acknowledges transfers of this Agreement or the Negotiated FILOT Property may cause the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

**Section 4.05. Records and Reports.** The Company and each Sponsor or Sponsor Affiliate will maintain, or cause to be maintained, such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project it places in service during the Investment Period, the amount of investment with respect thereto, and any computations of Negotiated FILOT Payments made by such entity hereunder, and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by Section 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that



the parties hereto hereby waive in their entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from the Company and any other Sponsor or Sponsor Affiliate that support the Negotiated FILOT returns of the Company or such other Sponsor or Sponsor Affiliate as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments by the Company, or such other Sponsor or Sponsor Affiliate. For purposes of this Agreement, the term “County Official” shall include the Administrator, Auditor, Assessor, or Treasurer of the County.

(b) Each year during the Term hereof, the Company, and each other Sponsor or Sponsor Affiliate shall deliver to the County Auditor, the County Assessor and the County Treasurer of the County a copy of any form or return it files with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(c) The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of original execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County, and with the Department of Revenue, and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

Notwithstanding any other provision of this Section, the Company and each other Sponsor or Sponsor Affiliate may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Sponsor or Sponsor Affiliate believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company or any such other Sponsor or Sponsor Affiliate with respect to maintaining the confidentiality of such designated segments, to the extent allowed by law. Except to the extent required by law, unless the County has provided at least ten (10) days advance written notice to the Company or such other Sponsor or Sponsor Affiliate of such proposed release, the County shall not knowingly and voluntarily release any Filing, documents, or other information provided to the County by the Company or any other Sponsor or Sponsor Affiliate in connection with the Project, whether or not such information has been designated as confidential or proprietary by the Company or any other Sponsor or Sponsor Affiliate.

## ARTICLE V

### FEES IN LIEU OF TAXES

#### Section 5.01. Payment of Fees in Lieu of *Ad Valorem* Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereto hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this Section, 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. It is presently anticipated, but not required, that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2023.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the Investment Period is extended as set forth in the definition of "Investment Period" in **Section 1.01** hereof, up to an aggregate of forty (40) years.

(ii) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the lowest millage rate allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which based on the property comprising the Land as of the original execution and delivery of this Agreement, is equal to the millage indicated on **Exhibit B** with respect to all Negotiated FILOT Property comprised of, or located on, such Land, and shall be fixed for the Term of this Agreement; and, (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment but with regard to any ordinary obsolescence factors traditionally applied to the Company's real property and the original income tax basis for any personal property less allowable depreciation and ordinary obsolescence factors traditionally applied to the Company's personal property (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, only in a writing approved by the Council, at a later date to amend this Agreement as to Negotiated FILOT Property owned by the Company or such other Sponsor or

Sponsor Affiliate so as to determine the fair market value of any such real property in accordance with any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or other 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 five (5) year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code; provided, however, the Company shall not be entitled to extraordinary obsolescence with respect to Negotiated FILOT Property as set forth in Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act.

(iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) To the extent not prohibited by the Department of Revenue, Negotiated FILOT Payments are to be recalculated (subject, always to the continuing requirements of **Section 5.01(f)** hereof):

(i) to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.01(d)(ii)** hereof by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project as a result of circumstances beyond the control of the Company or any other Sponsor or Sponsor Affiliate;

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

(iv) to adjust such payments if the Company or any other Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes as permitted by **Section 4.01(d)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by the Negotiated FILOT Act, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. 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 Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes that would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payments for the remaining portion of the Negotiated FILOT Payment period set forth in **Section 5.01(b)(i)** hereof applicable to the Released Property.

(ii) The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and each other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes, and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five (5) year exemption from *ad valorem* taxes, provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and each other Sponsor or Sponsor Affiliate were obligated

to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to such entity's portion of the Negotiated FILOT Property in question, an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f)

(i) In the event that the Minimum Statutory Investment Requirement is not satisfied by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment shall be due and payable from, or at the direction of, the Company or each other Sponsor or Sponsor Affiliate, as the case may be, with respect to Negotiated FILOT Payments theretofore made. To the extent necessary to collect a Deficiency Payment under this clause (i) due to failure to satisfy the Minimum Statutory Investment Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(ii) In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but following the Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Minimum Statutory Investment Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act, commencing with any Negotiated FILOT Payments due with respect to Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

(iii) In accordance with the provisions of **Sections 4.01(b) and 6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor, which qualifies as Negotiated FILOT Property, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid, or caused to be paid, by the Company or the

Sponsor or Sponsor Affiliate, as the case may be, within sixty (60) days following receipt by the Company or such other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

The parties acknowledge that: (i) the calculation of the annual Negotiated FILOT Payment due hereunder is a function of the Department of Revenue and is wholly dependent on the parties hereto intended to receive benefits under this Agreement timely submitting the correct annual property tax returns to the Department of Revenue; (ii) the County has no responsibility for the submission of returns or the calculation of the annual Negotiated FILOT Payment; and, (iii) failure by any party to timely submit the correct annual property tax return could lead to loss of all or a portion of the Negotiated FILOT benefits and other incentives provided by this Agreement.

Section 5.02. Statutory Lien. The parties hereto acknowledge the County's right to receive Negotiated FILOT Payments hereunder and that the County is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

## ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time: (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or, (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Sponsor or Sponsor Affiliate under this Agreement, including, without limitation, the benefits of the Negotiated FILOT with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved, upon written approval of the County, which approval may take the form of a consent letter, a resolution or ordinance of the Council. Notwithstanding anything to the contrary in this **Section 6.01**, the County hereby preapproves and consents to the Company transferring all or any of its rights and interests hereunder or with respect to all or any part of the Project to an Affiliate, or a company with which the Company shares common management.

Subject to County consent when required under this **Section 6.01**, and at the expense of the Company or such other Sponsor or Sponsor Affiliate, the County agrees to take such further action and execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or any other Sponsor or Sponsor Affiliate under this Agreement and/or any release of the Company or any other Sponsor or Sponsor Affiliate pursuant to this **Section 6.01**.

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

**Section 6.02. Sponsors and Sponsor Affiliates.** The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which, in each case, must agree to be bound by the terms of this Agreement and must be approved by resolution of the Council. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

## ARTICLE VII

### TERM; TERMINATION

**Section 7.01. 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 day the last Negotiated FILOT Payment is made hereunder.

**Section 7.02. Termination.** In addition to the termination rights of the County under **Section 8.02(a)** hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* taxes, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.01. Events of Default.** 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 (the “Defaulting Entity”):

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County;

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing paragraph (a), and such default shall continue for sixty (60) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default; or,

(c) if a Cessation of Operations occurs after the Compliance Period. For purposes of this Agreement, a “Cessation of Operations” means a publicly announced closure of the Project or a cessation in production at the Project that continues for a period of twelve (12) consecutive months.

Notwithstanding anything herein to the contrary, failure to meet any investment requirement, threshold, or level set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or any other Sponsor or Sponsor Affiliate, as the case may be, to make certain additional payments to the County, all as set forth in **Section 5.01(f)** hereof.

**Section 8.02. Remedies on an Event of Default.** Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

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

(b) the County may have access to and inspect, examine, and make copies of the books and records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.05** hereof;



(c) the County may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties hereto that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

**Section 8.03. Defaulted Payments.** In the event the Company or any other Sponsor or Sponsor Affiliate should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall 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 Negotiated FILOT Act.

**Section 8.04. Default by the County.** Upon the default of the County in the performance of any of its obligations hereunder, the Company or any other Sponsor or Sponsor Affiliate 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.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Rights and Remedies Cumulative.** Each right, power, and remedy of the County, or of the Company and any other Sponsor or Sponsor Affiliate provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County, or by the Company or any other Sponsor or Sponsor Affiliate of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County, or by the Company any other Sponsor or Sponsor Affiliate of any or all such other rights, powers, or remedies.

**Section 9.02. 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; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the Company and any other Sponsor or Sponsor Affiliate, which consent may be provided by the Company or such other Sponsor or Sponsor Affiliate in their sole discretion.

**Section 9.03. 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 reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) As to the County:

Jasper County Administrator  
Attn: Andrew Fulghum  
P.O. Box 1149  
Ridgeland, South Carolina 29936

(b) with a copy (which shall not constitute notice) to:

Jasper County Attorney  
Attn: David Tedder  
358 Third Avenue  
Ridgeland, South Carolina 29936

(c) As to the Company:

Project Lite  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC  
Attn: Burnet R. Maybank III  
Andrew W. Saleeby  
1230 Main Street, Suite 700 (29201)  
P.O. Box 2426  
Columbia, South Carolina 29202  
Phone: (803) 253-8220

**Section 9.04. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

**Section 9.05. Entire Understanding.** This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties hereto, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or 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. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

Section 9.06. Severability. In the event that any clause or provision 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 9.07. 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 9.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereto hereunder surrendered, only by a writing signed by both parties hereto.

Section 9.10. Waiver. Either party hereto may waive compliance by the other party hereto with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 9.11. Further Proceedings. The parties hereto intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

Section 9.12. Indemnification Covenants.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement. The Company shall indemnify, defend and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel of the Company’s choice, which is acceptable to the County (the approval of which shall not be unreasonably withheld), and whose purported representation of the County in such matters

would not present an unwaivable conflict of interest under the South Carolina Rules of Professional Conduct, the waiveability of which shall be determined by the County, in its reasonable discretion; provided, however, that the Company shall be entitled to manage and control the defense of, or respond to, any claim, action, prosecution, or proceeding, for itself and any Indemnified Party; provided the Company is not entitled to settle any matter without the consent of that Indemnified Party. To the extent any Indemnified Party desires to use separate legal counsel for any reason, that Indemnified Party is responsible for its independent legal costs and expenses, in whole.

(b) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability: (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or, (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(c) An Indemnified Party may not avail itself of the indemnification of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

Section 9.13. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Agreement may be had against any member of the Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 9.14. Limitation of Liability. The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement. Notwithstanding anything in this Agreement to the contrary, any financial obligation the County may incur under this Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Fee in Lieu of Tax and Incentive Agreement to be effective as of the date first written above.

JASPER COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Barbara Clark, Chairperson, County Council  
Jasper County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Wanda Simmons, Clerk to County Council  
Jasper County, South Carolina

*[Signature Page to Fee in Lieu of Tax and Incentive Agreement]*

PROJECT LITE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

*[Signature Page to Fee in Lieu of Tax and Incentive Agreement]*

**EXHIBIT A**  
**LAND DESCRIPTION**

*[Signature Page to Fee in Lieu of Tax and Incentive Agreement]*

**EXHIBIT B**  
**APPLICABLE MILLAGE RATES**

The millage rate to be applied in accordance with Section 5.01(b)(ii) of this Agreement shall be as follows for each parcel of real property, and all business personal property located thereon in the following County tax district:

- Jasper County Tax District 01 345.000 Mills
- Jasper County Tax District 02 345.000 Mills
- Jasper County Tax District 03 345.000 Mills
- Jasper County Tax District 04 377.000 Mills

There shall be applied an additional millage rate to real and business personal property located within any of the following municipal limits:

- City of Hardeeville 114.000 Mills
- City of Ridgeland 140.250 Mills



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# AGENDA ITEM:

## XI-H

Ordinance item H

JASPER COUNTY  
STATE OF SOUTH CAROLINA

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AN ORDINANCE 2021-05

TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING \$5,990,000 GENERAL OBLIGATION REFUNDING BONDS OF JASPER COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO.

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## AN ORDINANCE

**TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING \$5,990,000 GENERAL OBLIGATION REFUNDING BONDS OF JASPER COUNTY, SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO.**

**BE IT ENACTED BY THE COUNTY COUNCIL OF JASPER COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:**

As an incident to the enactment of this Ordinance and the issuance of the bonds provided for herein, the County Council of Jasper County, South Carolina (the "County Council"), the governing body of Jasper County, South Carolina (the "County"), find that the facts set forth herein exist and the statements made with respect thereto are true and correct.

**WHEREAS**, by virtue of the Refunding Act (Title 11, Chapter 15, Article 5 of the Code of Laws of South Carolina 1976, as amended), as amended and continued by Section 11-27-40 of the Code of Laws of South Carolina 1976, as amended (the Refunding Act, as so amplified, amended and continued, being hereinafter called the "Refunding Act"), the County is authorised to issue general obligation bonds of the County whose proceeds are to be used to pay sums due on general obligation bonds previously issued by the County, including the current refunding of such previously issued general obligation bonds; and

**WHEREAS**, the County has previously issued its General Obligation Bonds of 2011 (the "Series 2011 Bonds") and its General Obligation Bonds of 2015 (the "Series 2015 Bonds"); and

**WHEREAS**, the County Council have determined, upon the advice of Municipal Advisors Group of Boston, Inc., the County's Financial Advisor (the "Financial Advisor"), that a savings in the debt service payments through the current refunding of all or a portion of the outstanding Series 2011 Bonds and Series 2015 Bonds (the Series 2011 Bonds and Series 2015 Bonds to be refunded in whole or in part are referred to herein as the "Refunded Bonds") can be achieved by issuing refunding bonds (the "Bonds") at this time, in one or more series, and using the proceeds thereof to provide for the payment of (i) the Refunded Bonds maturing subsequent to the date of issuance of the Bonds, (ii) the amount required to pay all or a portion of the interest on the Refunded Bonds to the date fixed for redemption in the plan of current refunding, (iii) any other deposits required with respect to the Bonds, and (iv) all expenses incurred by County Council with respect to the issuance of the Bonds; and

**NOW, THEREFORE**, on the basis of the foregoing authorisations and for the purposes set forth above, the County Council enact this Ordinance to effect the issuance and sale of not to exceed \$5,990,000 general obligation refunding bonds of the County, in one or more series, authorised by the Refunding Act.

## ARTICLE I

### DEFINITIONS AND INTERPRETATIONS

#### Section 1     Defined Terms.

The terms defined in this Article (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Ordinance shall have the respective meanings specified in this Article.

“Act” shall mean the Refunding Act (Title 11, Chapter 15, Article 5 of the Code of Laws of South Carolina 1976, as amended), as amended and continued by Section 11-27-40 of the Code of Laws of South Carolina 1976, as amended.

“Authenticating Agent” shall mean the authenticating agent for the Bonds designated pursuant to Section 1 of Article II hereof.

“Authorised Denominations” shall mean denominations of Five Thousand and no/100 Dollars (\$5,000.00) and any integral multiple thereof.

“Beneficial Owner” shall mean the person in whose name a Bond is recorded as the beneficial owner of the Bond by a Participant on the records of the Participant or such person’s subrogee.

“Bonds” shall mean the General Obligation Refunding Bonds, Series 2021 of the County authorised to be issued hereunder, in one or more series, in the aggregate principal amount of not to exceed \$5,990,000.

“Bond Registrar” shall mean the bond registrar designated pursuant to the provisions of Section 1 of Article II hereof.

“Book-Entry Only System” shall have the meaning attributed to that term in Article II, Section 14 hereof.

“Books of Registry” shall mean the registration books maintained by the Bond Registrar in accordance with Section 8 of Article II hereof.

“Bond Counsel” means, with respect to the Bonds, Howell Linkous & Nettles, LLC, Charleston, South Carolina, or any other firm of attorneys of nationally recognised standing in the matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

“Chairperson” shall mean the chairperson of the County Council or, in her absence, the vice chairperson of the County Council.

“Chief Financial Officer” shall mean the Finance Director of the County or, in her absence, any other officer or employee of the County designated in writing by the County Administrator to perform the duties of the Chief Financial Officer under this Ordinance.

“Clerk” shall mean the clerk of the County Council or, in her absence, the acting clerk.

“Closing Date” shall mean the date upon which there is an exchange of the Bonds for the proceeds representing the purchase price of the Bonds by the Original Purchaser.

“Continuing Disclosure Undertaking” shall mean the Continuing Disclosure Undertaking hereby authorized to be executed by the Chief Financial Officer on behalf of the County, as it may be amended from time to time in accordance with the terms thereof.

“County” shall mean Jasper County, South Carolina.

“County Administrator” shall mean the County Administrator of the County.

“County Council” shall mean the County Council of Jasper County, South Carolina, the governing body of the County or any successor governing body of the County.

“Dated Date” shall mean the date of delivery of the Bonds.

“DTC” shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors pursuant to Article II, Section 14 hereof.

“Escrow Agent” shall mean the as escrow agent appointed pursuant to Section 1 of Article IX hereof to serve as escrow agent under the Escrow Deposit Agreement, and its successors and assigns thereunder.

“Escrow Deposit Agreement” shall mean the Escrow Deposit Agreement, between the County and Escrow Agent, established with respect to the Refunded Bonds, as amended from time to time.

“Financial Advisor” shall mean Municipal Advisors Group of Boston, Inc., the financial advisor to the County.

“Fiscal Agents” shall mean the Paying Agent, the Bond Registrar, the Authenticating Agent, and any Escrow Agent under Article VI hereof with respect to the Bonds.

“Interest Payment Date” shall mean any April 1 or October 1, commencing April 1, 2022.

“Letter of Representations” shall mean the Blanket Letter of Representations of the County to DTC dated December 1, 2005.



“Ordinance” shall mean this Ordinance as from time to time amended and supplemented by one or more supplemental ordinances enacted in accordance with the provisions of Article VII hereof.

“Original Purchaser” shall mean the first purchaser of the Bonds from the County.

“Participants” shall mean those broker-dealers, banks, and other financial institutions for which the Securities Depository holds Bonds as securities depository.

“Paying Agent” shall mean the paying agent for the Bonds designated pursuant to Section I of Article II hereof.

“Refunded Bonds” means the Series 2011 Bonds and Series 2015 Bonds or any part thereof that are refunded by the Bonds.

“Securities Depository” shall mean the administrator of the book-entry only system for the Bonds, as further described in Article II, Section 14 hereof and any successor appointed as provided in Article II, Section 14 hereof. The initial Securities Depository shall be DTC.

“Series 2011 Bonds” shall mean the General Obligation Bonds of 2011 of the County.

“Series 2015 Bonds” shall mean the General Obligation Bonds of 2015 of the County.

“Sinking Fund Account” shall mean the sinking fund account established and held by the Treasurer of Jasper County designed to provide for the payment of the principal of, premium, if any, and interest on the Bonds, as the same respectively fall due.

## Section 2      General Rules of Interpretation.

For purposes of this Ordinance, except as otherwise expressly provided or the context otherwise requires:

(a) Articles, Sections, and Paragraphs, mentioned by number are the respective Articles, Sections, and Paragraphs, of this Ordinance so numbered.

(b) Except as otherwise expressly provided or unless the context otherwise requires, words importing persons include firms, associations, and corporations, and the masculine includes the feminine and the neuter.

(c) Words importing the redemption or redeeming or calling for redemption of a Bond do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.

(d) Words importing the singular number include the plural number and *vice versa*.

(e) The heading or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this Ordinance.

## ARTICLE II

### ISSUANCE OF BONDS

Section 1      Authorisation of Bonds; Approval of Maturity Dates, Principal Amounts, and Interest Rates.

(a) Pursuant to the provisions of the Refunding Act and for the purposes of providing for the payment of (i) the Refunded Bonds maturing subsequent to the date of issuance of the Bonds, (ii) the amount required to pay interest on the Refunded Bonds to the date fixed for redemption in the plan of current refunding, (iii) any other deposits required with respect to the Bonds, and (iv) all expenses incurred by County Council with respect to the issuance of the Bonds, there shall be issued, in one or more series, the aggregate principal amount of not exceeding Five Million Nine Hundred Ninety Thousand and no/100 Dollars (\$5,990,000.00) of general obligation refunding bonds of the County (the "Bonds"). The Bonds shall be designated "General Obligation Refunding Bonds, Series 2021;" and may be issued in one or more subseries as designated by the Chairperson.

(b) The Bonds shall be originally dated the Dated Date, shall be in fully-registered form, shall be in Authorised Denominations, and may be numbered from R-1 upward.

(c) The Bonds will bear interest at such rates, payable on each Interest Payment Date, and will mature on the dates and in the amounts as are approved by the Chairperson provided that:

(i) The Bonds shall bear an interest rate such that they result in a net present value savings for the Refunded Bonds of not less than 3.5%.

(ii) The Bonds shall mature not later than April 1, 2042.

(iii) The Paying Agent, Authenticating Agent, and Bond Registrar shall be a Fiscal Agent as designated by the Chairperson as in the best interest of the County.

(d) The Chairperson is hereby expressly delegated the authority to approve the sale and issuance of the Bonds so long as they conform to all of the parameters set forth in this Ordinance, including, but not limited to, this Section 1 of Article II.

Section 2      Redemption of Bonds.

(a) General. The Bonds may not be called for redemption by the County except as provided in this Section 2.

(b) Redemption. The Bonds as designated in writing by the County may be subject to redemption prior to their maturity, in whole or in part, and by lot as to Bonds or portions of Bonds within a maturity as designated in writing by the County (but only in integral multiples of \$5,000), upon the terms and on the dates and at the redemption prices as approved by the Chairperson prior to the issuance of the Bonds.

(c) Partial Redemption of Bonds. In the event that only part of the principal amount of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of that Bond to the Paying Agent. Upon surrender of such Bond, the County shall execute and the Authenticating Agent shall authenticate and deliver to the holder thereof, at the office of the Authenticating Agent, or send to such holder by registered mail at his request, risk, and expense, a new fully-executed Bond or Bonds, of authorized denominations equal in aggregate principal amount to, and of the same maturity and interest rate as, the unredeemed portion of the Bond surrendered.

(d) Official Notice of Redemption. (i) Unless waived by any registered owner of Bonds to be redeemed, official notice of any such redemption shall be given by the County by mailing a copy of an official redemption notice by first class mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to the registered owners of the Bond or Bonds to be redeemed at the address shown on the Books of Registry. Notice of redemption shall describe whether and the conditions under which the call for redemption may be revoked. Failure to give notice by mail or any defect in any notice so mailed with respect to any Bond shall not affect the validity of the proceedings for such redemption for Bonds for which notice was properly given.

(ii) All official notices of redemption shall be dated and shall state:

- (A) the redemption date,
- (B) the redemption price,
- (C) if less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (D) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after such date, and
- (E) the place where such Bonds are to be surrendered for payment of the redemption price.

(e) Conditional Notice of Redemption of Bonds Permitted. In the case of an optional redemption, the notice may state (i) that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the redemption date or (ii) that the County retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a "Conditional Redemption"), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded.

(f) Deposit of Funds. At least one day prior to any redemption date, the County shall deposit or cause to be deposited with the Paying Agent an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

(g) Effect of Deposit of Funds. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless (i)

the County shall have revoked the redemption in accordance with the terms set forth in the official notice of redemption or (ii) the County shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. If said money shall not be available on the redemption date, such bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption. Upon surrender of such Bonds for redemption in accordance with such notice, such Bonds shall be paid by the Paying Agent at the redemption price. Instalments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be cancelled by the Paying Agent and shall not be reissued.

### Section 3      Cancellation of Bonds.

All Bonds which have been redeemed shall be cancelled and either maintained or destroyed by the Paying Agent and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Paying Agent to the County upon the request of the Chief Financial Officer.

### Section 4      Purchase of Bonds.

The Paying Agent shall, if and to the extent practicable, endeavor to purchase Bonds or portions of Bonds at the written direction of the County at the time, in the manner, and at the price as may be specified by the County. The Paying Agent may so purchase the Bonds; provided, that any limitations or restrictions on such redemption or purchases contained in this Ordinance shall be complied with. The expenses of such purchase shall be deemed an expense of the Paying Agent to be paid by the County. The Paying Agent shall incur no liability for any purchase made in accordance with this Section or for its inability to effect such purchase in excess of the redemption price thereof.

### Section 5      Medium of Payment.

Both the principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

### Section 6      Place of Payments; Selection of Paying Agent.

Principal and premium, if any, of the Bonds, when due, shall be payable at the corporate trust office of the Paying Agent. Interest on any Bond shall be payable on each Interest Payment Date by cheque or draught mailed to the person in whose name such Bond is registered at the close of business on the fifteenth (15<sup>th</sup>) day (whether or not a business day) of the calendar month next preceding such Interest Payment Date (the Regular Record Date) by the Paying Agent. Principal of, redemption premium, if any, and interest payable to any person holding Bonds in aggregate principal amount of \$1,000,000 or more will be paid, upon the written request of any such registered owner in form and substance satisfactory to the Paying Agent, by wire transfer of immediately available funds

to an account within any of the continental United States of America designated by such registered owner on or before the Regular Record Date.

Section 7      Execution of Bonds; Designation of Authenticating Agent.

(a)      The Bonds shall be executed in the name of the County by the manual or facsimile signature of the Chairperson, and attested by the manual or facsimile signature of the Clerk, and the seal of the County shall be impressed or reproduced on each Bond. Any manual or facsimile signature appearing on the Bonds may be that of the officer who is in office on the date of the enactment of this Ordinance. The execution of the Bonds in this fashion shall be valid and effective notwithstanding changes in the personnel of any of the above offices subsequent to their execution.

(b)      The Bonds shall bear a certificate of authentication, substantially in the form set forth in Exhibit A, duly executed by the Authenticating Agent. The Authenticating Agent shall authenticate each Bond with the manual signature of an authorized officer of the Authenticating Agent, but it shall not be necessary for the same authorized officer to authenticate all of the Bonds. Only such authenticated Bonds shall be entitled to any right or benefit under this Ordinance. Such certificate on any Bond issued hereunder shall be conclusive evidence that the Bond has been duly issued and is secured by the provisions hereof.

Section 8      Form of Bonds; Designation of Bond Registrar.

(a)      The Bonds shall be issued in fully-registered form, and all principal, interest, or other amounts due thereunder shall be payable only to the registered owner thereof. The County Council hereby direct the Bond Registrar to maintain, at the County's expense, the Books of Registry for the registration or transfer of the Bonds.

(b)      The form of the Bonds and assignment provisions to be endorsed thereon shall be substantially as set forth in Exhibit A attached hereto and made a part of this Ordinance with any appropriate variations, legends, omissions, and insertions as permitted or required by this Ordinance or law.

Section 9      Registration and Transfers of Bonds; Persons Treated as Owners.

(a)      Each Bond shall be fully-registered and no Bond may be transferred except by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such registered Bond or Bonds, the County shall execute and the Authenticating Agent shall authenticate and deliver, subject to the provisions of Section 12 of this Article, in the name of the transferee, a new registered Bond or Bonds of the same aggregate principal amount as the unpaid principal amount of the surrendered Bond or Bonds.

(b)      Any registered owner requesting any transfer shall pay all taxes or other governmental charges required to be paid with respect thereto. Any purported assignment in contravention of the foregoing requirements shall be, as to the County, absolutely null and void. The

person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of and interest on such Bonds shall be made only to or upon the order of the registered owner or his legal representative. All such payments shall be valid and effective to satisfy and discharge the liability of the County upon such Bond to the extent of the sum or sums so paid. No person other than the registered owner shall have any right to receive payments, pursue remedies, enforce obligations, or exercise or enjoy any other rights under any Bond against the County. Notwithstanding the foregoing, nothing herein shall limit the rights of a person having a beneficial interest in any Bond as against a person (including the registered owner) other than the County, as in the case where the registered owner is a trustee or nominee for two or more beneficial owners of an interest in any Bond.

(c) The Bond Registrar shall not be required to exchange or transfer any Bond or portion thereof (i) for which notice of redemption has been mailed to the registered owner thereof or (ii) for the period beginning on the Regular Record Date and ending on the next succeeding Interest Payment Date.

#### Section 10 Mutilated, Lost, or Stolen Bonds.

In the event any Bond is mutilated, lost, stolen, or destroyed, the County may execute and the Authenticating Agent may authenticate a new Bond of like date, maturity, interest rate, and denomination, as that mutilated, lost, stolen, or destroyed; provided that, in the case of any mutilated Bonds, they shall first be surrendered to the Paying Agent, and in the case of any lost, stolen, or destroyed Bonds, there shall be first furnished to the County and the Paying Agent evidence of their loss, theft, or destruction satisfactory to the County and the Paying Agent, together with indemnity satisfactory to them; provided that in the case of a registered owner which is a bank or insurance company, the agreement of such bank or insurance company to indemnify the County and the Paying Agent shall be sufficient. In the event any such Bonds shall have matured, instead of issuing a duplicate Bond, the County may pay the same without surrender thereof. The County, the Paying Agent, and the Authenticating Agent, may charge the registered owner of such Bond with their reasonable fees and expenses to replace mutilated, lost, stolen, or destroyed Bonds.

#### Section 11 Exchange of Bonds.

Subject to the provisions of Section 9 of this Article, the Bonds, upon surrender thereof to the Bond Registrar with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his duly authorized attorney, may, at the option of the registered owner thereof, and upon payment by such registered owner of any charges which the Paying Agent, the Authenticating Agent, or the Bond Registrar may make as provided in Section 12 of this Article, be exchanged for a principal amount of Bonds of any other authorized denominations equal to the unpaid principal amount of surrendered Bonds.

#### Section 12 Regulations with Respect to Exchanges and Transfers.

In all cases in which the privilege of exchanging or transferring the Bonds is exercised, the County shall execute and the Authenticating Agent shall authenticate and deliver the Bonds in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or

transfers shall forthwith be cancelled by the Paying Agent. There shall be no charge for such exchange or transfer of the Bonds except that the Paying Agent, the Bond Registrar, and the Authenticating Agent, may make a charge sufficient to reimburse them, or any of them, for any tax or other governmental charge required to be paid with respect to such exchange or transfer.

Section 13     Book-Entry Only System for the Bonds.

(a)     The provisions of this section shall apply with respect to any Bond registered to Cede & Co. or any other nominee of DTC while the book-entry only system (the “Book-Entry Only System”) provided for herein is in effect and shall, during the period of their application, supersede any contrary provisions of this Ordinance.

(b)     The Bonds shall be issued as a single Bond for each maturity. On the date of the initial authentication and delivery of all of the Bonds, the Bonds shall be registered in the name of Cede & Co., as nominee of DTC as the registered owner of the Bonds. With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the County shall have no responsibility or obligation to any Participant (which means securities brokers and dealers, banks, trust companies, clearing corporations, and various other entities, some of whom, or their representatives, own DTC) or to any Beneficial Owner (which means, when used with reference to the Book-Entry Only System, the person who is considered the beneficial owner thereof pursuant to the arrangements for book entry determination of ownership applicable to DTC) with respect to the following: (i) the accuracy of the records of DTC, Cede & Co., or any Participant with respect to any ownership interests in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner, or any other person, other than DTC, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any Participant, or any Beneficial Owner, or any other person, other than DTC, of any amount with respect to the principal of or premium, if any, or interest on the Bonds. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective fully to satisfy and discharge the County’s obligations with respect to the principal of and premium, if any, and interest on such Bonds to the extent of the sum so paid. No person other than DTC shall receive a Bond. Upon delivery by DTC to the County of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words “Cede & Co.” in this section shall refer to such new nominee of DTC.

(c)     Upon receipt by the County of written notice from DTC to the effect that DTC is unable or unwilling to discharge its responsibilities hereunder, the County shall issue, transfer, and exchange Bonds as requested by DTC in authorized denominations, and whenever DTC requests the County to do so, the County will cooperate with DTC in taking appropriate action after reasonable notice to arrange for a substitute Securities Depository willing and able upon reasonable and customary terms to maintain custody of the Bonds registered in whatever name or names the registered owners transferring or exchanging such Bonds shall designate in accordance with this section.

(d)     In the event the County determines that it is in the best interests of the Beneficial Owners that they be able to obtain Bonds registered in the name of a registered owner other than DTC, the County may so notify DTC, whereupon DTC will notify the Participants of the availability



through DTC of such Bonds. In such event, upon the return by DTC of Bonds held by DTC in the name of Cede & Co., the County shall issue, transfer, and exchange Bonds in authorized denominations as requested by DTC, and whenever DTC requests the County to do so, the County will cooperate with DTC in taking appropriate action after reasonable notice to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging Bonds shall designate, in accordance with this section.

(e) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the Letter of Representations delivered by the County to DTC.

(f) In the event that the Book-Entry Only System pursuant to this section is discontinued, the Bonds shall be issued, transferred, and exchanged through DTC and its Participants to the Beneficial Owners.

### **ARTICLE III**

#### **SECURITY FOR BONDS**

##### **Section 1 Pledge of Full Faith, Credit, and Taxing Power.**

For the payment of the principal of and interest on the Bonds as the same respectively mature, and for the creation of such Sinking Fund Account as may be necessary therefor, the full faith, credit, and taxing power, of the County are irrevocably pledged, and there shall be levied annually by the Auditor of Jasper County, and collected by the Treasurer of Jasper County, in the same manner as other County taxes are levied and collected, a tax, without limit, on all taxable property in the County, sufficient to pay the principal and interest of the Bonds as they mature, and to create such Sinking Fund Account as may be necessary therefor.

##### **Section 2 Levy and Collection of Property Taxes.**

The Auditor and Treasurer of Jasper County, South Carolina, shall be notified of this issue of Bonds and directed to levy and collect, respectively, upon all taxable property in the County, an annual tax, without limit, sufficient to meet the payment of the principal of and interest on the Bonds, as the same respectively mature, and to create such Sinking Fund Accounts as may be necessary therefor.

## ARTICLE IV

### SALE OF BONDS; DISPOSITION OF PROCEEDS OF SALE

#### Section 1      Sale of Bonds.

The Bonds shall be sold at public sale at the price of not less than 100% of par and accrued interest to the date of delivery, in accordance with Section 11-27-40(9)(b) of the Code of Laws of South Carolina 1976, as amended, on the terms and conditions as are approved by the Chairperson. The Chairperson is hereby expressly delegated the authority to approve the sale of the Bonds so long as they conform to all of the parameters set forth in Section 1 of Article II hereof. The sale of the Bonds shall be advertised as directed by the Chief Financial Officer in accordance with Section 11-27-40(9)(b). In the event that the Bonds are sold at a public sale, the form of the notice of sale, and the conditions of sale, are substantially those set forth in Exhibit B attached hereto and made a part and parcel hereof. Bids for the purchase of the Bonds may be received in such form as determined by the Chief Financial Officer to be in the best interest of the County.

#### Section 2      Disposition of Proceeds of Sale of Bonds and Other Funds.

(a) The proceeds derived from the sale of the Bonds issued pursuant to this Ordinance shall be made use of by the County Council as follows:

(i) Any accrued interest shall be deposited in the Sinking Fund Account and applied to the payment of the first instalment of interest to become due on the Bonds.

(ii) Any premium on the Bonds shall be deposited with the Escrow Agent and applied to the payment of principal, interest, and redemption price of the Refunded Bonds in accordance with the Escrow Deposit Agreement.

(iv) The remaining proceeds derived from the sale of the Bonds shall be applied as follows:

(A) Sufficient proceeds shall be applied to defray the costs of issuing the Bonds.

(B) The proceeds of the Bonds necessary to refund all the Refunded Bonds as designated for refunding pursuant to Section 3 of this Article shall be deposited with the Escrow Agent and applied to the payment of principal, interest, and redemption price of the Refunded Bonds in accordance with the Escrow Deposit Agreement.

(C) Any remaining proceeds of the Bonds, after their application to the purposes set forth in paragraph (a) above, together with investment earnings on the proceeds of the Bonds, shall be applied as directed by the County Council to defray costs of other capital projects of the County or to the redemption of the Bonds as directed by the Chairperson.

(b) No purchaser or registered owner of the Bonds shall be liable for the proper application of the proceeds thereof.

Section 3      Designation of and Redemption of Refunded Bonds.

(a) Based upon the advice of the Financial Advisor, the Chairperson shall designate those maturities and the principal amounts, if any, of the Refunded Bonds which have been determined to be in the best interest of the County to refund from the proceeds of the Bonds.

(b) The Chairperson, upon the advice of the Financial Advisor, shall take all necessary action to call the Refunded Bonds so selected for prior redemption on the dates that are most advantageous to the County.

**ARTICLE V**

**TAX EXEMPTION OF BONDS**

Section 1      Exemption from State Taxes.

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

Section 2      Federal Tax Provisions.

The County Council hereby authorize the Chief Financial Officer to execute and deliver a tax regulatory agreement or certificate for the purpose of establishing and maintaining the excludability of interest on the Bonds which bond counsel has opined may be excluded from the gross income of the recipients thereof for federal income tax purposes.

**ARTICLE VI**

**DEFEASANCE**

Section 1      Release of Ordinance.

(a) If all of the Bonds issued pursuant to this Ordinance shall have been paid and discharged, then the obligations of the County under this Ordinance, and all other rights granted thereby shall cease and determine. Bonds shall be deemed to have been paid and discharged within the meaning of this Article in each of the following circumstances:

(i) If the Paying Agent shall hold, at the stated maturities of such Bonds, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or

(ii) If default in the payment of the principal of such Bonds or the interest thereon shall have occurred, and thereafter tender of such payment shall have been made, and the Paying Agent shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of such payment; or

(iii) If the County shall have deposited with the Paying Agent or other escrow agent meeting the requirements of a Fiscal Agent hereunder, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America, which are not subject to redemption by the issuer prior to the date of maturity of the Bonds to be defeased, the principal of and interest on which, when due, and without reinvestment thereof, will provide moneys, which, together with the moneys, if any, so deposited at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium or premiums, if any, due or to become due on and prior to the maturity date or dates; or

(iv) If there shall have been so deposited either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, so deposited at the same time, shall be sufficient to pay, when due, the principal and interest due or to become due on the Bonds on the maturity thereof.

(b) In addition to the above requirements of paragraphs (i), (ii), (iii), or (iv), in order for this Ordinance to be discharged, all other fees, expenses, and charges of the Fiscal Agents, shall have been paid in full at such time.

(c) Notwithstanding the satisfaction and discharge of this Ordinance, the Fiscal Agents shall continue to be obligated to hold in trust any moneys or investments then held by the Paying Agent for the payment of the principal of, premium, if any, and interest on, the Bonds, to pay to the registered owners of Bonds the funds so held by the Fiscal Agents as and when such payment becomes due.

(d) Any release under this Section shall be without prejudice to the rights of the Fiscal Agents to be paid reasonable compensation for all services rendered under this Ordinance and all reasonable expenses, charges, and other disbursements and those of their respective attorneys, agents, and employees, incurred on and about the administration of trusts by this Ordinance created and the performance of the powers and duties under this Ordinance of the Fiscal Agents.

## Section 2      Deposit of Moneys.

Any moneys which at any time shall be deposited with a Fiscal Agent by or on behalf of the County for the purpose of paying and discharging any Bonds shall be and are hereby assigned, transferred, and set over to the Fiscal Agent in trust for the respective registered owners of such Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the registered owners of such Bonds shall no longer be entitled to enforce payment of their obligations, then, in such event, it shall be the duty of the Fiscal Agent to transfer such funds to the County.

**Section 3**      **Notice of Release of Ordinance.**

(a) In the event any of said Bonds are not to be redeemed within the sixty (60) days next succeeding the date the deposit required by Section 1(a)(iii) or (iv) of this Article is made, the County shall give the Fiscal Agent irrevocable instructions to mail, as soon as practicable by first class mail, a notice to the registered owners of such Bonds at the addresses shown on the Books of Registry that (i) the deposit required by subparagraph (a)(iii) or (a)(iv) of Section 1 of this Article has been made with the Fiscal Agent, and (ii) said Bonds are deemed to have been paid in accordance with this Article and stating such maturity or redemption dates upon which moneys are to be available for the payment of the principal of, and premium, if any, and interest on, said Bonds.

(b) The County covenants and agrees that any moneys which it shall deposit with the Fiscal Agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Article.

**ARTICLE VII**

**AMENDING AND SUPPLEMENTING OF ORDINANCE**

**Section 1**      **Amending and Supplementing of Ordinance Without Consent of Registered Owners of Bonds.**

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

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

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

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

(iv) To grant or confer upon the registered owners of the Bonds any additional rights, remedies, powers, authority, or security that lawfully may be granted to or conferred upon them; or

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

(b) The County Council shall not enact any supplemental ordinance authorised by the foregoing provisions of this Section unless in the opinion of Bond Counsel (which opinion may be combined with the opinion required by Section 4 hereof) the enactment of such supplemental ordinance is permitted by the foregoing provisions of this Section and the provisions of such supplemental ordinance do not adversely affect the rights of the registered owners of the Bonds then outstanding.

**Section 2 Amending and Supplementing of Ordinance With Consent of Registered Owners of Bonds.**

(a) With the consent of the registered owners of not less than a majority in principal amount of the Bonds then outstanding the County Council from time to time and at any time may enact an ordinance amendatory hereof or supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Ordinance, or modifying or amending the rights or obligations of the County under this Ordinance, or modifying or amending in any manner the rights of the registered owners of the Bonds then outstanding; provided, however, that without the specific consent of the registered owner of each such Bond which would be affected thereby, no supplemental ordinance amending or supplementing the provisions hereof shall: (i) change the fixed maturity date of any Bond or the dates for the payment of interest thereon or the terms of the redemption thereof, or reduce the principal amount of any Bond or the rate of interest thereon or the redemption price (or the redemption premium) payable upon the redemption or prepayment thereof; (ii) reduce the aforesaid percentage of Bonds, the registered owners of which are required to consent to any supplemental ordinance amending or supplementing the provisions of this Ordinance; or (iii) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby. Nothing in this paragraph contained, however, shall be construed as making necessary the approval of the registered owners of the Bonds of the enactment of any supplemental ordinance authorised by the provisions of Section 1 of this Article.

(b) It shall not be necessary that the consents of the registered owners of the Bonds approve the particular form of the wording of the proposed amendment or supplement or of the supplemental ordinance effecting such amending or supplementing hereof pursuant to this Section. The County shall mail a notice at least once, not more than thirty (30) days after the effective date of such amendment or supplement, of such amendment or supplement postage prepaid, to each registered owner of Bonds then outstanding at his address appearing upon the Books of Registry and to the Paying Agent, but failure to mail copies of such notice to any of the registered owners shall not affect the validity of the supplemental ordinance effecting such amendments or supplements or the consents thereto. Nothing in this paragraph contained, however, shall be construed as requiring the giving of notice of any amendment or supplement of this Ordinance authorised by Section 1 of this Article. No action or proceeding to set aside or invalidate such supplemental ordinance or any of the proceedings for its enactment shall be instituted or maintained unless such action or

proceeding is commenced within sixty (60) days after the mailing of the notice required by this paragraph.

**Section 3**      **Notation Upon Bonds; New Bonds Issued Upon Amendments.**

Bonds delivered after the effective date of any action taken as provided in this Article may bear a notation as to such action, by endorsement or otherwise and in form approved by the County. In that case, upon demand of the registered owner of any Bond outstanding after such effective date and upon the presentation of the Bond for such purpose at the office of the Paying Agent, and at such additional offices, if any, as the County may select and designate for that purpose, a suitable notation shall be made on such Bond. If the County shall so determine, new Bonds, so modified as in the opinion of the County upon the advice of counsel to conform to the amendments or supplements made pursuant to this Article, shall be prepared, executed, and delivered, and upon demand of the registered owner of any Bond then outstanding shall be exchanged without cost to such registered owner for Bonds then outstanding, upon surrender of such outstanding Bonds.

**Section 4**      **Effectiveness of Supplemental Ordinance.**

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

**Section 5**      **Supplemental Ordinance Affecting Fiscal Agents.**

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

**ARTICLE VIII**

**CONCERNING THE FISCAL AGENTS**

**Section 1**      **Fiscal Agents; Appointment and Acceptance of Duties.**

The Paying Agent, the Bond Registrar, the Authenticating Agent, and any escrow agent with respect to the Bonds shall accept the duties and trusts imposed upon it by this Ordinance and shall

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

Section 2      Responsibilities of Fiscal Agents.

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

Section 3      Evidence on Which Fiscal Agents May Act.

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

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

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



Section 4      Compensation.

The County shall pay to each Fiscal Agent from time to time reasonable compensation based on the then standard fee schedule of the Fiscal Agent for all services rendered under this Ordinance, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Ordinance; provided, however, that any specific agreement between the County and a Fiscal Agent with respect to the compensation of that Fiscal Agent shall control the compensation to be paid to it.

Section 5      Certain Permitted Acts.

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

Section 6      Resignation of Any Fiscal Agent.

Any Fiscal Agent may at any time resign and be discharged of the duties and obligations created by this Ordinance by giving not less than sixty (60) days' written notice to the County and not less than thirty (30) days' written notice to the registered owners of the Bonds (as established by the Books of Registry) prior to the next succeeding Interest Payment Date, and such resignation shall take effect upon the date specified in such notice unless a successor shall have been appointed previously by the County pursuant to Section 8 of this Article VIII, in which event such resignation shall take effect immediately upon the appointment of such successor. In no event, however, shall such a resignation take effect until a successor has been appointed.

Section 7      Removal of Fiscal Agent.

Any Fiscal Agent may be removed at any time by an instrument or concurrent instruments in writing, filed with the County and such Fiscal Agent, and signed by either the Chairperson or the registered owners representing a majority in principal amount of the Bonds then outstanding or their attorneys in fact duly authorised.

Section 8      Appointment of Successor Fiscal Agents.

(a) In case any Fiscal Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the County. Every such Fiscal Agent appointed pursuant to the provisions of this Section 8 shall be a trust company or bank organised under state or federal laws and which is in good standing, within or outside the State of South Carolina, having a stockholders' equity of not less than \$25,000,000 if there be such institution willing, qualified, and able to accept the trust upon reasonable and customary terms.

(b) If in a proper case no appointment of a successor Fiscal Agent shall be made by the County pursuant to the foregoing provisions of this Section 8 within forty-five (45) days after any Fiscal Agent shall have given to the County written notice as provided in Section 6 of this Article VIII or after a vacancy in the office of such Fiscal Agent shall have occurred by reason of its removal or inability to act, the former Fiscal Agent or any registered owner may apply to any court of competent jurisdiction to appoint a successor. Said court may thereupon, after notice, if any, as the court may deem proper, appoint a successor.

Section 9      Transfer of Rights and Property to Successor.

Any successor Fiscal Agent appointed under this Ordinance shall execute, acknowledge, and deliver to its predecessor, and also to the County, an instrument accepting such appointment, and thereupon the successor, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties, and obligations of the predecessor Fiscal Agent, with like effect as if originally named in that capacity; but the Fiscal Agent ceasing to act shall nevertheless, at the request of the County or at the written request of the successor Fiscal Agent, execute, acknowledge, and deliver, all instruments of conveyance and further assurance and do all things as may reasonably be required for more fully and certainly vesting and confirming in the successor Fiscal Agent all the right, title, and interest, of the predecessor Fiscal Agent in and to any property held by it under this Ordinance, and shall pay over, assign, and deliver, to the successor Fiscal Agent any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance, or instrument in writing, from the County be required by such successor Fiscal Agent for more fully and certainly vesting in and confirming to such successor any such estates, rights, powers, and duties, any and all such deeds, conveyances, and instruments in writing, shall, on request, and so far as may be authorised by law, be executed, acknowledged, and delivered, by the County. Each successor Fiscal Agent shall promptly notify the other Fiscal Agents, if any, of its appointment as Fiscal Agent.

Section 10      Merger or Consolidation.

Any corporation or other organisation into which any Fiscal Agent may be merged or converted or with which it may be consolidated or any corporation or other organisation resulting from any merger, conversion, or consolidation or other organisation to which it may be party or any corporation or other organisation to which any Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such corporation or other organisation shall be a bank or trust company organised under state or federal laws, and shall be authorised by law to perform all the duties imposed upon it by this Ordinance, shall be the successor to such Fiscal Agent without the execution or filing of any paper or the performance of any further act.

Section 11      Adoption of Authentication.

In case any of the Bonds contemplated to be issued under this Ordinance shall have been authenticated but not delivered, any successor Authenticating Agent may adopt the certificate of authentication of any predecessor Authenticating Agent so authenticating such Bonds and deliver such Bonds so authenticated. In case any such Bonds shall not have been authenticated, any

successor Authenticating Agent may authenticate such Bonds in the name of the predecessor Authenticating Agent or in the name of the successor Authenticating Agent, and in all such cases such certificate shall be of full force and effect.

## ARTICLE IX

### MISCELLANEOUS

#### Section 1      Execution of Closing Documents and Certificates.

(a) The Chairperson, the Clerk, the County Administrator, the Chief Financial Officer of the County, and all other officers and employees of the County, are fully authorised and empowered to take all further action and to execute and deliver all closing documents and certificates as may be necessary and proper in order to complete the issuance of the Bonds and the refunding of the Refunded Bonds and the action of such officers or any one or more of them in executing and delivering any documents, in the form as he or they shall approve, is hereby fully authorised.

(b) There is hereby authorised the Escrow Deposit Agreement, in substantially the form attached hereto as Exhibit E, for use with the refunding of the Refunded Bonds designated pursuant to Section 3 of the Article IV hereof. The Chief Financial Officer of the County is hereby authorised and directed to execute and deliver the Escrow Deposit Agreement on behalf of the County, with any changes as he shall approve, upon the advice of the Financial Advisor or counsel, his execution being conclusive evidence of his approval. The Chairperson shall appoint a Fiscal Agent to serve as Escrow Agent as is in the best interest of the County.

#### Section 2      Vice Chairperson May Act in Chairperson's Absence; Acting Clerk May Act in Clerk's Absence.

In the absence of the Chairperson, the vice chairperson of the County Council is fully authorised to exercise all powers vested in the Chairperson under this Ordinance. In the absence of the Clerk, the acting clerk of the County Council is fully authorised to exercise all powers and take all actions vested in the Clerk under this Ordinance.

#### Section 3      Official Statement.

(a) The County Council hereby approve the form of the Preliminary Official Statement relating to the Bonds in substantially the form presented at third reading hereof and hereby direct the distribution thereof in connexion with the sale of the Bonds.

(b) The County Council hereby authorise the Official Statement of the County relating to the Bonds substantially in the form of the Preliminary Official Statement presented at this meeting, with any modifications as the Chief Financial Officer of the County, upon the advice of the Financial Advisor and Bond Counsel, approves; the Chief Financial Officer of the County is hereby authorised and directed to execute copies of the Official Statement and deliver them to the Original Purchaser of the Bonds, which execution and delivery shall be conclusive evidence of the approval of any such

modifications; and the County hereby authorise the use of the Official Statement and the information contained therein in connexion with the public offering and sale of the Bonds.

Section 4      Benefits of Ordinance Limited to the County and Registered Owners of the Bonds.

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

Section 5      Ordinance Binding Upon Successors or Assigns of the County.

All the terms, provisions, conditions, covenants, warranties, and agreements contained in this Ordinance shall be binding upon the successors and assigns of the County and shall inure to the benefit of the registered owners of the Bonds.

Section 6      No Personal Liability.

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

Section 7      Effect of Saturdays, Sundays and Legal Holidays.

Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, or legal holiday or bank holiday in the State of South Carolina or in a state where the office of any Fiscal Agent is located, the action shall be taken on the first secular or business day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, or legal holiday or bank holiday in the State of South Carolina or in a state where the office of any Fiscal Agent is located, the time

shall continue to run until midnight on the next succeeding secular or business day.

**Section 8**      **Partial Invalidity.**

(a) If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the County or any Fiscal Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the registered owners of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

(b) If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

**Section 9**      **Continuing Disclosure Undertaking.**

(a) Pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended (“Section 11-1-85”), the County Council covenant to file with a central repository for availability in the secondary bond market when requested:

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

(ii) Event specific information within 30 days of an event adversely affecting more than five percent of the aggregate of revenues of the County.

The only remedy for failure by the County Council to comply with the covenant in this Section shall be an action for specific performance of this covenant. The County Council specifically reserves the right to amend this covenant to reflect any change in Section 11-1-85, without the consent of any registered owner of any Bonds.

(b) In addition, the County Council hereby authorize the Chief Financial Officer of the County to execute the Continuing Disclosure Undertaking, in substantially the form attached hereto as Exhibit C, with any changes therein as may be approved by the Chief Financial Officer of the County, upon the advice of the Financial Advisor and Bond Counsel. The County Council further hereby covenant and agree that they will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this Ordinance, failure of the County Council to comply with the Continuing Disclosure Undertaking shall not be considered an event of default with respect to the Bonds; however, any registered owner may take

such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the County Council to comply with their obligations under this paragraph.

Section 10     Law and Place of Enforcement of the Ordinance.

This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in said State.

Section 11     Repeal of Inconsistent Ordinances and Resolutions.

All ordinances and resolutions of the County Council, and any part of any resolution or ordinance, inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency.

Section 12     Notice of Enactment of Ordinance.

Upon enactment of this Ordinance, notice, substantially in the form attached hereto as Exhibit D, of the enactment of this Ordinance shall be published in *Jasper Sun News*, a newspaper published in Ridgeland, South Carolina of general circulation in the County.

Section 13    Effective Date of this Ordinance.

This Ordinance shall become effective upon approval following third reading.

(SEAL)

ATTEST:

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Chairperson,  
County Council of Jasper County, South  
Carolina

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Clerk,  
County Council of  
Jasper County, South Carolina

First Reading:        December 7, 2020  
Second Reading:     February 1, 2021  
Public Hearing:        July 19, 2021  
Third Reading:        July 19, 2021

**STATE OF SOUTH CAROLINA  
COUNTY OF JASPER  
GENERAL OBLIGATION REFUNDING BOND  
SERIES 2021**

NO. R-\_\_

CUSIP NO. \_\_\_\_\_

Interest Rate: \_\_\_\_\_ and 00/100 percentum (\_\_\_\_%)

Maturity Date: \_\_\_\_\_ 1, \_\_\_\_\_

Original Date of Issue: \_\_\_\_\_, \_\_\_\_\_

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ and \_\_\_/100 (\$ \_\_\_\_\_) Dollars

**KNOW ALL MEN BY THESE PRESENTS**, that **JASPER COUNTY, SOUTH CAROLINA** (hereinafter called the County), a body politic and corporate and a political subdivision of the State of South Carolina, is justly indebted and, for value received, hereby promises to pay the Registered Owner or registered assigns hereof on the Maturity Date set forth above the Principal Sum set forth above, and to pay interest (computed on the basis of a 360-day year consisting of twelve 30-day months) on the Principal Amount from the most recent \_\_\_\_\_ 1 or \_\_\_\_\_ 1 to which interest shall have been paid, or if no interest shall have been paid, from the Original Date of Issue, interest being payable to the Maturity Date hereof on the first days of \_\_\_\_\_ and \_\_\_\_\_ of each year (such dates being hereinafter referred to as the Interest Payment Dates), commencing \_\_\_\_\_ 1, \_\_\_\_\_, at the Interest Rate per annum specified above, until payment of the Principal Amount. The interest so payable and to be punctually paid or duly provided for on any Interest Payment Date will be paid to the person in whose name this bond is registered at the close of business on the fifteenth day (whether or not a business day) of the calendar month immediately preceding such Interest Payment Date (the Regular Record Date), by cheque or draught mailed to the registered owner by \_\_\_\_\_ (the Paying Agent) at his address as it appears on the registration books (the Books of Registry) of the County as maintained by the Paying Agent as bond registrar (the Bond Registrar). The principal and premium, if any, of this bond, when due, shall be payable upon presentation and surrender of this bond at the corporate trust office of the Paying Agent in the City of \_\_\_\_\_, State of \_\_\_\_\_. Both the principal of and interest on this bond are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for payment of public and private debts. For the prompt payment hereof, both principal and interest, as the same shall become due, the full faith, credit, and taxing power, of the County are irrevocably pledged.



**THIS BOND** is one of an issue of bonds (the "Bonds") of like series, original date of issue, tenor, and effect except as to number, denomination, date of maturity, date of authentication, rate of interest, and registered owner, aggregating \_\_\_\_\_ Million \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_), issued pursuant to and for purposes authorized by the Refunding Act (Title 11, Chapter 15, Article 5 of the Code of Laws of South Carolina 1976, as amended), as amended and continued by Section 11-27-40 of the Code of Laws of South Carolina 1976, as amended; and an ordinance (the "Ordinance") duly enacted by the County Council of Jasper County, South Carolina, in order to fund the costs of refunding certain outstanding general obligation bonds and paying costs of issuance of the Bonds.

**THE ORDINANCE** contains provisions defining terms; sets forth the terms and conditions upon which the covenants, agreements, and other obligations of the County made therein may be discharged at or prior to the maturity of this bond with provisions for the payment thereof in the manner set forth in the Ordinance; and sets forth the terms and conditions under which the Ordinance may be amended or modified with or without the consent of the registered owner of this bond. Reference is hereby made to the Ordinance, to all provisions of which any registered owner of this bond by the acceptance hereof thereby assents.

[**THE BONDS** are not subject to redemption prior to their maturity.]

[**THE BONDS** maturing on or before \_\_\_\_\_ 1, \_\_\_\_\_, are not subject to optional redemption prior to their maturity. The Bonds maturing after \_\_\_\_\_ 1, \_\_\_\_\_, are subject to optional redemption on or after \_\_\_\_\_ 1, \_\_\_\_\_, at the option of the County, in whole at any time or in part from time to time on any Interest Payment Date, and those maturities as designated by the County, and by lot as to Bonds or portions of Bonds within a maturity (but only in integral multiples of \$5,000), at the redemption price of par plus accrued interest to the date fixed for redemption.]

[**THE BONDS** maturing on \_\_\_\_\_ 1, \_\_\_\_\_, are subject to mandatory redemption on \_\_\_\_\_ 1, \_\_\_\_\_ and on each \_\_\_\_\_ 1 thereafter, at a redemption price equal to the principal amount of each Bond (or portion thereof) to be redeemed plus accrued interest to the date fixed for redemption, in the following principal amounts and on the dates set forth below:

_____	1 of the	<u>Principal Amount</u>
<u>Year</u>		

\_\_\_\_\_  
\*Final Maturity]

**[IF BONDS** are called for redemption prior to their maturity, notice of redemption, describing the bonds or portions of bonds to be redeemed and specifying the redemption date and place or places where amounts due upon redemption will be payable, must be given by the County by sending a notice, by first class mail, not less than thirty (30) days and not more than sixty (60) days prior to the redemption date, to the registered owner of each bond to be redeemed in whole or in part at the address shown on the Books of Registry. Failure to give notice by mail or any defect in any notice mailed with respect to any bond shall not affect the validity of the proceedings for redemption as to bonds for which notice was properly given. Interest on the bonds or portions thereof to be redeemed shall cease to accrue from and after the redemption date specified in the notice, unless the County defaults in making due provision for the payment of the redemption price thereof.]

**ALL PRINCIPAL**, interest, or other amounts due hereunder, shall be payable only to the Registered Owner hereof. This bond may not be transferred except by the Registered Owner hereof in person or by his attorney duly authorised in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Registered Owner of this bond. Any purported assignment in contravention of the foregoing requirements shall be, as to the County, absolutely null and void. The person in whose name this bond shall be registered shall be deemed and regarded as the absolute power hereof for all purposes, and payment of the principal of, premium, if any, and interest on, this bond shall be made only to or upon the order of the Registered Owner or his legal representative. All payments made in this manner shall be valid and effective to satisfy and discharge the liability of the County upon this bond to the extent of the sum or sums paid. No person other than the Registered Owner shall have any right to receive payments, pursue remedies, enforce obligations, or exercise or enjoy any other rights under this bond, against the County. Notwithstanding the foregoing, nothing herein shall limit the rights of a person having a beneficial interest in this bond as against a person (including the Registered Owner) other than the County, as in the case where the Registered Owner is a trustee or nominee for two or more beneficial owners of an interest in this bond.

**THE BOND REGISTRAR** shall not be required to exchange or transfer any bond **(i) for which notice of redemption has been mailed to the Registered Owner** or **(ii) for the period beginning on the Regular Record Date and ending on the next succeeding Interest Payment.**

**THIS BOND** and the interest hereon are exempt from all state, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, or transfer taxes.

**IT IS HEREBY CERTIFIED AND RECITED** that all acts, conditions, and things, required by the Constitution and Laws of the State of South Carolina to exist, to happen, and to be performed, precedent to or in the issuance of this bond exist, have happened, and have been done and performed in regular and due time, form, and manner; that the total indebtedness of the County, including this bond and the issue of which this bond is one, does not exceed any constitutional or statutory limitation thereon; and that provision has been made for the levy and collection of sufficient annual taxes, without limit, for the payment of the principal and interest hereof, as they should fall due.

**THIS BOND** shall not be entitled to any benefit under the Ordinance or become valid or obligatory for any purpose until it shall have been authenticated by the execution of the Certificate of Authentication which appears hereon by the manual signature of an authorised officer of the authenticating agent.

**IN WITNESS WHEREOF, JASPER COUNTY, SOUTH CAROLINA**, has caused this bond to be signed in its name by the Chairperson of the County Council of Jasper County, by his manual signature, attested by the Clerk of the County Council of Jasper County, by her manual signature, under the Seal of Jasper County impressed or reproduced hereon, and this bond to be originally dated the Original Date of Issue.

**JASPER COUNTY, SOUTH CAROLINA**

(SEAL)

By: \_\_\_\_\_  
Chairperson  
County Council of Jasper County,  
South Carolina

ATTEST:

\_\_\_\_\_  
Clerk  
County Council of Jasper County,  
South Carolina

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds of the issue designated herein and issued under the provisions of the within-mentioned Ordinance.

\_\_\_\_\_ as Authenticating Agent

By: \_\_\_\_\_  
Authorized Officer

Date of Authentication: \_\_\_\_\_

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT - \_\_\_\_\_  
(Cust)

Custodian \_\_\_\_\_  
(Minor)

under Uniform Gifts to Minors Act \_\_\_\_\_  
(State)

Additional abbreviations \_\_\_\_\_ also be used, though not in the above list.

### ASSIGNMENT

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ (Social Security No. or Other Identifying Number of Assignee \_\_\_\_\_) the within bond, and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the said bond on the books kept for registration thereof with full power of substitution in the premises.

DATED: \_\_\_\_\_

Signature of Owner: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program ("STAMP") or similar programme.

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

FORM OF OFFICIAL NOTICE OF SALE

OFFICIAL NOTICE OF SALE

§ \_\_\_\_\_\*  
JASPER COUNTY, SOUTH CAROLINA  
GENERAL OBLIGATION REFUNDING BONDS  
SERIES 2021

ELECTRONIC BIDS VIA BIDCOMP/PARITY ELECTRONIC BID SUBMISSION SYSTEM (“PARITY®”) WILL BE RECEIVED BY Jasper County, South Carolina, at the Jasper County Government Building, 358 Third Avenue, Ridgeland, South Carolina:

\_\_\_\_\_ a.m. (Eastern Time) on \_\_\_\_\_, \_\_\_\_\_, 2021

At such time and location the electronic bids will be made publicly available for the purchase of all, but not less than all, of the \$ \_\_\_\_\_\* General Obligation Refunding Bonds, Series 2021 (the “Bonds”) of Jasper County, South Carolina (the “Issuer”). No electronic bids from any other providers of electronic bidding services will be accepted. Information about the electronic bidding services of PARITY® may be obtained from IPREO, Municipal Services, telephone (212) 404-8102, or [parity@ipreo.com](mailto:parity@ipreo.com).

**PRINCIPAL AND INTEREST PAYMENTS AND AMOUNTS OF THE BONDS.** The Bonds will be dated and bear interest from their date of delivery, expected to be \_\_\_\_\_, 2021, at a rate or rates to be named by the successful bidder. Interest on the Bonds will be payable on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year commencing \_\_\_\_\_ 1, 2021 [, at which time interest for \_\_\_\_\_ ( ) months will be due]. The Bonds will mature [and mandatory sinking fund instalments with respect to the Bonds to be issued as term bonds, if any, will be due] on \_\_\_\_\_ 1 (the “Annual Principal Payment Date”) in the years and principal amounts as follows:

<u>Year</u>	<u>Principal Amount*</u>	<u>Year</u>	<u>Principal Amount*</u>
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**RIGHT TO AMEND.** The Issuer reserves the right to amend this Official Notice of Sale, including, but not limited to, the right to change the date of the bond sale, the aggregate principal amount of the Bonds, and the annual principal amounts of the maturities of the Bonds.

\_\_\_\_\_  
\* Preliminary, subject to adjustment as set forth herein.

*Change of Sale Date:* THE SALE DATE OF ALL OR ANY PORTION OF THE BONDS MAY BE MODIFIED BY NOTICE DISSEMINATED VIA THOMSON MUNICIPAL MARKET MONITOR NEWS SERVICE ([www.tm3.com](http://www.tm3.com)) OR ANOTHER ELECTRONIC INFORMATION SERVICE NOT LATER THAN 9:30 A.M. (EASTERN TIME) ON THE DAY OF THE SALE. If a new date is selected for the receipt of bids for any or all of the Bonds, it will be disseminated via Thomson Municipal Market Monitor News Service ([www.tm3.com](http://www.tm3.com)) or another electronic information service at least forty-eight (48) hours prior to the time set for the receipt of bids.

*Adjustments to Maturity Schedule:* The preliminary annual principal amounts (the "Preliminary Annual Principal Amounts") of the Bonds as set forth above may be revised before the opening and viewing of electronic bids for the purchase of the Bonds. Any such revisions (the "Revised Annual Principal Amounts") will be given by NOTIFICATION PUBLISHED ON THOMSON MUNICIPAL MARKET MONITOR NEWS SERVICE ([www.tm3.com](http://www.tm3.com)) NOT LATER THAN 9:30 A.M., EASTERN TIME ON THE DAY OF THE BOND SALE. In the event that no such revisions are made, the Preliminary Annual Principal Amounts will constitute the Revised Annual Principal Amounts. **BIDDERS SHALL SUBMIT BIDS BASED ON THE REVISED ANNUAL PRINCIPAL AMOUNTS.** Prospective bidders may request notification by facsimile transmission of any revisions to the Preliminary Annual Principal Amounts by so advising and faxing their facsimile number(s) or email address(es) to Municipal Advisors Group of Boston, Inc., Financial Advisor, at \_\_\_\_\_. by 2:00 P.M., Eastern Time, at least one day prior to the date for receipt of bids.

*Adjustments to Revised Maturity Schedule:* After selecting the winning bid, the County will determine the final aggregate principal amount of the Bonds and each final annual principal amount (the "Final Aggregate Principal Amount" and the "Final Annual Principal Amounts," respectively; collectively, the "Final Amounts"). As promptly as reasonably possible after the bids are received, the Issuer will notify the bidder to whom the Bonds will be awarded, if and when such award is made, and such bidder, upon such notice, shall advise the Issuer of the initial public offering prices of each maturity of the Bonds (the "Initial Reoffering Prices"). The Initial Reoffering Prices of the Bonds will be used to determine the Final Amounts to accommodate objectives of the Issuer, such as to limit net bond proceeds, achieve a more favorable interest rate at the sale of the Bonds, and achieve any savings objectives, as applicable. In determining the Final Amounts, the County will not reduce or increase the Revised Aggregate Principal Amount by more than 15 percent of such amount. **THE SUCCESSFUL BIDDER MAY NOT WITHDRAW ITS BID OR CHANGE THE INTEREST RATES BID OR THE INITIAL REOFFERING PRICES AS A RESULT OF ANY CHANGES MADE TO THE REVISED AMOUNTS WITHIN THESE LIMITS.** The dollar amount bid by the successful bidder will be adjusted to reflect any adjustments in the Final Annual Principal Amounts of the Bonds. Such adjusted bid price will reflect changes in the dollar amount of the underwriters discount and original issue discount/premium, if any, but will not change the selling compensation per \$5,000 of par amount of Bonds from the selling compensation that would have been received based on the purchase price of the winning bid and the initial public offering prices. The interest rate specified by the successful bidder for each maturity at the initial reoffering price for such maturity will not change. The Issuer anticipates that the Final Amounts of the Bonds will be communicated to the successful bidder subsequent to the award of the Bonds as soon as possible, but no later than 4:00 p.m. (Eastern Time) on the day of the sale.



**TERM BONDS.** Bidders may designate in their bid two or more consecutive annual principal payments as a term bond which matures on the last Annual Principal Payment Date of the sequence. Any term bond so designated must be subject to mandatory sinking fund redemptions in each year on the Annual Principal Payment Dates such that the principal amounts subject to mandatory sinking fund redemption match the Revised Annual Principal Amounts and equal, together with the principal amount of such term bond due at its maturity, the principal amount of the term bond. There is no limitation on the number of term bonds.

**DESCRIPTION, PURPOSE AND SECURITY OF THE BONDS.**

*Book-Entry Only:* The Bonds will initially be subject to a system of book-entry registration maintained by The Depository Trust Company, New York, New York (“DTC”).

*General:* Principal of the Bonds when due will be paid upon presentation and surrender of such Bonds at the corporate trust office of \_\_\_\_\_ (the “Paying Agent”). Interest on the Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months. Both principal of and interest on the Bonds will be paid in any coin or currency of the United States of America, which, at the time of payment, is legal tender for the payment of public and private debts. The Bonds will be issued in denominations of \$5,000 or any multiple thereof.

*Purpose and Security:* The proceeds of the Bonds will be used to provide funds to currently refund the County’s General Obligation Bonds of 2011 and to pay costs of issuance of the Bonds. See “THE BONDS – Plan of Finance” in the Preliminary Official Statement.

The Bonds are general obligations of the Issuer and the full faith, credit and taxing power of the Issuer are irrevocably pledged to the payment of the principal and interest thereof. For more complete and detailed information, please see “THE BONDS – Security for Bonds” in the Preliminary Official Statement.

**[NO] OPTIONAL REDEMPTION.** [The Bonds are not subject to optional redemption prior to their maturity.] [Describe optional redemption provisions.]

**BOND INSURANCE.** The Issuer has not contracted for the issuance of any policy of municipal bond insurance for the Bonds. If the Bonds qualify for any such policy or commitment therefor, any purchase of such insurance or commitment shall be at the sole option and expense of the successful bidder, and any increased costs of issuance or delivery of the Bonds resulting by reason of such insurance or commitment shall be the responsibility of such bidder. Bids shall not be conditioned upon the issuance of such policy or commitment. Any failure of the Bonds to be so insured or of any such policy or commitment to be issued, or any rating downgrade or other material event occurring relating to the issuer of any such policy or commitment, shall not in any way relieve of the successful bidder of its contractual obligations arising from the acceptance of its bid for the purchase of the Bonds.

**BIDDING DETAIL AND BASIS OF AWARD.** Each bid must be for all and not part of the entire \$ \_\_\_\_\_ \* of Bonds and must name the rate or rates of interest the Bonds are to bear. The bids shall comply with the following conditions: (i) the rate of interest specified for any maturity may not exceed \_\_\_\_\_ % per annum; (ii) the rate or rates of interest the Bonds are to bear must be multiples

of 1/8<sup>th</sup> or 1/20<sup>th</sup> of 1%; (iii) all Bonds with the same Annual Principal Payment Date must bear the same rate of interest; (iv) no Bond shall bear more than one rate of interest; (v) no interest rate may be more than \_\_\_\_% higher than the lowest interest rate; and (vi) each Bond shall bear interest from the Dated Date to its Annual Principal Payment Date at the interest specified in the bid.

A bid for less than 100 percent (100.00%) of the par value of the Revised Aggregate Principal Amount of the Bonds [or a bid for greater than \_\_\_\_% of the par value of the Revised Aggregate Principal Amount of the Bonds] will not be considered.

Unless all bids are rejected, the Bonds will be awarded to the responsible bidder whose bid complies with this Official Notice of Sale and results in the lowest true interest cost to the Issuer based on the Revised Amounts. The lowest true interest cost will be determined in accordance with the True Interest Cost (“TIC”) method by doubling the semi-annual interest rate, compounded semi-annually, necessary to discount the debt service payments from the debt service payment dates to the Dated Date of the Bonds and to the aggregate purchase price. If two (2) or more responsible bidders offer to purchase the Bonds at the same lowest TIC, the Bonds may be apportioned between such bidders if it is agreeable to each of the bidders who have offered the price producing the same lowest TIC; provided, that if apportionment is not acceptable to such bidders, the Issuer will award the Bonds to one of such bidders by lot. There will be no auction.

Each bidder is requested to include in its bids a statement of TIC offered in its bid, but this statement shall not be deemed to be part of the bid.

Any premium offered must be paid in cash as a part of the purchase price.

The County reserves the right to reject any and all bids and to reject any bids not complying with this Official Notice of Sale. The County also reserves the right to waive any irregularity or informality with respect to any bid.

**NO GOOD FAITH DEPOSIT.** A good faith deposit is not required for a bid to be considered for the Bonds.

#### **ELECTRONIC BIDDING PROCEDURES.**

*Registration to Bid:* Electronic bids must be submitted to **PARITY**. All prospective bidders must be contracted customers of IPREO’s BiDCOMP/PARITY Competitive Bidding System (“BiDCOMP”). If you do not have a contract with BiDCOMP, call 212.849.5021 to become a customer. By submitting a bid, a prospective bidder represents and warrants to the Issuer that such a bidder’s bid for the Bonds (if a bid is submitted in connection with the sale) is submitted for and on behalf of such prospective bidder by an officer or agent who is duly authorized to bind the prospective bidder to a legal, valid, and enforceable contract for the purchase of the Bonds. By contracting with BiDCOMP a prospective bidder is not obligated to submit a bid in connection with the sale.

If any provisions of this Official Notice of Sale conflict with information provided by BiDCOMP as the selected provider of electronic bidding services, this Official Notice of Sale shall control.

*Bids are Irrevocable Offers to Purchase the Bonds:* Bids to purchase Bonds must be submitted electronically via PARITY®. Bids will be communicated electronically to the Issuer at \_\_\_\_\_ a.m. (Eastern Time) on \_\_\_\_\_, \_\_\_\_\_, 2021. Prior to that time, a prospective bidder may input and save the proposed terms of its bid in BiDCOMP. Once the final bid has been saved in BiDCOMP, the bidder may select the final bid button in BiDCOMP to submit the bid to PARITY®. Once the bids are communicated electronically via PARITY® to the Issuer and the sale time has passed (\_\_\_\_\_ a.m. (Eastern Time)), each bid will constitute an irrevocable and unconditional offer to purchase the Bonds on the terms therein provided. For purposes of the electronic bidding process, the time as maintained on BiDCOMP shall constitute the official time

*Disclaimer:* Each prospective bidder shall be solely responsible to make necessary arrangements to access BiDCOMP for the purpose of submitting its bid in a timely manner and in compliance with the requirements of this Official Notice of Sale. Neither the Issuer nor BiDCOMP shall have any duty or obligation to undertake such registration to bid for any prospective bidder or to provide or assure such access to any prospective bidder, and neither the Issuer nor BiDCOMP shall be responsible for proper operation of, or have any liability for any delays or interruptions of, or any damages caused by, PARITY®. The Issuer is using PARITY® as a communication mechanism, and not as the Issuer's agent, to conduct the electronic bidding for the Bonds. The Issuer is not bound by any advice and determination of BiDCOMP to the effect that any particular bid complies with the terms of this Official Notice of Sale and in particular "Bidding Detail and Basis of Award" set forth above. All costs and expenses incurred by prospective bidders in connection with their submission of bids via PARITY® are the sole responsibility of the bidders; and the Issuer is not responsible, directly or indirectly, for any of such costs or expenses. If a prospective bidder encounters any difficulty in submitting, modifying, or withdrawing a bid for the Bonds, the bidder should telephone BiDCOMP and notify the Municipal Advisors Group of Boston, Inc., John Canney, by telephone at \_\_\_\_\_.

## **REOFFERING AND SALE OF THE BONDS.**

*Compliance with Laws:* By submitting a bid, each initial purchaser agrees to apply with all applicable laws and regulations in force in any jurisdiction where it purchases, offers, or sells the Bonds or possesses or distributes the Official Statement with respect to the Bonds (the "Official Statement") or any other offering or publicity material relating to the Bonds and will obtain any consent, approval, or permission required by it for the purchase, offer, or sale of the Bonds under the laws and regulations in force in any country or jurisdiction to which it is subject or in which it makes such purchases, offers, or sales and the Issuer shall have no responsibility therefor.

*Reoffering Certificate:* The successful bidder (the "Purchaser") shall be required to provide a certificate (the "Reoffering Certificate") and such other information that would demonstrate to the satisfaction of the Issuer that, as of the date of the award of the Bonds to the Purchaser (the "Sale Date"), the Purchaser (a) made a bona fide offering of all of the Bonds at prices no higher than or yields no lower than those set forth on the [inside] cover page of the Official Statement (the "Initial Offering Prices") to the general public (excluding bond houses, brokers, or similar persons acting in the capacity of underwriters or wholesalers) and (b) reasonably expected that the respective Initial Offering Price applicable to each maturity would be the first price at which at least 10 percent of each maturity of the Bonds would be sold. The Reoffering Certificate shall state that, at the time the

Purchaser agreed to purchase the Bonds, based upon then prevailing market conditions, it had no reason to believe any of the Bonds would be initially sold to the general public (excluding bond houses, brokers, or similar persons acting in the capacity of underwriters or wholesalers) at prices higher than or yields lower than the Initial Offering Prices.

The purchaser shall also certify, in form and substance satisfactory to the Issuer, the following:

1. The aggregate of the Initial Offering Prices for the Bonds;
2. That the aggregate of the Initial Offering Prices does not exceed the fair market value price of the Bonds as of the Sale Date;
3. That, as of the date of the execution of the Reoffering Certificate, all of the Bonds have actually been offered to general public (excluding bond houses, brokers, or similar persons acting in the capacity of underwriters or wholesalers) in a bona fide public offering at the Initial Offering Prices and the first price at which at least 10 percent of each maturity of the Bonds has been sold to the general public was the respective Initial Offering price, except for any maturity(ies) specifically set forth in the Reoffering Certificate (the "Specified Maturities"); and
4. That, with respect to any Specified Maturities (as defined in paragraph 3 above), the Bonds of such maturities were continuously offered to the general public at the Initial Offering Price(s) for a period after the purchaser was awarded the Bonds (the "Initial Offering Period"), and the Purchaser made reasonable efforts to sell such Bonds to the general public at the Initial Offering Price(s) throughout the Initial Offering Period. During the Initial Offering Period the Bonds of any Specified Maturities were not offered to bond houses, brokers, or similar persons acting in the capacity of underwriters or wholesalers. Prevailing market conditions during the Initial Offering Period prevented a substantial amount of such Bonds from being sold at the Initial Offering Price(s).

**OFFICIAL STATEMENT.** The Preliminary Official Statement dated \_\_\_\_\_, 2021, with respect to the Bonds has been prepared by the Issuer, and such Preliminary Official Statement has been deemed final by the Issuer as of its date for purposes of Rule 15c2-12 of the United States Securities and Exchange Commission ("Rule 15c2-12") except for certain permitted omissions described in paragraph (b)(1) of Rule 15c2-12, but is subject to change without notice and to completion or amendment or supplementation.

The Issuer is distributing copies of the Preliminary Official Statement to potential bidders electronically through [\_\_\_\_\_]. Potential bidders may also obtain an electronic copy of the Preliminary Official Statement by logging on to the website of [\_\_\_\_\_] [at \_\_\_\_\_].

The Issuer designates the Purchaser as its agent for purposes of distributing copies of the final Official Statement. By submitting a bid for the Bonds, the Purchaser agrees to (i) accept such designation, and (ii) assure proper dissemination of the final Official Statement. The Issuer will prepare and provide to the Purchaser, within 7 business days after the sale date, a mutually agreed upon number of printed copies of the final Official Statement. The final Official Statement shall be in substantially the same form as the Preliminary Official Statement, subject to any additions, deletions or revisions that the Issuer believes are necessary. The Purchaser will be required to provide prompt pricing information on the Sale Date for the Issuer to complete the Official Statement. The Purchaser agrees to file electronically the Official Statement with the Municipal Securities Rulemaking Board by the closing

date.

**CONTINUING DISCLOSURE.** In order to assist the Purchaser in complying with Rule 15c2-12, the Issuer will undertake pursuant to an agreement (the “Continuing Disclosure Undertaking”), to provide annual reports and notices of certain events. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the final Official Statement.

The Issuer will provide to the Purchaser as part of the closing papers a representation that [except as otherwise set forth in the Official Statement] there have not been any instances in the previous five years in which the Issuer failed to comply, in all material respects, with any previous continuing disclosure undertaking agreed to pursuant to Rule 15c2-12.

**CUSIP NUMBERS.** It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto shall constitute cause for a failure or refusal by the Purchaser to accept delivery of and pay for the Bonds. Each maturity of the Bonds must have a separate CUSIP number, which shall be the responsibility of and shall be paid by the Purchaser.

**DELIVERY AND PAYMENT.** Delivery of the Bonds will be made through the facilities of DTC within \_\_ days from the date of award, accompanied by (i) a certified transcript of the record of proceedings, (ii) a copy of the Official Statement relating to the Bonds, dated the date of award of the Bonds to the Purchaser, and similar in form and substance in all material respects to the Preliminary Official Statement, as amended or supplemented, (iii) a Signature and No-Litigation Certificate, (iv) a Non-Arbitrage and Tax Certificate, (v) the Continuing Disclosure Undertaking, (vi) the opinion letter of Howell Linkous & Nettles, LLC, Charleston, South Carolina, Bond Counsel to the Issuer, in substantially the form included as an Appendix to the Official Statement, (vii) the opinion letter of Howell Linkous & Nettles, LLC, as disclosure counsel to the Issuer, and (viii) the opinion letter as to certain legal matters passed upon for the Issuer by David L. Tedder, Esquire, County Attorney. Payment for the Bonds shall be made by wire transfer in immediately available federal funds. Delivery is expected on or about \_\_\_\_\_, 2021.

Concurrently with the delivery of the Bonds, the Issuer will furnish a certificate, signed by the appropriate officials, stating in effect that, as of its date and at all times subsequent thereto and up to the time of delivery of the Bonds, the information contained in the Preliminary Official Statement was, and such information contained in the Official Statement is, true and correct in all material respects and does not contain any untrue statement of a material fact and does not omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

**ADDITIONAL INFORMATION:** Additional information is available upon request to Municipal Advisors Group of Boston, Inc., John Canney; phone \_\_\_\_\_.\_\_\_\_.\_\_\_\_ the Financial Advisor to the Issuer.

The Preliminary Official Statement and the Official Notice of Sale will be available in electronic format on the following websites: \_\_\_\_\_; \_\_\_\_\_.

JASPER COUNTY, SOUTH CAROLINA

Dated \_\_\_\_\_, 2021

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

This Continuing Disclosure Undertaking (this “Disclosure Undertaking”) is executed and delivered this \_\_\_ day of \_\_\_\_\_, 2021, by Jasper County, South Carolina (the “Issuer”) in connection with the issuance of the Issuer’s \$ \_\_\_\_\_ General Obligation Refunding Bonds, Series 2021 (the “Bonds”).

The Bonds are being issued pursuant to an ordinance enacted on \_\_\_\_\_, 2021 (the “Ordinance”), by the County Council of the Issuer authorizing the issuance of the Bonds. The Issuer covenants and agrees as follows:

Section 1. Purpose of the Disclosure Undertaking. This Disclosure Undertaking is being executed and delivered by the Issuer for the benefit of the holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with the U.S. Securities and Exchange Commission (the “SEC”) Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth in the Ordinance or elsewhere in this Disclosure Undertaking, which apply to any capitalized terms used in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” means the annual report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Undertaking.

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

“Dissemination Agent” means an agent, if any, appointed in accordance with Section 7 hereof.

“EMMA” means the Electronic Municipal Market Access system described in SEC Release No. 34-59062 (or any successor electronic information system) and maintained by MSRB as the sole repository for the central filing of electronic disclosure pursuant to the Rule.

“Financial Obligation” as used in this Disclosure Undertaking is defined in the Rule, as may be amended, as (i) a debt obligation; (ii) derivative instrument entered into in connection with, or pledged as a security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “Financial Obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

“Issuer” means Jasper County, South Carolina.

“Listed Events” means any of the events listed in Section 5(a) or (b) of this Disclosure Undertaking.

“MSRB” means the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Unless otherwise designated by MSRB or the SEC, filings with the MSRB are to be made through EMMA.

“Official Statement” means the Official Statement dated \_\_\_\_\_, 2021, prepared in connection with the Bonds.

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

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

Section 3. Provision of Annual Reports. (a) The Issuer shall, not later seven (7) months after the end of the Issuer’s fiscal year (which shall be January 31 of each year, so long as the Issuer’s fiscal year ends on June 30), commencing with the report for the fiscal year ended June 30, 2021, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Undertaking. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Undertaking; provided, however that the audited financial statements of the Issuer for the fiscal year ended June 30, 2021, and for each subsequent fiscal year may be submitted separately from the remainder of the Annual Report, and later than the date required for the filing of the Annual Report if they are not available by that date. If the Issuer’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(a) hereof.

(b) The Annual Report shall be submitted to the MSRB either through a web-based electronic submission interface or through electronic computer-to-computer data connections with EMMA in accordance with the submission process, document format and configuration requirements established by the MSRB. The Annual Report shall also include all related information required by the MSRB to accurately identify: (i) the category of information being provided; (ii) the period covered by the Annual Report; (iii) the issues or specific securities to which the Annual Report is related (including CUSIP number, Issuer name, state, issue description/securities name, dated date, maturity date, and/or coupon rate); (iv) the name of any obligated person other than the Issuer; (v) the name and date of the document; and (vi) contact information for the Dissemination Agent or the Issuer’s submitter.

(c) If the Issuer is unable to provide to the MSRB an Annual Report by the date required in subsection (a) above, the Issuer shall, in a timely manner, send or cause to be sent to the MSRB, a notice in substantially the form attached hereto as Exhibit A.

(d) In the event that there is a Dissemination Agent, then not later than fifteen (15) business days prior to each due date the Issuer shall provide the Annual Report to the Dissemination Agent for distribution to the MSRB. In connection with this distribution of the Annual Report, the Dissemination Agent, if any, shall file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Undertaking, and stating the date it was provided to the MSRB.

Section 4. Contents of Annual Reports. The Annual Report shall contain or incorporate by reference the following:

(a) The Issuer’s audited financial statements for the fiscal year ended on the previous June



30, prepared in accordance with accounting principles generally accepted in the United States of America applicable to government entities from time to time by the Governmental Accounting Standards Board. If the Issuer's audited financial statements are not available by the time the Annual Report is required to be provided to the MSRB pursuant to Section 3(a) hereof, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the Official Statement, and the audited financial statements shall be provided to the MSRB in the same manner as the Annual Report when they become available;

(b) Certain annual financial information and operating data generally consistent with the information set forth in the following sections in the Official Statement:

1. "CERTAIN FISCAL MATTERS;" and
2. "COUNTY DEBT STRUCTURE."

The Annual Report may consist of one or more documents. Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer, which have been made available to the public on EMMA. The Issuer shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events. (a) The Issuer shall give or cause to be given notice of the occurrence of any of the following events with respect to the Bonds in a timely manner not later than ten business days after the occurrence of the event:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) modifications to rights of security holders, if material;
- (viii) Bond calls, if material and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Bonds, if material;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or similar event of any obligated person, which event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person;

(xiii) the consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) appointment of a successor or additional trustee or the change of name of trustee, if material.

(xv) incurrence of a Financial Obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the issuer or obligated person, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the Financial Obligation of the issuer or obligated person, any of which reflect financial difficulties.

Section 6. Format for Filing With the MSRB. All documents provided to the MSRB pursuant to this Disclosure Undertaking shall be submitted in electronic format and shall identify the Bonds by name and CUSIP number or shall be accompanied by such identifying information as described from time to time by the MSRB.

Section 7. Termination of Reporting Obligation. This Disclosure Undertaking shall remain in full force and effect until such time as all principal, redemption premiums, if any, and interest on the Bonds shall have been paid in full or the Bonds shall have otherwise been paid or legally defeased; provided, however, that if the Rule (or any successor provision) shall be amended, modified, or changed so that all or any part of the information currently required to be provided thereunder shall no longer be required to be provided thereunder, then such information shall no longer be required to be provided hereunder; and provided further that if and to the extent the Rule (or any successor provision), or any provision thereof, shall be declared by a court of competent and final jurisdiction to be, in whole or in part, invalid, unconstitutional, null and void, or otherwise inapplicable to the Bonds, then the information required to be provided hereunder, insofar as it was required to be provided by a

provision of the Rule so declared, shall no longer be required to be provided hereunder. Upon any legal defeasance, the Issuer shall electronically file notice of such defeasance with the MSRB, and such notice shall state whether the Bonds have been defeased to maturity or to redemption and the timing of such maturity or redemption.

Section 8. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist in its carrying out its obligations under this Disclosure Undertaking, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Undertaking.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Undertaking, the Issuer may amend this Disclosure Undertaking, and any provision of this Disclosure Undertaking may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a) hereof, it may only be made in connection with a change in circumstances that arises from a change in legal requirements or change in law;

(b) This Disclosure Undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Undertaking, the Issuer shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given by filing with the MSRB and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 10. Additional Information. Nothing in this Disclosure Undertaking shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Undertaking or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Undertaking. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Undertaking, the Issuer shall have no obligation under this Disclosure Undertaking to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event or any other event required to be reported.

Section 11. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Undertaking, any holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking *mandamus* or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Undertaking; provided, however, that any such action may be instituted only in the Federal or State courts located in or serving Jasper County, South Carolina. A default under this Disclosure Undertaking shall not be deemed an event of default under the Ordinance, and the sole remedy under this Disclosure Undertaking in the event of any failure of the Issuer to comply with this Disclosure Undertaking shall be an action to compel performance.

Section 12. Beneficiaries. This Disclosure Undertaking shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriters and holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity. This Disclosure Undertaking is not intended to create any monetary rights on behalf of any person.

JASPER COUNTY, SOUTH CAROLINA

Date: \_\_\_\_\_, 2021

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD  
OF FAILURE TO FILE ANNUAL REPORT

Issuer: Jasper County, South Carolina

Obligations: \$ \_\_\_\_\_ General Obligation Refunding Bonds, Series 2021

Date of Issuance: \_\_\_\_\_, 2021

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required by the Ordinance enacted on \_\_\_\_\_, 2021. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

JASPER COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

**NOTICE OF ENACTMENT OF ORDINANCE AUTHORIZING  
ISSUANCE OF NOT EXCEEDING \$ \_\_\_\_\_ GENERAL  
OBLIGATION REFUNDING BONDS OF JASPER COUNTY, SOUTH  
CAROLINA**

Notice is hereby given that the County Council of Jasper County, South Carolina (the "County") has enacted an Ordinance authorising the issuance of not exceeding \$ \_\_\_\_\_ general obligation refunding bonds of the County secured by a pledge of the full faith, credit, and taxing power of the County.

By order of the County Council of Jasper County, South Carolina.

---

**REFUNDING ESCROW AGREEMENT**

**between**

**Jasper County, South Carolina**

**and**

**[NAME OF ESCROW AGENT], as Escrow Agent**

**Dated: \_\_\_\_\_, 2021**

---

**Re: Jasper County, South Carolina  
General Obligation Bonds of 2011**

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## REFUNDING ESCROW AGREEMENT

This **REFUNDING ESCROW AGREEMENT**, dated \_\_\_\_\_, 2021 (this “Agreement”), by and between the Jasper County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina under the laws of the State of South Carolina (the “Issuer”), and [NAME OF ESCROW AGENT], a [national banking association], [with a corporate trust office in \_\_\_\_\_, \_\_\_\_\_,] as the Escrow Agent (the “Escrow Agent”);

### WITNESSETH:

WHEREAS, the Issuer has previously issued its \$4,500,000 General Obligation Bonds of 2011 (the “Series 2011 Bonds”); and

WHEREAS, the amount of \$\_\_\_\_\_ of Series 2011 Bonds which mature in the years \_\_\_\_\_ through \_\_\_\_\_ remains outstanding, and are being refunded to achieve debt service savings and are referred to herein as the “Refunded Bonds”; and

WHEREAS, in accordance with the terms of the Bond Ordinance (the “Bond Ordinance”) enacted on June 6, 2011, providing for the issuance of the Refunded Bonds, the Issuer has elected to defease the Refunded Bonds by depositing in an irrevocable trust moneys or direct obligations of the United States of America which will provide moneys sufficient to pay the principal of, premium, if any, and interest on the Refunded Bonds on [Redemption Date] (the “Redemption Date”); and

WHEREAS, in order to obtain the funds needed for the current refunding and defeasance of the Refunded Bonds, the Issuer has authorised and is, concurrently with the delivery of this Agreement, issuing its General Obligation Refunding Bonds, Series 2021 (the “Series 2021 Bonds”), as more fully described herein; and

WHEREAS, the Issuer has determined that the amount on deposit in the irrevocable escrow account to be established hereunder will be sufficient to pay the principal of, interest on, and premium price, if any, of the Refunded Bonds on the Redemption Date; and

WHEREAS, Regions Bank currently serves as paying agent for the Refunded Bonds; and

WHEREAS, the Escrow Agent has agreed with the Issuer to act as Escrow Agent hereunder and to perform the duties and functions herein imposed upon the Escrow Agent;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Issuer and Escrow Agent do hereby agree as follows:

Section 1. Definitions. As used herein including the recitals hereof the following terms mean:

“Agreement” means this Refunding Escrow Agreement, as the same may be modified or amended as permitted hereunder.

“Bond Ordinance” means the County Council of Jasper County of the Issuer enacted on June 6, 2011.

“Bondholders” means the registered holders of the Refunded Bonds, as determined pursuant to the provisions of the Bond Ordinance.

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

“Debt Service” means the principal, premium, if any, and interest due or coming due on the Refunded Bonds on and prior to the Redemption Date.

“Defeasance Obligations” means any of the following obligations used to fund an escrow account established to defease the Refunded Bonds, and may be more specifically set forth in Exhibit A attached hereto:

1. Cash
2. Direct general obligations of the United States of America, which are not subject to redemption prior to the applicable Redemption Date

“Escrow Account” means the account established and held by the Escrow Agent pursuant to this Agreement, in which cash and investments will be held for payments of the Refunded Bonds as provided herein.

“Escrow Agent” means \_\_\_\_\_, its successors and assigns hereunder.

“Escrow Requirement” means, as of any date of calculation, the sum of the principal amount of the Defeasance Obligations in the Escrow Account which will be sufficient to pay the Debt Service when due.

“Paying Agent” means Regions Bank.

“Redemption Date” means [Redemption Date].

“Refunded Bonds” means the \$ \_\_\_\_\_ amount of Jasper County, South Carolina General Obligation Bonds of 2011, maturing in the years \_\_\_\_\_ through \_\_\_\_\_, being refunded on the date hereof.

“Refunding Issue Date” means \_\_\_\_\_, 2021, the date of original delivery of the Series 2021 Bonds.

“Series 2021 Bonds” means the \$ \_\_\_\_\_ original principal amount Jasper County,

South Carolina, General Obligation Refunding Bonds, Series 2021.

Section 2. Deposit of Funds.

(a) The Issuer represents and warrants that it will deposit on the Refunding Issue Date the amount of \$ \_\_\_\_\_, which is the amount necessary to fund the Escrow Account with cash equal to the Escrow Requirement. Such funds are to be used solely to purchase the Defeasance Obligations described in Exhibit A attached hereto held in the Escrow Account and applied by the Escrow Agent solely as provided in Section 3 of this Agreement. Subject to the provisions of Section 5(b) hereof, such deposit shall constitute an irrevocable pledge of such funds to the payment of the Refunded Bonds. The Issuer represents that the sum of \$ \_\_\_\_\_ referred to above has been obtained from the following sources:

Proceeds of Series 2021 Bonds	\$ _____
Debt Service Fund for Refunded Bonds	_____
Total	\$ _____

(b) The aggregate principal amounts of the Defeasance Obligations to be purchased pursuant to Section 3 hereof with the immediately available funds referred to in paragraph (a) above, exclusive of any interest earned on those Defeasance Obligations will be sufficient to meet in full the Debt Service on the Refunded Bonds, and accordingly equals or exceeds the Escrow Requirement.

Section 3. Use and Investment of Funds.

(a) The Escrow Agent agrees that upon receipt of the immediately available funds set forth in Section 2 hereof, the sum of \$ \_\_\_\_\_ will be used to purchase the Defeasance Obligations as directed by the Issuer.

(b) The Escrow Agent agrees to deposit in the Escrow Account, as received, the receipts of the maturing principal of and interest on such Defeasance Obligations held in the Escrow Account and to apply the same as provided in Section 4 hereof.

Section 4. Payment of Refunded Bonds.

(a) *Refunded Bonds.* The Escrow Agent shall pay to the Paying Agent from the funds on hand in the Escrow Account and in the manner directed herein a sum sufficient to pay all Debt Service on the Refunded Bonds on and prior to the Redemption Date.

(b) *Priority of Payments.* The Bondholders shall have, and are hereby granted, an express first lien upon and security interest in all funds in the Escrow Account from time to time until the same are used and applied as provided in this Agreement. If the cash or other investments on hand in the Escrow Account are ever insufficient to make the payments required hereunder, the Issuer shall, as soon as practicable after notice has been given by the Escrow Agent, provide the required sum of money necessary to discharge such deficiency.

(c) *Remaining Cash.* Upon the payment in full of the Refunded Bonds on the

Redemption Date, any remaining funds in the Escrow Account shall be transferred to the Issuer.

Section 5. Investments by the Escrow Agent.

(a) The Escrow Agent shall invest funds received from payments made on account of the Defeasance Obligations at the written request of the Issuer in Defeasance Obligations which mature on or prior to the Redemption Date and, to the extent that there shall be an excess, such funds may remain uninvested.

(b) Under the terms and conditions of this paragraph (b), and at the written request of the Issuer, the Escrow Agent shall (i) sell, transfer, request the redemption of, or otherwise dispose of the Defeasance Obligations in the Escrow Account, (ii) invest the proceeds thereof and other money in the Escrow Account in Defeasance Obligations which are available for purchase with such money on the date of such transaction, or (iii) release and deliver money or the Defeasance Obligations in the Escrow Account to the Issuer; but prior to taking any such action, the Escrow Agent shall have received (1) the unqualified opinion of a firm of nationally recognised municipal bond attorneys to the effect that such transaction would not adversely affect the tax-exempt status of interest on either the Refunded Bonds or the Series 2021 Bonds by causing any of the Refunded Bonds or the Series 2021 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Treasury Regulations thereunder in effect on the date of such transaction, and (2) a certification from a nationally recognised independent certified public accountant that, after such transaction, and after making all payments or releases then or thereafter contemplated by such transaction, the principal of and interest on the Defeasance Obligations in the Escrow Account will, together with any other moneys in the Escrow Account available for such purpose, and excluding any reinvestment of earnings therein, be sufficient to pay, when due, the Debt Service.

Section 6. Notice of Election to Redeem Refunded Bonds.

(a) The Issuer hereby gives notice to the Escrow Agent of its irrevocable election to cause the redemption of the Refunded Bonds on the Redemption Date at the redemption price of 100%, plus accrued interest.

(b) The Escrow Agent is hereby directed to give (at the expense of the Issuer) timely and proper notice of the redemption of the Refunded Bonds to the Bondholders in accordance with the Bond Ordinance, and in form substantially similar to that attached hereto as Exhibit B. The Escrow Agent acknowledges receipt of a copy of the Bond Ordinance and agrees to effect the timely and proper notice of the redemption of the Refunded Bonds, including through the publication or delivery of such notice as may be expressly required under the Bond Ordinance. The Issuer agrees to cooperate with the Escrow Agent in the preparation, sending, and, if required, publication, of the notice of redemption in the manner required under the Bond Ordinance.

Section 7. Indemnity.

To the extent permitted by the laws and Constitution of the State of South Carolina, the Issuer hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated herein are consummated) to indemnify, protect, save, and keep harmless the Escrow Agent and its 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 for such legal services) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against at any time, the Escrow Agent (whether or not the Escrow Agent is also indemnified against the same by any other person under any other agreement or instrument) in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Escrow Account, the acceptance of the money, the purchase of Defeasance Obligations, the retention of the Defeasance Obligations or the proceeds thereof, and any payment, transfer, or other application of funds or the Defeasance Obligations by the Escrow Agent in accordance with the provisions of this Agreement; provided, however, that the Issuer shall not be required to indemnify the Escrow Agents against its own negligence or wilful misconduct. Except as to the Bondholders, in no event shall the Issuer or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section 7. The indemnities contained in this Section 7 shall survive the termination of this Agreement and the resignation or removal of the Escrow Agent hereunder. The Escrow Agent shall give notice in reasonable detail to the Issuer as promptly as practicable after becoming aware of facts and circumstances under which it expects to make a claim for indemnification hereunder; provided that the failure of the Escrow Agent to give such notice shall not relieve the Issuer of its obligations under this Section 7 except to the extent that the Issuer has been materially prejudiced thereby.

Section 8. Responsibilities. The Escrow Agent and its successors, assigns, agents, and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connexion with the execution and delivery of this Agreement, the establishments of the Escrow Account, the acceptance of the money and the Defeasance Obligations deposited in the Escrow Account, the retention of the Defeasance Obligations or the proceeds thereof, any payment, transfer, or other application of money or Defeasance Obligations by the Escrow Agent, any act, omission, or error of the Escrow Agent made in good faith in the conduct of its duties and not constituting negligence. The Escrow Agent shall, however, be liable for its own negligence or wilful acts, omissions, or errors which violate or fail to comply with the terms of this Agreement. The duties and obligations of the Escrow Agent shall be determined by only the express provisions of this Agreement. The Escrow Agent may consult with counsel, who may or may not be counsel to the Issuer, and in reliance upon the opinion of such counsel shall have full and complete authorisation and protection in respect of any action taken, suffered, or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to talking, suffering, or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificates signed by the Mayor or Assistant Issuer Administrator of the Issuer.

Section 9. Resignation. The Escrow Agent may resign at any time by giving written notice of the resignation to the Issuer and to the Bondholders as their names and addresses appear on the register at the close of business fifteen (15) days prior to the mailing. The resignation shall take

effect upon the appointment of a successor Escrow Agent. Upon the written request of its successor, the Issuer, or the predecessor Escrow Agent (i) shall execute and deliver any instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests, and liens of the predecessor Escrow Agent under the Bond Ordinance, and (ii) shall take any other action necessary to duly assign, transfer, and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Escrow Agent. Should any instrument or document in writing from the Issuer be requested by any successor Escrow Agent for vesting and the conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests, and liens vested or conveyed hereby in or to the predecessor Escrow Agent, the Issuer agrees to execute, acknowledge, and deliver that instrument or document.

Section 10. Removal. Prior to the occurrence and continuance of an Event of Default under the Bond Ordinance, or after the curing or waiver of any such Event of Default, the Issuer, or the Bondholders of a majority in aggregate principal amount of the Bondholders, may remove the Escrow Agent and shall appoint a successor Escrow Agent. In the event there shall have occurred and be continuing an Event of Default under the Bond Ordinance, the Bondholders of a majority in aggregate principal amount of the Refunded Bonds may remove the Escrow Agent and shall appoint a successor Escrow Agent. In each instance such removal and appointment shall be accomplished by an instrument or concurrent instruments in writing signed by the Issuer or such Bondholders, as the case may be, and delivered to the Escrow Agent, the Issuer, and Bondholders of the Refunded Bonds.

Section 11. Successors.

(a) If (i) the Escrow Agent shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (ii) the Escrow Agent shall be taken under control of any public officer or officers, or (iii) a receiver shall be appointed by a court, then a successor Escrow Agent shall be appointed by the Issuer; provided, that if a successor Escrow Agent is not so appointed within ten days after (a) a notice of resignation or any instrument or document of removal is received by the Issuer, or (b) the Escrow Agent is dissolved, taken under control, becomes otherwise incapable of acting, or a receiver is appointed, in each case, as provided above, then, so long as the Issuer shall not have appointed a successor Escrow Agent, the Bondholders of at least a majority of the par amount of the Refunded Bonds not paid or provided for may designate a successor Escrow Agent by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Bondholders. If no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this Section, the Bondholder of any Refunded Bond or any retiring Escrow Agent may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Escrow Agent.

(b) Every successor Escrow Agent appointed pursuant to this Section shall (i) be a trust company or bank having the powers of a trust company, (ii) be in good standing within the State, (iii) be duly authorized to exercise trust powers within the State, (iv) have a reported capital and surplus of not less than \$75,000,000, and (v) be willing to accept the responsibilities under the terms

and conditions of this Agreement.

(c) Every successor Escrow Agent appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor and the Issuer an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests, and liens of its predecessor. Upon the written request of its successor, the Issuer, the predecessor Escrow Agent (i) shall execute and deliver any instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests, and liens of the predecessor Escrow Agent hereunder, and (ii) shall take any other action necessary to duly assign, transfer, and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Escrow Agent. Should any instrument or document in writing from the Issuer be requested by any successor Escrow Agent for vesting and the conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests, and liens vested or conveyed hereby in or to the predecessor Escrow Agent, the Issuer agrees to execute, acknowledge, and deliver that instrument or document.

(d) In the event of a change in the Escrow Agent, the predecessor Escrow Agent shall cease to be custodian of any moneys which it may hold pursuant to this Agreement. The successor Escrow Agent shall become custodian.

**Section 12. Term.** This Agreement, which is hereby declared to be irrevocable, shall commence upon its execution and delivery and shall terminate only when the funds sufficient to pay the remaining aggregate Debt Service on the Refunded Bonds shall be deposited with the paying agent(s) therefore, at which time all excess money and Defeasance Obligations in the Escrow Account shall be delivered to the Issuer.

**Section 13. Compensation.** The Issuer agrees to pay the Escrow Agent reasonable compensation for its services and to pay all of its expenses, including reasonable fees of counsel which it may incur in acting hereunder. To the extent that any portion of the compensation of the Escrow Agent has been agreed to by any separate agreement, such separate agreement shall control, to the extent so intended. The Escrow Agent shall under no circumstances have any claim to or any lien upon any cash or Defeasance Obligations in the Escrow Account.

**Section 14. Severability.** If any one or more of the provisions of this Agreement should be determined by a court of competent jurisdiction to be contrary to law, such covenant shall be null and void and shall be severed from the remaining provisions and shall in no way affect the validity of the remaining provisions of this Agreement.

**Section 15. Amendments.** This Agreement may be amended only for the following purposes:

- (1) as may be expressly provided for elsewhere in this Agreement;

- ambiguities;
- (2) to insert unintentionally omitted material, or to correct mistakes or
- Bonds; or
- (3) to pledge additional legal security to the registered holders of the Refunded
- Account;
- (4) to provide for the deposit of additional securities or cash in the Escrow

provided, that in the event, any such amendments may not be adverse to the interest of the registered holders of the Refunded Bonds.

Section 16. Counterparts. This Agreement may 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 17. Governing Law. This Agreement shall be construed under the laws of the State of South Carolina.

Section 18. Security for Accounts and Funds. All uninvested 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 Escrow Agent.



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

**JASPER COUNTY, SOUTH CAROLINA**

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

**[NAME OF ESCROW AGENT]**

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

Its: \_\_\_\_\_

**EXHIBIT A**

**Defeasance Obligations**

(See attached)

EXHIBIT B

**NOTICE OF REDEMPTION TO THE HOLDERS OF**

**Jasper County, South Carolina  
General Obligation Bonds of 2011**

**Dated \_\_\_\_\_, \_\_\_\_\_**

NOTICE IS HEREBY GIVEN by the Jasper County, South Carolina (the "Issuer") that there have been called for redemption on \_\_\_\_\_, \_\_\_\_\_ (the "Redemption Date"), the outstanding General Obligation Bonds of 2011, issued by the Issuer and originally dated November 1, 2011, described below (the "Called Bonds") totaling \$\_\_\_\_\_:

<b><u>CUSIP*</u></b>	<b><u>NUMBER</u></b>	<b><u>MATURITY DATE</u></b> _____1	<b><u>INTEREST</u></b> <b><u>RATE</u></b>	<b><u>PRINCIPAL</u></b> <b><u>AMOUNT</u></b>
----------------------	----------------------	---------------------------------------	--	---

The Called Bonds are called pursuant to the optional redemption provisions of the governing documents at the redemption price of par plus accrued interest to the Redemption Date (the "Redemption Price"). On the Redemption Date, there shall become due and payable upon each Called Bond the Redemption Price thereof, and that, from and after the Redemption Date, interest thereon shall cease to accrue.

Holders of the Called Bonds are requested to present their Called Bonds at the following addresses:

**By Registered or Certified Mail**

**By Hand or Overnight Mail**

Registered or certified insured mail is suggested when submitting Called Bonds for payment.

When inquiring about this redemption, please have the bond number available. Please inform the

customer service representative of the CUSIP number(s) of the affected bonds.

Dated \_\_\_\_\_, \_\_\_\_\_

**NOTICE**

Withholding of 30% of gross redemption proceeds of any payment made within the United States may be required by the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "Act") unless the Paying Agent has the correct taxpayer identification number (social security or employer identification number) or exemption certificate of the payee. Please furnish a properly completed Form W-9 or exemption certificate or equivalent when presenting your securities.

*\*Neither the Issuer nor the Paying Agent shall be responsible for the use of the CUSIP number(s) selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Called Bonds. They are included solely for the convenience of the holders.*

---

# AGENDA ITEM:

## XI-I

Ordinance item I

STATE OF SOUTH CAROLINA  
COUNTY OF JASPER

ORDINANCE NO: 2021-\_\_\_\_\_

AN ORDINANCE  
OF JASPER COUNTY COUNCIL

To amend the Jasper County, South Carolina  
Organizational Chart.

WHEREAS, by Ordinance No. 09-10 adopted \_\_\_\_\_, 2009, the Jasper County Council did adopt an Official Organizational Chart for the County; and

WHEREAS, due to the passage of time, changes in departmental responsibilities, and a comprehensive examination and re-defining of certain of job descriptions and reporting responsibilities, it has become desirable to make certain amendments to the organization of the County administration; and

WHEREAS, the Administration recommends the attached Jasper County, South Carolina Organizational Chart to be the official organizational chart for the County;

NOW, THEREFORE BE IT ORDAINED by the Jasper County Council in council duly convened and by the authority of the same:

1. The Jasper County, South Carolina Organizational Chart dated \_\_\_\_\_, 2021, a copy of which is attached hereto, is hereby adopted as the official Organizational Chart for Jasper County Government , and all previous versions of the Organizational Chart are hereby repealed.
2. This ordinance shall take effect upon approval by Council.

\_\_\_\_\_  
Barbara B. Clark, Chairwoman

ATTEST:

\_\_\_\_\_  
Wanda Simmons, Clerk to Council

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Adopted: \_\_\_\_\_

\_\_\_\_\_

The following document is required to be attached prior to 3<sup>rd</sup> Reading:

Jasper County, South Carolina Organizational Chart dated \_\_\_\_\_, 2021.

\_\_\_\_\_

Reviewed for form and draftsmanship by the Jasper County Attorney.

\_\_\_\_\_  
David L. Tedder

\_\_\_\_\_  
Date

