

# STATE FISCAL ACCOUNTABILITY AUTHORITY

Meeting of Wednesday, September 8, 2021 -- 3:30 P. M.

Room 252, Edgar A. Brown Building

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**STATE FISCAL ACCOUNTABILITY AUTHORITY**  
**Meeting of Wednesday, September 8, 2021 -- 3:30 P.M.**  
**Room 252, Edgar A. Brown Building**

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<u>Item</u>	<u>Agency</u>	<u>Subject</u>
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AGENCY: State Fiscal Accountability Authority

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SUBJECT: Proviso 117.21 – Organizations Receiving State Appropriations Report

Proviso 117.21 provides the following:

Each organization receiving a contribution in this act shall render to the state agency making the contribution by November first of the fiscal year in which funds are received, an accounting of how the state funds will be spent, goals to be accomplished, proposed measures to evaluate success in implementing and meeting the goals, a copy of the adopted budget for the current year, and also a copy of the organization's most recent operating financial statement. The funds appropriated in this act for contributions shall not be expended until the required financial statements are filed with the appropriate state agency. No funds in this act shall be disbursed to organizations or purposes which practice discrimination against persons by virtue of race, creed, color or national origin. The State Auditor shall review and audit, if necessary, the financial structure and activities of each organization receiving contributions in this act and make a report to the General Assembly of such review and/or audit, when requested to do so by the State Fiscal Accountability Authority. From the funds an organization receives from a state agency, for accountability purposes, by June thirtieth organizations receiving contributions in this act shall submit a report to the state agency making the contribution that includes an accounting of how the funds were spent and the outcome measures used to determine the success of the stated goals. State agencies receiving such data from organizations shall forward the information to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.

The Authority provides the following guidance to facilitate a uniform and efficient approach to the accountability and reporting requirements of the proviso:

1. By November 1, 2021, each state agency charged with making a contribution pursuant to the Fiscal Year 2021-22 Appropriations Act must receive from any organization receiving the contribution:
  - a. An accounting of how the state funds will be spent;
  - b. Goals to be accomplished;
  - c. Proposed measures to evaluate success in implementing the goals;
  - d. A copy of the adopted budget for the current year; and
  - e. A copy of the organization's most recent operating financial statement.

The funds for contributions must not be expended until the required financial statements and other information are received by the state agency charged with making the

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AGENCY: State Fiscal Accountability Authority

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SUBJECT: Proviso 117.21 – Organizations Receiving State Appropriations Report

contribution from the organization receiving the contribution.

2. By June 30, 2022, organizations receiving contributions must submit a report to the state agency making the contribution that includes an accounting of how the funds were spent and the outcome measures used to determine the success of the stated goals. State agencies receiving such data from organizations must forward the information to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.

Staff of the Authority, with input from staff of Authority members and the State Auditor, is directed to develop a reporting format or template for the efficient collection, review, and as applicable, audit of information collected for each of these reporting dates. The reporting format or template is to be developed and distributed to state agencies charged with making contributions as soon as practicable. Emphasis is placed on concise but complete information responsive to these accountability measures.

A state agency charged with making contributions may submit a request to the State Fiscal Accountability Authority for a review and audit, if necessary, by the State Auditor of the financial structure and activities of an organization receiving contributions pursuant to the Fiscal Year 2021-22 Appropriations Act. The request to the Authority for review or audit by the State Auditor must provide the circumstances and rationale underlying the request.

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AUTHORITY ACTION REQUESTED:

The Authority is asked to adopt guidance for the accountability and reporting requirements of the proviso; direct staff of the Authority to develop reporting formats or templates for the efficient collection, review, and as applicable, audit of information collected for each reporting date; and distribute that guidance and reporting formats or templates to state agencies charged with making contributions; all in accordance with the proviso.

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ATTACHMENTS:

Proviso 117.21

**117.21. (GP: Organizations Receiving State Appropriations Report)** Each organization receiving a contribution in this act shall render to the state agency making the contribution by November first of the fiscal year in which funds are received, an accounting of how the state funds will be spent, goals to be accomplished, proposed measures to evaluate success in implementing and meeting the goals, a copy of the adopted budget for the current year, and also a copy of the organization's most recent operating financial statement. The funds appropriated in this act for contributions shall not be expended until the required financial statements are filed with the appropriate state agency. No funds in this act shall be disbursed to organizations or purposes which practice discrimination against persons by virtue of race, creed, color or national origin. The State Auditor shall review and audit, if necessary, the financial structure and activities of each organization receiving contributions in this act and make a report to the General Assembly of such review and/or audit, when requested to do so by the State Fiscal Accountability Authority. From the funds an organization receives from a state agency, for accountability purposes, by June thirtieth organizations receiving contributions in this act shall submit a report to the state agency making the contribution that includes an accounting of how the funds were spent and the outcome measures used to determine the success of the stated goals. State agencies receiving such data from organizations shall forward the information to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.

MEETING OF September 8, 2021

ITEM NUMBER 2AGENCY: State Treasurer's OfficeSUBJECT: Bond Counsel Selection

The State Treasurer's Office has provided the following notification, for informational purposes, of the firms selected and approved:

**CONDUIT/OTHER ISSUES:**

Description of Issue	Agency/Institution (Borrower)	Bond Counsel	Issuer's Counsel
\$35,000,000; South Carolina Jobs-Economic Development Authority, Residential Care Facilities Revenue Bonds; KershawHealth dba the Health Services District of Kershaw County; Series 2021 (South Carolina Jobs-Economic Development Authority – "SC JEDA")	KershawHealth dba the Health Services District of Kershaw County Conduit: SC JEDA	Parker Poe – Ray Jones, Emily Luther	Nexsen Pruet – Laurie Becker
\$100,000,000; South Carolina Jobs-Economic Development Authority, Educational Facilities Revenue Bonds; York Preparatory Academy; Series 2021	York Preparatory Academy Conduit: SC JEDA	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Burr Forman McNair – Michael Seezen
\$14,000,000; Multifamily Housing Revenue Bonds; 573 Meeting Street Apartments Project; Series 2021(SC State Housing Finance and Development Authority - "SCSHFDA")	573 Meeting Street Associates, LLC (573 Meeting Street Associates Apartments Project) Conduit: SCSHFDA	Haynsworth Sinkler Boyd - John Van Duys	Tracey Easton, General Counsel
\$27,500,000; Multifamily Housing Revenue Bonds; Lawsons Ridge Apartments Project; Series 2021 (Housing Authority of the City of Spartanburg)	Lawsons Ridge, LP (Lawsons Ridge Apartments Project) Conduit: Housing Authority of the City of Spartanburg	Burr Forman McNair – Michael Seezen	Issuer's Counsel to Housing Authority of the City of Spartanburg Horton Law Firm – Bo Campbell
\$35,000,000; Multifamily Housing Revenue Bonds; Shockley Terrace Apartments Project; Series 2021 (Housing Authority of the City of Spartanburg)	Shockley Terrace, LP (Shockley Terrace Apartments Project) Conduit: Housing Authority of the City of Spartanburg	Parker Poe – Ray Jones, Emily Luther	Issuer's Counsel to Housing Authority of the City of Spartanburg Horton Law Firm – Bo Campbell
\$25,000,000; Multifamily Housing Revenue Bonds; The Park at Wilkerson Road Apartments Project; Series 2021 (Housing Authority of the City of Rock Hill)	The Park at Wilkerson Road, LP (The Park at Wilkerson Road Apartments Project) Conduit: Housing Authority of the City of Rock Hill	Parker Poe – Ray Jones, Emily Luther	Issuer's Counsel to Housing Authority of the City of Rock Hill -Haynsworth Sinkler Boyd - John Van Duys, Ron Scott

MEETING OF September 8, 2021

ITEM NUMBER 2AGENCY: State Treasurer's OfficeSUBJECT: Bond Counsel Selection

\$8,000,000; Multifamily Housing Revenue Bonds; Dillon Graded School Senior Apartments; Series 2021 (Housing Authority of the City of Florence)	Dillon School Senior, LP (Dillon Graded School Senior Apartments Project) Conduit: Housing Authority of the City of Florence	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer's Counsel to Housing Authority of the City of Florence – Wilcox Buyck & Williams Law Firm
\$9,999,999; Multifamily Housing Revenue Bonds; Brookfield Pointe Apartments Project; Series 2021 (Housing Authority of the City of Columbia)	Bradley Housing Developers, LLC (Brookfield Pointe Apartments Project) Conduit: Housing Authority of the City of Columbia	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer's Counsel to Housing Authority of the City of Columbia – Horton Law Firm – Bo Campbell
\$10,000,000; Multifamily Housing Revenue Bonds; Connecticut Village Apartments Project; Series 2021 (Housing Authority of the City of Spartanburg)	CV Housing Partners, LP (Connecticut Village Apartments Project) Conduit: Housing Authority of the City of Spartanburg	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer's Counsel to Housing Authority of the City of Spartanburg Horton Law Firm – Bo Campbell
\$14,000,000; Multifamily Housing Revenue Bonds; Hilton Head Gardens Apartments Project; Series 2021 (Beaufort Housing Authority)	Hilton Head Housing Partners, LP (Hilton Head Apartments Project) Conduit: Beaufort Housing Authority	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer's Counsel to Beaufort Housing Authority – Haynsworth Sinkler Boyd

**GENERAL OBLIGATION / REVENUE ISSUES:**

Description of Issue	Agency/Institution	Approved Bond Counsel
\$46,000,000; Higher Education Revenue Refunding Bonds; Coastal Carolina University; Series 2021	Coastal Carolina University	Pope Flynn – Gary Pope

**AUTHORITY ACTION REQUESTED:**

In accord with Authority policy, receive the State Treasurer's Office report of bond counsel as information.

**ATTACHMENTS:**

Bond Counsel Selection Approved by the State Treasurer's Office

**The State Treasurer advises the State Fiscal Accountability Authority, for informational purposes,  
of the firms selected and approved for its September 08, 2021 meeting;**

**CONDUIT/OTHER ISSUES:**

Description of Issue	Agency/Institution (Borrower)	Bond Counsel	Issuer's Counsel	Date STO Approved
\$35,000,000; South Carolina Jobs-Economic Development Authority, Residential Care Facilities Revenue Bonds; KershawHealth dba the Health Services District of Kershaw County; Series 2021 (South Carolina Jobs-Economic Development Authority – “SC JEDA”)	KershawHealth dba the Health Services District of Kershaw County Conduit: SC JEDA	Parker Poe – Ray Jones, Emily Luther	Nexsen Pruet – Laurie Becker	07/20/2021
\$100,000,000; South Carolina Jobs-Economic Development Authority, Educational Facilities Revenue Bonds; York Preparatory Academy; Series 2021	York Preparatory Academy Conduit: SC JEDA	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Burr Forman McNair – Michael Seezen	07/20/2021
\$14,000,000; Multifamily Housing Revenue Bonds; 573 Meeting Street Apartments Project; Series 2021(SC State Housing Finance and Development Authority - “SCSHFDA”)	573 Meeting Street Associates, LLC (573 Meeting Street Associates Apartments Project) Conduit: SCSHFDA	Haynsworth Sinkler Boyd - John Van Duys	Tracey Easton, General Counsel	07/20/2021
\$27,500,000; Multifamily Housing Revenue Bonds; Lawsons Ridge Apartments Project; Series 2021 (Housing Authority of the City of Spartanburg)	Lawsons Ridge, LP (Lawsons Ridge Apartments Project) Conduit: Housing Authority of the City of Spartanburg	Burr Forman McNair – Michael Seezen	Issuer’s Counsel to Housing Authority of the City of Spartanburg Horton Law Firm – Bo Campbell	07/20/2021
\$35,000,000; Multifamily Housing Revenue Bonds; Shockley Terrace Apartments Project; Series 2021 (Housing Authority of the City of Spartanburg)	Shockley Terrace, LP (Shockley Terrace Apartments Project) Conduit: Housing Authority of the City of Spartanburg	Parker Poe – Ray Jones, Emily Luther	Issuer’s Counsel to Housing Authority of the City of Spartanburg Horton Law Firm – Bo Campbell	07/20/2021
\$25,000,000; Multifamily Housing Revenue Bonds; The Park at Wilkerson Road Apartments Project; Series 2021 (Housing Authority of the City of Rock Hill)	The Park at Wilkerson Road, LP (The Park at Wilkerson Road Apartments Project) Conduit: Housing Authority of the City of Rock Hill	Parker Poe – Ray Jones, Emily Luther	Issuer’s Counsel to Housing Authority of the City of Rock Hill - Haynsworth Sinkler Boyd	07/20/202



			- John Van Duys, Ron Scott	
\$8,000,000; Multifamily Housing Revenue Bonds; Dillon Graded School Senior Apartments; Series 2021 (Housing Authority of the City of Florence)	Dillon School Senior, LP (Dillon Graded School Senior Apartments Project) Conduit: Housing Authority of the City of Florence	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer’s Counsel to Housing Authority of the City of Florence – Wilcox Buyck & Williams Law Firm	07/20/2021
\$9,999,999; Multifamily Housing Revenue Bonds; Brookfield Pointe Apartments Project; Series 2021 (Housing Authority of the City of Columbia)	Bradley Housing Developers, LLC (Brookfield Pointe Apartments Project) Conduit: Housing Authority of the City of Columbia	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer’s Counsel to Housing Authority of the City of Columbia – Horton Law Firm – Bo Campbell	07/20/2021
\$10,000,000; Multifamily Housing Revenue Bonds; Connecticut Village Apartments Project; Series 2021 (Housing Authority of the City of Spartanburg)	CV Housing Partners, LP (Connecticut Village Apartments Project) Conduit: Housing Authority of the City of Spartanburg	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer’s Counsel to Housing Authority of the City of Spartanburg Horton Law Firm – Bo Campbell	07/20/2021
\$14,000,000; Multifamily Housing Revenue Bonds; Hilton Head Gardens Apartments Project; Series 2021 (Beaufort Housing Authority)	Hilton Head Housing Partners, LP (Hilton Head Apartments Project) Conduit: Beaufort Housing Authority	Howell Linkous & Nettles – Sam Howell, Alan Linkous	Issuer’s Counsel to Beaufort Housing Authority – Haynsworth Sinkler Boyd	07/20/2021

**GENERAL OBLIGATION / REVENUE ISSUES:**

Description of Issue	Agency/Institution	Approved Bond Counsel	Date STO Approved
\$46,000,000; Higher Education Revenue Refunding Bonds; Coastal Carolina University; Series 2021	Coastal Carolina University	Pope Flynn – Gary Pope	07/21/2021

MEETING OF September 8, 2021

ITEM NUMBER 3, Page 1

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**AGENCY:** Department of Administration, Executive Budget Office

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**SUBJECT:** Permanent Improvement Projects

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- (a) **Project:** JBRC Item 2: Francis Marion University  
H18.9582: Smith University Center Renovations & Improvements
- Request:** Establish Phase I Predesign Budget to complete renovations to the women's and men's locker rooms, showers, athletic training facilities and offices.
- Included in CPIP:** Yes – 2021 CPIP Priority 8 of 8 in FY22 (estimated at \$4,000,000)
- CHE Approval:** 8/5/21

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, FMU Maintenance Reserve				60,000	60,000
All Sources				<u>60,000</u>	<u>60,000</u>

**Summary of Work:** The renovations will double the square footage and will provide increased rehabilitation facilities. The main lobby of the building looks worn and dated and needs new finishes and lighting to continue to host functions and events in the space as well as provide wayfinding to all other spaces in the building. The main weight room is located on the second floor of the building and will be relocated to the main level and consolidated with the exercise area. The basketball gymnasium has fixed seating at one side that needs to be replaced and will provide the code required aisle width and rails for patrons. The entry into the building from the parking lot side requires wider stairs and an accessible ramp so that patrons for basketball games and other public events such as graduations do not have to traverse around the corner to enter the building.

**Rationale:** The current locker rooms and showers have undergone very little improvements since the building was constructed. As the number of teams and student-athletes within the FMU program have increased, the functionality of the facility has become extremely deficient. The renovations will help bring the facility into the 21st-century. The current athletic training room does not meet minimum National Athletic Trainers' Association (NATA) requirements. Additionally, some staff are using closet space for offices, and this renovation will afford improved and increased office space.

**Facility Characteristics:** The Smith University Center is 115,366 square feet and was constructed in 1974 (47 years old). The renovated space in the Smith University Center will serve approximately 200 individuals on a daily basis, including student athletes, students, visiting team members, faculty/staff members, and alumni. Over the course of a year, the space will serve over 250 FMU student athletes, be available to 4,000 members of the FMU community (students, faculty, and staff), serve more than 1,500 visiting athletes, be available for more than 1,500 members of the FMU Alumni Association, and provide a greater experience for those attending athletic events.

**Financial Impact:** The project will be funded from FMU Maintenance Reserve Funds (uncommitted balance \$14.2 million at June 10, 2021). Revenue to this fund is generated from FMU Board of Trustee approved earmarked tuition funds (\$200 per full time student per year) and facilities fees (\$200 per student per year) held for capital improvements of the University. The project is not expected to result in any change in annual operating expenditures. No student fees or tuition will be



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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: Permanent Improvement Projects

increased as a consequence of the project. Revenue bond debt is serviced by a designated portion of the student activity fee. The student activity fee is \$156 per semester for full-time students. The student activity fee was first utilized to service revenue bond debt in 2010. A portion of the Student Activity Fee is designated for Debt Service of Athletic Revenue Bonds, currently \$133.50 per student per semester, and has increased from \$125.50 in academic year 2016-2017.

Full Project Estimate: \$4,000,000 (internal) funded by FMU Maintenance Reserve Funds and Athletic Revenue Bonds.

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**AGENCY:** Department of Administration, Executive Budget Office

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**SUBJECT:** Permanent Improvement Projects

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- (b) **Project:** JBRC Item 4: Winthrop University  
H47.9586: Joynes Hall Interior Renovation
- Request:** Establish Phase II Full Construction Budget to renovate the interior to accommodate the relocation of Alumni Relations and the Division of University Advancement Offices.
- Included in CPIP:** Yes – 2021 CPIP Priority 1 of 11 in FY22 (estimated at \$1,100,000)  
**Phase I Approval:** May 2021 (estimated at \$1,100,000)  
**CHE Approval:** 8/5/21

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, Donations	9,750		9,750	1,090,250	1,100,000
All Sources	<u>9,750</u>		<u>9,750</u>	<u>1,090,250</u>	<u>1,100,000</u>

**Summary of Work:** The project renovations will enhance the interior of the building to accommodate the relocation of Alumni Relations and the Division of University Advancement offices. It will also expand the lobby of the building to improve receiving of visitors, students, and alumni. The project will also update the large multipurpose room on the first floor, the front entrance porch, and add accessible restrooms on the first, second and third floors.

**Rationale:** Locating Admissions, Alumni, and Advancement in a single building will allow future students to interact with Alumni Services allowing the university to generate excitement around the Winthrop experience for visitors interested in attending the university. In addition, the central location of these three departments will assist with the admissions process that they expect will increase enrollment.

**Facility Characteristics:** Joynes Hall is 30,077 square feet and was constructed in 1928 (93 years old). It currently houses the Office of Admissions and the Inn at Winthrop. (The Inn was closed July 2019 to open space to accommodate the relocation of Alumni Relations and the Division of University Advancement Offices.) The building serves more than 5,000 students, family members, and alumni.

**Financial Impact:** This project will be funded from Other, Donation Funds (uncommitted balance \$1.21 million at June 7, 2021). The project is expected to result in an increase of \$12,000 (year 1), \$12,210 (year 2), and \$12,430 (year 3), in annual operating expenses. No student fees or tuition will be increased as a consequence of the project. A portion of tuition is designated for capital improvements, currently \$523 per student per semester, and has decreased from \$593 in academic year 2017-2018.

**Full Project Estimate:** \$1,100,000 (internal) funded by Donation Funds. Contract execution is expected in November 2021 with construction completion in April 2022.

MEETING OF September 8, 2021

ITEM NUMBER 3, Page 4

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**AGENCY:** Department of Administration, Executive Budget Office

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**SUBJECT:** Permanent Improvement Projects

- (c) **Project:** JBRC Item 5: Horry Georgetown Technical College  
H59.6173: Diesel Engine Training Facility Expansion – Building & Land Acquisition

**Request:** Establish Preliminary Land Acquisition for the purpose of investigating the purchase of approximately 1.50 acres of land and a 13,700 square foot building in Horry County.

**Included in CPIP:** Yes – 2021 CPIP Priority 1 of 1 in 2022. (estimated at \$2,000,000)

**CHE Approval:** 8/5/21

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, College				20,000	20,000
All Sources				<u>20,000</u>	<u>20,000</u>

**Rationale:** In response to workforce needs, state-wide labor shortages, and increased student demand, the college desires to acquire light industrial/commercial space that can accommodate both classroom and lab training for its Diesel Engine Technician Program. The existing training facility is only 5,000 square feet and cannot accommodate additional student enrollment. Through acquiring additional instructional and lab training space, the college can more than double enrollment in the Diesel Engine Technician program and also use the added space to better support the training, vehicle maintenance and equipment storage needs of its Electrical Lineman and Golf Course Management programs. Enrollment in the Diesel Training Program is currently 20 students with a waiting list of more than 2 semesters. With this project and the additional space, the college plans to increase the enrollment to a capacity of 55 students.

**Characteristics:** The 13,700 square foot light industrial/commercial (warehouse type) building, on 1.5 acres of land, is located in a Business Park directly across (within 1.5 miles), of the college's Conway campus. The proposed building was constructed in 2005 (16 years old), includes 3 dock high (garage) doors that are 12 feet in height, and has 2 loading docks along with parking to support 45 vehicles. The total number of students, faculty, and staff that will occupy or use the added space is expected to be 104 per semester, or 202 per academic year.

**Financial Impact:** The property is offered by 470 Allied Drive, LLC of Conway SC for \$2,000,000. The due diligence activities will be funded from Other, College Funds (uncommitted balance \$48.4 million at July 6, 2021). Revenue to this fund is the cumulative excess of revenues over expenses that are set aside to fund capital projects and major renovations. The project is expected to result in an increase of \$17,125 (year 1), and \$34,250 (years 2 and 3), in annual operating expenses. No student fees or tuition will be increased as a consequence of the project. Furthermore, the college has no debt and does not impose any capital related fee. If acquired, the College anticipates some renovations of the building to include supplementing the existing HVAC system, modifying the loading docks, and possibly expanding electrical service. They anticipate the costs of these renovations to be less than \$400,000. These costs will be paid for with Plant Funds.

**AGENCY:** Department of Administration, Executive Budget Office

**SUBJECT:** Permanent Improvement Projects

- (d) **Project:** JBRC Item 15: Department of Corrections  
N04.9768: Kirkland CI – Remodel Storage Space into Housing Unit
- Request:** Establish Phase II Full Construction Budget to remodel a portion of the building “D” at Kirkland CI to a Housing Unit.
- Included in CPIP:** Yes – 2021 CPIP Priority 1 of 11 in FY21 (estimated at \$1,000,000)
- Phase I Approval:** June 2020 (estimated at \$1,000,000) (SFAA)
- CHE Approval:** N/A
- Supporting Details:** Pages

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Appropriated State, FY21 Carryforward				500,000	500,000
Other, Canteen	15,000		15,000	985,000	1,000,000
All Sources	<u>15,000</u>		<u>15,000</u>	<u>1,485,000</u>	<u>1,500,000</u>

**Summary of Work:** The project will convert approximately 10,446 square feet, which is the portion of the building used for storage space, into a Housing Unit. Portions of this building were remodeled into a housing unit in 2000. Currently Kirkland CI houses R&E, the State’s MSU and special needs inmates which puts bed space at a premium.

**Rationale:** The Housing Unit will provide space for Kirkland CI’s inmate cadre to be moved from the Special Needs Unit to a separate unit freeing up bed space for additional special needs inmates.

**Facility Characteristics:** The “D” Building is 51,860 square feet and was constructed in 1973 (48 years old). The 10,446 square feet of remodeled space will house 100 inmates and 1 staff.

**Financial Impact:** The project will be funded from Appropriated State, FY21 Carryforward Funds (uncommitted balance \$25 million at June 8, 2021), and Canteen Funds (uncommitted balance \$4.69 million at June 8, 2021). Revenue to this fund is derived wholly from the canteen operations within the Department of Corrections on behalf of the inmate population, which may be retained and expended by the department for the continuation of the operation of said canteens and the welfare of the inmate population or, at the discretion of the Director, used to supplement costs of operations. The project is expected to result in an increase of \$25,302 (years 1 thru 3), in annual operating expenses.

**Full Project Estimate:** \$1,500,000 (internal) funded by Appropriated State, FY21 Carryforward Funds and Canteen Funds. Contract execution is expected in January 2022 with construction completion in December 2024.

**AGENCY:** Department of Administration, Executive Budget Office

**SUBJECT:** Permanent Improvement Projects

- (e) **Project:** JBRC Item 18: Department of Juvenile Justice  
N12.9614: Statewide Surveillance Equipment and Services for Existing Facilities
- Request:** Establish Project at Phase II Full Construction Budget as an emergency project to replace existing surveillance equipment that is past its useful life span.
- Included in CPIP:** No
- CHE Approval:** N/A

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Appropriated State, FY21 Carryforward				4,574,920	4,574,920
All Sources				<u>4,574,920</u>	<u>4,574,920</u>

**Summary of Work:** The project will provide a more robust and up to date camera surveillance system for the Broad River Road Complex, the Upstate Evaluation Center, and the Coastal Evaluation Center. Cabling and cameras will be replaced across multiple facilities. A centralized operating system will be developed so personnel may access footage remotely. The project will also include training for personnel in the use of the new surveillance system acquired and include a maintenance plan.

**Rationale:** In the mission of keeping the public, the youth, and employees safe, DJJ assessed the needs of their existing facilities. One such need is to increase security awareness and coverage of each campus across the state. Camera systems for secured facilities are more localize and need physical access from parties to access footage and some of these systems are as old as 10 to 15 years. With this project the agency aims to centralize their surveillance system and upgrade all out of date equipment.

**Facility Characteristics:** The buildings affected by this project include the Birchwood school campus, portions of the Broad River Road Complex, the Upstate Evaluation Center, the Coastal Evaluation Center, and possibly smaller and more local offices. This area totals approximately 250,000 square feet. The oldest systems are 10 to 15 years old and controlled locally. No building space is being renovated or constructed, but the surveillance systems will affect all divisions with routine interactions within the secured facilities. A few examples of the divisions affected are the Division of Education & Workforce Development, the Division of Institutional Programming, and the Division of Rehabilitative Services. These programs oversee education, work skills development and social work. The areas affected contain approximately 275 youth/clients and approximately 520 staff/faculties.

**Financial Impact:** The project will be funded from Appropriated State, FY21 Carryforward Funds (uncommitted balance \$4.96 million at June 10, 2021). The project is expected to result in an increase of \$87,500 (years 1 thru 3), in annual operating expenses.

**Full Project Estimate:** \$4,574,920 (internal) funded by Appropriated State, FY21 Carryforward Funds. Contract execution is expected in July 2021 with construction completion in December 2022.

AGENCY: Department of Administration, Executive Budget Office

SUBJECT: Permanent Improvement Projects

- (f) **Project:** JBRC Item 19: Forestry Commission  
P12.9603: Wee Tee State Forest Bridge Project
- Request:** Establish Phase I Predesign Budget to install new bridges in the Wee Tee State Forest.
- Included in CPIP:** Yes – 2021 CPIP Priority 1 of 1 in FY22 (estimated at \$1,350,000)
- CHE Approval:** N/A

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Appropriated State, FY21 Carryforward				60,000	60,000
All Sources				<u>60,000</u>	<u>60,000</u>

**Summary of Work:** The project will install a total of 9 new bridges that will provide improved public access (some limited vehicular travel) for all aspects of public recreational use; hunting, fishing, wildlife viewing, and hiking. New and improved bridges will also greatly enhance the ability to manage the area as needed for public safety as well as management of the resources (forestry & wildlife). This phase of the project will install 6 of the 9 bridges.

**Rationale:** The agency is seeking to replace the current bridges due to their overall disrepair. The main supports (or abutments, piers, and pillars) have degraded to the point that some of the bridges are assuming precarious angles and the entire decking is very suspect on most of the bridges. Per the agency, none of the bridges would be considered safe for any vehicular usage at this point in time.

**Facility Characteristics:** The age of the 9 bridges in Wee Tee State Forest is unknown. The bridges are utilized by approximately 5 staff members of the Forestry Commission State Forest Program, and an unknown number of the general public.

**Financial Impact:** The project will be funded from Appropriated State, FY21 Carryforward Funds (uncommitted balance \$2.1 million at July 7, 2021). The project is not expected to result in any change in annual operating expenditures.

**Full Project Estimate:** \$4,000,000 (internal) funded by Appropriated State, FY21 Carryforward Funds and FY22 Appropriated State, Proviso 118.18 (nonrecurring) Funds.



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**AGENCY:** Department of Administration, Executive Budget Office

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**SUBJECT:** Permanent Improvement Projects

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- (g) **Project:** JBRC Item 21: Department of Parks, Recreation & Tourism  
P28.9798: Fair Play Welcome Center Rebuild and Beautification
- Request:** Establish Phase I Predesign Budget to construct a new Welcome Center at Fair Play.
- Included in CPIP:** Yes – 2020 CPIP Priority 1 of 9 in FY22 (estimated at \$5,500,000)
- CHE Approval:** N/A
- 

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
FY20 Capital Reserve				97,500	97,500
All Sources				<u>97,500</u>	<u>97,500</u>

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**Summary of Work:** The work will include the demolition of the outdated facility and construction of a new, more efficient Welcome Center at the site. The Phase I process will determine the size of the new facility and what attributes it will have based on budget availability.

**Rationale:** The current facility experiences structural and maintenance issues that compromise both the integrity of the facility and the visitor's experience. This has resulted in increased maintenance costs and potential losses in revenue for the state's tourism related businesses. The new facility will greatly improve the visitor experience, the staff's ability to interact with the visitor, and be more energy efficient.

**Facility Characteristics:** The existing facility is ??? square feet and was constructed in 1969 (52 years old). The building houses the welcome center program, providing visitor services and marketing tourism opportunities and venues throughout South Carolina. Additionally, the facility will provide expanded restroom facilities to improve visitor experience. The facility receives about 700,000 visitors per year.

**Financial Impact:** The project will be funded from FY20 Capital Reserve Funds (uncommitted balance \$3.9 million at July 20, 2021).

**Full Project Estimate:** \$6,500,000 (internal) funded by FY20 Capital Reserve Funds, and FY22 State Appropriated, Proviso 118.18 (nonrecurring) Funds. Phase II will be funded by \$2,500,000 in FY20 Capital Reserve and \$4,000,000 in FY22 Appropriated State Funds.

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**AGENCY:** Department of Administration, Executive Budget Office

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**SUBJECT:** Permanent Improvement Projects

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- (h) Project: JBRC Item 25: Department of Employment and Workforce  
R60.9536: David Building - (3) Passenger Elevators & (1) Freight Elevator Renovation
- Request: Establish Phase II Full Construction Budget for the renovation and current code compliance of the elevators in the Robert E. David Building.
- Included in CPIP: Yes - 2021 CPIP Priority 4 of 4 in FY22 (estimated at \$1,660,409)  
Phase I Approval: May 2021 (estimated at \$1,660,409) (SFAA)  
CHE Approval: N/A

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, Contingency Assessment	21,541		21,541	1,638,868	1,660,409
All Sources	<u>21,541</u>		<u>21,541</u>	<u>1,638,868</u>	<u>1,660,409</u>

**Summary of Work:** The project will renovate and bring up to code compliance of (3) passenger –stop traction elevators and (1) hydraulic 1-stop service elevator.

**Rationale:** The elevator controllers and equipment have been discontinued by the manufacturer and only non-warranty salvage parts are available. Equipment failure rendering the elevators unusable has been occurring often and more frequently disrupting agency operations.

**Facility Characteristics:** The building is 104,076 square feet and was constructed in 1975 (46 years old). The elevators and elevator machine room are a total of 652 square feet. The building is occupied by approximately 350 staff of the SC Department of Employment Workforce.

**Financial Impact:** The project will be funded from Contingency Assessment Funds (uncommitted balance \$43.8 million at April 30, 2021). Revenue received is the contingency assessment portion of the tax and is accounted for in the special revenue fund which is primarily to fund the administrative costs and employment services, whereas the employment tax is used to fund unemployment compensation benefits in the proprietary fund. The project is not expected to result in any change in annual operating expenditures.

**Full Project Estimate:** \$1,660,409 (internal) funded by Contingency Assessment Funds. Contract execution is expected in January 2022 with construction completion in May 2023.

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**AUTHORITY ACTION REQUESTED:**

Approve permanent improvement project establishment requests and budget revisions as requested by the Department of Administration, Executive Budget Office. All items have been reviewed favorably by the Joint Bond Review Committee.

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**ATTACHMENTS:** Agenda item worksheet and attachments



Project List: SFAA Items - September 8, 2021

SFAA Items - September 8, 2021

SFAA Item	JBRC Item	Agency Code	Agency Name	Project ID	Project Name	Action Proposed	Included in CPIP?	Current Budget	Requested Change	Phase I	Total Phase II Budget	SOF (excludes proposed Phase II if currently seeking Phase I)
(a)	2	H18	Francis Marion University	9582	Smith University Center Renovations & Improvements	Establish Phase I	Yes	-	60,000	60,000	4,000,000	Other - FMU Maintenance Reserve
(b)	4	H47	Winthrop University	9586	Joynes Hall Interior Renovation	Establish Phase II	Yes	9,750	1,090,250	9,750	1,100,000	Other - Donations
(c)	5	H59	Horry Georgetown Technical College	6173	Diesel Engine Training Facility Expansion – Building & Land Acquisition	Preliminary Land Acquisition	Yes	-	20,000	20,000	2,020,000	Other - College
(d)	15	N04	Department of Corrections	9768	Kirkland CI - Remodel Storage Space Into Housing Unit	Establish Phase II	Yes	15,000	1,485,000	15,000	1,500,000	Appropriated State - FY21 Carryforward / Other - Canteen
(e)	18	N12	Department of Juvenile Justice	9614	Statewide Surveillance Equipment and Services for Existing Facilities	Establish Phase II	No	-	4,574,920	4,574,920	4,574,920	Appropriated State - FY21 Carryforward
(f)	19	P12	Forestry Commission	9603	Wee Tee State Forest Bridge Project	Establish Phase I	Yes	-	60,000	60,000	4,000,000	Appropriated State - FY21 Carryforward
(g)	21	P28	Department of Parks, Recreation & Tourism	9798	Fair Play Welcome Center Rebuild and Beautification	Establish Phase I	Yes	-	97,500	97,500	6,500,000	FY20 Capital Reserve
(h)	25	R60	Department of Employment & Workforce	9536	David Building - (3) Passenger Elevators & (1) Freight Elevator Renovation	Establish Phase II	Yes	21,541	1,638,868	21,541	1,660,409	Other - Contingency Assessment

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Easements

The Department of Administration requests approval of the following easements in accordance with SC Code of Laws:

- a. County Location: Horry  
From: Department of Administration  
To: Horry Telephone Cooperative, Inc.  
Consideration: \$1  
Description/Purpose: To grant a 0.10± acre easement for the purpose of relocating, constructing, operating, repairing, maintaining and replacing telecommunication systems, lines and equipment on property of SCDMV's Conway Office due to the SCDOT US 701 North Widening Project. The easement will contain the State's standard termination language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The term of the easement will be fifty (50) years. The easement will be of mutual benefit to HTC and SCDMV. The SCDMV has determined that, in accordance with the requirement of the statute, the easement does not appear to materially impair the utility of the property or damage it.
- b. County Location: Horry  
From: Department of Administration  
To: Horry Telephone Cooperative, Inc.  
Consideration: \$1  
Description/Purpose: To grant a 0.116± acre easement for the purpose of relocating, constructing, operating, repairing, maintaining and replacing telecommunication systems, lines and equipment on property of SCDOT's Horry County Maintenance and Construction Complex due to the SCDOT US 701 North Widening Project. The easement will contain the State's standard termination language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The term of the easement will be fifty (50) years. The easement will be of mutual benefit to HTC and SCDOT. The SCDOT has determined that, in accordance with the requirement of the statute, the easement does not appear to materially impair the utility of the property or damage it.

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Easements

- c. County Location: Charleston  
From: College of Charleston  
To: 23 Bond Owner 363-369 King, LLC  
Consideration: \$100,500  
Description/Purpose: To grant an assignable, non-exclusive 0.122± acre (5,320 square feet) access easement along a portion of an alley driveway that extends from George Street through the middle of the block between St. Philip and King Street for the purpose of pedestrian and vehicular ingress and egress across and upon property owned by the College of Charleston to Grantee's property in support of a housing development project to be marketed as student housing. The easement will be for a 50 year term with the option for Grantee to renew for an additional 50 years provided that Grantee provides six (6) months' notice, pays an additional \$100,000 at that time as consideration for the renewal term, and is not in violation or breach of the terms of the easement. Granting an easement for 50 years with an automatic 50 year renewal option at the discretion of the grantee varies from the Authority's policy of granting 50 year easements with renewal at the State's discretion for an appropriate additional charge. The request is for an assignable easement, subject to Grantor's prior written consent only if assigned to a person or entity that does not own Grantee's Property. An appraisal estimated the value of the 12,800 square feet of underlying land encumbered by the easement to be \$930,000. Based on that appraisal, it appears the appraised value of the 5,320 square foot easement area is approximately \$386,551; however, the College of Charleston has indicated the negotiated consideration is reasonable based on the following benefits to the College: (1) the terms of the easement relieve the College of obligation to maintain or repair the easement area, relieve the College of responsibility for noise or odor, and prevent obstruction to or parking in the easement area; (2) the easement will allow for the development of new needed housing next to the campus that will be funded completely by private capital and not require any resources of the College or the State; (3) 23 Bond Owner 363-369 King, LLC paid \$75,000 to another property owner

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Easements

for an easement across the other portion of the alley in connection with this development. Additionally, Grantee will provide the College of Charleston an exclusive right of first opportunity to negotiate for the purchase of the housing development should the Grantee ever decide to sell its property. The easement will contain the State's standard termination language that if the easement holder abandons the easement or is in breach the College may terminate as well as language that if the easement holder ceases to use the easement for its intended purpose, the College may terminate. The College of Charleston has determined that, in accordance with the requirement of the statute, the easement does not appear to materially impair the utility of the property or damage it.

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AUTHORITY ACTION REQUESTED:

Approve granting the referenced easements as recommended by the Department of Administration, Facilities Management and Property Services.

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ATTACHMENTS:

Agenda item worksheet and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

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**Meeting Scheduled for: September 8, 2021**

**Regular Agenda**

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**1. Submitted by:**

- (a) Agency: Department of Administration  
(b) Authorized Official Signature:

*Ashlie Lancaster*  
\_\_\_\_\_  
Ashlie Lancaster, Director

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**2. Subject: Easements**

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**3. Summary and Background Information:**

- (a) County Location: Horry  
From: Department of Administration  
To: Horry Telephone Cooperative, Inc.  
Consideration: \$1  
Description/Purpose: To grant a 0.10± acre easement for the purpose of relocating, constructing, operating, repairing, maintaining and replacing telecommunication systems, lines and equipment on property of SCDMV's Conway Office due to the SCDOT US 701 North Widening Project. The easement will contain the State's standard termination language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The term of the easement will be fifty (50) years. The easement will be of mutual benefit to HTC and SCDMV. The SCDMV has determined that, in accordance with the requirement of the statute, the easement does not appear to materially impair the utility of the property or damage it.
- (b) County Location: Horry  
From: Department of Administration  
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Description/Purpose: To grant a 0.116± acre easement for the purpose of relocating, constructing, operating, repairing, maintaining and replacing telecommunication systems, lines and equipment on property of SCDOT's Horry County Maintenance and Construction Complex due to the SCDOT US 701 North Widening Project. The easement will contain the State's standard termination language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The term of the easement will be fifty (50) years. The easement will be of mutual benefit to HTC and SCDOT. The SCDOT has determined that, in accordance with the requirement of the statute, the easement does not appear to materially impair the utility of the property or damage it.

(c) County Location: Charleston  
From: College of Charleston  
To: 23 Bond Owner 363-369 King, LLC  
Consideration: \$100,500  
Description/Purpose: To grant an assignable, non-exclusive 0.122± acre (5,320 square feet) access easement along a portion of an alley driveway that extends from George Street through the middle of the block between St. Philip and King Street for the purpose of pedestrian and vehicular ingress and egress across and upon property owned by the College of Charleston to Grantee's property in support of a housing development project to be marketed as student housing. The easement will be for a 50 year term with the option for Grantee to renew for an additional 50 years provided that Grantee provides six (6) months' notice, pays an additional \$100,000 at that time as consideration for the renewal term, and is not in violation or breach of the terms of the easement. Granting an easement for 50 years with an automatic 50 year renewal option at the discretion of the grantee varies from the Authority's policy of granting 50 year easements with renewal at the State's discretion for an appropriate additional charge. The request is for an assignable easement, subject to Grantor's prior written consent only if assigned to a person or entity that does not own Grantee's Property. An appraisal estimated the value of the 12,800 square feet of underlying land encumbered by the easement to be \$930,000. Based on that appraisal, it appears the appraised value of the 5,320 square foot easement area is approximately \$386,551; however, the College of Charleston has indicated the negotiated consideration is reasonable based on the following benefits to the College: (1) the terms of the easement relieve the College of obligation to maintain or repair the easement area, relieve the College of responsibility for noise or odor, and prevent obstruction to or parking in the easement area; (2) the easement will allow for the development of new needed housing next to the campus that will be funded completely by private capital and not require any resources of the College or the State; (3) 23 Bond Owner 363-369 King, LLC paid \$75,000 to another property owner for an easement across the other portion of the alley in connection with this development. Additionally, Grantee will provide the College of Charleston an exclusive right of first opportunity to negotiate for the purchase of the housing development should the Grantee ever decide to sell its property. The easement will contain the State's standard termination language that if the easement holder abandons the easement or is in breach the College may terminate as well as language that if the easement holder ceases to use the easement for its intended purpose, the College may terminate. The College of Charleston has determined that, in accordance with the requirement of the statute, the easement does not appear to materially impair the utility of the property or damage it.

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4. **What is the Authority asked to do?** Approve the referenced easements.

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5. **What is recommendation of the submitting agency involved?** Consider approval of the referenced easements.

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6. **Private Participant Disclosure – Check one:**

No private participants will be known at the time the Authority considers this agenda item.

A Private Participant Disclosure form has been attached for each private participant.

As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

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7. **Recommendation of other office (as required)?**

(a) Authorized Signature: \_\_\_\_\_

(b) Office Name: Click or tap here to enter text.

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8. **List of Supporting Documents:**

(a) SC Code of Laws Sections 1-11-70, 1-11-80, 1-11-100 and 10-1-130

(b) Exhibits (plats, maps, etc.)

a. Horry Telephone Cooperative, Inc. – SCDMV Parcel

b. Horry Telephone Cooperative, Inc. – SCDOT Parcel

c. 23 Bond Owner 363-369 King, LLC

d. Letter from College of Charleston to State Fiscal Accountability Authority



## **SOUTH CAROLINA CODE OF LAWS**

### **SECTION 1-11-70. Lands subject to Department's control.**

All vacant lands and lands purchased by the former land commissioners of the State are subject to the directions of the Department of Administration.

### **SECTION 1-11-80. Department authorized to grant easements for public utilities on vacant State lands.**

The Department of Administration, upon approval of the State Fiscal Accountability Authority, is authorized to grant easements and rights of way to any person for construction and maintenance of power lines, pipe lines, water and sewer lines and railroad facilities over, on or under such vacant lands or marshland as are owned by the State, upon payment of the reasonable value thereof.

### **SECTION 1-11-100. Execution of instruments conveying rights of way or easements over marshlands or vacant lands.**

Deeds or other instruments conveying such rights of way or easements over such marshlands or vacant lands as are owned by the State shall be executed by the Governor in the name of the State, when authorized by the Department of Administration, upon approval of the State Fiscal Accountability Authority, and when duly approved by the office of the Attorney General; deeds or other instruments conveying such easements over property in the name of or under the control of State agencies, institutions, commissions or other bodies shall be executed by the majority of the governing body thereof, shall name both the State of South Carolina and the institution, agency, commission or governing body as grantors, and shall show the written approval of the Director of the Department of Administration and the State Fiscal Accountability Authority.

### **SECTION 10-1-130. Grant of easements and rights of way.**

The trustees or governing bodies of state institutions and agencies may grant easements and rights of way over any property under their control, upon the recommendation of the Department of Administration and approval of the State Fiscal Accountability Authority, whenever it appears that such easements do not materially impair the utility of the property or damage it and, when a consideration is paid therefor, any amounts must be placed in the State Treasury to the credit of the institution or agency having control of the property involved.



(b) a.

PIN # 29305020001  
4103 US-701, CONWAY  
S.C. 29526

ADJACENT PROPERTY  
PIN # 29300000031  
4145 US-701, CONWAY  
S.C. 29526

HTC will place facilities 5' behind new ROW,  
approx 441.49' across front of property.  
Approx sq. Ft. would be 4,414.90

BACK OF EASEMENT

Red line indicates HTC proposed conduit package

NEW PROPOSED R.O.W.



PROJECT ID: SCONV EASEMENT  
 PROJECT TITLE: S.C. DEPT OF MOTOR VEHICLES  
 DESIGNED BY: Spivey, Randy (ext. 8254)  
 EXCHANGE: CON  
 SERVICE ADDRESS: 4103 US-701 CONWAY, SC 29526  
 STAKED BY: Moore, Frankie (ext. 8198)  
 DRAWN BY: Spivey, Randy (ext. 8254)  
 DATE DRAWN: 7/20/2021  
 SERVICE ORDER NUMBER:  
 PERMIT #:  
 PLP/PT/TKETS:

NOTES:

PIN # 29305020001

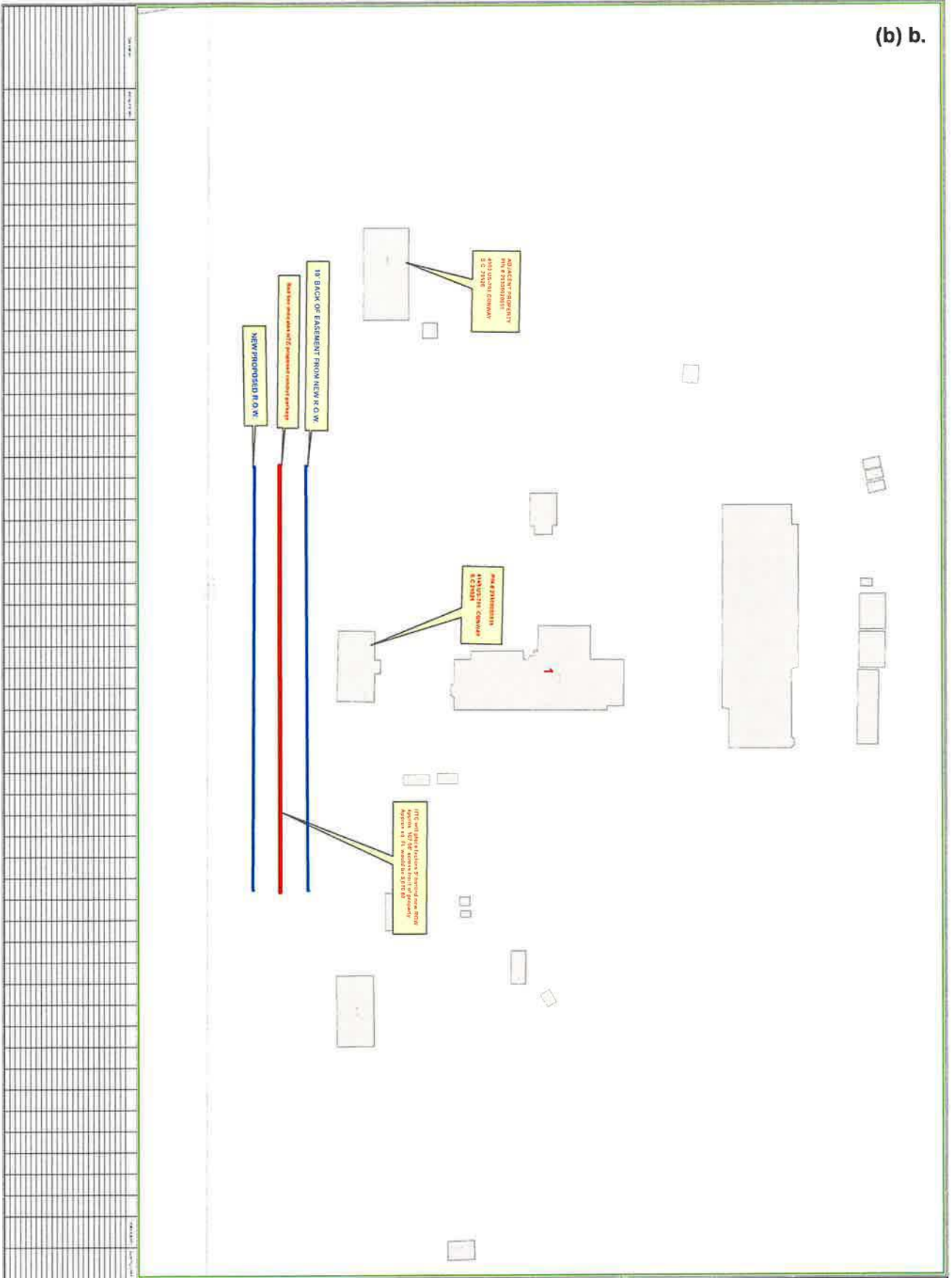
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(b) b.



PROJECT ID: SCOOT MAINTENANCE SIGD  
 PROJECT TITLE: SCOOT MAINTENANCE SIGD

DESIGNED BY: CDM

EXCHANGE: 4148 US-791 CORWAY SC 29028

SKAFFER ADDRESS: Market, Francon (cell 819)

FRANCO BY: Sperry, Randy (cell 8754)

DATE DRAWN: 7/22/201

REVIEWER: NAME

PLANNING &

PROJECT NOTES

NOTES:

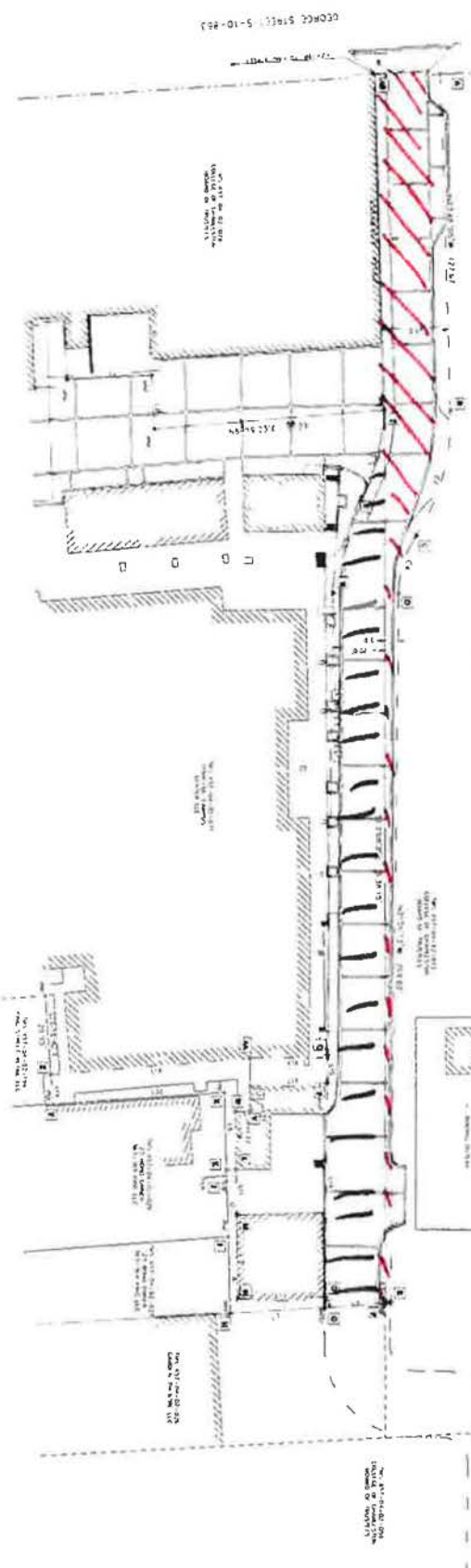
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SHEET: 1

(b) c.1

 = Cost C  
 = Campus Center



THE INFORMATION CONTAINED HEREIN IS FOR THE EXCLUSIVE USE OF THE CLIENT AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE SURVEYOR. THE SURVEYOR ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS PLAN. THE CLIENT ACCEPTS FULL RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED AND THE USE OF THIS PLAN.

**NOTES:**  
 1. THE SURVEY WAS MADE BY THE SURVEYOR IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS AND ETHICS OF THE SURVEYING PROFESSION.  
 2. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND NO EVIDENCE OF ANY UNRECORDED EASEMENTS OR ENCUMBRANCES.  
 3. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT PROPERTIES AND HAS FOUND NO EVIDENCE OF ANY UNRECORDED EASEMENTS OR ENCUMBRANCES.  
 4. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE RECORDS OF THE CHARLESTON COUNTY CLERK'S OFFICE AND HAS FOUND NO EVIDENCE OF ANY UNRECORDED EASEMENTS OR ENCUMBRANCES.  
 5. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE RECORDS OF THE CHARLESTON COUNTY CLERK'S OFFICE AND HAS FOUND NO EVIDENCE OF ANY UNRECORDED EASEMENTS OR ENCUMBRANCES.

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DATE: 6/1/2020

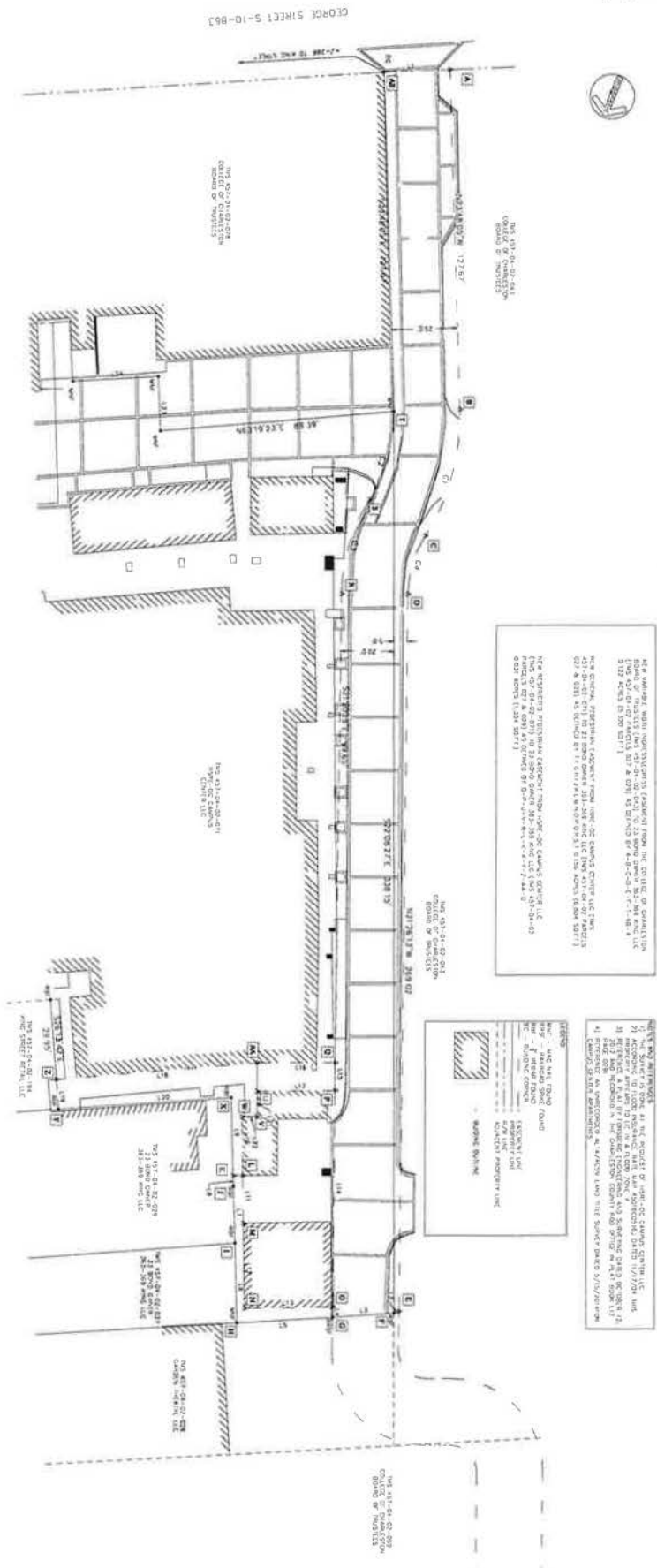
PROJECT: 1834

SCALE: 1" = 20'

BY: [Signature]

**PLAT SHOWING NEW INGRESS/EGRESS EASEMENT -**  
**NEW RESTRICTED PEDESTRIAN EASEMENT AND**  
**GENERAL PEDESTRIAN EASEMENT**  
**FOR 23 BOND OWNER 363-369 KING LLC**  
 CITY OF CHARLESTON - CHARLESTON COUNTY, S.C.

**FORSBERG ENGINEERING AND SURVEYING, INC.**  
 1181 BARNWELL HIGHWAY, SUITE 100  
 CHARLESTON, SOUTH CAROLINA 29407  
 (843) 551-1833 FAX: (843) 551-1762  
 WWW.FORSBERGENGINEERING.COM



NO CHANGE, WITH IMPROVEMENTS (EXCEPT FROM THE CITY OF CHARLESTON) TO EXISTING LOT 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

PARCEL CURVE TABLE

CURVE #	LENGTH	STATION	BEARING	CHORD BEARING	CHORD LENGTH
01	100.00	0+00.00	N 00° 00' 00" W	N 00° 00' 00" W	100.00
02	100.00	0+100.00	S 00° 00' 00" E	S 00° 00' 00" E	100.00
03	100.00	0+200.00	E 00° 00' 00" S	E 00° 00' 00" S	100.00
04	100.00	0+300.00	N 00° 00' 00" W	N 00° 00' 00" W	100.00

PARCEL LINE TABLE

LINE #	DIRECTION	LENGTH
01	N 00° 00' 00" W	100.00
02	S 00° 00' 00" E	100.00
03	E 00° 00' 00" S	100.00
04	N 00° 00' 00" W	100.00



THIS SHEET IS LESS THAN ONE (1) SHEET IN A SERIES OF SHEETS. SEE SHEET RECORDING INFORMATION FOR SHEET NUMBER AND SHEET TITLE.

PLAT SHOWING NEW INGRESS/EGRESS EASEMENT -  
 NEW RESTRICTED PEDESTRIAN EASEMENT AND  
 GENERAL PEDESTRIAN EASEMENT  
 FOR 23 BOND OWNER 363-369 KING LLC  
 CITY OF CHARLESTON CHARLESTON COUNTY, S.C.

DATE: 01/20/2020  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: 1"=20'  
 SHEET NUMBER: 1

**FORSBERG ENGINEERING AND SURVEYING, INC.**  
 1587 SAVANNAH HIGHWAY SUITE B  
 D. BOX 10575  
 CHARLESTON, SOUTH CAROLINA 29417  
 (843) 571-2622 FAX (843) 571-5780  
 www.forsberg-engineering.com  
 ENGINEERING AND LANDSCAPE ARCHITECTURE



(b) d.



Andrew T. Hsu, Ph.D.  
President

Grant Gillespie  
Executive Director  
South Carolina State Fiscal Accountability Authority  
BOX 1244  
Columbia, South Carolina 29211

Delivered via email - GGillespie@sfaa.sc.gov

Dear Mr. Gillespie,

The College of Charleston request that the State Fiscal Accountability Authority (Authority) approve the easement consideration terms between the College and 23 Bond Owner 363-369 King, LLC. We understand these terms vary from the current standing policy of the Authority but given the circumstances of this development, an exemption seems appropriate. This student housing project will benefit not only the College of Charleston community, but the also the greater efforts for continued redevelopment of the middle-King Street business district.

Thank you for your consideration. Please let us know if you have any questions.

Sincerely,

Paul Patrick  
Chief of Staff  
College of Charleston

cc: Lancaster, Ashlie - [Ashlie.Lancaster@admin.sc.gov](mailto:Ashlie.Lancaster@admin.sc.gov)  
Trenholm Walker - [Walker@WGFLAW.com](mailto:Walker@WGFLAW.com)  
Kenny Bingham - [Kenny.Bingham@arlaw.com](mailto:Kenny.Bingham@arlaw.com)

**AGENCY:** Department of Administration, Facilities Management and Property Services

**SUBJECT:** SC Department of Public Safety Lease at 33 Villa Road, Greenville

The South Carolina Department of Public Safety (DPS) requests approval to lease 18,207 rentable square feet of office space from Piedmont Center Owner, LLC (“Landlord”) at 33 Villa Road, Suite 200, Greenville. DPS has leased space at this location since November 2011, which houses units of the Highway Patrol, State Transport Police, the Multi-disciplinary Accident Investigation Team, and the Telecommunications Team. DPS’s current lease at this location expires on October 31, 2021. The Court of Common Pleas in Greenville County appointed Trident Pacific Real Estate Group, Inc. as Receiver in March 2019 and the Court appointed receiver continues in that role.

After contacting state agencies to verify no adequate state space was available, the Department of Administration solicited for commercial space. Five proposals were received, one was deemed non-responsive and the selected location was the lowest bid of the remaining 4 proposals.

The space meets the standard of 210 RSF/person with a density of approximately 140 RSF/person. The lease provides free parking spaces for staff and visitors in the adjacent parking lot.

The lease term will be five (5) years commencing November 1, 2021. The rental rate for the first year of the term will be \$14.50 per rentable square foot, which is an increase from their current rate of \$13.75 per square foot, for an annual aggregate amount of \$264,001.50. The rental rate will then increase by 3% annually as more specifically set forth in the chart below. The total rent to be paid over the 5-year term will be \$1,401,619.82. This is a full gross lease and includes all operating expenses.

Term	Rent/SF	Monthly Rent	Annual Rent
Year 1	\$14.50	\$22,000.13	\$264,001.50
Year 2	\$14.94	\$22,660.13	\$271,921.55
Year 3	\$15.38	\$23,339.93	\$280,079.19
Year 4	\$15.84	\$24,040.13	\$288,481.57
Year 5	\$16.32	\$24,761.33	\$297,136.01

The following chart represents comparable lease rates of similar space:

Tenant	Location	Rate/ RSF
Vocational Rehabilitation	301 N. Main St.	\$19.70
Vacant	701 Easley Bridge Road*	\$19.75
Vacant	100 Verdae Blvd.	\$23.00
Vacant	80 International Dr.*	\$21.50
Vacant	1001 Keys Dr.*	\$19.75

\*Submitted in response to solicitation.

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: SC Department of Public Safety Lease at 33 Villa Road, Greenville

DPS has adequate funds for the lease according to a Budget Approval Form approved June 16, 2021, which also includes a multi-year plan. Lease payments will be funded through motor vehicle license/title fees and driver's license fees. No option to purchase the property is included in the lease. The lease was approved by JBRC on August 17, 2021.

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AUTHORITY ACTION REQUESTED:

As requested by the Department of Administration, Facilities Management Property Services on behalf of the SC Department of Safety, approve a 5 year lease of 18,207 rentable square feet of office space from Piedmont Center Owner, LLC ("Landlord") at 33 Villa Road, Suite 200, Greenville.

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ATTACHMENTS:

Agenda item worksheet and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: September 8, 2021

Regular Agenda

**1. Submitted by:**

- (a) Agency: Department of Administration
- (b) Authorized Official Signature:

*Ashlie Lancaster*  
Ashlie Lancaster, Director

**2. Subject:** SC Department of Public Safety Lease at 33 Villa Road, Greenville

**3. Summary and Background Information:**

The South Carolina Department of Public Safety (DPS) requests approval to lease 18,207 rentable square feet of office space from Piedmont Center Owner, LLC ("Landlord") at 33 Villa Road, Suite 200, Greenville. DPS has leased space at this location since November 2011, which houses units of the Highway Patrol, State Transport Police, the Multi-disciplinary Accident Investigation Team, and the Telecommunications Team. DPS's current lease at this location expires on October 31, 2021. The Court of Common Pleas in Greenville County appointed Trident Pacific Real Estate Group, Inc. as Receiver in March 2019 and the Court appointed receiver continues in that role.

After contacting state agencies to verify no adequate state space was available, the Department of Administration solicited for commercial space. Five proposals were received, one was deemed non-responsive and the selected location was the lowest bid of the remaining 4 proposals.

The space meets the standard of 210 RSF/person with a density of approximately 140 RSF/person. The lease provides free parking spaces for staff and visitors in the adjacent parking lot.

The lease term will be five (5) years commencing November 1, 2021. The rental rate for the first year of the term will be \$14.50 per rentable square foot, which is an increase from their current rate of \$13.75 per square foot, for an annual aggregate amount of \$264,001.50. The rental rate will then increase by 3% annually as more specifically set forth in the chart below. The total rent to be paid over the 5-year term will be \$1,401,619.82. This is a full gross lease and includes all operating expenses.

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Vacant	1001 Keys Dr.*	\$19.75

\*Submitted in response to solicitation.

DPS has adequate funds for the lease according to a Budget Approval Form approved June 16, 2021, which also includes a multi-year plan. Lease payments will be funded through motor vehicle license/title fees and driver's license fees. No option to purchase the property is included in the lease. The lease was approved by JBRC on August 17, 2021.

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**4. What is the Authority asked to do?** Approve the proposed five-year lease.

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**5. What is recommendation of the division of Facilities Management and Property Services?**  
Approve the proposed five-year lease.

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**6. Private Participant Disclosure – Check one:**

No private participants will be known at the time the Authority considers this agenda item.  
Landlord is an exempt governmental entity.

A Private Participant Disclosure form has been attached for each private participant.  
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

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**7. Recommendation of other office (as required)?**

- (a) Authorized Signature: \_\_\_\_\_  
 (b) Office Name: Click or tap here to enter text.

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**8. List of Supporting Documents:**

- (a) Letter from Agency dated June 14, 2021.  
 (b) SC Code of Laws Sections 1-11-55 and 1-11-56



## South Carolina Department of Public Safety

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June 14, 2021

Ms. Ashlie Lancaster  
South Carolina Department of Administration  
Real Property Services  
1200 Senate Street, 6<sup>th</sup> floor  
Columbia, SC 29201

RE: Lease for 33 Villa Rd, Suite 200, Greenville SC 29615

Dear Ms. Lancaster:

The South Carolina Department of Public Safety requests approval from the Joint Bond Review Committee and the State Fiscal Accountability Authority to enter into a (5) year lease with Gregg Williams Receiver for Piedmont Center Owner, LLC for 18,207 square feet rentable square feet of office space at 33 Villa Rd, Suite 200, Greenville SC 29615. SCDPS's current lease at 33 Villa Rd, Suite 200, Greenville SC 29615 expires on October 31, 2021.

As the largest law enforcement agency in the state, it is the mission of the South Carolina Department of Public Safety to protect and serve the public with the highest standard of conduct and professionalism; to save lives through educating the citizens of South Carolina on highway safety and diligent enforcement of laws governing traffic, motor vehicles, commercial carriers, and immigration; to provide protective services for government officials, state government properties, and the general public visiting these properties; and to ensure a safe, secure environment for the citizens of the state of South Carolina and its visitors. This location includes units of the Highway Patrol, State Transport Police, the Multi-disciplinary Accident Investigation Team (MAIT), and the Telecommunications Team.

After contacting state agencies to verify that there was no adequate state space available, the Department of Administration solicited for commercial space and five proposals were received. Of those received, one proposal was deemed non-responsive, leaving four to review. The lowest offer received was for the current space occupied by SCDPS. After careful consideration, 33 Villa Rd, Suite 200, Greenville SC 29615 was selected as it was the most cost effective offer. The cumulative cost of the lease during the term is \$1,401,619.82.

Thank you for your consideration of this request and please let me know if you need any additional information.

Sincerely,

R G Woods, IV

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Patriots Point Development Authority Lease Amendments

Patriots Point Development Authority (“PPDA”) is requesting approval to amend two leases with Great American Life Insurance Company (“GALIC”).

PPDA is the Landlord and GALIC is the tenant under (i) the Lease Agreement for Parcel A (as amended, the “**Parcel A Lease**”) dated July 2, 1996, assigned to GALIC from Charleston Harbor Partners I Limited Partnership on May 2, 2002, covering approximately 9.79 acres on the Charleston Harbor in Mount Pleasant, SC, (ii) the Lease Agreement for Parcels B, C, and D (as amended, the “**Parcel BCD Lease**”) dated January 1, 1997, assigned to GALIC from Charleston Harbor Partners III Limited Partnership on May 2, 2002, covering approximately 14.55 acres on the Charleston Harbor in Mount Pleasant, SC, and (iii) the Lease Agreement for Parcel B-1 (as amended, the “**Parcel B-1 Lease**”) dated January 1, 1997, assigned to Charleston Harbor Marina, Inc. on May 2, 2002 and transferred to its two shareholders GALIC and Great American Insurance Company December 31, 2006 upon the dissolution of Charleston Harbor Marina, Inc. and held by GALIC for the benefit of GALIC and Great American Insurance Company, covering a marina on the Charleston Harbor in Mount Pleasant, SC. The Parcel A Lease, the Parcel BCD Lease, and the Parcel B-1 Lease are together the “**Leases.**”

Under each of the Leases, GALIC pays to PPDA a combination of Base Rent and Percentage Rent on all revenue derived from the leased premises. Under the Parcel BCD Lease, GALIC pays the greater of the combination of Base Rent and Percentage Rent and Minimum Rent of \$360,000 annually. The Parcel B-1 Lease and the Parcel BCD Lease account for the possibility that GALIC would develop new sources of gross revenue for uses and/or activities that were not contemplated at the time the Leases were signed, and that if a new source of revenue is proposed that does not fall within the revenue categories set forth Landlord and Tenant will negotiate in good faith the appropriate percentage to be used to calculate Percentage Rent.

In July of 2017, GALIC notified PPDA that GALIC would be receiving gross revenue from several new sources for which applicable rent percentage were not set forth in the Parcel BCD Lease (New Revenue Categories). PPDA proposed suggested percentages based on similar revenue categories under other leases and on percentages applied under PPDA’s most recently negotiated lease with Patriots Annex, LLC. Efforts to negotiate rent percentages for the New Revenue Categories continued throughout 2018 and 2019 and, during this time, other rent disputes were identified. As negotiations were at an impasse, on October 22, 2019 PPDA filed and served a summons and complaint on GALIC to commence an arbitration against GALIC to set the rent percentages and resolve the other rent disputes.

AGENCY: Department of Administration, Facilities Management and Property Services

SUBJECT: Patriots Point Development Authority Lease Amendments

The arbitration has now resulted in a proposed settlement which includes executing a Ninth Amendment to the Parcel BCD Lease and a Sixth Amendment to the Parcel B-1 Lease. The Ninth Amendment to the Parcel BCD Lease would increase Minimum Rent from \$360,000 to \$500,000 annually beginning in calendar year 2021 with an annual escalation at the rate of increase of the CPI for the prior twelve (12) months but not to exceed four (4) percent and would set percentages for New Revenue Categories as follows:

Harborside meeting room rental	5%
Harborside Audio Visual revenues	5%
Beach Club meeting room rental	5%
Fish House room rental	3.5%
Estuary Spa and other spa revenues	5%
Marina Store sales	5%
Parking deck/garage revenues	6.5%
Harborside cigar sales	5%
Gift Shop sales	5%
Banquet Special Event Sponsorship revenues	5%
Banquet Special Event revenues	5%
Valet Laundry Sales	5%
Valet Parking revenues	6.5%
Self-Parking revenues	6.5%
Cabana Rental revenues	6.5%
Postage revenues	5%
Copies revenues	5%
Offsite Transportation revenues	5%
Fish House Miscellaneous revenues	5%
Harborside Miscellaneous Food Bev revenues	3% Food; 5% Beverage
Harborside Food Beverage Delivery Fee revenues	5%
Pavilion Rental revenues	5%
Pavilion AV In-House revenues	5%
Pavilion AV Vendor revenues	5%
Pavilion Other revenues	5%
Resort Fee revenues	5%
Any new unspecified revenue items unless otherwise agreed	5%

AGENCY: Department of Administration, Facilities Management and Property Services

SUBJECT: Patriots Point Development Authority Lease Amendments

The Sixth Amendment to the Parcel B-1 Lease would set percentages for New Revenue Categories as follows:

Meeting room rental	5%
Audio Visual revenues	5%
Beach Club meeting room rental	5%
Fish House room rental	3.5%
Spa revenues	5%
Marina Store sales	5%
Parking deck/garage revenues	10%
Cigar sales	5%
Gift Shop sales	5%
Banquet Special Event Sponsorship revenues	5%
Banquet Special Event revenues	5%
Valet Laundry Sales	5%
Valet Parking revenues	10%
Self-Parking revenues	10%
Cabana Rental revenues	6.5%
Postage revenues	5%
Copies revenues	5%
Offsite Transportation revenues	5%
Restaurant Miscellaneous revenues	5%
Miscellaneous Food Bev revenues	3% Food; 5% Beverage
Food Beverage Delivery Fee revenues	5%
Venue Rental revenues	5%
Venue AV In-House revenues	5%
Venue AV Vendor revenues	5%
Venue Other revenues	5%
Resort Fee revenues	5%
Any new unspecified revenue items unless otherwise agreed	5%



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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Patriots Point Development Authority Lease Amendments

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As a matter of information and as a result of the arbitration, PPDA will also consent to assigning of the Leases by GALIC to Charleston Harbor Holding Company, LLC (CHHC) as American Financial Group ("AFG"), GALIC's parent corporation, is selling GALIC, but retaining GALIC's real estate assets. CHHC is a wholly owned subsidiary of AFG. As part of these assignments, AFG will execute a Lease Guaranty for each lease, providing an absolute and unconditional guaranty of payment and performance. Additionally, PPDA will receive a total of \$699,099.49 for rent disputes, attorneys' fees and a one-time consent fee.

Executing the Lease Amendments was approved by JBRC on August 17, 2021

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AUTHORITY ACTION REQUESTED:

As requested by the Patriots Point Development Authority through the Department of Administration, Facilities Management and Property Services, approve the request by PPDA to fully execute the proposed Sixth Amendment to Lease Agreement for Parcel B-1 and the proposed Ninth Amendment to Lease Agreement for Parcels B, C and D, consistent with the material terms reflected herein and as more fully described in the PPDA Executive Summary included with this submission.

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ATTACHMENTS:

Agenda item worksheet and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

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**Meeting Scheduled for: September 8, 2021**

**Regular Agenda**

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**1. Submitted by:**

- (a) Agency: Department of Administration  
(b) Authorized Official Signature:

*Ashlie Lancaster*  
Ashlie Lancaster, Director

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**2. Subject: Patriots Point Development Authority Lease Amendments**

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**3. Summary and Background Information:**

Patriots Point Development Authority ("PPDA") is requesting approval to amend two leases with Great American Life Insurance Company ("GALIC").

PPDA is the Landlord and GALIC is the tenant under (i) the Lease Agreement for Parcel A (as amended, the "**Parcel A Lease**") dated July 2, 1996, assigned to GALIC from Charleston Harbor Partners I Limited Partnership on May 2, 2002, covering approximately 9.79 acres on the Charleston Harbor in Mount Pleasant, SC, (ii) the Lease Agreement for Parcels B, C, and D (as amended, the "**Parcel BCD Lease**") dated January 1, 1997, assigned to GALIC from Charleston Harbor Partners III Limited Partnership on May 2, 2002, covering approximately 14.55 acres on the Charleston Harbor in Mount Pleasant, SC, and (iii) the Lease Agreement for Parcel B-1 (as amended, the "**Parcel B-1 Lease**") dated January 1, 1997, assigned to Charleston Harbor Marina, Inc. on May 2, 2002 and transferred to its two shareholders GALIC and Great American Insurance Company December 31, 2006 upon the dissolution of Charleston Harbor Marina, Inc. and held by GALIC for the benefit of GALIC and Great American Insurance Company, covering a marina on the Charleston Harbor in Mount Pleasant, SC. The Parcel A Lease, the Parcel BCD Lease, and the Parcel B-1 Lease are together the "**Leases.**"

Under each of the Leases, GALIC pays to PPDA a combination of Base Rent and Percentage Rent on all revenue derived from the leased premises. Under the Parcel BCD Lease, GALIC pays the greater of the combination of Base Rent and Percentage Rent and Minimum Rent of \$360,000 annually. The Parcel B-1 Lease and the Parcel BCD Lease account for the possibility that GALIC would develop new sources of gross revenue for uses and/or activities that were not contemplated at the time the Leases were signed, and that if a new source of revenue is proposed that does not fall within the revenue categories set forth Landlord and Tenant will negotiate in good faith the appropriate percentage to be used to calculate Percentage Rent.

In July of 2017, GALIC notified PPDA that GALIC would be receiving gross revenue from several new sources for which applicable rent percentage were not set forth in the Parcel BCD Lease (New Revenue Categories). PPDA proposed suggested percentages based on similar revenue categories under other leases and on percentages applied under PPDA's most recently negotiated lease with Patriots Annex, LLC. Efforts to negotiate rent percentages for the New Revenue Categories continued throughout 2018 and 2019 and, during this time, other rent disputes were identified. As negotiations were at an impasse, on October 22, 2019 PPDA filed and served a summons and complaint on GALIC to commence an arbitration against GALIC to set the rent percentages and resolve the other rent disputes.

The arbitration has now resulted in a proposed settlement which includes executing a Ninth Amendment to the Parcel BCD Lease and a Sixth Amendment to the Parcel B-1 Lease. The Ninth Amendment to the



Parcel BCD Lease would increase Minimum Rent from \$360,000 to \$500,000 annually beginning in calendar year 2021 with an annual escalation at the rate of increase of the CPI for the prior twelve (12) months but not to exceed four (4) percent and would set percentages for New Revenue Categories as follows:

Harborside meeting room rental	5%
Harborside Audio Visual revenues	5%
Beach Club meeting room rental	5%
Fish House room rental	3.5%
Estuary Spa and other spa revenues	5%
Marina Store sales	5%
Parking deck/garage revenues	6.5%
Harborside cigar sales	5%
Gift Shop sales	5%
Banquet Special Event Sponsorship revenues	5%
Banquet Special Event revenues	5%
Valet Laundry Sales	5%
Valet Parking revenues	6.5%
Self-Parking revenues	6.5%
Cabana Rental revenues	6.5%
Postage revenues	5%
Copies revenues	5%
Offsite Transportation revenues	5%
Fish House Miscellaneous revenues	5%
Harborside Miscellaneous Food Bev revenues	3% Food; 5% Beverage
Harborside Food Beverage Delivery Fee revenues	5%
Pavilion Rental revenues	5%
Pavilion AV In-House revenues	5%
Pavilion AV Vendor revenues	5%
Pavilion Other revenues	5%
Resort Fee revenues	5%
Any new unspecified revenue items unless otherwise agreed	5%

The Sixth Amendment to the Parcel B-1 Lease would set percentages for New Revenue Categories as follows:

Meeting room rental	5%
Audio Visual revenues	5%
Beach Club meeting room rental	5%
Fish House room rental	3.5%
Spa revenues	5%
Marina Store sales	5%
Parking deck/garage revenues	10%
Cigar sales	5%

Gift Shop sales	5%
Banquet Special Event Sponsorship revenues	5%
Banquet Special Event revenues	5%
Valet Laundry Sales	5%
Valet Parking revenues	10%
Self-Parking revenues	10%
Cabana Rental revenues	6.5%
Postage revenues	5%
Copies revenues	5%
Offsite Transportation revenues	5%
Restaurant Miscellaneous revenues	5%
Miscellaneous Food Bev revenues	3% Food; 5% Beverage
Food Beverage Delivery Fee revenues	5%
Venue Rental revenues	5%
Venue AV In-House revenues	5%
Venue AV Vendor revenues	5%
Venue Other revenues	5%
Resort Fee revenues	5%
Any new unspecified revenue items unless otherwise agreed	5%

As a matter of information and as a result of the arbitration, PPDA will also consent to assigning of the Leases by GALIC to Charleston Harbor Holding Company, LLC (CHHC) as American Financial Group (“AFG”), GALIC’s parent corporation, is selling GALIC, but retaining GALIC’s real estate assets. CHHC is a wholly owned subsidiary of AFG. As part of these assignments, AFG will execute a Lease Guaranty for each lease, providing an absolute and unconditional guaranty of payment and performance. Additionally, PPDA will receive a total of \$699,099.49 for rent disputes, attorneys’ fees and a one-time consent fee.

Executing the Lease Amendments was approved by JBRC on August 17, 2021

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**4. What is the Authority asked to do?** Approve the request by PPDA to fully execute the proposed Sixth Amendment to Lease Agreement for Parcel B-1 and the proposed Ninth Amendment to Lease Agreement for Parcels B, C and D consistent with the material terms reflected herein and as more fully described in the PPDA Executive Summary included with this submission.

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**5. What is recommendation of the division of Facilities Management and Property Services?** Consider approval of the request by PPDA to fully execute the proposed Sixth Amendment to Lease Agreement for Parcel B-1 and the proposed Ninth Amendment to Lease Agreement for Parcels B, C and D, consistent with the material terms reflected herein and as more fully described in the PPDA Executive Summary included with this submission.

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**6. Private Participant Disclosure – Check one:**

No private participants will be known at the time the Authority considers this agenda item.

Landlord is an exempt governmental entity.

A Private Participant Disclosure form has been attached for each private participant. As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

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**7. Recommendation of other office (as required)?**

- (a) Authorized Signature: \_\_\_\_\_
- (b) Office Name: Click or tap here to enter text.

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**8. List of Supporting Documents:**

- (a) Letter from Agency dated July 15, 2021
- (b) PPDA Executive Summary
- (c) SC Code of Laws Sections 1-11-55 and 1-11-56

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July 15, 2021

**Via Electronic Mail:**

Ashlie Lancaster, Director  
SC Department of Administration  
803-737-9822  
Email: ashlie.lancaster@admin.sc.gov

Mr. Rick Harmon  
Research Director, Joint Bond Review Committee  
803-734-2114  
Email: RickHarmon@scsenate.gov

**Re: Settlement of Arbitration with Great American Life Insurance Company and ancillary Amendments to three leases, and Request to Assign Leases for Parcels A, BC&D and B-1 to a wholly-owned subsidiary, Charleston Harbor Holding Company, LLC**

Dear Rick and Ashlie:

Enclosed are the following;

1. Executive Summary explaining the arbitration and settlement, the resulting lease amendments, and the proposed assignments of leases,
2. May 28, 2021 Resolution of the PPDA Board approving the Settlement and related documents and instruments,
3. The Settlement Agreement,
4. The Ninth Amendment to the BCD Lease,
5. The Sixth Amendment to the B-1 Lease,
6. The Assignment and Assumption of the Parcel A Lease,
7. The Assignment and Assumption of the Parcel BCD Lease,
8. The Assignment and Assumption of the Parcel B-1 Lease,

## Craver Law Firm, PA

Ms. Ashlie Lancaster  
Mr. Rick Harmon  
July 15, 2021  
Page 2 of 2

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9. The Lease Guaranty of the Parcel A Lease,
10. The Lease Guaranty of the Parcel BCD Lease, and
11. The Lease Guaranty of the Parcel B-1 Lease.

Patriots Point is submitting these documents and instruments for review and approval as appropriate by the Joint Bond Review Committee and the State Fiscal Accountability Authority.

Please do not hesitate to contact me if you have any questions.

Sincerely,

*s/ Bill*

William E. Craver, III

Copies by email: Wayne Adams, Vice Chairman, PPDA  
Rorie Cartier, Executive Director, PPDA  
Terry Ansley, Director of Property, PPDA  
Rebecca C. Achey, Esq.  
Brandon Dermody  
Shawn DeJames, Esq.  
Keith McCook, Esq.

Enclosures as stated

**Executive Summary**  
**August 3, 2021**

**Settlement Agreement and Lease Amendments between Patriots Point Development Authority as Landlord and Great American Life Insurance Company as Tenant and Consents to Lease Assignments by Patriots Point Development Authority as Landlord and Lease Guaranties by American Financial Group, all dated as of May, 2021**

Patriots Point Development Authority (“PPDA”) is the Landlord and Great American Life Insurance Company (“GALIC”) is the Tenant under (i) the Lease Agreement for Parcel A (as amended, the “Parcel A Lease”) dated July 2, 1996, assigned to GALIC from Charleston Harbor Partners I Limited Partnership on May 2, 2002, covering approximately 9.79 acres on the Charleston Harbor in Mount Pleasant, SC, (ii) the Lease Agreement for Parcels B, C, and D (as amended, the “Parcel BCD Lease”) dated January 1, 1997, assigned to GALIC from Charleston Harbor Partners III Limited Partnership on May 2, 2002, covering approximately 14.55 acres on the Charleston Harbor in Mount Pleasant, SC, and (iii) the Lease Agreement for Parcel B-1 (as amended, the “Parcel B-1 Lease”) dated January 1, 1997, assigned to Charleston Harbor Marina, Inc. on May 2, 2002 and transferred to its two shareholders GALIC and Great American Insurance Company December 31, 2006 upon the dissolution of Charleston Harbor Marina, Inc. and held by GALIC for the benefit of GALIC and Great American Insurance Company, covering approximately 12.15 acres of critical area and the adjacent marina on the Charleston Harbor in Mount Pleasant, SC. The Parcel A Lease, the Parcel BCD Lease, and the Parcel B-1 Lease are together the “Leases.”

Included with this Executive Summary are two plats prepared in 2019. One plat that shows the parcel boundaries, the area within each parcel, and the tenant holding the lease of each parcel. The second plat is the first plat superimposed over an aerial photo of the property taken in 2019.

Parcel A is approximately 9.79 acres and includes the 125 room Harborside Hotel and parking, Reel Bar, swimming pool and Harborside beach. Charleston Harbor Resort web site pricing for the rooms at this hotel for the month August, 2021 ranges from \$169 to \$349 per room with a room for August 17, 2021 being \$169 per night.

Parcels BC&D are included in one lease. The hotel and amenities on Parcels BC&D are marketed as “luxury” products while the hotel and amenities on Parcel A are marketed at a more modest price level. Charleston Harbor Resort web site pricing for the rooms at this hotel for the month August, 2021 ranges from \$407 to \$757 per room with a room for August 17, 2021 being \$427 per night. Parcel B is approximately 8.96 acres and includes the 92 room Beach Club Hotel with large waterfront swimming pools, the Tiki Bar, the Estuary Spa, the Marina Store, the Fish House Restaurant, the Bridge Bar and parking. Parcel D is approximately 4.22 acres, and Parcel C is approximately 1.37 acres. The 4,900 square foot Lookout Pavilion straddles Parcels C and D and is an outside venue for weddings, receptions and other outdoor events. Parcel D also contains a parking lot.



Parcel B-1 is approximately 12.15 acres of critical area. The Charleston Harbor Marina is in Charleston Harbor adjacent to this parcel. The marina has more than 17,000 linear feet of floating dock to accommodate vessels up to 120 feet in length with approximately 287 boat slips ranging from 33 to 66 feet, bath and shower facilities, and fuel sales.

Under each of the Leases, GALIC pays to PPDA a combination of Base Rent and Percentage Rent. Under the Parcel BCD Lease, GALIC pays PPDA the greater of (i) a combination of Base Rent and Percentage Rent, and (ii) Minimum Rent of \$360,000 per year. Percentage Rent under each Lease is calculated using a percentage of GALIC's gross revenue derived from the leased premises. On Parcel A, GALIC pays a flat 5% on all gross revenue. Under the Parcel BCD Lease and the Parcel B-1 Lease, the applicable percentage of gross revenue depends on the source of the revenue. For example, under the Parcel BCD Lease, GALIC pays PPDA 5% of gross revenue derived from renting hotel rooms, and 3% of gross revenue derived from selling food, and additional percentages on a variety of other gross revenue sources.

The Leases are clear that GALIC is required to pay Percentage Rent on all revenue derived from the leased premises. The Parcel B-1 Lease and the Parcel BCD Lease account for the possibility that GALIC would develop new sources of gross revenue for uses and/or activities that were not contemplated at the time the Leases were signed, and therefore have not been assigned a percentage for purposes of calculating Percentage Rent. Each of the Parcel B-1 Lease and the Parcel BCD Lease provide that "Landlord and Tenant expressly acknowledge and agree that if the Tenant proposes a use on the Premises which does not fall within" one of the revenue categories set forth in the Lease, then "they will negotiate in good faith an appropriate percentage to be used to calculate Percentage Rent due in connection with such use."

In July of 2017, GALIC informed PPDA that with completion of construction and opening of the hotel expansion under the Parcel BCD Lease, GALIC's gross revenue from Parcels B, C, and D would be such that GALIC expected Base Rent and Percentage Rent to exceed Minimum Rent for the first time. In addition, GALIC would be receiving gross revenue from several new sources for which applicable rent percentages were not set forth in the Parcel BCD Lease or the Parcel B-1 Lease. For example, GALIC would begin charging for parking, and the Parcel BCD Lease does not provide an applicable rent percentage for parking revenues. GALIC provided PPDA with a list of its various revenue categories for its operations on Parcels B, C, and D, including the new categories (the "**New Revenue Categories**") for which no applicable rent percentages had been determined.

On August 30, 2017, Oliver Rooskens (Managing Director of the Charleston Harbor Resort & Marina for GALIC), Paul Rebello (Director of Finance of the Charleston Harbor Resort & Marina for GALIC), Bob Howard (Property Manager for PPDA), Mac Burdette (Executive Director for PPDA), Phil Wagoner, and Bill Craver met at Patriots Point. PPDA presented Mr. Rooskens and Mr. Rebello a memorandum discussing the Parcel BCD Lease rent structure and suggesting percentages to be applied to each of the New Revenue Categories. PPDA reasonably based these suggested percentages on (i) the percentages applied to similar revenue categories under the Leases, and (ii) the percentages applied under PPDA's most recently negotiated lease with Patriots Annex, LLC. Mr. Rooskens and Mr. Rebello did not agree with PPDA's suggested percentages, and PPDA asked Mr. Rooskens and Mr. Rebello to produce a counter-offer as the next step in the negotiations.

Letters were exchanged by PPDA and GALIC and PPDA's and GALIC's representatives subsequently met on February 9, 2018 and March 20, 2018. PPDA never received a comprehensive response to its suggested percentages for the New Revenue Categories. Instead, GALIC treated these negotiations as an opportunity to attempt to extract concessions from PPDA. GALIC's responses focused on (i) attempting to avoid paying percentage rent on gross revenues derived from parking, despite GALIC's clear obligation under the Leases to do so, and (ii) requesting changes to other terms of the Leases that were not part of the original discussion. PPDA has been clear from the beginning of these discussions that PPDA will not entertain suggested changes to the Leases that would decrease the amount of rent received by PPDA. GALIC's requested changes to the Leases were an attempt to "cherry pick" advantageous elements from the rent structure in PPDA's lease with Patriots Annex, LLC. The rent structure in the Patriots Annex, LLC lease is a comprehensive structure designed to provide PPDA annual rent of the greater of fair market rent and percentage rent, and includes an extensive list of categories of revenue and applicable rent percentages. PPDA informed GALIC that if GALIC was interested in amending its leases to incorporate the entire Patriots Annex, LLC lease rent structure, PPDA would consider the request. GALIC did not respond.

As an ancillary and related matter, PPDA told GALIC that PPDA would like to discuss GALIC's plans for completing the development of Parcels B, C, and D. According to PPDA's records, GALIC paid \$494,485 in rent to PPDA for Parcels B, C, and D for the July 1, 2017 through June 30, 2018 fiscal year (according to GALIC's records the amount of rent paid was \$464,789.32; PPDA assumed this difference was the result of the timing of the actual receipt of funds). Fair market rent for Parcels B, C, and D is approximately \$50,000 per acre per year (based on appraisals obtained by PPDA in connection with setting the Patriots Annex, LLC minimum rent), which comes to \$727,500 per year ( $14.55 \times \$50,000 = \$727,500$ ). PPDA told GALIC that at the present time, GALIC was significantly underutilizing the Parcels B, C and D property. PPDA requested GALIC's plans to complete the development of Parcels B, C, and D, to increase the revenue GALIC receives from the property, and to increase the rent paid by GALIC to PPDA. PPDA informed GALIC that if GALIC has no further development plans, then PPDA's approach to setting percentages for the New Revenue Categories would be adjusted.

One of the New Revenue Categories listed on GALIC's 2017 list for Parcel BCD was for gross revenue derived from the Estuary Spa. In reviewing the gross revenue spreadsheets provided by GALIC, gross revenue from the Estuary Spa for the 2018-2019 fiscal year was \$349,980.04. However, GALIC did not pay Percentage Rent based on this revenue. Instead, GALIC paid Percentage Rent on GALIC's estimate of the fair market rent of the square footage of the Spa as retail space. The Authority objected to GALIC's characterization of the Estuary Spa as retail space, and demanded that GALIC pay rent of 5% of revenue.

Further GALIC failed to pay rent for 9 months on the Marina Store and paid based on GALIC's estimate of the fair market rent of the square footage of the Marina Store as retail space. PPDA objected to this approach.

Because discussions with the local GALIC representatives were at an impasse, PPDA requested that a meeting be arranged between Wayne Adams, Chairman of PPDA Board's

Development Committee, and one of GALIC's senior policy makers. PPDA did not receive a response to this request.

PPDA pointed out to GALIC that the Parcel B-1 Lease and the Parcel BCD Lease require PPDA and GALIC to "negotiate in good faith" to arrive at the appropriate rent percentages to be applied to new revenue categories, and that GALIC failed to negotiate in good faith. PPDA noted that GALIC was receiving gross revenue from some or all of the New Revenue Categories, but GALIC was not paying Percentage Rent on that gross revenue. PPDA further pointed out that Section XVIII.F of each of the Parcel BCD Lease and the Parcel B-1 Lease provides arbitration mechanisms that can be initiated by either PPDA or GALIC in the event of disagreements under the Leases.

PPDA wrote multiple letters to GALIC representatives and indicated to GALIC that if PPDA did not receive a response to its letters within thirty (30) days from the date of each letter, PPDA would commence an arbitration proceeding to resolve the matter. PPDA received no results; therefore, on October 22, 2019 PPDA filed and served a summons and complaint on GALIC to commence an arbitration against GALIC to set the rent percentages and resolve the other rent disputes. PPDA named an arbitrator, but GALIC did not.

Coincidentally, in October 2019, PPDA received a request from GALIC to consent to GALIC transferring the Leases to Charleston Harbor Holding Company, LLC, a wholly-owned GALIC subsidiary. PPDA refused to consider the request until the rent issues were resolved.

At the beginning of May, 2021, as COVID was winding down, discussions with GALIC's legal team commenced, and GALIC informed PPDA that American Financial Group ("AFG"), GALIC's parent corporation, was selling GALIC, but was going to keep GALIC's real estate assets. The multi-billion dollar sale was set to close May 31, 2021. PPDA responded by proposing a global settlement of the issues in the arbitration as follows:

- (1) **Amendment to Alphabet Parcel Leases.** The following two amendments may be referred to herein as the "**Lease Amendments.**" The Parties approved and agreed to execute the Ninth Amendment to Lease Agreement for Parcels B, C and D, and the Sixth Amendment to Lease Agreement for Parcel B-1.

The Ninth Amendment provided that (i) commencing in 2021, minimum rent would be increased from \$360,000 to \$500,000 with an annual escalator equal to CPI, not to exceed 4%, and (ii) commencing July 1, 2021, percentages were set for the categories not previously set, including 5% of revenue for the Estuary Spa and the Marina Store.

The Sixth Amendment provided that commencing July 1, 2021, percentages were set for the categories not previously set.

- (2) **Payments.** PPDA will receive a total of \$699,099.49 broken down as follows: GALIC, as the Tenant of the Parcels BCD Lease and AFG as the beneficial owner of 100% of the ownership interests in GALIC, agreed to pay Patriots Point in settlement of

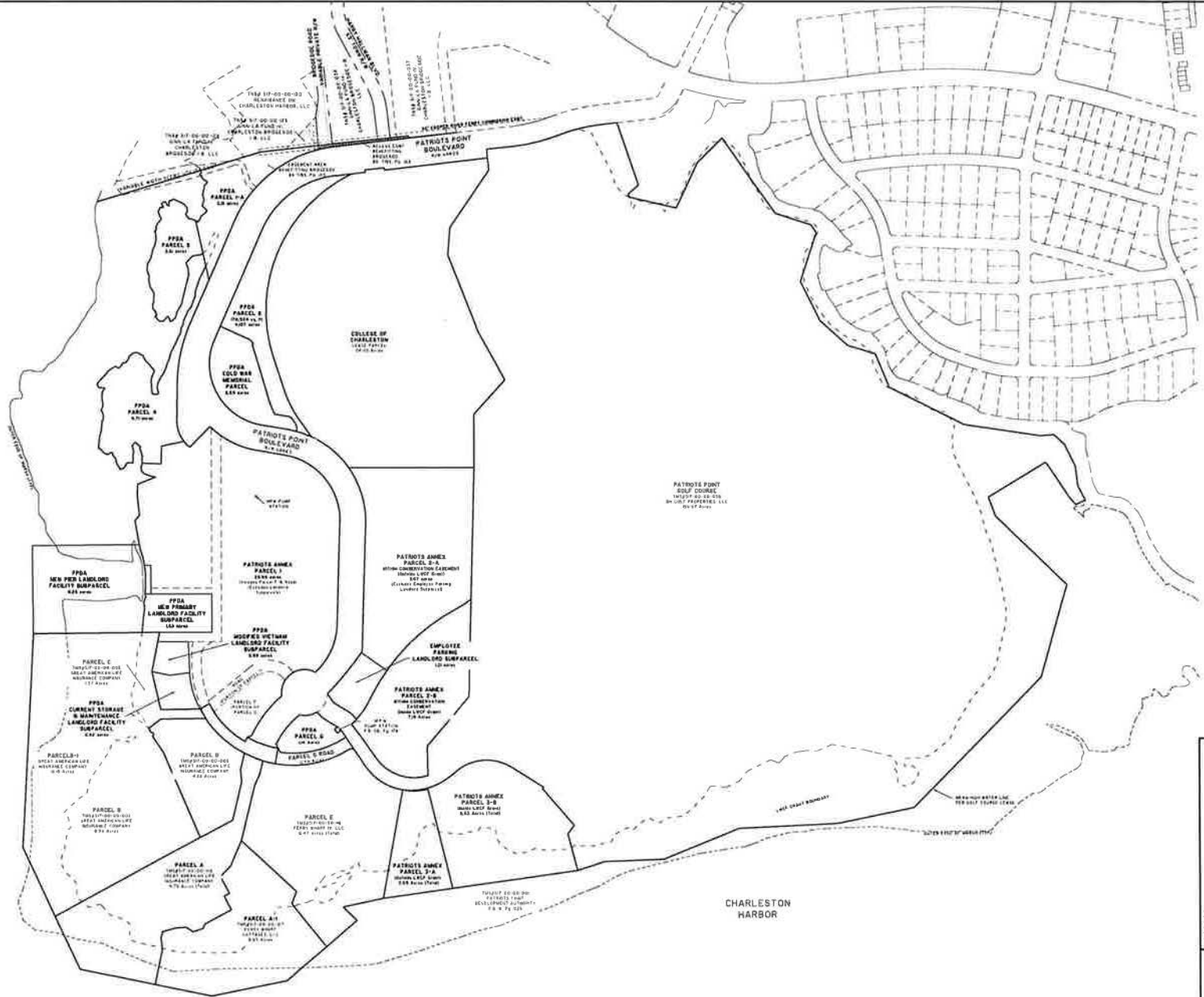
amounts allegedly underpaid under the Leases, up to and including 5/31/2021, a one-time cash payment of \$550,000 plus \$49,099.49 in attorneys' fees, for a total payment of \$599,099.49. In addition, AFG agreed to pay Patriots Point a one-time consent fee of \$100,000 in connection with Patriots Point consenting to the assignments of the Leases

- (3) **Approval of Transfer of Leases to CHHC for the Benefit of American Financial Group.** GALIC will execute and deliver to PPDA the following documents/instruments fully-executed by GALIC: the Settlement Agreement, the Amendments, and the Guaranties and the Assignment Documents (as agreed by the parties to accomplish the assignment of the Leases by GALIC to CHHC). Upon execution by GALIC and AFG (as applicable) of the Settlement Agreement, the Amendments, and the Guaranties and the Assignment Documents, Patriots Point will execute and forward to the South Carolina State Fiscal Accountability Authority and the South Carolina Joint Bond Review Committee the (i) Settlement Agreement, (ii) the Amendments, (iii) the Guaranties, and (iv) the Assignment Documents. The transactions will be complete upon approval from the South Carolina authorities of PPDA's request to fully execute the proposed Sixth Amendment to Lease Agreement for Parcel B-1 and the proposed Ninth Amendment to Lease Agreement for Parcels B, C and D consistent with the material terms reflected herein, and the payment of the funds required hereby. AFG executed broad unlimited guaranties of the three leases to be assigned.
- (4) **Meet, Discuss and Consider Resolving The Application of 180,000 SF Language and Parcel C-1.** AFG and Patriots Point agreed to meet as soon as is practicable to discuss and consider resolution of the alleged 180,000-foot development requirement in the Leases and possible amendments concerning Parcel C-1.
- (5) **Dismiss Arbitration and Related proceedings.** PPDA and GALIC directed their respective counsel that upon receipt of the (i) Settlement Agreement, (ii) the Amendments, (iii) the Guaranties, and (iv) the Assignment Documents fully executed by the Parties, and payment and receipt of the funds referred to above, such counsel shall dismiss the arbitration and related state court action referred to above without prejudice.
- (6) **Release and Waivers.** PPDA agreed that its claims for unpaid Rent in the Arbitration proceeding having been settled and resolved as set forth above, each party to the Settlement Agreement hereby (a) releases the other parties from any claims, demands or related expenses that the releasing party may have or claim to have for the payment of Rent (as defined in the Leases) claimed in the Arbitration proceeding not to have been paid up to and including May 31, 2021 other than as has been paid and is being paid in the normal course of dealings between the parties through such date, or as provided in this Settlement Agreement or the Leases as amended by the Amendments, and (b) waives any claims, demands and related expenses that any aspect of this Settlement Agreement may violate or may be a breach of any of the Leases.

PPDA's Board, with the assistance of counsel, has considered, approved and executed the above-

referenced documents (subject to required State approvals), the material terms of which are set forth in the Executive Summary. PPDA requests authorization to execute and deliver the amendments pursuant to the material terms outlined in PPDA's submission and the Executive Summary. PPDA representatives and counsel are available to meet with staff and officials at their convenience.



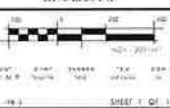


**VARIOUS PARCELS  
AT PATRIOTS POINT**

PREPARED FOR:  
PATRIOTS POINT  
DEVELOPMENT AUTHORITY  
TOWN OF MT. PLEASANT  
CHARLESTON COUNTY  
SOUTH CAROLINA



**THOMAS & HUTTON**  
INCORPORATED  
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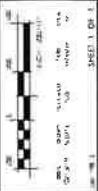


**VARIOUS PARCELS  
AT PAIROIS POINT  
PAIROIS POINT  
DEVELOPMENT AUTHORITY**

TOWN OF FAIRBANKS  
1001 11TH AVENUE  
FAIRBANKS, ALASKA 99701

NO. OF SHEETS	10
SHEET NO.	1

**THOMAS E. HUTTON**  
REGISTERED PROFESSIONAL LAND SURVEYOR  
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PHONE: 479-1322  
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T: 847 840 0204



DATE: 11/11/11  
DRAWN BY: J. HUTTON  
CHECKED BY: T. HUTTON  
SCALE: AS SHOWN ON THIS PLAN  
SHEET 1 OF 1



**SECTION 1-11-55.** Leasing of real property for governmental bodies.

(1) "Governmental body" means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive branch of this State. Governmental body excludes the General Assembly, Legislative Council, the Legislative Services Agency, the judicial department and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts.

(2) The Division of General Services of the Department of Administration is hereby designated as the single central broker for the leasing of real property for governmental bodies. No governmental body shall enter into any lease agreement or renew any existing lease except in accordance with the provisions of this section. However, a technical college, with the approval by the State Board for Technical and Comprehensive Education, and a public institution of higher learning, may enter into any lease agreement or renew any lease agreement up to one hundred thousand dollars annually for each property or facility.

(3) When any governmental body needs to acquire real property for its operations or any part thereof and state-owned property is not available, it shall notify the Division of General Services of its requirement on rental request forms prepared by the division. Such forms shall indicate the amount and location of space desired, the purpose for which it shall be used, the proposed date of occupancy and such other information as General Services may require. Upon receipt of any such request, General Services shall conduct an investigation of available rental space which would adequately meet the governmental body's requirements, including specific locations which may be suggested and preferred by the governmental body concerned. When suitable space has been located which the governmental body and the division agree meets necessary requirements and standards for state leasing as prescribed in procedures of the department as provided for in subsection (5) of this section, General Services shall give its written approval to the governmental body to enter into a lease agreement. All proposed lease renewals shall be submitted to General Services by the time specified by General Services.

(4) The department shall adopt procedures to be used for governmental bodies to apply for rental space, for acquiring leased space, and for leasing state-owned space to nonstate lessees.

(5) Any participant in a property transaction proposed to be entered who maintains that a procedure provided for in this section has not been properly followed, may request review of the transaction by the Director of the Division of General Services of the Department of Administration or his designee.

HISTORY: 1997 Act No. 153, Section 2; 2002 Act No. 333, Section 1; 2002 Act No. 356, Section 1, Pt VI.P(1); 2011 Act No. 74, Pt VI, Section 13, eff August 1, 2011; 2013 Act No. 31, Section 1, eff May 21, 2013; 2014 Act No. 121 (S.22), Pt V, Section 7.A, eff July 1, 2015.

Code Commissioner's Note



The last sentence in subsection (2), which was added by 2011 Act No. 74, was inadvertently omitted from 2014 Act No. 121 due to a scrivener's error. At the direction of the Code Commissioner, this sentence has been retained in subsection (2).

#### Effect of Amendment

The 2011 amendment, in subsection (2), added the third sentence relating to technical colleges.

The 2013 amendment, in subsection (1), substituted "Legislative Services Agency" for "Office of Legislative Printing, Information and Technology Systems".

2014 Act No. 121, Section 7.A, in subsection (1), substituted "agency, government corporation, or other establishment or official of the executive branch" for "legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branches"; in subsection (2), substituted "Division of General Services of the Department of Administration" for "Budget and Control Board"; in subsection (3) substituted "division" for "office" in three instances, and substituted "department" for "board"; in subsection (4), substituted "department" for "board"; and in subsection (5), substituted "Division of General Services of the Department of Administration" for "Office of General Services".

#### **SECTION 1-11-56.** Program to manage leasing; procedures.

(A) The Division of General Services of the Department of Administration, in an effort to ensure that funds authorized and appropriated for rent are used in the most efficient manner, is directed to develop a program to manage the leasing of all public and private space of a governmental body. The department must submit regulations for the implementation of this section to the General Assembly as provided in the Administrative Procedures Act, Chapter 23, Title 1. The department's regulations, upon General Assembly approval, shall include procedures for:

- (1) assessing and evaluating agency needs, including the authority to require agency justification for any request to lease public or private space;
- (2) establishing standards for the quality and quantity of space to be leased by a requesting agency;
- (3) devising and requiring the use of a standard lease form (approved by the Attorney General) with provisions which assert and protect the state's prerogatives including, but not limited to, a right of cancellation in the event of:
  - (a) a nonappropriation for the renting agency;
  - (b) a dissolution of the agency; and

- (c) the availability of public space in substitution for private space being leased by the agency;
- (4) rejecting an agency's request for additional space or space at a specific location, or both;
- (5) directing agencies to be located in public space, when available, before private space can be leased;
- (6) requiring the agency to submit a multiyear financial plan for review by the department with copies sent to Ways and Means Committee and Senate Finance Committee, before any new lease for space is entered into; and
- (7) requiring prior review by the Joint Bond Review Committee and the requirement of State Fiscal Accountability Authority approval before the adoption of any new or renewal lease that commits more than two hundred thousand dollars annually in rental or lease payments or more than one million dollars in such payments in a five-year period.

(B) Leases or rental agreements involving amounts below the thresholds provided in subsection (A)(7) may be executed by the Department of Administration without this prior review by the Joint Bond Review Committee and approval by the State Fiscal Accountability Authority.

(C) The threshold requirements requiring review by the Joint Bond Review Committee and approval by the State Fiscal Accountability Authority as contained in subsection (A)(7) also apply to leases or rental agreements with nonstate entities whether or not the state or its agencies or departments is the lessee or lessor.

HISTORY: 1997 Act No. 153, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.B, eff July 1, 2015.

#### Effect of Amendment

2014 Act No. 121, Section 7.B, added subsection designator (A); in subsection (A), substituted "Division of General Services of the Department of Administration" for "State Budget and Control Board", substituted "a governmental body" for "state agencies", and added the second sentence relating to regulations; in subsection (A)(6), substituted "department" for "board's budget office", and deleted text relating to prior review by the Joint Bond Review Committee; rewrote subsection (A)(7); and added subsections (B) and (C) .

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Study on Leasing Policies and Procedures

During its meeting of December 10, 2020, members of the Joint Bond Review Committee expressed interests in provisions of state law and policies concerning solicitations and awards for commercial lease space. Subsequently, during its meeting of December 17, 2020, members of the State Fiscal Accountability Authority expressed similar and additional interests. These interests are collectively summarized as follows.

**Resident Vendor Preference.** Whether or not a resident vendor preference applies, and whether or not proposers domiciled in South Carolina are disadvantaged in any way, under the policies and procedures applicable to solicitations for leases of commercial space.

**Lease Terms and Effects of Telecommuting.** Whether or not agencies are considering the effects of telecommuting and other changes in staffing requirements on lease term and space needs over time.

**Renegotiation Provisions.** Whether or not longer-term leases include provisions for rate renegotiation or early termination in the event the rental market fluctuates or agency needs change over time, and the potential negative effects these provisions might have on bidder participation and pricing.

**Timeliness of Submissions.** Whether or not the process can be modified to support earlier review by the committee and the authority to provide opportunities for comment and redirection prior to expiration of the existing lease.

Representatives of the Department of Administration (Admin) and the Office of General Counsel of the State Fiscal Accountability Authority met with committee staff on January 6, 2021, to develop an approach to evaluating these considerations, and Admin subsequently contracted with CBRE to produce the attached report. Additionally, Admin is requiring all agencies to conduct an evaluation of the potential effects of telecommuting and other changes in space needs over time when presenting their space needs, and Admin includes provisions in commercial leases to

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Study on Leasing Policies and Procedures

allow for agencies to reduce or eliminate space if needed in the future. Admin has also been working with agencies to support earlier review of proposed leases, and the timeliness of submissions has improved. The report was submitted as information to JBRC on August 17, 2021.

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AUTHORITY ACTION REQUESTED:

Receive the attached report from CBRE of the State of SC Leasing Policies and Procedures as information.

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ATTACHMENTS:

Agenda item worksheet and attachments



**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

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**Meeting Scheduled for: September 8, 2021**  
**Agenda**

**Regular**

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**1. Submitted by:**

- (a) Agency: Department of Administration  
(b) Authorized Official Signature:

*Ashlie Lancaster*  
Ashlie Lancaster, Director

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**2. Subject: Study on Leasing Policies and Procedures**

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**3. Summary and Background Information:**

During its meeting of December 10, 2020, members of the Joint Bond Review Committee expressed interests in provisions of state law and policies concerning solicitations and awards for commercial lease space. Subsequently, during its meeting of December 17, 2020, members of the State Fiscal Accountability Authority expressed similar and additional interests. These interests are collectively summarized as follows.

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**4. What is the Authority asked to do?** Receive the attached report as information.

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**5. What is recommendation of the division of Facilities Management and Property Services?** Receive the attached report as information.

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**6. Private Participant Disclosure – Check one:**

No private participants will be known at the time the Authority considers this agenda item. Landlord is an exempt governmental entity.

A Private Participant Disclosure form has been attached for each private participant.

As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

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**7. Recommendation of other office (as required)?**

(a) Authorized Signature: \_\_\_\_\_

(b) Office Name: Click or tap here to enter text.

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**8. List of Supporting Documents:**

(a) CBRE State of South Carolina Study on Leasing Policies and Procedures



# STATE OF SOUTH CAROLINA

Leasing Policies and Procedures Study

July 2021



**CBRE**



TABLE OF  
**CONTENTS**

- I. EXECUTIVE SUMMARY
- II. SOUTH CAROLINA COMMERCIAL  
LANDLORD REVIEW AND RESIDENT  
PREFERENCE ANALYSIS
- III. SOUTH CAROLINA COMMERCIAL  
OFFICE MARKET OVERVIEW & OUTLOOK



The following report addresses the current ownership mix across South Carolina markets and the current market climate coming out of a global pandemic with researched backed information.

## ***I. South Carolina Commercial Landlord Review and Resident Preference Analysis:***

- The majority of office building ownership in the major leasing markets is held by South Carolinians.
- In a survey on resident Landlord preference conducted to 26 states, none currently have a resident Landlord preference.
- Implementing a resident Landlord preference would negatively impact competition and rates.
- Out-of-state building owners positively contribute to the South Carolina economy in many ways such as using South Carolina brokers and building managers, paying local taxes, and hiring local contractors.
- Large office buildings (100,000+ SF) are frequently owned by out-of-state investors, implementing a resident Landlord preference would make these buildings less likely to be selected as possible lease locations and could reduce the number of bids received and therefore reduce competition.

## ***II. South Carolina Commercial Office Market Overview and Outlook***

- Office space is still in demand.
- Rental and vacancy rates are forecast to remain relatively steady. The State of South Carolina can be confident their pre-pandemic negotiated rental rates will remain on par with the market climate.
- Including a rate renegotiation clause based on market factors into the lease terms would negatively impact competition and rates.



# COMMERCIAL LANDLORD REVIEW AND RESIDENT PREFERENCE ANALYSIS

## ***State of South Carolina Request:***

A market analysis of the number/percentage of resident vendor commercial landlords in the State, including analysis of the impact on the State having a resident preference in the lease solicitation process. The market analysis will represent the major markets tracked by CBRE Research: Greenville, Columbia and Charleston.

## ***Approach to Project:***

The CBRE team catalogued all office buildings tracked by in-house research within the State of South Carolina (over 2,000 properties). To determine if the owner is a South Carolina resident, we reviewed ownership data for office buildings over 10,000 square feet, plus existing state commercial leases as provided by Admin. For the purposes of this study, where a Limited Liability Corporation (LLC) was identified as the owner, CBRE utilized tools such as the state tax assessor websites, Realquest, Costar and Lexis Nexis to identify, to the best of our ability, the LLC ownership.

We researched the address for the true ownership entity and used that address to determine whether the owner was a South Carolina resident. For example, a building in Columbia is owned by Hamilton Equity Partners, research found that the partnership is based out of New York, establishing the ownership as New York ownership.

CBRE has provided summary data on the following pages.



## **Do other States include a resident preference?**

- 26 out of 50 States responded to the survey conducted by CBRE.
- No States surveyed utilize a resident landlord preference.
- The only constraint noted was that the landlord must be registered to do business in the State.

## **CBRE has concluded that the potential impacts on South Carolina leasing process should it implement a "resident" landlord preference are as follows:**

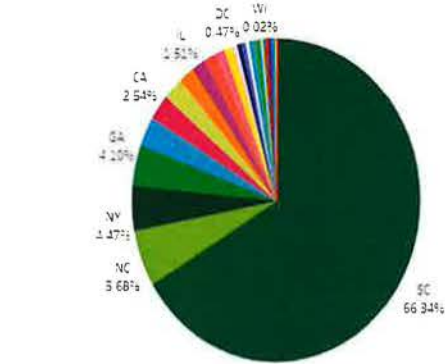
- Limit market competition.
- Counterintuitive to economic development and investments into the major markets given the State's desires to attract out-of-state businesses.
- Could negatively impact the State's "business friendly" reputation.
- Negatively impacts the State's lease rate with less competitive lease procurements.
- Challenge to define what constitutes a "resident" landlord.
- Adds significant due diligence and time for leasing staff to analyze ownership of each proposer.

## **In addition to the aforementioned data and key findings, it should be noted that out-of-state building owners positively contribute to the South Carolina economy in the following ways:**

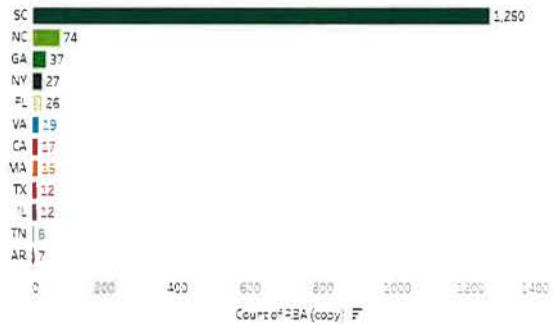
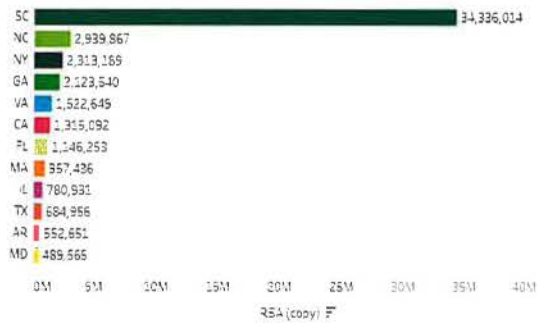
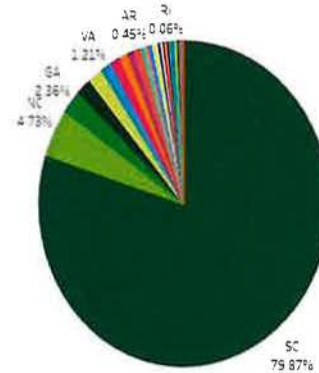
- Pay local taxes.
- Licensed in South Carolina.
- Require South Carolina legal representation.
- Oftentimes use South Carolina based brokers.
- Use and pay for local utilities.
- Hire local employees for: janitorial, landscape, mechanical, electrical, plumbing and other associated building maintenance.

# Landlord Mix Per CBRE Database of Tracked Space Statewide:

OWNERSHIP BY SQ. FT.



OWNERSHIP BY COUNT

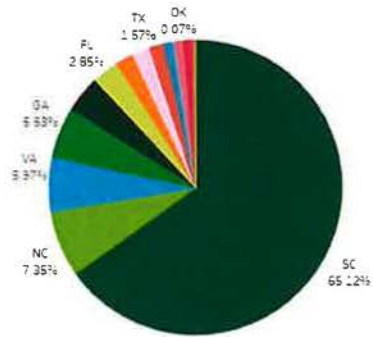


## SOUTH CAROLINIAN OWNERSHIP BY SIZE RANGE\*

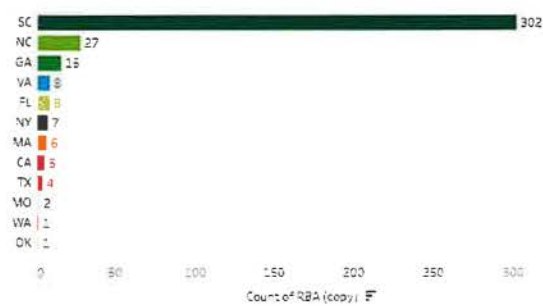
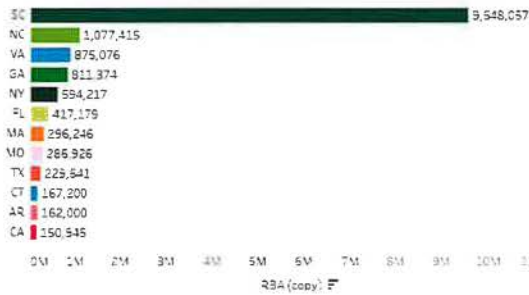
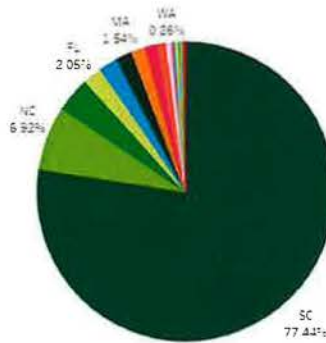
10,000-50,000 SF	50,000-100,000 SF	100,000+ SF
<b>83%</b>	<b>59%</b>	<b>45%</b>

# Landlord Mix in Major South Carolina Markets: Greenville

OWNERSHIP BY SQ. FT.



OWNERSHIP BY COUNT

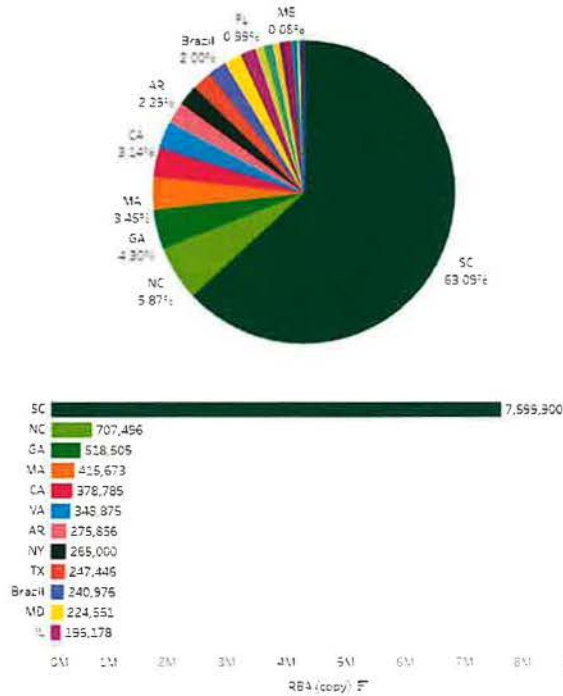


## SOUTH CAROLINIAN OWNERSHIP BY SIZE RANGE\*

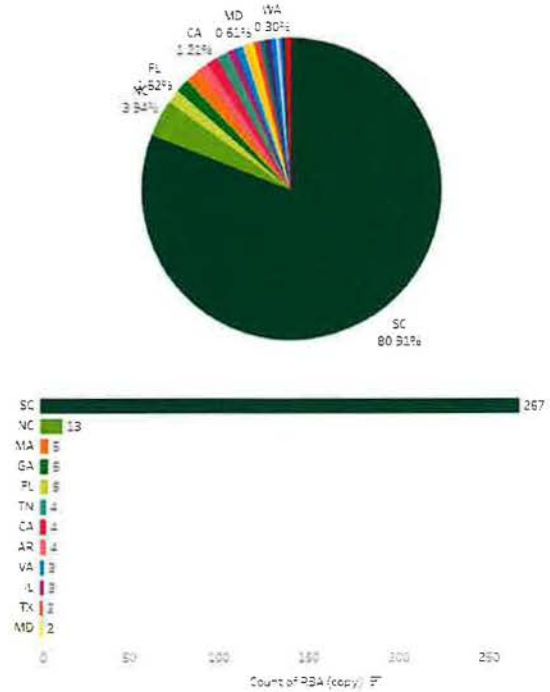
10,000-50,000 SF	50,000-100,000 SF	100,000+ SF
<b>82%</b>	<b>59%</b>	<b>50%</b>

# Landlord Mix in Major South Carolina Markets: Columbia

OWNERSHIP BY SQ. FT.



OWNERSHIP BY COUNT



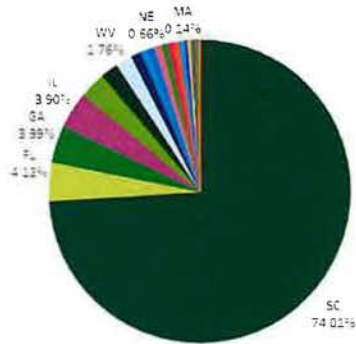
## SOUTH CAROLINIAN OWNERSHIP BY SIZE RANGE\*

10,000-50,000 SF	50,000-100,000 SF	100,000+ SF
<b>85%</b>	<b>65%</b>	<b>38%</b>

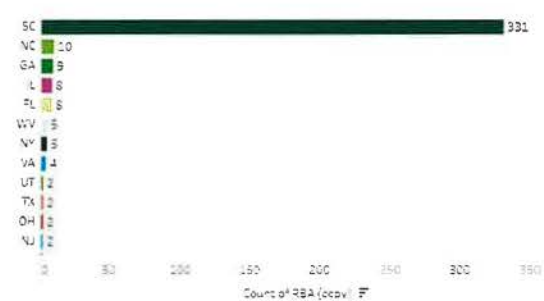
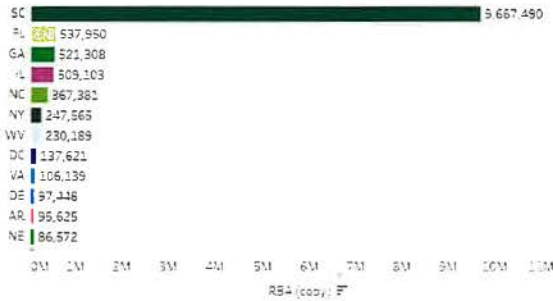
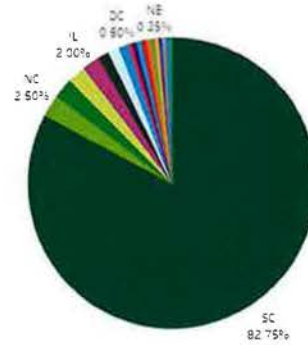


# Landlord Mix in Major South Carolina Markets: Charleston

OWNERSHIP BY SQ. FT.



OWNERSHIP BY COUNT



## SOUTH CAROLINIAN OWNERSHIP BY SIZE RANGE\*

10,000-50,000 SF	50,000-100,000 SF	100,000+ SF
85%	62%	65%

### KEY FINDINGS

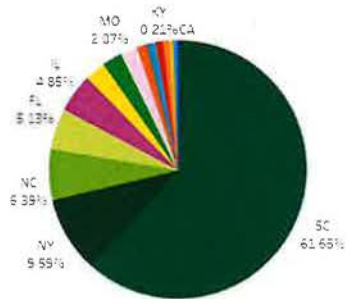
70-80% of Office Building ownership in the major markets is held by South Carolinians

#### What this means for State of South Carolina:

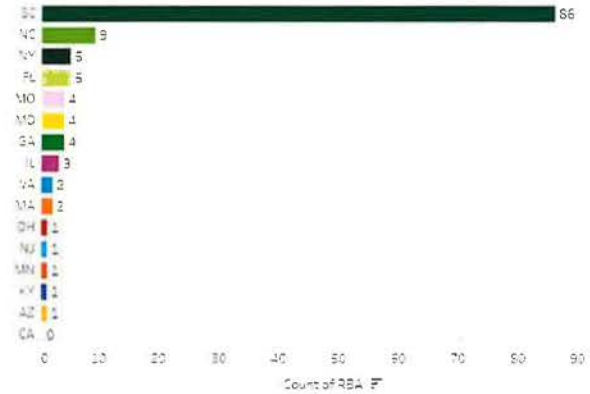
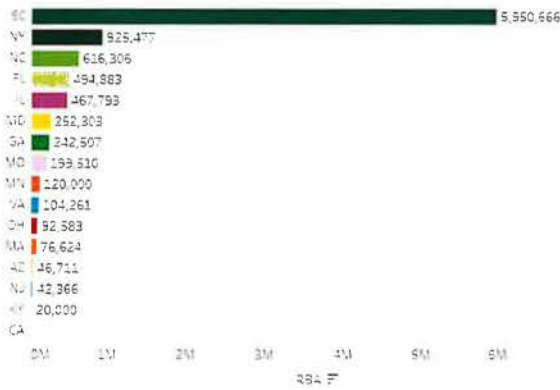
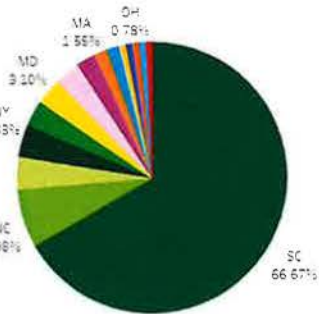
The market is already predominantly owned by resident South Carolinians and adding a preference could add time and resources to the leasing process while negatively impacting competition.

# Admin's Lease Portfolio Landlord Mix: All Markets

OWNERSHIP BY SQ. FT.



OWNERSHIP BY COUNT



## SOUTH CAROLINIAN OWNERSHIP BY SIZE RANGE\*

10,000-50,000 SF	50,000-100,000 SF	100,000+ SF
68%	55%	62%

### KEY FINDINGS

As building size increases the percentage of resident ownership decreases.

#### What this means for State of South Carolina:

Multi-story downtown buildings are the buildings most likely owned out-of-state and the State of South Carolina only has leased locations in 29 buildings over 100,000 square feet of which 17 are owned by South Carolinians. Those buildings over 100k SF account for only 22% of leased buildings in Admin's portfolio.

\*South Carolina ownership determined by data publicly available and proprietary knowledge



# COMMERCIAL OFFICE MARKET OVERVIEW & OUTLOOK

## **State of South Carolina Request:**

A “white paper” detailing the major SC commercial office market rates and vacancy rates pre-pandemic, currently, and as projected for the future and analyzing the impact of requiring Landlord's to allow for early termination or rate renegotiation if commercial market rates were to significantly decline. In addition, provide other occupancy factors that either benefit the State or contribute to occupancy challenges.

## **Forecasting & Trends:**

Compared to previous recessions, CBRE expects a severe but quick economic crisis. While the expected decline in office employment was more rapid in comparison to the Dot Com bust or Great Financial Crisis, the duration of the current crisis is predicted to be much shorter. Thus, recovery in office rents and vacancy is driven by the ability for the economy to bounce back and start to recover quickly.

Pages 14 and 15 showcase a forecast of anticipated trends for the three major South Carolina Markets: Greenville, Columbia and Charleston. Below is a summation of CBRE's findings.

## **INSIGHTS**

1. *Rental rates are forecast to remain relatively steady or only slightly decrease across the State. This showcases only a slight recession with a quick recovery time. The State can be confident that market rates shall remain relatively steady and that their lease rates will not be overpriced.*
2. *Vacancy to remain stable based on new office delivery and demand. The State can remain confident in the stability of the office market as employees return to the office.*

## **Broker Opinion of Office Market Outlook in South Carolina:**

CBRE does not foresee a decline of the office market in South Carolina. Quickly into the pandemic, CBRE believed the Office market would hold steady and was here to stay.

One year later, that prediction holds true. The situation created by COVID-19 was very different from the Great Recession. Buildings were open and operating throughout the pandemic and only a small portion of tenants requested relief, which was granted as differed rent. On the landlord side, some are granting free rent, however this is only for long term leases. Most companies will continue to need a physical office in which to do business, however they are shifting how they use and design the space to fit a more flexible and collaborative era.

### **REASONS THE OFFICE IS HERE TO STAY:**

1. *Employers are uncertain if the full-time, "work-from-home" model can produce high productivity and performance long-term.*
2. *Overwhelming desire to return to the office to create a work/life balance and community.*
3. *Companies need the ability to collaborate and innovate.*

### **REASONS SOUTH CAROLINA OFFICE IS HERE TO STAY:**

1. *Local and regional firms were much less likely to close or stay closed for long. South Carolina has more local and regional firms than larger markets.*
2. *Due to friendly business environment, stable political climate, relatively low cost of occupancy, attractive climate, and overall quality of life, South Carolina is a recipient of the mass relocations America is experiencing. South Carolina is growing.*
3. *South Carolina is not a state that relies heavily on mass transit for commuting which allows employees to individually access to the office at their convenience.*

#### **KEY FINDING**

Office space is still in demand.

#### **What this means for State of South Carolina:**

The markets in South Carolina are predicted to make a quick recovery with rental rates and vacancy rates to stabilize within the upcoming year. The State of South Carolina can be confident their pre-pandemic negotiated rental rates will remain on par with the market climate.



## Possible Implications and Impacts for Adding Rate Renegotiation to Lease Term:

- Landlords could have a negative reaction as this is not industry standard language.
- Competitive bids could decline.
- Including a rate renegotiation clause could rebound and landlords may propose the opposite; that if market rates were to increase, they could change their rate to reflect the new market value.
- Lack of consistency with private sector tenants and perception that the State is not asking for market terms.

### KEY FINDING

Rate renegotiation due to market factors is not industry standard lease language.

### What this means for State of South Carolina:

Adding lease language on renegotiating rates during lease term could impact rental rates for the State and the number of competitive offers received by potential landlords.

Of note, Operating Expenses are expected to rise (mainly due to an increase in property taxes and utility cost, but all services are susceptible to increases) and Landlords will not be in a position to lower rents. Buildings, in general, may become more expensive to operate. Landlords will be forced to work diligently to cover the increases in Operating Expenses by rent increases the market will bear. Landlords may face the challenge of a loss of net rent. Additionally, the Consumer Price Index (CPI) has shown steady increases long-term contributing to raising rents over time and increased Operating Expenses. The past decade has seen a CPI increase of 21.2%

If the State were to require a rate renegotiation clause based on market factors, we believe it would not be positively received by market-based Landlords. It is possible that, of the Landlords that do accept this language, they would front load their lease rates to compensate for uncertainty.

## Occupancy Factors – Key Trends

- Mass migration from larger markets (i.e. Los Angeles, New York City) to smaller secondary and tertiary markets (i.e. Nashville, Charleston, Austin).
- Move from large downtown headquarters to smaller, multiple satellite offices.
- Office environment shifting to focus on community, collaboration and culture verses individual work.
- Increased technology to support mixed presence collaboration.
- Office space is becoming a consumer product, offering services and amenities that the home office cannot.
- Flexible work policies are becoming a standard offering.
- Office space shifting to focus on overall employee well-being.

## GREENVILLE, SC

- The Greenville-Spartanburg office leasing market remains on pause due to the COVID-19 crisis, but vaccine distribution is expected to give way to new activity in 2021.
- Local occupiers are finding employees are eager to get back to the workplace. This return to the office and the de-densification of space could spur additional demand in 2021.
- Greenville-Spartanburg is regaining the jobs lost which peaked at 12.2% in May 2020 – current unemployment is 3.5% lower than the pre-pandemic level, a positive sign for future office demand.
- Like other Southeast markets, Greenville expects to rebound in 2021 and see the continued migration of people from the Northeast due to a welcoming business environment, low cost of living and competitive tax benefits.

**4%**

5-YEAR PROJECTED  
POPULATION GROWTH

**6.7%**

5-YEAR PROJECTED  
JOB GROWTH

## COLUMBIA, SC

- In contrast with other markets since the COVID-19 pandemic, Columbia has not seen a dramatic uptick in sublease availability, which bodes well for landlords and overall market health into 2021.
- Limited new deliveries and the stabilizing government presence in the office sector will continue to help Columbia remain in balance and active into 2021.
- Columbia's educated workforce, strong millennial concentration and welcoming business environment is leading to a growing tech sector, which could emerge more prominently in 2021.

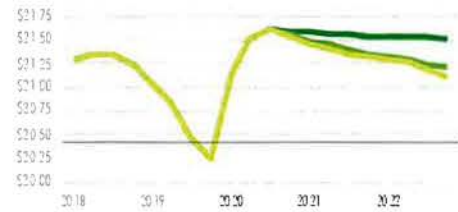
**2.6%**

5-YEAR PROJECTED  
POPULATION GROWTH

**6.3%**

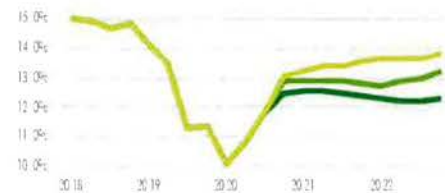
5-YEAR PROJECTED  
JOB GROWTH

### RENT FORECAST\*



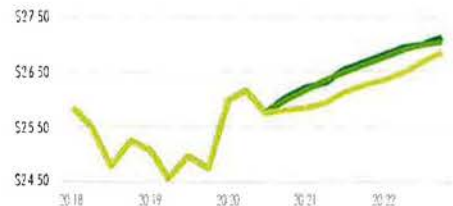
BASELINE DOWNSIDE UPSIDE

### VACANCY FORECAST\*



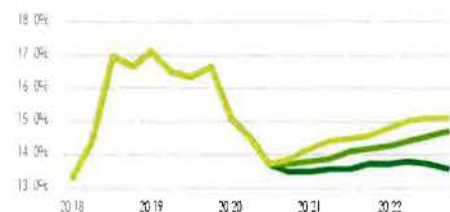
BASELINE DOWNSIDE UPSIDE

### RENT FORECAST\*



BASELINE DOWNSIDE UPSIDE

### VACANCY FORECAST\*



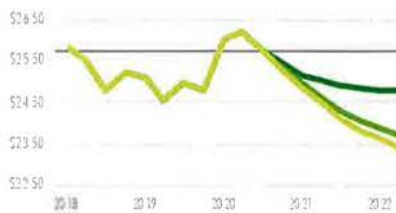
BASELINE DOWNSIDE UPSIDE



## CHARLESTON, SC

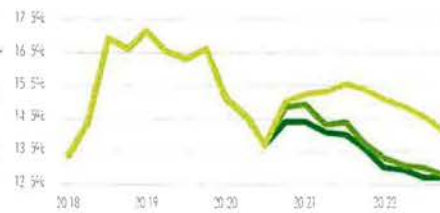
- The Charleston office leasing market paused during most of 2020 due to the COVID-19 pandemic, but optimism for a return to the office in 2021 remains as vaccines make their way to residents and public confidence rises.
- Charleston expects to have a significant amount of office space deliver in 2021 due to an uptick in sublease space, large construction deliveries and a less predictable leasing market.
- Although market fundamentals may fluctuate in 2021, Charleston expects to benefit from companies potentially migrating south due to cost of living and less dense urban environments.
- Charleston's international airport and seaport continue to promote incredible growth for the market. Both have served as economic catalysts and will continue to fuel demand in 2021.
- One factor driving demand for product in Charleston is the impact of global trade. Key additions to the Port's harbor capabilities and additional depth will help support future growth of e-commerce in the region.

### RENT FORECAST\*



BASELINE DOWNSIDE UPSIDE

### VACANCY FORECAST\*



BASELINE DOWNSIDE UPSIDE

**4.5%**  
5-YEAR  
PROJECTED  
POPULATION  
GROWTH

**10.2%**  
5-YEAR  
PROJECTED JOB  
GROWTH

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**AGENCY:** Division of Procurement Services

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**SUBJECT:** Procurement Audit and Certification - South Carolina Arts Commission

In accordance with Section 11-35-1210 of the South Carolina Consolidated Procurement Code, the Division of Procurement Services has audited the following agency and recommends certification within the parameters described in the audit report for the following agencies for a period of three years.

**South Carolina Arts Commission:** supplies and services<sup>1</sup>, \$100,000\* per commitment; information technology<sup>2</sup>, \$100,000 per commitment.

\*Total potential purchase commitment whether single year or multi-term contracts are used.

The internal controls of the SC Arts Commission's procurement system are adequate to ensure compliance with the South Carolina Consolidated Procurement Code and ensuing regulations as described in the audit report. We recommend the State Fiscal Accountability Authority approve procurement certification for the SC Arts Commission at the limits noted above for a period of three years.

---

**AUTHORITY ACTION REQUESTED:**

Grant procurement certification, in accord with Section 11-35-1210, for the following agency within the parameters described in the audit report for the following limits (total potential purchase commitment whether single-or multi- year contracts are used):

**South Carolina Arts Commission:** supplies and services, \$100,000\* per commitment; information technology, \$100,000 per commitment.

\*Total potential purchase commitment whether single year or multi-term contracts are used.

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**ATTACHMENTS:**

Agenda item worksheet and attachments

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<sup>1</sup> Supplies and Services includes non-IT consulting services

<sup>2</sup> Information Technology includes consultant assistance for any aspect of information technology, systems and networks



**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

**Meeting Scheduled for: September 8, 2021**

**Regular Agenda**

**1. Submitted by:**

- (a) Agency: Division of Procurement Services  
(b) Authorized Official Signature:

  
John St. C. White, Materials Management Officer

**2. Subject: Audits and Certification**

**3. Summary and Background Information:**

In accordance with S.C. Code Ann. §11-35-1210, the Division of Procurement Services audited the procurement operating policies and procedures of the South Carolina Arts Commission to determine whether the internal controls of the Commission's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations.

PROCUREMENT AREAS

RECOMMENDED CERTIFICATION LIMITS

Supplies and Services<sup>1</sup>

\*\$ 100,000 per commitment

Information Technology<sup>2</sup>

\*\$ 100,000 per commitment

\*Total potential purchase commitment whether single year or multi-term contracts are used.

<sup>1</sup> Supplies and Services includes non-IT consulting services

<sup>2</sup> Information Technology includes consulting services for any aspect of information technology, systems and networks

The internal controls of the SC Arts Commission's procurement system are adequate to ensure compliance with the South Carolina Consolidated Procurement Code and ensuing regulations as described in the audit report. We recommend the State Fiscal Accountability Authority approve procurement certification for the SC Arts Commission at the limits noted above for a period of three years.

**4. What is the Authority asked to do?** Approve the Recommended Procurement Certification for the South Carolina Arts Commission.

<sup>1</sup> Supplies and Services includes non-IT consulting services.

<sup>2</sup> Information Technology includes consulting services for any aspect of information technology, systems and networks.

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5. **What is recommendation of the submitting agency involved?** Approve the Recommended Procurement Certification

---

6. **Private Participant Disclosure – Check one:**

- No private participants will be known at the time the Authority considers this agenda item.
- A Private Participant Disclosure form has been attached for each private participant.  
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

---

7. **Recommendation of other office (as required)?**

- (a) Authorized Signature: \_\_\_\_\_
- (b) Office Name: \_\_\_\_\_

---

8. **List of Supporting Documents:**

- (a) S.C. Code Ann. § 11-35-1210

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9. **Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.**

**SECTION 11-35-1210. Certification.**

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body's procurement not under term contract; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
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JOHN ST. C. WHITE  
MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
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HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

July 7, 2021

Mr. Delbert H. Singleton Jr.  
Director  
Division of Procurement Services  
6<sup>th</sup> Floor-Wade Hampton Building  
Columbia, South Carolina 29201

Subject: South Carolina Arts Commission  
Independent Procurement Audit Report

Delbert:

I have attached the South Carolina Arts Commission's procurement audit report issued by the Office of Audit and Certification. I concur with the report and recommend it be submitted as information to the State Fiscal Accountability Authority.

Sincerely,

John St. C. White  
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR  
GOVERNOR  
CURTIS M. LOFTIS, JR.  
STATE TREASURER  
RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE  
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JOHN ST. C. WHITE  
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FAX: (803) 737-0639

July 7, 2021

Mr. John St. C. White  
Materials Management Officer  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

Re: South Carolina Arts Commission  
Independent Procurement Audit Report

John:

We audited the internal procurement operating policies and procedures of the South Carolina Arts Commission for the period of January 1, 2015 to June 30, 2020. The objectives of our audit were to determine whether in all material respects, the internal controls of the Commission's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The internal controls of the Arts Commission's procurement system are adequate to ensure compliance, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations, subject to recommendations described in the audit report.

Sincerely,

Crawford Milling  
Director of Audit & Certification

Attachment



**South Carolina Arts Commission**

**INDEPENDENT PROCUREMENT AUDIT REPORT**

**For the Audit Period:  
January 1, 2015 to June 30, 2020**

**Office of Audit & Certification  
Division of Procurement Services  
January 29, 2021**



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## INTRODUCTION

The Division of Procurement Services (DPS) audited the Arts Commission's (Commission) internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 (1) of the South Carolina Consolidated Procurement Code (Code) and R 19-445.2020 of the ensuing regulations.

The primary objective of our audit was to determine whether, in all material respects, the internal controls of the Commission's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of the Commission is responsible for the commission's compliance with the Code. Those responsibilities include the following:

- Identifying the commission's procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the commission administers its procurement programs in compliance with the Code
- Evaluating and monitoring the commission's compliance with the Code
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

## INTRODUCTION

Our audit was also performed to determine if recertification under SC Code Ann. § 11-35-1210 is warranted.

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On August 23, 2016 the State Fiscal Accountability Authority (SFAA) granted the Commission the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 100,000 per commitment
Information Technology	*\$ 100,000 per commitment

\*Total potential purchase commitment whether single-year or multi-term contracts are used.

During the audit, the Commission did not request an increase in its certification limits.

---

### Total Expenditures

During the audit period, the Commission conducted procurements as follows:

	\$ Amount (000s)							
	<u>Count</u>	<u>FY2015</u>	<u>FY2016</u>	<u>FY2017</u>	<u>FY2018</u>	<u>FY2019</u>	<u>FY2020</u>	<u>Total</u>
POs .....	56	21,577	34,540	80,456	86,929	38,136	91,045	352,683
DEV .....	4,268	1,276,574	3,690,135	4,010,648	4,253,710	5,186,550	13,371,496	31,789,114
<b>Total Spend</b>		<b>1,298,152</b>	<b>3,724,675</b>	<b>4,091,104</b>	<b>4,340,639</b>	<b>5,224,686</b>	<b>13,462,541</b>	<b>32,141,797</b>

## SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about the Commission's compliance with the Code for the period January 1, 2015 through June 30, 2020, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) All sole source and emergency procurement justifications. The following sole source procurement activity was reported to DPS:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
2015	-	-0-
2016	1	6,750
2017	3	44,000
2018	3	27,500
2019	1	2,500
2020	-	-0-

- (3) Procurement transactions for the audit period as follows:
  - a) Twenty-eight purchase orders each exceeding \$2,500, five of which exceeded \$10,000
  - b) Nine direct expenditure voucher (DEV) payments
  - c) Twenty-five P-Card transactions
  - d) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of favored vendors
  - e) One blanket purchase agreement
- (4) Small and Minority Business Enterprise (MBE) utilization plans and reports. The following activity was reported to the Division of Small and Minority Business Contracting and Certification (SMBCC) during the audit period:

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Amount</u>
2015	3,363	-
2016	2,078	323
2017	1,198	705
2018	2,274	619
2019	-	-
2020	1,915	99

- (5) Information Technology acquisitions under IT Plans
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5,000, of which there were none
- (7) Disposition of unauthorized procurements, of which there were none

**SUMMARY OF FINDINGS**

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The Commission’s internal procurement procedure manual had not been revised based on the May 13, 2019 revisions to the Code and ensuing regulations.	
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**SUMMARY OF FINDINGS**

**V. Minority Business Enterprise (MBE) Utilization**

A. Annual MBE Utilization Plan and Progress Reports Not Filed..... 11

One annual MBE utilization plan and eight quarterly progress reports were not submitted to the SMBCC.

B. Annual MBE Utilization Plans and Progress Reports Not Submitted Timely ..... 11

Four annual utilization plans and six quarterly reports were not filed in a timely manner.

## RESULTS OF AUDIT

The following issues were identified during the audit:

### I. Purchasing Cards

We reviewed the Commission's internal P-Card procedures for compliance with the State P-Card Policy dated March 6, 2020. The Commission had three cardholders that spent approximately \$173,000 during the audit period through 950 transactions.

#### A. Insufficient P-Card Manual

The Commission's P-Card Manual had not been revised based on revisions to the State P-Card Policy. The roles and responsibilities of P-Card Administrators (PCAs), supervisors/approving officials, and liaisons were inconsistent with the State P-Card Policy. Section III. A. 1. a) requires agencies to "Develop the internal policy governing the use of P-Cards, to include the [listed] minimum requirements." The responsibilities for these roles are detailed in sections III. A, B, and C, of the State P-Card Policy.

**Recommendation:** We recommend the Commission clearly define the roles and responsibilities of the PCAs, supervisors/approving officials, and liaisons in its P-Card Manual.

#### Agency Response

The Commission's current P-card Manual links to the online version of the State P-Card Policy. The Commission has begun updating the agency P-card manual to include the internal policy governing the use of P-cards and clearly define roles and responsibilities for the administrator, supervisors, and liaisons. This update will be finalized by September 1, 2021.

#### B. Improper Approval of Transactions

Cardholders approved their own purchases in nine transactions in violation of State P-Card Policy. The Commission's P-Card manual does not adequately define the roles and responsibilities of supervisors/approvers. Section V. A. 4. of the State P-Card Policy provides that "No Cardholder can provide approval for payment for his/her transactions or of the P-Card cardholder monthly bank statements."

**Recommendation:** We recommend the Commission revise its P-Card Manual to include adequate separation of duties including a defined approval process. We further recommend that Level I P-Card training clearly explain the prohibition against cardholders approving their own purchase transactions.

## RESULTS OF AUDIT

### Agency Response

The Commission's P-Card manual will be revised to clearly define the roles and responsibilities of supervisors/approvers, establish adequate separation of duties, and clarify that cardholders cannot approve their own purchases. This update will be completed by September 1, 2021.

#### C. Improperly Documented Approval

Eleven transactions lacked proper approval. The agency discontinued the use of an internal "Agency Credit Card Receipt Covers" form with each purchase, but did not develop and implement a new procedure. Section III. A. 2. a) of the State P-Card Policy requires governmental bodies to "establish written procedures to ensure compliance with, or request exceptions to, the Code, and State and internal P-Card policy."

**Recommendation:** We recommend the Commission develop and implement new transaction approval procedures for the PCA, liaisons, supervisor/approving officials, and P-Card holders, as required by the State P-Card Policy.

### Agency Response

The Commission re-established use of an internal credit card receipt cover with the April 2021 p-card statement. This procedure and any new approval procedures will be added to the revision of the agency p-card manual by September 1, 2021.

#### D. PCA Roles and Responsibilities Inadequately Defined

The roles and responsibilities of the PCA are not adequately defined to ensure that reviews of monthly statements and transactions are effective. Based on the nature of the Commission's P-Card program, we do not believe an external/third party audit is necessary. However, when considering the issues observed during the audit, there should be more thorough reviews by the PCA to ensure compliance with the State P-Card Policy. Section III. A. 2. a) of the State P-Card Policy requires governmental bodies to "establish written procedures to ensure compliance with, or request exceptions to, the Code, the State P-Card Policy, and the internal P-Card policy."

**Recommendation:** We recommend the Commission revise its P-Card manual to specify the roles and responsibilities of the PCA, and establish criteria by which the PCA confirms that transactions are in compliance with the State P-Card Policy during the monthly review process. Common practice is for the criteria to be documented in a checklist that can be used with each bank statement review to ensure the consistency and effectiveness of such reviews.

## **RESULTS OF AUDIT**

### **Agency Response**

The Commission will revise the P-card manual to specify the roles and responsibilities of the PCA and include monthly review criteria for confirming transaction compliance. This update will be finalized by September 1, 2021.

#### **E. Training Program Not Implemented**

The Commission had no documented Level 1 P-Card training program. There is no documentation to confirm the cardholders, supervisors/approvers/ or liaisons were trained prior to issuance of the P-Card. Section III. A. 4. of the State P-Card Policy requires agencies to “Develop a documented, Agency-specific training program that must be completed for all prospective cardholders, supervisors/approving officials, and liaisons prior to issuance of the P-Card.” The training requirement in the State P-card Policy is specified depending on the roles of each cardholder.

**Recommendation:** We recommend the Commission develop and implement documented Level I and II training programs for new and existing cardholders.

### **Agency Response**

Two staff members currently hold P-cards (as of April 1, 2021). These two existing cardholders did receive training when their cards were issued. We will ensure that existing cardholders receive updated Level I and II training and document this training, and that any new cardholders also receive documented training.

#### **F. Missing Monthly P-Card Statement Certifications**

The monthly P-Card Statement Certification was not completed for May 2020. Section V. A. 7. of the State P-Card Policy states that, “PCAs are required to submit a completed P-Card Statement Certification Form with each monthly statement.”

**Recommendation:** We recommend the Commission develop and implement procedures in their internal P-Card manual to ensure the P-Card certification form is completed and submitted to the Comptroller General’s Office each month.

### **Agency Response**

The May 2020 certification was not completed in the normal manner due to employees working from home during the pandemic. (The approval was granted in an email message in lieu of the certification form being completed.) This process was corrected for the June 2020 billing cycle, and all subsequent certifications have been completed and submitted correctly.

## **RESULTS OF AUDIT**

### **G. Bank of America (BOA) Works Auto-Signoff**

The Commission does not use the BOA Works Payment Manager system to approve individual transactions. All transactions were shown to have an "auto-signoff" instead of a manager's approval. State P-Card Policy Section I states, "All Entities are required to use the Works Payment Manager system provided by the Bank, or other system approved by DPS, for card administration and cardholder monthly bank statement reconciliation."

**Recommendation:** We recommend the Commission use the BOA Works Payment Manager system to approve transactions and complete monthly bank statement reconciliations as required.

### **Agency Response**

The Commission understands from our audit exit interview that using BOA Works Payment Manager is not a requirement for an agency of our size. However, we are committed to correcting identified p-card issues in compliance and documentation and will begin using Works Payment Manager if improving our current internal processes is not sufficient to strengthen compliance and documentation.

## **II. Sole Source Procurements**

### **Inadequate Written Determinations for Sole Source Procurements**

The justifications for four procurements did not adequately explain why the vendor was the only qualified vendor. An adequate justification would define the agency's need, describe the methods used to determine suitable products available in the market, and weigh the advantages/disadvantages of the identified options. SC Code Ann. § 11-35-1560 requires governmental bodies to determine in writing that there is only one source for the required supply, service, information technology, or construction item. SC Regulation 19-445.2105 further specifies that "the determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision."

**Recommendation:** We recommend the Commission review and revise its internal procedures for preparing written determinations, including adequate review and approval, to ensure written determinations adequately justify sole source procurements.

### **Agency Response**

The commission concurs with these findings. We will ensure that our written determinations in the future are thoroughly detailed to justify the reasoning of sole sourcing the procurement.



## RESULTS OF AUDIT

### **III. Procurement Policies and Procedures Manual**

#### Internal Procurement Manual Not Updated

The Commission's internal procurement manual was not revised after May 13, 2019, and there was no written approval from the Chief Procurement Officer (CPO) for their current manual, which has a revision date of July 2011. This is a repeat finding from the procurement audit completed in 2008. SC Code Ann. § 11-35-540 (3) states that "governmental bodies shall develop internal operational procedures consistent with this code; except, that the operational procedures must be approved in writing by the appropriate CPO."

**Recommendation:** We recommend the Commission update its procurement manual and submit the updated manual to the CPO for approval as required. To assist the agency, DPS has a Procurement Manual Checklist on its website.

#### Agency Response

As Procurement Officer, I concur with these findings. I will work to make the proper revisions to the commission's procurement manual to align with the state procurement code by September 1, 2021. I will use the Division of Procurement Services' checklist as oversight to make sure that the manual covers all necessary areas of procurement.

### **IV. Blanket Purchase Agreement**

#### Inadequate Blanket Purchase Agreement

A blanket purchase agreement was found not to contain the terms and conditions required by Regulation 19-445.2100 (E): description of agreement, extent of obligation, notice of individuals authorized to place calls, and dollar limitations. Regulation 19-445.2100 (E) specifies the terms and conditions to be applied in the establishment of a blanket purchase agreement.

**Recommendation:** We recommend the Commission modify the blanket purchase agreement to include the terms and conditions required by SC Code of Regulation 19-445.2100 (E). We also recommend the Commission develop and implement procedures to ensure that future blanket purchase agreements contain terms and conditions required by regulation.

#### Agency Response

The Commission concurs with these findings. This was a mistake in coding this purchase order, and it should not have been classified as a blanket purchase agreement. More attention will be paid to prevent such oversights.

## RESULTS OF AUDIT

### V. Minority Business Enterprise (MBE) Utilization

#### A. Annual Utilization Plan and Progress Reports Not Filed

One annual utilization plan and eight quarterly reports were not filed.

#### B. Annual Utilization Plans and Progress Reports Not Submitted Timely

Four annual utilization plans and six quarterly reports were not filed in a timely manner.

SC Code Ann. § 11-35-5240 (2) requires that MBE utilization plans be submitted to the SMBCC for approval no later than July 30th annually and that progress reports be submitted to the SMBCC no later than 30 days after the end of each fiscal quarter.

**Recommendation:** We recommend the Commission develop and implement procedures, including management review and approval, to ensure that annual MBE utilization plans and quarterly progress reports are submitted to the SMBCC in a timely manner as required by SC Code Ann. § 11-35-5240 (2).

#### Agency Response

The Commission concurs with these findings. I have completed all quarterly reporting for FY20 and have set up MBE reporting in my Outlook reminder system, which has worked well for my other reporting, but mistakenly was overlooked in including MBE. Along with this, I will also work more closely with our accountant to ensure that I receive financial data well in advance to help me complete the annual utilization plan and quarterly reports in a timely manner.


**CERTIFICATION RECOMMENDATION**

We believe corrective action based on the recommendations in this report will make the Arts Commission's internal procurement operations consistent with the South Carolina Consolidated Procurement Code and ensuing regulations.

As provided in SC Code Ann. § 11-35-1210, we recommend that the Arts Commission's procurement authority to make direct agency procurements be re-certified up to the following limits for three years:

<u>PROCUREMENT AREAS</u>	<u>RECOMMENDED CERTIFICATION LIMITS</u>
Supplies and Services <sup>1</sup>	*\$ 100,000 per commitment
Information Technology <sup>2</sup>	*\$ 100,000 per commitment

\* Total potential purchase commitment whether single year or multi-term contracts are used.



Juwan Bailey  
Senior Auditor  
Audit & Certification



Crawford Milling, CPA, CGMA  
Director of Audit & Certification

<sup>1</sup> Supplies and Services includes non-IT consulting services.

<sup>2</sup> Information Technology includes consulting services for any aspect of information technology, systems and networks.

---

AGENCY: Division of Procurement Services

---

SUBJECT: Procurement Audit—John de la Howe

In accordance with S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of the SC Governor’s School for Agriculture at John de la Howe to determine whether the internal controls of the Agency’s procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations. Because the Governor’s School for Agriculture is not a certified agency and has not requested procurement certification, this report is submitted as information only.

---

AUTHORITY ACTION REQUESTED:

Receive the audit report for John de la Howe as information only.

---

ATTACHMENTS:

Agenda item worksheet and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

**Meeting Scheduled for:** September 8, 2021

**Regular Agenda**

**1. Submitted by:**

- (a) Agency: Division of Procurement Services  
(b) Authorized Official Signature:

  
John St. C. White, Materials Management Officer

**2. Subject: Audit and Certification**

**3. Summary and Background Information:**

In accordance with S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of the SC Governor's School for Agriculture at John de la Howe to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations. Because the Governor's School for Agriculture is not a certified agency and has not requested procurement certification, this report is submitted as information only.

**4. What is Authority asked to do?**

Receive the audit report for information only.

**5. What is recommendation of the submitting agency involved?**

DPS recommends that the Authority receive the report for information only.

**6. Private Participant Disclosure – Check one:**

- No private participants will be known at the time the Authority considers this agenda item.  
 A Private Participant Disclosure form has been attached for each private participant.  
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

**7. Recommendation of other office (as required)?**

- (a) Authorized Signature: \_\_\_\_\_  
(b) Office Name: \_\_\_\_\_

**8. List of Supporting Documents:**

- (a) S.C. Code Ann. § 11-35-1210

**9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.**



**SECTION 11-35-1210. Certification.**

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body's procurement not under term contract; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

JOHN ST. C. WHITE  
MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

August 13, 2021

Mr. Delbert H. Singleton Jr.  
Director  
Division of Procurement Services  
6<sup>th</sup> Floor-Wade Hampton Building  
Columbia, South Carolina 29201

Subject: Governor's School for Agriculture  
at John de la Howe  
Procurement Audit Report

Delbert:

I have attached the Governor's School for Agriculture at John de la Howe's procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendations.

Sincerely,

John St. C. White  
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR  
GOVERNOR  
CURTIS M. LOFTIS, JR.  
STATE TREASURER  
RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



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August 13, 2021

Mr. John St. C. White  
Materials Management Officer  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

Subject: Governor's School for Agriculture  
at John de la Howe  
Procurement Audit Report

John:

We have audited the internal procurement operating policies and procedures of the Governor's School for Agriculture at John de la Howe (School), for the period of April 1, 2018 through March 31, 2021, to determine whether the internal controls of the School's procurement system were adequate to ensure compliance, in all material respects, with the South Carolina Procurement Code and ensuing regulations.

The audit disclosed conditions, as explained in the report, which we believe require corrective action or improvement. Corrective action by the School based on the recommendations described in the report will, in all material respects, place the School in compliance with the South Carolina Consolidated Procurement Code and ensuing regulations.

Sincerely,

Crawford Milling  
Director of Audit & Certification

Attachment



**The South Carolina  
Governor's School for Agriculture  
at John de la Howe**

**INDEPENDENT PROCUREMENT AUDIT REPORT**

**for the Audit Period:  
April 1, 2018 to March 31, 2021**

**Office of Audit & Certification  
Division of Procurement Services  
June 19, 2021**

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## INTRODUCTION

The Division of Procurement Services (DPS) audited the SC Governor's School for Agriculture at John de la Howe's (JdlH) internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020<sup>1</sup>. JdlH is a non-certified agency.

The primary objective of our audit was to determine whether, in all material respects, the internal controls of JdlH's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of JdlH is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code
- Evaluating and monitoring the agency's compliance with the Code, and
- Taking corrective action when instances of noncompliance are identified, including corrective action on the findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

### Total Expenditures

During the audit period, the agency made expenditures as follows:

	\$ Amount (000s)				Total
	Q4		Q1,2,3		
	FY2018	FY2019	FY2020	FY2021	
PO's	134	652	2,312	2,997	6,095
DEV's	142	608	650	514	1,914
<b>Total Spend</b>	<b>276</b>	<b>1,260</b>	<b>2,962</b>	<b>3,511</b>	<b>8,009</b>

## SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about JdlH's compliance with the Code for the period April 1, 2018 through March 31, 2021, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) Written determinations for all sole source and emergency procurements. The following sole source and emergency procurement activity was reported to DPS during the audit period:

<u>Fiscal Year</u>	<u>Sole Source</u>		<u>Emergency</u>	
	<u>Count</u>	<u>\$ Amount</u>	<u>Count</u>	<u>\$ Amount</u>
Q4; 2018	0	0	1	17,190
2019	0	0	1	3,318
2020	1	57,000	1	4,250
Q1,2,3; 2021	2	240,094	3	219,999

- (3) Procurement transactions for the audit period as follows:
  - a) Sixty-four payments, each exceeding \$10,000, for a total of \$1.9M
  - b) Twenty-seven direct payments totaling \$68K
  - c) Four hundred thirty-six purchase orders (PO) and one-thousand three hundred seventy direct payments reviewed for order splitting or the use of favored vendors
  - d) Twenty-five P-Card transactions for two judgmentally selected months for compliance with the South Carolina Purchasing Card Policy and Procedures (State P-Card Policy). During the audit period JdlH had two cardholders that made P-Card expenditures as follows:

<u>Fiscal Year</u>	<u>Transactions</u>	<u>\$ Amount</u>
Q4 2018	56	2,800
2019	124	16,322
2020	101	13,078
Q1,2,3 2021	406	59,525

- (4) Construction contracts and Architect/Engineer and Related Professional Service Contracts for compliance with the Manual for Planning and Execution of State Permanent Improvements
- (5) Small and Minority Business utilization plans and progress reports.
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5,000

**SCOPE**

(7) Disposition of unauthorized procurements. The following unauthorized procurement activity was reported to DPS:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
Q4; 2018	3	18,229
2019	3	111,772
2020	3	96,070
Q1,2,3; 2021	3	10,790

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## RESULTS OF AUDIT

### **I. Requested Documentation for Testing During Audit Period Not Provided**

We experienced unusual delays in response to requests for documentation. JdlH did not provide the requested documentation pertaining to the following areas:

- List of Construction Projects
- List of any Revenue Generating Contracts
- Internal Control Questionnaire
- Small and Minority Business Enterprise Utilization and Quarterly Reports
- Gifts and Other Related Transactions Involving charitable organizations
- Blanket Purchase Agreements

Without the requested documentation, we were not able to determine the agency's compliance with the Code in these areas.

SC Code Ann. § 11-35-2430 - retention of procurement records, states, "All procurement records of governmental bodies shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History after consultation with the Attorney General." Per Regulation 19-445.2005 (B) Procurement Records. "Each governmental body must maintain procurement files sufficient to satisfy the requirements of external audit."

**Recommendation:** We recommend that JdlH develop and implement procedures that establish a consistent methodology for organization and location of required documentation of procurement activity as required by the Code and Regulations.

#### **Management's Response**

Management agrees with finding of documentation pertaining to: 1) List of Construction Projects, 2) List of any Revenue Generating Contracts, 3) Internal Control Questionnaire, 4) Small and Minority Business Enterprise Utilization and Quarterly Reports, 5) Gifts and Other Related Transactions Involving charitable organizations and 6) Blanket Agreements. The agency was short-staffed in the Business Office and was also being audited by the State Auditor and had recently completed the audit visit from the Inspector General.

The missing reports will be furnished and going forward ensure that compliance to SC Code 11-35-2430 is adhered to by conducting quarterly internal audit reviews to ensure that records are being maintained properly to suffice external audits.

### **II. Divided Procurements**

The Agency's practice is to request quotes from vendors and then develop project scopes that will be within its procurement authority. Construction projects totaling approximately \$564k were divided among 13 vendors circumventing the agency's \$50,000 procurement authority. For

## RESULTS OF AUDIT

example, one construction project was divided into two projects bringing each below the \$50,000 threshold. Prior to requesting bids on the two construction projects, JdlH obtained quotes valuing the combined project at \$70,000.

In addition, we identified 173 procurements, totaling approximately \$990k, that were divided among 28 vendors circumventing the small purchase threshold of \$10,000, and in some cases, steer business to favored vendors.

SC Code Ann. § 11-35-1550(1) states, "...Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section." Pertaining to small purchases not exceeding \$10,000, SC Code Ann. § 11-35-1550(2)(a) states, "...The purchases must be distributed equitably among qualified suppliers." Pertaining to purchases requiring three written quotes, SC Code Ann. § 11-35-1550(2)(b) states, "...Requests must be distributed equitably among qualified suppliers unless advertised..."

**Recommendation:** We recommend JdlH develop and implement procedures to establish project scope and specifications, including management review and approval, that ensure cost-effective procurement of the Agency's actual needs. Then we recommend procurement personnel be provided training pertaining to the Code and internal procedures. Agency procurement procedures should require that all projects that exceed the agency's procurement authority be approved or conducted by DPS or the Office of State Engineer.

### Management's Response

The agency agrees that procurements to 13 vendors appeared to circumvent the agency's \$50,000 procurement authority and 28 vendors under the small purchase threshold of \$10,000. To better comply with SC Codes 11-35-1550(2), the agency will develop policies and procedures that will include established project scope and specifications that will be documented with management review and approval. This policy revision will require that all projects more than the agency's procurement authority will require approval of DPS and/or the Office of State Engineer. In addition, the agency will plan a vendor invitation day to attract and identify vendors in the areas where goods and services have been procured to increase the pool of available vendors and educate them on the various projects that the agency is planning goods and services in the coming fiscal year to better aid in getting better equity among the available qualified vendors.

### **III. Small Construction Projects**

We tested 33 small construction projects less than \$50K.

## RESULTS OF AUDIT

### A. Missing Solicitation Documents (Bid Request)

JdlH did not provide copies of bid requests pertaining to 24 small construction projects less than \$50K, the Agency's certification level. Without these documents we were not able to determine the scope of work to which vendors were responding in their bids. In addition, the agency did not provide the required documentation for 32 small construction projects stating that the procurement is to the advantage of the State.

Per the Manual for Planning and Execution of State Permanent Improvements, section 8.3.3.B(4): "The Agency should make the purchase on a purchase requisition form with the following attached in the Agency file: (a) A copy of the written solicitation and written quotes; and (b) A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase."

**Recommendation:** We recommend that JdlH develop and implement procedures requiring construction personnel to follow the Code and regulations as outlined in the Manual for Planning and Execution of State Permanent Improvements.

### Management's Response

Management agrees with finding of small construction projects missing solicitation documents. To correct this finding the agency has instituted a numbering requisition system to better track the support documentation and will ensure that Procurement staff has the checklist of required documents and initial documents and ensure that the statement to document that the procurement is to the advantage of the state inclusive of pricing and other related factors. Finally, the agency will develop procedures that require construction personnel to follow the Code [and] regulations contained within the Manual for Planning and Execution of State Permanent Improvements.

### B. Safeguarding of Bids

We found instances where vendors' bid proposals were sent to facilities management personnel, in addition to or instead of, being sent to address established by JdlH for receipt of bids as required by JdlH's procurement procedures.

JdlH's Bid Request documents require that "All Completed Bid requests shall only be submitted to JDLH procurement 192 Getty Road; (procurement@delahowe.sc.gov)". Some vendor bid proposals were cc'd to Facilities Management personnel in addition to the procurement email address, some were sent to Facilities Management and then forwarded to procurement@delahowe.sc.gov, and some revised bids were copied to all bidders and facilities management personnel. This ongoing practice increases the risk of collusion and was evident during the course of this audit.

## RESULTS OF AUDIT

SC Code Ann. § 11-35-20(2) states, “The underlying purposes and policies of this code are: (f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement”. § 11-35-30 states, “Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. ‘Good faith’ means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.” Reg. 19-445.2010(C) states; “Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer...”

JdlH’s procurement policy states, “Verbal contact with vendors is not allowed after specifications/terms, etc. have been put out for bids. Any alterations must be in the form of a written amendment to all bidders...”

### C. Solicitation for Bids Sent to Vendors Were Not Comparable

We saw evidence of construction bid requests being sent to separate vendors with different or no scopes of work for the same project. This occurred with multiple projects. This evidence showed the Agency would:

- review the bids on these differing scopes,
- select the preferred scope, and then
- instruct the other bidders to modify their description of work to be performed to match the preferred scope and re-submit bids.

JdlH’s Procurement Department deemed the solicitations to be inconsistent among the bidders. This ongoing practice increases the risk of collusion and was evident during the course of this audit.

Reg. 19-445.2010(C) states; “Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer...”

## RESULTS OF AUDIT

**Recommendation:** We recommend JdlH revise and clarify its solicitation procedures to ensure the integrity of the bid process. We then recommend documented refresher training be provided to all appropriate personnel pertaining to construction projects.

### Management's Response

The agency agrees with findings and training of all staff will occur by August 11, 2021 to ensure that all bid documents submitted to 192 Gettys Road and on-line bids to (procurement@delahowe.sc.gov)

With the revision the solicitation procedures and development of project scope and detailed specifications, the agency will ensure that bids are sent to all interested vendors to ensure comparable bids are received and adherence to Reg. 19-445.2010(C) as well as ensure the integrity of the bid process. On-going training will be documented annually after the refresher training is conducted.

#### D. Unable to Determine if Contracts Were Properly Awarded

We were unable to determine if small construction projects had been properly awarded in three instances. We identified one instance where the awarded bid proposal was dated before the date of the bid request. We identified one instance where instruction to begin work on the project was sent to the awarded bidder before the date of the winning bid. These practices increase the likelihood that there were undocumented discussions with offerors.

Reg. 19-445.2010(C) states; "Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer."

A third instance involved an award in the case of tied bids. Management stated there was no documentation in their files showing how the award was determined. A newspaper article dated before the audit stated that the award was based on date of bid receipt.

SC Code Ann. § 11-35-1520(9)(e) states, "In all other situations in which bids are tied, the award must be made to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie must be resolved by the flip of a coin witnessed by the procurement officer. All responding vendors must be invited to attend."

**Recommendation:** We recommend JdlH develop and implement procedures, including review by the procurement director or agency management, for awarding contracts in the event of tied bids that are consistent with the Code. We further recommend JdlH Facilities Management personnel be provided training pertaining to the revised procedures.



## RESULTS OF AUDIT

### Management's Response

The agency agrees with this finding and will develop and implement procedures to ensure that bids are awarded properly to adhere to Reg 19-445.2010(C) and SC Code 11-35-1520(9). The revised procedures will be developed by December 31, 2021 and submitted to DPS for review. The agency will recommend the training to its Facilities Management personnel and ensure that they have training and receive the developed procedures for tied bids and how bids are awarded.

#### **IV. Retention Exceeded Amount Allowed by the Code**

One construction project required retainage of 10%, which exceeds the 3.5% allowed by Code. SC Code Ann. § 11-35-3030(4)(a) states, ... "the retained amount of each progress payment or installment must be no more than three and one-half percent."

**Recommendation:** We recommend JdlH comply with the Code pertaining to retention in payments on construction projects.

### Management's Response

The agency agrees with the finding of exceeding the allowed construction retainage of 3.5%. Through training, the agency will comply with SC Code pertaining to retention in payments on construction projects.

#### **V. Insufficient Internal Procurement Procedures Manual**

JdlH's internal procurement procedures manual did not provide procedures for application of key provisions of the Code as required by Code and Regulation 19-445.2005. Key Code provisions omitted by JdlH include procedures for the use of applicable source selection methods, and a filing system that provides for consistent organization and retention of procurement files, as well as the assignment of roles and responsibilities.

Additionally, the agency's manual does not have adequate guidance or procedures pertaining to competitive procurement or small purchases being routed through their procurement department for pre-approval. This has contributed to multiple unauthorized procurements, in which staff purchased goods and services prior to notifying the agency's procurement department.

SC Code Ann. § 11-35-540(3) states, "Governmental bodies shall develop internal operational procedures consistent with this code; except, that the operational procedures must be approved in writing by the appropriate chief procurement officer."

**Recommendation:** We recommend JdlH revise its internal procurement manual to provide roles and responsibilities by position, procedures for procurement personnel conducting source selection methods commonly used by the agency, and a consistent filing system. A Procurement Manual checklist is available on the Procurement Services website that may assist in revising the

## RESULTS OF AUDIT

manual. Once the manual has been revised, we recommend JdlH submit the manual to Audit and Certification for approval as required by SC Code Ann. § 11-35-540 and Reg. 19-445.2005. Then, we recommend retraining staff on the revised procedures.

### Management's Response

We agree with the auditors' finding and recommendation that our internal procurement manual was insufficient in the area as required by Code and Regulation 19-445.2005. The agency recently implemented a requisition numbering request to begin the procurement process to better capture the use of applicable source selection methods. To further better our procurement procedures, written operational procedures guidance will be provided to each department to ensure that the competitive small purchases are routed to procurement department for pre-approval. The final written updated Procurement Manual will be submitted to Audit and Certification for review and approval. After receiving approval, the agency will conduct a retraining session on the revised procedures with all staff.

## VI. Direct Payments

We tested 25 direct payments for compliance with the Code and the Comptroller General's (CG) SC Statewide PO Policy.

### A. Improper Use of Direct Payments

We identified one expenditure, for \$14,770, that did not meet the criteria established by the CG's PO Policy pertaining to Direct Payments and should have been purchased with a PO. In addition, this service should have been competitively procured. This resulted in an unauthorized procurement.

### B. No Pre-Approval by Procurement

We identified five expenditures totaling \$2,525 that were not submitted to the procurement department for pre-approval. This resulted in five unauthorized procurements. In addition, no procedures were provided pertaining to the proper approval of Direct Pays as outlined by the CG's PO Policy.

Per the CG's PO Policy, ..." A Direct Pay is a payment method only. It does not establish compliance with the SC Consolidated Procurement Code & Regulations or other State regulations." In addition, the CG's PO Policy states, Direct Payments "should not be used as a matter of convenience as it leads to a reduction in controls and approvals."

**Recommendation:** We recommend these six unauthorized procurements be properly reported to DPS and include a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent recurrence, and any individual disciplinary action

## RESULTS OF AUDIT

as required by R 19-445.2015 (H)(2). In addition, we recommend JdlH follow the Code pertaining to required competition. We also recommend a provision be added to the agency's business operations manual that clearly defines when supplies and services, information technology, and construction requisitions be routed through the procurement department. This provision should comply with the CG's PO Policy regarding when the direct payment method may be used.

### Management's Response

The agency agrees with the one improper direct pay of \$14,770 not meeting the criteria established by the Comptroller General's Office as well as five other that were not submitted for pre-approval. The identified procurements will be updated to reflect the unauthorized status and reported to DPS with the appropriate written determination as required by Reg 19-445-2015(H)(2). The agency's business operations manual will add the provision that defines when supplies and services, information technology and construction requisitions are to be routed through the procurement department. Only direct payments that meet the criteria as stated by the Comptroller General's guidelines will be processed as direct payments. This revision will be made accessible to all staff on the agency's shared drive.

## VII. Sole Source and Emergency Procurements

Written determinations for all three sole source and six emergency procurements made pursuant to SC Code Ann. §§ 11-35-1560 and 1570, were evaluated to assess the appropriateness of the procurement actions and the accuracy of the quarterly reports submitted to the chief procurement officers as required by § 11-35-2440.

### A. Required Written Determination Not Provided

One written determination for a sole source in the amount \$225,000 was not provided. Without a written determination, we were unable to determine the justification for making this procurement without competition. The result is this is an unauthorized procurement.

Regulation 19-445.2015 (A) requires that, "upon finding after award that a State employee has made an unauthorized award of a contract or that it is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate it in accordance with this section.... If the value of the contract exceeds \$100,000, the CPO must concur in the written determination before any action is taken on the decision."

**Recommendation:** We recommend that this procurement be reported as unauthorized as required by regulation.

## RESULTS OF AUDIT

### Management's Response

The agency agrees with finding that written determination was not suffice on sole source for \$225,000. This sole source will be document with the proper written determination and forwarded to CPO for ratification decision and reported as unauthorized procurement by September 30, 2021.

#### B. Written Determinations for Emergency Procurements Were Inadequate

Required written determination for two emergency procurements did not adequately describe the justification for procurement without competition.

A written determination for one emergency procurement totaling \$17,190 was based on overdue inspections; however, documentation was submitted that stated there was no immediate danger. Another emergency determination totaling \$145,000 was for a food contract listed as an exempt commodity. Food is not an exempt commodity. The result is that these two emergency procurements were illegal. Additionally, the food contract exceeded JdlH's procurement authority and should have been sent to DPS for procurement.

Regulation 19-445.2110 (B) defines an emergency:

An emergency condition which creates a threat to public health, welfare, or safety such as may arise by reason of flood, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the CPO or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) The functioning of State government.
- (2) The preservation or protection of property; or
- (3) The health or safety of any person.

The SC Supreme Court, relying on the above Regulation and the common meaning of the term emergency, held that “[a]n emergency is, by its very nature, a sudden, unexpected onset of a serious condition.”<sup>1</sup>

**Recommendation:** We recommend that both emergency procurements be reported as unauthorized as required by regulation 19-445.2015. We also recommend procedures be developed and implemented to ensure that emergency procurements are limited to circumstances that meet the definition of an emergency under Reg. 19-445.2110.<sup>2</sup> We further recommend JdlH Procurement submit the requisition to DPS when required supplies and services, information technology, or construction exceed the agency's procurement authority.

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<sup>1</sup> The State of South Carolina, In the Supreme Court, Opinion No. 26534, Heard April 15, 2008 – Filed August 25, 2008.

<sup>2</sup> SC Code Ann. §§ 11-35-1560 and 1570 require adequate public notice for all sole source and emergency procurements greater than \$50,000, effective May 13, 2020.

## RESULTS OF AUDIT

### Management's Response

The agency will write determination for the emergency procurements of \$17,190 and \$145,000. With the opening of the school with students and no inspection on the dining areas due to COVID restrictions, this procurement will be corrected to reflect that they were unauthorized. The agency will facilitate its future solicitation of a food contract with DPS to ensure compliance. Going forward, the agency will also ensure that emergency procurements meet the conditions as outlined in Reg 19-445.2110 (B) and further develop procedures that limit the use of emergency procurement unless the procurement meets the above referenced regulation.

### **VIII. Unauthorized Procurements**

We reviewed unauthorized procurements to determine if they were properly ratified or terminated in accordance with Reg. 19-445.2015.

#### **A. Written Determination Were Inadequate**

Six unauthorized procurements lacked adequate written determinations as to the facts and circumstances surrounding the improper act, the corrective action taken to prevent recurrence, and the action taken against the individual committing the act, as required by Reg. 19-445.2015 (H)(2).

**Recommendation:** We recommend procedures, forms, and instructions be developed and implemented, to ensure written determinations include all of the required elements as required by Regulation 19-445-2015 (H)(2).

### Management's Response

The agency agrees and accepts the finding in unauthorized procurements for compliance with Reg. 19-445.2015.

To correct, the agency will update its policies, procedures, and forms to reflect the required elements of Reg. 19.445.2015 (H)(2) with explanations of unauthorized procurements to include facts, circumstances surrounding the act, and the corrective actions taken to prevent recurrence and what written action was taken against the individual(s) coming the act.

#### **B. Non-Compliance with CPO Approved Corrective Action Plan (CAP)**

During the tenure of Dr. Wall as interim agency head, JdlH entered into an agreement for consulting services totaling \$224,394 that was deemed to be an illegal procurement. As a result of the Request for CPO Concurrence, the CPO terminated the contract and agreed to a CAP. The terms of the CAP stated that JdlH would take advantage of the Department of Administration's (Admin) Shared Services platform. However, the agency never executed a shared services agreement. There was no Memorandum of Agreement between the agency and Admin for shared services until June 2021 and it was only valid for that month.



## RESULTS OF AUDIT

Additionally, per the approved Request for CPO Concurrence, “The JDLHS Board and the Interim Agency Head for JDLHS, will, at a minimum, attend the Introduction to the South Carolina Procurement Code training class offered by SFAA as soon as possible. JDLHS will review the SFAA course listings regularly and will attend any courses which it believes would be beneficial for JDLHS’s staff to attend.” Dr. Wall did not attend any SFAA Procurement training before leaving in June 2020. It is unknown how many other staff should have been determined to participate in SFAA Procurement training. The Director of Finance did submit documentation of his attendance at several SFAA procurement training courses, and the Director of Facilities submitted documentation of his attendance at the “Introduction to the South Carolina Procurement Code.”

**Recommendation:** We recommend JdlH comply with the terms of the CAP and determine which staff would benefit from SFAA Procurement training and attend the courses as soon as possible.

### **Management’s Response**

The agency agrees with this finding of non-compliance with CPO approved corrective action by entering to agreement for consulting services totaling \$224,394. Going forward, the agency will comply with all requested terms from CPO. In addition, the agency conducted a Procurement Training on August 10, 2021, from SFAA and will further ensure that appropriate staff attend future scheduled SFAA trainings.

## **IX. Purchasing Cards (P-Cards)**

JdlH had two P-Cards in use during the audit period and spent approximately \$91k in 687 transactions.

### **1. Program Administration**

We requested JdlH’s P-Card policies and procedures manual to be reviewed for compliance with the State P-Card Policy and identified areas of non-compliance.

#### **A. No P-Card Manual**

JdlH did not have an internal P-Card Manual as required.

Per State P-Card policy III.(A)I(a), “Develop the internal policy governing the use of the P-Card...” and V(A) states, “Each Agency’s internal P-Card policy must establish an internal control process and structure that ensures compliance with the Code and State P-Card Policy.”

## RESULTS OF AUDIT

**Recommendation:** We recommend JdlH develop its internal P-Card Manual to ensure compliance with the Code and State P-Card Policy. The Procurement Services website has a P-Card Manual checklist which may be helpful.

### B. Roles and Responsibilities

Roles and responsibilities for the P-Card program had not been established. Current practice is for the fiscal technician to perform the monthly statement reconciliations for the Director of Finance. There is no one with authority over the Director of Finance assigned the responsibility to approve his P-Card transactions. In addition, the Director of Finance is the Procurement Director, a cardholder, the Purchasing Card Administrator (PCA), and the approver of the monthly bank statements and P-Card Statement Certifications. The lack of separation of duties is a control weakness in the P-Card program.

The State P-Card Policy, section (V).(A) states, "...Internal controls should include: (1). Appropriate separation of duties between making transactions (Cardholders), review and approval of transactions for payment (approving officials), and payment of the cardholder monthly bank statements (Accounts Payable). (3). Appropriate hierarchical review and approval of purchases by someone with supervisory authority over the Cardholder and/or with the authority to question purchases if needed. (4). No Cardholder can provide approval for payment for his/her transactions or of the P-Card cardholder monthly bank statements. Review and approval responsibilities cannot be delegated to someone else..."

**Recommendation:** We recommend JdlH's internal P-Card policy manual include the assignment of roles and responsibilities to ensure the proper separation of duties and other internal controls as outlined in the State P-Card Policy.

### C. P-Card Training Not Provided

JdlH does not have a documented Level I P-Card training program. In addition, no documentation was provided to verify that cardholders or supervisors/approvers were trained prior to issuance of the P-Card.

Per the State P-Card Policy III. (A) (4), "Develop a documented, Agency-specific training program that must be completed for all prospective Cardholders, Supervisors/approving officials, and Liaisons prior to issuance of the P-card. (a) Level I training is the initial training all prospective Cardholders must receive prior to issuance of a P-Card..."

**Recommendation:** We recommend JdlH develop a policy requiring that all P-Card holders, supervisor/approvers, and liaisons be trained prior to being issued a P-Card, and that the cardholder

## RESULTS OF AUDIT

agreement include acknowledgement of that training. We further recommend that the training program be documented to ensure the adequacy of training and to provide a reference for all P-Card personnel.

### **2. Transaction Testing**

We tested 25 P-Card transactions from two judgementally selected months for compliance with the State P-Card Policy.

#### **Cardholder Approved their Own Purchases**

We identified 12 purchases where the cardholder approved his/her own purchase. Per the State P-Card Policy, section V.(A) (4). "No Cardholder can provide approval for payment for his/her transactions or of the P-Card cardholder monthly bank statements. Review and approval responsibilities cannot be delegated to someone else."

**Recommendation:** We recommend JdlH include in its internal P-Card policies a separation of duties that prevents a cardholder from approving his/her own purchases. Monthly P-Card reviews should include reviewing transactions for proper approval as required by the State P-Card Policy.

#### **Management's Response**

- The agency agrees with the Purchasing Cards (P-Cards) findings. To correct the agency will:
- a. Develop an agency P-Card policies and procedures manual by December 31, 2021, versus only referencing the Comptroller General's guidelines. This manual will govern use and ensure internal controls and compliance with the Code and State P-Card Policy.
  - b. The agency will develop defined roles and responsibilities for the P-Card program and ensure that proper separation of duties and internal controls are outlined to comply with the State P-Card Policy.
  - c. Develop a policy that will capture and document all new P-Card holders Level I training before issuance of P-Card to ensure the staffs acknowledgement of the training as well as documenting the training occurred.
  - d. The agency will include in its internal P-Card policies separation of duties to ensure separation of duties that will prevent a cardholder from approving his/her own purchases to comply with proper approval requirements of the State P-Card Policy

## CONCLUSION

We believe corrective action based on the recommendations described in this report will, in all material respects, place John de ls Howe in compliance with the South Carolina Consolidated Procurement Code.

Subject to the corrective action recommended in this report, we recommend the Agency be allowed to continue procuring supplies and services, information technology, and construction services up to \$50,000 as allowed by the South Carolina Consolidated Procurement Code.

  
Cherie Ergle, CRMA  
Audit Manager,  
Audit & Certification

  
Crawford Milling, CPA, CGMA  
Director, Audit & Certification

## End Notes

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<sup>1</sup> Regulation 19-445.2020 Certification

(A) Review Procedures.

(2) The Materials Management Officer shall review and report on the particular government body's entire internal procurement operation to include, but not be limited to the following:

- (a) Adherence to provisions of the Code and these Regulations.
- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidence of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selection;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;
- (k) Adequacy of written determinations required by the Code and these Regulations;
- (l) Contract administrations;
- (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the board.





**SC Governor's School  
for Agriculture**  
AT JOHN DE LA HOWE

**August 10, 2021**

**Mr. D. Crawford Milling, CPA, CGMA**  
Director of Procurement Services  
SC State Fiscal Accountability Authority  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201

**RE: SC Governor's School for Agriculture at John de la Howe Independent Procurement Audit Report**

**Mr. Milling,**

The South Carolina Governor's School for Agriculture is in receipt of Independent Procurement Audit Report received via e-mail August 3, 2021, for the audit period of April 1, 2018 to March 31, 2021. The agency acknowledges the findings noted in this report and will take corrective measures to ensure all recommendations are addressed. Please see our agency management response in the subsequent pages.

In closing, the agency acknowledges the professionalism of the involved audit parties from SFAA. Additionally, the agency will use the staff-wide overview Procurement Training as a baseline to reinforce the importance of adhering to the South Carolina Consolidated Procurement Code and take advantage of any trainings that will ensure that the agency is compliant to all areas of the State Code.

If there are any questions or need for any additional information, please feel free to contact us.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Tim Krown', written over a horizontal line.

Tim Krown, President

A handwritten signature in blue ink, appearing to read 'Sylvester Coleman', written over a horizontal line.

Sylvester Coleman, Director of Finance/Procurement

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AGENCY: Division of Procurement Services

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SUBJECT: Procurement Audit – State Accident Fund

In accordance with Section 11-35-1210 of the South Carolina Consolidated Procurement Code, the Division of Procurement Services has audited the procurement operating policies and procedures of the State Accident Fund to determine whether the internal controls of the agency's procurement system were adequate to ensure compliance, in all material respects, with the SC Consolidated Procurement Code and ensuing regulations. Because the State Accident Fund is not a certified agency and has not requested procurement certification, this report is submitted as information only.

---

AUTHORITY ACTION REQUESTED:

Receive the audit report for the State Accident Fund as information only.

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ATTACHMENTS:

Agenda item worksheet and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

**Meeting Scheduled for:** September 8, 2021

**Regular Agenda**

**1. Submitted by:**

- (a) Agency: Division of Procurement Services  
(b) Authorized Official Signature:



John St. C. White, Materials Management Officer

**2. Subject: Audit and Certification**

**3. Summary and Background Information:**

In accordance with S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of the State Accident Fund to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations. Because the State Accident Fund is not a certified agency and has not requested procurement certification, this report is submitted as information only.

**4. What is Authority asked to do?**

Receive the audit report for information only.

**5. What is recommendation of the submitting agency involved?**

DPS recommends that the Authority receive the report for information only.

**6. Private Participant Disclosure – Check one:**

- No private participants will be known at the time the Authority considers this agenda item.  
 A Private Participant Disclosure form has been attached for each private participant.  
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

**7. Recommendation of other office (as required)?**

- (a) Authorized Signature: \_\_\_\_\_  
(b) Office Name: \_\_\_\_\_

**8. List of Supporting Documents:**

- (a) S.C. Code Ann. § 11-35-1210

**9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.**

**SECTION 11-35-1210. Certification.**

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body's procurement not under term contract; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

JOHN ST. C. WHITE  
MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

July 23, 2021

Mr. Delbert H. Singleton Jr.  
Director  
Division of Procurement Services  
6<sup>th</sup> Floor-Wade Hampton Building  
Columbia, South Carolina 29201

Subject: South Carolina State Accident Fund  
Procurement Audit Report

Delbert:

I have attached the State Accident Fund's procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendation that the State Fiscal Accountability Authority approve a three-year procurement certification for the State Accident Fund.

Sincerely,

John St. C. White  
Materials Management Officer

Attachment



HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
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DIVISION DIRECTOR  
(803) 734-8018

JOHN ST. C. WHITE  
MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

July 23, 2021

Mr. John St. C. White  
Materials Management Officer  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

Re: South Carolina State Accident Fund (SAF)  
Procurement Audit Report

John:

We audited the internal procurement operating policies and procedures of SAF for the period January 1, 2018 through March 31, 2021. The objective of our audit was to determine whether the internal controls of SAF's procurement system were adequate to ensure compliance with the South Carolina Consolidated Procurement Code and ensuing regulations.

The audit disclosed conditions as described in the attached report which we believe require corrective action or improvement. Corrective action based on the recommendations made in the report will place SAF in compliance with the South Carolina Consolidated Procurement Code and ensuing regulations.

Sincerely,

Crawford Milling  
Director of Audit and Certification

Attachment



**South Carolina  
State Accident Fund**

**INDEPENDENT PROCUREMENT AUDIT REPORT**

**for the Audit Period:  
January 1, 2018 to March 31, 2021**

**Office of Audit & Certification  
Division of Procurement Services  
June 2, 2021**

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## INTRODUCTION

The Division of Procurement Services (DPS) audited the State Accident Fund’s (SAF) internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020<sup>i</sup> of the ensuing regulations.

The primary objective of our audit was to determine whether, in all material respects, the internal controls of SAF's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of SAF is responsible for the agency’s compliance with the Code. Those responsibilities include the following:

- Identifying the agency’s procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code
- Evaluating and monitoring the agency’s compliance with the Code
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

SAF is a non-certified agency. The Agency contracts to buy administrative services including procurement thru the Department of Administration.

### Total Expenditures

During the audit period, the agency conducted procurements as follows:

	\$ Amount (000s)					
	Count	FY2018	FY2019	FY2020	FY2021	Total
POs	121	387	686	1,223	930	3,226
DEV	1,126	2,357	3,544	2,786	21,633	30,320
<b>Total Spend</b>	<b>1,247</b>	<b>2,744</b>	<b>4,230</b>	<b>4,009</b>	<b>22,563</b>	<b>33,546</b>

## SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about SAF's compliance with the Code for the period January 1, 2018 through March 31, 2021, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) All sole source and emergency procurement justifications. There were no sole source or emergency procurements during the audit period.
- (3) Procurement transactions for the audit period as follows:
  - a) Thirty supplies & services expenditures totaling \$2.12 M.
  - b) Twenty direct expenditure vouchers (DEVs) totaling \$27.77 M.
  - c) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of or favored vendors.
  - d) Twenty-five P-Card transactions for single transaction limit (STL), split transactions, and MCC code compliance.
- (4) Small and Minority Business utilization plans and reports. The following activity was reported to the Division of Small and Minority Business Contracting and Certification (SMBCC):

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
2018	1,672	-0-
2019	1,672	-0-
2020	1,110	1,049
2021	1,672	331

- (5) Information Technology acquisition under IT Plans.
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5,000
- (7) Disposition of unauthorized procurements. The following unauthorized procurement activity was reported to DPS:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
2018	-	-0-
2019	1	2,765,527
2020	-	-0-
2021	-	-0-



## SUMMARY OF FINDINGS

<b>I. <u>SAF Procurement Manual Lacked Key Sections</u> .....</b>	<b>4</b>
Important sections of SAF’s Procurement Manual were not included.	
<b>II. <u>Purchasing Card Program Administration</u></b>	
Weaknesses in management oversight of the P-Card program result in increased risk that inappropriate use of P-Cards could go undetected.	
<b>A. <u>Purchasing Card Manual</u>.....</b>	<b>5</b>
Important sections of the revised Code were not included in SAF’s Procurement Manual.	
<b>B. <u>Cardholder Approved Their Own Purchases</u> .....</b>	<b>5</b>
Seventeen purchases were identified in which the cardholder approved their own purchases.	
<b>C. <u>Bank Statements Lacked Management Approval</u>.....</b>	<b>6</b>
Twenty-five transactions were identified in which the supervisor/approver did not sign the monthly bank statements.	
<b>D. <u>Bank Statements Lacked Cardholder Approval</u>.....</b>	<b>6</b>
Twenty-five transactions were identified in which the cardholder did not sign the monthly bank statements.	
<b>E. <u>Prohibited Purchases</u>.....</b>	<b>6</b>
One transaction was identified in which lodging was purchased on a P-Card.	
<b>F. <u>Purchases from Non-Contract Vendor</u>.....</b>	<b>7</b>
Two transactions were identified in which furniture items were purchased from non-contract vendors.	
<b>G. <u>Blocked Merchant Category Codes</u> .....</b>	<b>7</b>
Two transactions were identified in which blocked MCCs were used for purchases.	
<b>H. <u>P-Card Training Program Not Documented</u> .....</b>	<b>8</b>
The agency had no documented training program for Level I or Level II P-Cardholders.	
<b>III. <u>Small and Minority Business Utilization Plans and Progress Reports Not Filed</u> ....</b>	<b>9</b>
One Annual Utilization Plan was not filed and three Quarterly Progress Reports were not filed.	

**Note:** The agency’s responses to issues raised in this report have been inserted immediately following the recommendations in the body of the report.

## RESULTS OF AUDIT

### **I. SAF Procurement Manual Lacked Key Sections**

Important sections of the revised Code were not included in SAF's Procurement Manual. SAF's procurement manual was last updated on December 31, 2014 and had not been approved by the CPO. Significant changes were made to the South Carolina Procurement Code effective May 13, 2019.

- (1) The Small Purchase Procedures have not been updated to reflect SC Code Ann. § 11-35-1550.
- (2) There are no written procedures in the manual for the purchase of Commercial Products and Commercially Available Off-the-Shelf (COTS) products per SC Regs. 19-445-2141.
- (3) There are no written procedures in the manual referencing the new requirements for advertising all Sole Source and Emergency Procurements greater than \$50,000 to reflect SC Code Ann. §§ 11-35-1560 and 1570.
- (4) There are no written procedures in place that comply with the Retention of Procurement Records. SC Code Ann. § 11-35-2430.

SC Code Ann. § 11-35-540 (3) requires governmental bodies to develop internal operating procedures consistent with the Code.

**Recommendation:** We recommend SAF revise its internal procurement procedures manual to include source selection methods and other aspects of the Code commonly conducted by the agency as required by SC Code Ann. § 11-35-540 and Reg. 19-445.2005, and that SAF submit the manual to the Division of Procurement Services for approval.

#### **Agency Management Response**

In accordance with the Recommendation concerning SAF's Procurement Manual, SAF is revising our internal procurement procedures manual and internal procedures to comply with South Carolina Procurement Code. We will update the manual to reflect the changes in the Code as set forth in Section I of the Results of the Audit. We expect to have a proposed revised manual to the Division of Procurement Services for approval within 45 days of the date of this letter.

### **II. Purchasing Card Program Administration**

We reviewed SAF's P-Card policies and procedures for compliance with the South Carolina Purchasing Card Policy and Procedures (State P-Card Policy) and identified areas of non-compliance. SAF had four cardholders who spent \$59,616 during the audit period.

## RESULTS OF AUDIT

### A. Purchasing Card Manual

SAF's P-Card Manual was last updated on July 1, 2014 and did not address critical elements of the State P-Card Policy as follows:

- (1) Inadequate roles and responsibilities for the documentation of manager/supervisor approval.
- (2) Inadequate procedures for prohibited transactions.
- (3) No prohibition of order splitting.
- (4) No procedures for BOA Works or a description of how to use BOA Works.

**Recommendation:** We recommend SAF revise its internal P-Card Manual that covers the key requirements of the State P-Card Policy.

### **Agency Management Response**

In accordance with Recommendation A concerning the Purchasing Card Manual, SAF is revising our internal P-Card Manual to ensure that it complies with the critical requirements of the State P-Card Policy, including, but not limited to, those requirements identified in Section II(A) of the Results of the Audit. We expect to have a proposed revised manual to the Division of Procurement Services for review and/or approval within 45 days of the date of this letter.

### B. Cardholder Approved Their Own Purchases

We identified seventeen purchases where the cardholder, the agency director, approved her own purchases. Per section V. A. of the State P-Card Policy, "Internal Controls shall include, (4) No Cardholder can provide approval for payment for his/her transactions or of the P-Card cardholder activity statements." During the audit, the agency committed to reassigning the card and having the director approve the purchases with oversight by the Purchasing Card Administrator (PCA).

**Recommendation:** We recommend SAF revise its P-Card procedure manual to ensure adequate separation of duties including prohibition of a cardholder approving his/her own purchases. PCA roles and responsibilities should be adequately described including verification of manager approvals as required by the State P-Card Policy.

### **Agency Management Response**

In accordance with Recommendation B concerning SAF's procedures governing cardholder purchase approvals, we are revising our P-Card purchase manual and procedures to ensure that adequate separation of duties are in place to prohibit a cardholder from approving his/her own purchases. We are implementing a process by which the all purchases made by cardholders must

## RESULTS OF AUDIT

go through multiple levels of approval. All approvals will be made by individuals who are not cardholders. Our revised P-Card manual will outline this process.

### C. Bank Statements Lacked Management Approval

Twenty-five bank statements had not been signed by management. Per State P-Card Policy Section III(B)(8), supervisors “Sign the cardholder activity statements signifying review and approval for payment. This responsibility cannot be delegated to another person.”

**Recommendation:** We recommend that management sign the activity statements as required by State P-Card Policy. We also recommend that SAF’s P-Card procedure manual be updated to comply with the State P-Card Policy.

#### **Agency Management Response**

In accordance with Recommendation C concerning management approval of bank statements, we will require that management review and sign all bank statements from any purchases with the P-Card. We will also update SAF’s P-Card Manual to include this requirement.

### D. Bank Statements Lacked Cardholder Approval

Twenty-five bank statements had not been signed by the cardholder. Per State P-Card Policy III(D)(4) states, cardholders “sign the cardholder activity statements attesting to the accuracy and completeness of the statement. All signatures must be original. Signatures made with rubber stamps are prohibited.”

**Recommendation:** We recommend that SAF’s P-Card Policy be updated to comply with the State P-Card Policy. We also recommend that cardholders be re-trained to sign the activity statements as required by State P-Card Policy.

#### **Agency Management Response**

In accordance with Recommendation D concerning cardholder approval of bank statements, we will require that all cardholders review and sign all bank statements from their purchases with the P-Card. We will update SAF’s P-Card Manual to include this requirement and will include this requirement in the training provided to P-Cardholders.

### E. Prohibited Purchases

One transaction paid for a prohibited purchase. Lodging cannot be charged to a P-Card per State P-Card Policy IV (E), "The following types of purchases are strictly prohibited by State policy. No exceptions will be granted unless obtained in writing as set forth in this policy. This list must be included in lists of prohibited purchases in policies at the local agency and program

## RESULTS OF AUDIT

level:"" (4) Employee travel expenses, including lodging, transportation (except airline tickets & rental cars), and meals".

**Recommendation:** We recommend SAF train employees on the types of purchases that are prohibited. We further recommend that monthly management review address purchases that violate State P-Card Policy.

### Agency Management Response

In accordance with Recommendation E concerning prohibited purchases, we will ensure that both our P-Card policy and our training for P-Card holders include information regarding prohibited purchases, including but not limited to employee travel expenses. We will also ensure that management's review of all purchases with the P-Card address any purchases that violate State P-Card Policy.

### F. Purchases from Non-Contract Vendor

There were two transactions in which the procurement code was not followed. Two items of furniture in the amount of \$3,283 were purchased from a non-contract vendor. Furniture should be purchased from the vendors that are on state term contract. SC Code Ann § 11-35-310 Definitions (37). "Term contract" means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during their term"

**Recommendation:** We recommend SAF purchase supplies & services from state term contracts whenever possible to ensure compliance with SC Code Ann § 11-35-310 (37).

### Agency Management Response

In accordance with Recommendation F concerning purchases from non-contract vendors, we will ensure that, whenever possible, we will purchase supplies and services from state term contracts in compliance with S.C. Code Ann. §11-35-310(37). We will ensure the updated P-Card Manual includes this requirement and will include this requirement in the training provided to P-Card holders.

### G. Blocked Merchant Category Codes

We identified two purchases made on blocked MCCs without prior approval by the Office of the Comptroller General (OCG).

**Recommendation:** We recommend that SAF develop and implement procedures assigning responsibility for reviewing for blocked MCCs use to monthly management review and we further recommend that the justified use of any blocked MCCs be approved by the OCG.



## RESULTS OF AUDIT

### Agency Management Response

In accordance with Recommendation G concerning blocked merchant category codes("MCC"), as discussed during the exit conference, due to the nature of some purchases we have to make as part of our business practices, at times we do not know that a MCC is blocked until we attempt to make a purchase. We discussed that, in the future, when and if this occurs, we will provide a written explanation to the Office of the Comptroller General ("OCG") to obtain approval for such a purchase. If, we need to make a purchase with a MCC that we know is blocked in the future, we will obtain written approval from the OCG before making such a purchase.

#### H. P-Card Training Program Not Documented

The Agency had no documented training program for Level I and Level II P-Cardholders. Regarding Level I training (initial training of prospective cardholders), Section III (A)(4) of the State P-Card Policy states "Develop a mandatory Agency-specific training program for all prospective Cardholders and supervisors/approving officials prior to issuance of the P-Card." Additionally, the Manual requires Level II training, also referred to as "Procurement Official" training, for those making purchases exceeding the no competition threshold.

**Recommendation:** We recommend that SAF ensure adequate training is provided to cardholders and supervisors/approving officials providing oversight responsibilities. Both the Level I and the Level II training should be documented, and completion dates recorded in the cardholder's file.

### Agency Management Response

In accordance with Recommendation H concerning P-Card training, we will ensure that all P-Card holders and any supervisors and approving officials have adequate and complete training regarding the responsibilities and limitations on the use of the P-Card. We are developing a training program within SAF for these individuals and will ensure that we document their completion of this training within their individual files. We expect to have this training program completed within 45 days of the date of this letter.

## RESULTS OF AUDIT

### III. Small and Minority Business Utilization Plans and Progress Reports Not Filed

One of the required annual utilization plans was not filed and three of the quarterly progress reports were not filed. SC Code Ann. § 11-35-5240 (2) states in part that MBE utilization plans be submitted to the SMBCC for approval no later than July 30th, annually, and that progress reports be submitted to the SMBCC no later than 30 days after the end of each fiscal quarter.

**Recommendation:** We recommend that SAF develop and implement procedures to comply with SC Code Ann. § 11-35-5240(2) by submitting annual utilization plans and quarterly progress reports to the SMBCC in a timely manner.

#### **Agency Management Response**

In accordance with the Recommendation concerning the Small and Minority Business Utilization Plans and Progress Reports, we have implemented procedures to ensure that all future annual utilization plans and quarterly progress reports are submitted to the SMBCC in a timely manner in compliance with S.C. Code Ann. §11-35-5240(2).

### CONCLUSION

As described in our transmittal letter, corrective action based on the recommendations described in this report, we believe, will in all material respects place The State Accident Fund in compliance with the South Carolina Consolidated Procurement Code.

The Agency has not requested increased procurement certification above the basic limit of \$50,000 allowed by the Code. Subject to the corrective action listed in this report, we will recommend the Agency be allowed to continue procuring supplies and services, consultant services, construction services and information technology up to the basic level of \$50,000 as allowed by the South Carolina Consolidated Procurement Code.



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Edward Welch, CPA  
Audit Manager



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Crawford Milling, CPA, CGMA  
Director, Audit & Certification

## End Notes

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<sup>i</sup> Regulation 19-445.2020 Certification

(A) Review Procedures.

(2) The Materials Management Officer shall review and report on the government body's entire internal procurement operation to include, but not be limited to the following:

- (a) Adherence to provisions of the Code and these Regulations;
- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidence of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selection;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;
- (k) Adequacy of written determinations required by the Code and these Regulations;
- (l) Contract administrations;
- (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the board.

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AGENCY: Division of Procurement Services

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SUBJECT: Procurement Audit – Department of Natural Resources (limited follow up review)

In accordance with S.C. Code Ann. §11-35-1210, the Division of Procurement Services (DPS) conducted a follow-up audit on the purchasing card (P-Card) related findings in the South Carolina Department of Natural Resources' (DNR) Procurement Audit Report for the period January 1, 2017 through October 31, 2017, to determine whether the internal controls of the agency's P-Card program were adequate to ensure compliance, in all material respects, with the S.C. Purchasing Card Policies and Procedures (State P-Card Policy).

We found the internal controls of DNR's purchasing card procedures were not adequate to ensure compliance with the State P-Card Policy as described in the audit report and made recommendations for improvement. In the report, we recommend suspension of twenty percent of DNR's P-Cards until DNR can bring its oversight of the program in compliance with the State P-Card Policy and adequately manage the risk of misuse.

After meeting with DNR staff and receiving DNR's response to this audit report, we agreed to hold in abeyance the reduction in P-Cards contingent upon DNR's implementation of its proposed corrective actions within the time periods set forth in its response. Additionally, DPS has asked to be copied on DNR's P-Card training schedule and notification of implementation of each of corrective action. Should DNR fail to comply with these conditions, DPS will work with the Comptroller General's Office to suspend twenty percent of DNR's P-Cards.

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AUTHORITY ACTION REQUESTED:

Receive the follow-up audit report on the Department of Natural Resources' (DNR) purchasing card (P-Card) program related findings in DNR's Procurement Audit Report for the period January 1, 2017, through October 31, 2017, as information only.

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ATTACHMENTS:

Agenda item worksheet and attachments



**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

**Meeting Scheduled for: 9/8/2021**

**Regular Agenda**

**1. Submitted by:**

- (a) Agency: Division of Procurement Services  
(b) Authorized Official Signature:

  
John St. C. White, Materials Management Officer

**2. Subject: Audits and Certification (Limited follow-up review)**

**3. Summary and Background Information:**

In accordance with S.C. Code Ann. §11-35-1210, the Division of Procurement Services (DPS) conducted a follow-up audit on the purchasing card (P-Card) related findings in the South Carolina Department of Natural Resources' (DNR) Procurement Audit Report for the period January 1, 2017 through October 31, 2017, to determine whether the internal controls of the agency's P-Card program were adequate to ensure compliance, in all material respects, with the S.C. Purchasing Card Policies and Procedures (State P-Card Policy).

We found the internal controls of DNR's purchasing card procedures were not adequate to ensure compliance with the State P-Card Policy as described in the audit report and made recommendations for improvement. In the report, we recommend suspension of twenty percent of DNR's P-Cards until DNR can bring its oversight of the program in compliance with the State P-Card Policy and adequately manage the risk of misuse.

After meeting with DNR staff and receiving DNR's response to this audit report, we agreed to hold in abeyance the reduction in P-Cards contingent upon DNR's implementation of its proposed corrective actions within the time periods set forth in its response. Additionally, we have asked to be copied on DNR's P-Card training schedule and notification of implementation of each of corrective action. Should DNR fail to comply with these conditions, DPS will work with the Comptroller General's Office to suspend twenty percent of DNR's P-Cards.

**4. What is the Authority asked to do? Receive the report for information only.**

**5. What is recommendation of the submitting agency involved? DPS recommends the Authority receive the report for information only.**

**6. Private Participant Disclosure – Check one:**

- No private participants will be known at the time the Authority considers this agenda item.  
 A Private Participant Disclosure form has been attached for each private participant.  
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

**7. Recommendation of other office (as required)?**

- (a) Authorized Signature: \_\_\_\_\_



(b) Office Name:

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**8. List of Supporting Documents:**

- (a) Audit of DNR with DNR's response
  - (b) S.C. Code Ann. § 11-35-1210
- 

**9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.**

**SECTION 11-35-1210. Certification.**

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body's procurement not under term contract; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

JOHN ST. C. WHITE  
MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

July 23, 2021

Mr. Delbert H. Singleton Jr.  
Director  
Division of Procurement Services  
6<sup>th</sup> Floor-Wade Hampton Building  
Columbia, South Carolina 29201

Subject: SC Department of Natural Resources  
Audit Follow-up Review

Delbert:

I have attached the South Carolina Department of Natural Resources' follow-up review by the Office of Audit and Certification. I concur with the report and recommend it be submitted as information to the State Fiscal Accountability Authority.

Sincerely,

John St. C. White  
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR  
GOVERNOR  
CURTIS M. LOFTIS, JR.  
STATE TREASURER  
RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE  
G. MURRELL SMITH, JR.  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE  
GRANT GILLESPIE  
EXECUTIVE DIRECTOR

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(803) 734-8018

JOHN ST. C. WHITE  
MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

July 22, 2021

Mr. John St. C. White  
Materials Management Officer  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

Re: South Carolina Department of Natural Resources  
Limited Follow-up Review on Procurement Audit Report  
as of April 2, 2021

Dear John:

We conducted a limited follow-up review on purchasing card related findings in the Department of Natural Resources's (DNR) Procurement Audit Report for the period January 1, 2017 through October 31, 2017, dated February 23, 2018. The objective of our limited follow-up review was to assess Management's corrective actions taken as of April 2, 2021, regarding the issues and recommendations indicated in the February 2018 report.

The follow-up review disclosed conditions, as explained in the report which we believe still need correction or improvement.

In the report, we recommend suspension of twenty percent of DNR's P-Cards until DNR can bring its oversight of the program in compliance with the State P-Card Policy and adequately manage the risk of misuse. After meeting with DNR staff and receiving DNR's response to this audit report, we agreed to recommend the Authority hold in abeyance the reduction in P-Cards contingent upon DNR's implementation of its proposed corrective actions within the time periods set forth in its response.

Sincerely,

Crawford Milling  
Director, Audit & Certification



**South Carolina  
Department of Natural Resources  
LIMITED FOLLOW-UP REVIEW  
as of April 2, 2021**

**Office of Audit and Certification  
Division of Procurement Services  
April 2, 2021**



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**Department of Natural Resources  
Limited Follow-up Review  
as of April 2, 2021**

**Introduction**

We conducted a limited follow-up review as of July 18, 2019, on purchasing card (P-Card) related findings in our Procurement Audit Report on the SC Department of Natural Resources (DNR), dated February 23, 2018, for the period January 1, 2017 through October 31, 2017. The objective of our limited review was to assess Management’s progress implementing appropriate corrective actions regarding findings pertaining to P-Cards in the Procurement Audit Report issued April 2, 2018.

We conducted a second, limited follow-up review as of April 2, 2021 to assess additional progress implementing corrective actions in response to the February 23, 2018 report.

**Background**

We conducted the original audit of the internal procurement operating policies and procedures of DNR, as outlined in DNR’s Internal Procurement Operating Procedures Manual, under the SC Consolidated Procurement Code (Code) § 11-35-1230(1), and Regulation 19-445.2020.

The primary objective of that audit was to determine whether the internal controls of DNR’s procurement system were adequate to ensure compliance with the Code and ensuing regulations. The audit disclosed conditions which we believed required correction or improvement and concluded that corrective action based on the recommendations described in the report would place DNR in compliance with the Code.

Certification was recommended and approved subject to DNR’s implementation of corrective actions included in the agency’s response.

---

On May 1, 2018 the State Fiscal Accountability Authority approved the following increase in DNR’s procurement certifications:

	<b><u>Original Certification</u></b>	<b><u>Approved Certification</u></b>
Supplies and Services.....	*\$ 50,000	*\$ 300,000
	Per Commitment	Per Commitment

\*Total potential purchase commitment whether single year or multi-term contracts are used.

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The February 2018 audit report found that DNR had 634 cardholders who spent approximately \$5,078,000 during the audit period through 20,675 transactions. Due to this volume, there is enhanced risk of misuse without adequate management oversight of the P-Card program.

**Department of Natural Resources**  
**Limited Follow-up Review**  
**as of April 2, 2021**

DNR had one Division Liaison for each of its four divisions. DNR's internal P-Card Manual assigned monthly statement review responsibilities to Division Liaisons and did not specify Cardholder Supervisors responsibilities. However, DNR's practice was to have the cardholder supervisors approve transactions. There was no review by Liaisons, as required by State P-Card Policy, for prohibited transactions, purchases in excess of STLs, use of blocked MCC codes, or transaction splitting.

Assigning four Division Liaisons the responsibility for auditing and reviewing the transactions of over a hundred cardholders each month, would further increase the risk of misuse.

The report contained five recommendations related to P-Cards requiring corrective action:

1. Roles and Responsibilities Need Revision to Reflect Practice

We recommended DNR develop and implement P-Card procedures to address Program Administration in the following areas:

- delegation of purchase approval authority to the cardholder;
- ensure adequate review of cardholder transactions by the cardholders' supervisors; and
- assign responsibility for a documented review of the monthly statements by the Division Liaisons.

2. Cardholder Supervisors' Responsibilities

We recommended that a section be added clearly delineating their responsibilities, including transaction review and approval, and training.

3. Documenting Approval of Card Assignments

We recommended the form be revised to require approval by the Deputy Directors and assigning responsibility for retaining the forms while the card is active. We also recommended the P-Card Coordinator issue a standard form for use by the divisions to simplify compliance.

4. No Independent Audits of Procurement Cards Performed

We recommended that DNR develop and implement procedures to ensure compliance with the South Carolina Purchasing Card Policy and Procedures Manual regarding independent annual audits of the procurement card program.

5. Artificially Divided Procurements

Based upon the frequency of purchases and dollars spent, we recommended DNR solicit competition for nitrogen and fertilizer according to the competitive requirements of the South Carolina Consolidated Procurement Code.

**Department of Natural Resources**  
**Limited Follow-up Review**  
**as of April 2, 2021**

First Follow-up as of July 18, 2019

**Scope and Procedures**

We assessed the corrective actions taken by Management as of July 18, 2019 by performing the following:

1. Prepare and send the Follow-up Process – Information Request Sheet(s) and the Corrective Action Request letter to DNR.
2. Obtain and review Management’s corrective actions taken and evaluate to ensure the actions address the external audit recommendations.
3. Perform a limited review of the supporting documentation to ensure it substantiates the corrective actions Management has indicated.
4. Prepare a report indicating the results.

**Summary Assessment as of July 18, 2019**

As stated in the introduction, the objective of the July 2019 limited review was to assess DNR’s progress implementing corrective actions described in the February 2018 Procurement Audit Report, upon which DNR’s current certification was based.

The corrective actions disclosed during that follow-up did not adequately address the risk of misuse or abuse of the P-Cards as recommended in the audit report. Four recommendations to improve P-Card program oversight were partially implemented, and one recommendation to combine multiple fertilizer purchases and solicit competition was implemented. A more detailed assessment of management’s implementation of corrective actions is contained in [Exhibit A](#) to this report.

DNR’s P-Card Program continued to operate with 568 active cards, all with \$2,500 Single Transaction Limits (STLs), as of September 27, 2019. Annualized spend had increased from approximately \$5.1M (p. 1) to \$6.2M since the audit. Three internal audit reports obtained during the follow-up indicate the following recent P-Card activity:

<u>Month</u>	<u>Transactions</u>	<u>\$ Amount</u>
February 2019	2333	559,980
March 2019	1974	469,645
<u>April 2019</u>	<u>2271</u>	<u>524,605</u>
Annualized	26,312	\$ 6,216,920

We commend DNR for hiring a senior internal auditor to review P-Card transactions; however, the ability of one auditor to provide effective oversight for such a large P-Card program is questionable.



**Department of Natural Resources  
Limited Follow-up Review  
as of April 2, 2021**

**Second Follow-up as of April 2, 2021**

On March 29, 2021, Audit and Certification contacted the Procurement Director at DNR to inquire about the agency's progress implementing corrective action in response to the recommendations of the April 2, 2018 procurement audit report. At that time DNR requested another copy of the original audit report. The Director of Audit and Certification reminded DNR's Procurement Director that the report found that there was insufficient management oversight of the 634 P-Cards by four Liaisons.

DNR's Procurement Director stated that she planned to initiate an internal discussion to assess DNR's progress on implementing the procurement audit report's recommendations and provide a status update.

On April 1, 2021, DNR requested a meeting to have a conversation surrounding DNR's P-Card program,

On April 2, 2021, a video conference took place to address findings from the January 1 to October 31, 2017 audit findings related to DNR's use of P-Cards. The following people attended:

**DNR**

Valerie Duncan – Procurement Director  
Caleb Cohoon – Internal Audit Manager  
Donna Maples – Director of Finance  
Angie Cassella – Deputy Director, Div of Administration

**Audit and Certification**

Crawford Milling Director, Audit & Certification  
Edward Welch Audit Manager

At the meeting, DNR's Internal Audit Manager explained that DNR's corrective action plan did not follow the recommendations in the audit report. Instead, Internal Audit takes every statement with a transaction of \$1,500 and above and reviews all transactions on these statements. This method will result in approximately 15% of the total transactions being tested and approximately 25% of the total dollar amount being tested. The Deputy Director of Administration offered to audit a higher percentage if we thought that would be better.

DNR had 568 active cards all with a Single Transaction Limit of \$2,500 as of September 27, 2019 generating approximately 26,000 transactions and \$6.2M in spending on an annualized basis. On April 2, 2021, DNR indicated that it has eliminated as many cards as possible for office staff and others, but according to the Internal Audit Manager, there are still roughly 600 active P-Cards. The size of DNR's P-Card program continues to represent a heightened level of risk.



**Department of Natural Resources**  
**Limited Follow-up Review**  
**as of April 2, 2021**

There are no required liaison reviews to verify that transactions are allowable under State P-Card Policy. Per State P-Card Policy III (C) Liaison Responsibilities, "Liaisons review the transactions for all cardholders assigned to him/her to determine that the Cardholder and supervisor/approver are complying with the State P-Card Policy, i.e., no prohibited transactions, no split transactions, purchases made from contract vendors when available, no deliveries to other than the business address, no blocked MCCs, etc." The internal auditor is essentially performing both the P-Card Liaison function, on a sample basis, and some PCA roles.

We pointed out that the span of control over DNR's P-Cards by four Liaisons and one internal auditor is not manageable or effective. Per section V. A. Internal Controls. 5. "Appropriate limits on the number of Cardholders assigned to supervisor/approving officials, and liaisons in order to ensure adequate review of business need and documentation for each purchase, and to ensure that each purchase complies with this policy and the Code."

Based on internal audit's lack of independence from the agency's P-Card program, DNR has introduced the risk that an annual or semi-annual audit by internal audit may not be effective. State P-Card Policy V (A) (6) Internal Controls, requires that the agency P-Card manual have a provision for an annual independent audit or review of the P-Card Program by the P-Card Administrator, Internal Audit unit, or other unit assigned audit responsibilities.

DNR's Deputy Director expressed the belief that the controls DNR has in place are effective. She stated that a cookie cutter approach will not work because of the unique needs of the agency. DNR has wildlife employees, law enforcement employees, fishery employees, and others who are out of the office for long periods of time and who cannot make purchases by any other means. The Audit and Certification Director explained that the function of a Liaison under the P-Card program does not require the agency's existing Liaison positions to perform the required reviews and that they could be assigned in such a way as to narrow the span of control and provide for effective Liaison reviews. DNR's Deputy Director stated that the review DNR has in place now is more effective than having a Liaison review because the internal auditor is more familiar with which transactions are valid than an administrative assistant would be.

According to DNR's Deputy Director, the Liaisons check funding. DNR's internal policy is for the cardholder's manager to review all aspects of the transactions.

DNR does review their P-Card card account twice a year to ensure that no unused cards are active. DNR has updated their P-Card manual and the updated manual will be sent to Audit & Certification. Audit and Certification will review the DNR P-Card manual, when received, to better understand the PCA's role.

Audit and Certification recognizes the unique needs of the agency and the difficulty they face in complying with the State P-Card Policy and commend DNR for making improvements in its oversight of its use of P-Cards by hiring an internal auditor.

**Department of Natural Resources  
Limited Follow-up Review  
as of April 2, 2021**

On April 20, 2021, DNR submitted a copy of its revised P-Card procedure manual to provide documentation of all aspects of DNR's oversight of its P-Card program. There were gaps between the content of the manual and its table of contents. Significantly, it still provides for only one liaison in each of the four DNR divisions and leaves the cardholders' supervisors to review all aspects of transactions.

**Conclusion**

DNR has not adequately implemented corrective action as recommended in the February 2018 procurement audit report to comply with the State P-Card Policy and reduce the risk of misuse or abuse of P-Cards to an acceptable level.

**Recommendations**

We recommend that twenty percent of DNR's P-Cards be suspended until the Agency can bring its oversight of the program into compliance with the State P-Card Policy and adequately manage the risk of misuse.

We recommend that DNR revise its internal P-Card procedure manual, within 90 days of receipt of this report, to be in line with the revised State P-Card Policy dated March 6, 2020, and submit the revised manual to Audit and Certification for approval. The Procurement Services website has an Agency P-Card Manual Checklist that may be of assistance in revising DNR's P-Card procedure manual.

Once DNR's internal P-Card procedure manual has been approved, we further recommend that DNR retrain all P-Card holders, liaisons, and program managers using a documented training program.

After the revised procedures have been in place for a year, we recommend that DNR submit annual internal audit reports to Audit and Certification. The Procurement Services website has a copy of the audit procedures for P-Cards used by Audit and Certification as part of the Procurement Audit Program.



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Crawford Milling, CPA, CGMA  
Director of Audit & Certification

**Note:** The agency's response to the recommendations made in this report are attached after the report.

**Department of Natural Resources  
Limited Follow-up Review  
Results As of July 18, 2019**

**Exhibit A - Assessment of Corrective Actions as of July 18, 2019**

**Note: This assessment was never presented prior to its inclusion in this report**

**P-Card**

**1. Per Prior Audit Report - 1.A. Procurement Card Administration:**

DNR has delegated purchase approval authority to the cardholder (employee), in violation of State P-Card Policy. Review and approval responsibilities cannot be delegated to someone else.

DNR's Division Liaisons are not auditing and reviewing cardholders' transactions as required by the Agency's Procurement Card Manual.

There is one Division Liaison for each of four divisions in DNR. While the practice is to have the cardholders' supervisors approve transactions, there was not a process to have the statements reviewed by the Liaisons for prohibited transactions, purchases in excess of STLs, use of blocked MCCs, or transaction splitting.

**Per Prior Audit Report--Recommendation:** We recommend DNR develop and implement P-Card procedures to address Program Administration that comply with the State P-Card Policies and Procedures, Section III. A. 1. Specifically, DNR should:

- revise and clarify its delegation of purchase approval authority to the cardholder to prevent a cardholder from approving their own transaction(s);
- develop and implement procedures to ensure adequate review of cardholder transactions by assigning responsibility for review and approval of transactions to the cardholders' supervisors so that reviewers are only responsible for a reasonable number of cardholders to review; and
- assign responsibility for a documented review of the monthly statements by the Division Liaisons for the purpose of ensuring compliance with assigned STLs, prohibited transactions, including split transactions, and the CG's blocked MCC listing.

**Per Prior Audit Report (DNR) Response:** Program Administration – SC DNR will review the recommendations as stated and will revise the program procedures to be compliant with the State P-Card policies and procedures.

**DNR's Corrective Action Provided to Audit and Certification  
on September 16, 2019:**

As of July 2018, SC DNR has revised our process and manual to clarify that cardholders are not approving their own transactions. All transactions are reviewed and approved by the appropriate supervisor for that cardholder. Cardholders supervisors are not only reviewing and approving the Summary form, but approval of the cardholder's Purchasing Card Statement is also required.

**Department of Natural Resources  
Limited Follow-up Review  
Results As of July 18, 2019**

**Audit and Certification's Assessment  
of Management's Corrective Action:**

Corrective Action had been partially implemented.

The revised procedure manual did not adequately address the responsibilities for supervisor/approvers and liaisons. Additionally, the manual still provides for only four liaisons for approximately 600 P-Cards.

**2. Per Prior Audit Report - Cardholder Supervisors Responsibilities:**

DNR's Procurement Card Manual does not have a section for Cardholder Supervisors' Responsibilities as it did for Division Liaisons and Cardholders (Employee).

**Per Prior Audit Report--Recommendation:** We recommend that a section be added clearly delineating their responsibilities, including transaction review and approval, and training.

**Per Prior Audit Report (DNR) Response:** Program Administration – SC DNR will review the recommendations as stated and will revise the program procedures to be compliant with the State P-Card policies and procedures.

**DNR's Corrective Action Provided to Audit and Certification  
on September 16, 2019:**

As of September 2019, DNR Procurement Card Manual has been updated to reflect Supervisors' Responsibilities.

**Audit and Certification's Assessment  
of Management's Corrective Action:**

Corrective actions had been partially implemented.

DNR's P-Card Manual was updated after the follow-up request was received from A&C.

The new supervisor responsibilities mirror the liaison responsibilities except that the supervisor is required to review 'purchases.' As stated in Response 1 above, "supervisors are not only reviewing and approving the Summary form, but approval of the cardholder's Purchasing Card Statement is also required"; however, this is not documented in the procedures.

Roles and responsibilities remain unclear.

**3. Per Prior Audit Report - Assignment of cards:**

While we did see Division Deputy Directors initialing the request forms, there was not a specific space designated for that approval of the form.



**Department of Natural Resources  
Limited Follow-up Review  
Results As of July 18, 2019**

**Per Prior Audit Report--Recommendation:** We recommend the form be revised to require approval by the Deputy Directors, and assigning responsibility for retaining the forms while the card is active. We also recommend the P-Card Coordinator issue a standard form for use by the divisions to simplify compliance.

**Per Prior Audit Report (DNR) Response:** Program Administration – SC DNR will review the recommendations as stated and will revise the program procedures to be compliant with the State P-Card policies and procedures.

**DNR's Corrective Action Provided to Audit and Certification  
on September 16, 2019:**

SC DNR has created a new Employee Information form to request a Procurement Card. This form has a Deputy Director Signature block for the appropriate Deputy Director to approve the request of a Procurement Card for the designated staff. The Procurement Card Coordinator is also retaining a copy of the form while the card is active.

**Audit and Certification's Assessment  
of Management's Corrective Action:**

Corrective Action had been partially implemented.

A signature line was inserted next to the P-Card section on the new hire form. The signature on a sample form provided by DNR appears to be from a stamp and there is no space for the deputy director to date the approval.

**4. Per Prior Audit Report - Independent Audits:**

No independent audits of procurement card activity were being performed at least annually by the Agency.

**Per Prior Audit Report--Recommendation:** We recommend that DNR develop and implement procedures to ensure compliance with the South Carolina Purchasing Card Policy and Procedures Manual regarding independent annual audits of the procurement card program.

**Per Prior Audit Report (DNR) Response:** Program Administration – SC DNR will review the recommendations as stated and will revise the program procedures to be compliant with the State P-Card policies and procedures.



**Department of Natural Resources  
Limited Follow-up Review  
Results As of July 18, 2019**

**DNR's Corrective Action Provided to Audit and Certification  
on September 16, 2019:**

SC DNR hired a Senior Internal Auditor in February 2019. Since his tenure began DNR has been conducting monthly audits and will continue to do so going forward in accordance with the SC Purchasing Card Policy and Procedures Manual. In addition, the AUP Auditors also audit Procurement Card transaction usage on a yearly basis.

Examples of internal audits conducted are being forwarded with the follow-up Audit request.

**Audit and Certification's Assessment  
of Management's Corrective Action:**

Corrective actions had been partially implemented.

We commend DNR for hiring a senior internal auditor to review P-Card transactions. Our review of the three internal audit reports provided found that the reviews cover approximately 60 P-Card statements each month or 10 percent of statements and 20 percent of the transactions.

Review of the April 2019 internal auditor's report shows that unauthorized purchases are being identified and reported.

AUP engagement procedures are designed by the State Auditor's Office and require a sample of transactions be reviewed to determine:

- The cardholder is an authorized user and individual credit limits have been properly approved in accordance with agency policies.
- The purchase is authorized based on the cardholder's job title/position
- The monthly purchase summary was submitted along with applicable receipts and signed by both the supervisor and cardholder.
- The purchase did not exceed the single transaction limit or the individual credit limit and there was no indication of transaction splitting.

The AUP engagement is not intended to and does not adequately address P-Card program oversight as required by the State P-Card Policy.

**5. Per Prior Audit Report - I.B. Artificially Divided Procurements:**

Fertilizer and nitrogen purchases should have been combined and competed based upon the frequency of purchases and dollars spent. DNR's purchase of fertilizer and nitrogen to maintain dove fields is a recurring annual expense. Therefore, the Agency's annual usage for these products should be estimated and competition solicited.

**Department of Natural Resources  
Limited Follow-up Review  
Results As of July 18, 2019**

**Per Prior Audit Report--Recommendation:** We recommend DNR solicit competition for nitrogen and fertilizer according to the competitive requirements of the South Carolina Consolidated Procurement Code.

**Per Prior Audit Report (DNR) Response:** SC DNR will solicit competition for nitrogen and fertilizer according to the competitive requirements of the SC Consolidated Procurement Code.

**DNR's Corrective Action Provided to Audit and Certification  
on September 16, 2019:**

SC DNR has solicited competition for nitrogen and fertilizer according to the competitive requirement of the SC Consolidated Procurement Code beginning July 1, 2017 (FY18).

**Audit and Certification's Assessment  
of Management's Corrective Action:**

Corrective action had been implemented.

DNR provided a listing of solicitations conducted for nitrogen and fertilizer. We obtained solicitations from SCEIS and determined the earliest solicitation date to be February 15, 2018, during the audit.

# South Carolina Department of Natural Resources



Robert H. Boyles, Jr.  
Director  
Angie Cassella  
Deputy Director  
Division of Administration

July 19, 2021

D. Crawford Milling, CPA, CGMA  
Director, Audit & Certification of Procurement Services  
South Carolina State Accountability Authority  
1201 Main Street Suite 600  
Columbia, SC 29201

South Carolina Department of Natural Resources (the Department) held a meeting with Audit and Certification staff from the South Carolina Division of Procurement Services on July 8, 2021. The following people attended:

## SC DNR

Valerie Duncan, Procurement Director

Caleb-Scott Cohoon, Audit Manager

Angie Cassella, Deputy Director of Administration

Donna Maples, Director of Business and Finance

## Audit and Certification

Crawford Milling, Director of Audit and Certification

Edward Welch, Audit Manager

At the meeting, a draft follow-up report dated April 2, 2021, was discussed, specifically several findings and recommendations related to the Department's Purchasing Card (P-Card) Program. The Department concurs with the findings and recommendations discussed during that meeting and respectfully submits the following corrective action plan in accordance with those recommendations:

- 1) The single transaction limits and monthly credit limits for a significant majority of the Department's P-Cards be reduced to \$1,000 and \$3,000 respectively. (To be implemented no later than 90 days from the date of this response)


# South Carolina Department of Natural Resources

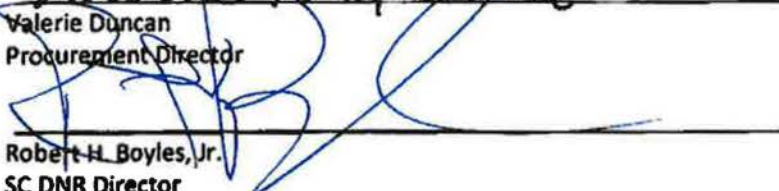


Robert H. Boyles, Jr.  
Director  
Angie Cassella  
Deputy Director  
Division of Administration

- 2) Addition of a second level of review to each cardholders' monthly transactions, typically by the second level supervisor to the cardholder. This review will be documented by having the second reviewer sign a checklist which clearly outlines the following items that they will review each transaction for:
  - Split purchases
  - Single transaction limits
  - Blocked MCC codes
  - Prohibited purchases(To be implemented starting with the P-Card statements ending December 28, 2021)
- 3) Revision of the Department's P-Card Manual to reflect these corrective actions and to better comply with the revised State P-Card Policy dated March 6, 2020. Once revised the Department's P-Card Manual will be submitted to Audit and Certification for review and approval. (To be implemented no later than 90 days from the date of this response)
- 4) Upon approval of the Department's P-Card Policy Manual revisions, the Department will develop and implement a documented training program that covers all aspects of the P-Card program. (To be implemented by the end of the calendar year 2021)
- 5) Once these corrective actions have been in place for a full fiscal year, the Department will submit annual internal audit reports, performed by the Audit Manager, to Audit and Certification.

The Department is wholly committed to fiscal responsibility and appreciates the opportunity to work with Audit and Certification staff to further that commitment in relation to the Department's P-Card program.

  
\_\_\_\_\_  
Valerie Duncan  
Procurement Director

  
\_\_\_\_\_  
Robert H. Boyles, Jr.  
SC DNR Director

STATE FISCAL ACCOUNTABILITY AUTHORITY

REGULAR SESSION

MEETING OF September 8, 2021

ITEM NUMBER 12

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AGENCY: Coastal Carolina University

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SUBJECT: Not Exceeding \$46,000,000 Higher Education Revenue Refunding Bonds of Coastal Carolina University

The Authority is asked to adopt a resolution making provision for the issuance and sale of not exceeding \$46,000,000 Higher Education Revenue Refunding Bonds (issued on behalf of Coastal Caroline University).

The proceeds of the bonds will be used for the purposes of: (i) defeasing all or a portion of the Outstanding Series 2013 bonds and refunding all or a portion of the refunded bonds; (ii) funding the Series 2021 Debt Service Reserve Requirement, if any; (iii) providing for credit enhancement with respect to Series 2021 bonds, if any; and (iv) paying certain costs and expenses relating to the issuance of the Series 2021 bonds.

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AUTHORITY ACTION REQUESTED:

Adopt a resolution making provision for the issuance and sale of not exceeding \$46,000,000 Higher Education Revenue Refunding Bonds of Coastal Carolina University.

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ATTACHMENTS:

Pope July 16, 2021 letter; SFAA Resolution, CCU 2021 Supplemental Resolution; Bond Counsel Opinion letter; NDIF





# OFFICE OF STATE TREASURER

## New Debt Information Form (NDIF) - Initial Form

SFAA Approval Date: 09/08/21

Final Version Date: 00/00/00

### 1. AGENCY/ISSUER & FINANCING INFORMATION

Agency #: \_\_\_\_\_ Issuer: Coastal Carolina University Series: 2021  
 Borrower (if not Issuer): \_\_\_\_\_  
 Bond Caption: Higher Education Revenue Refunding Bonds  
 Bond Resolution Amount: \$46,000,000 Est. Production/Par Amt: \$40,900,000

(\* Used to calculate initial COI percentages; STO bond issues must use Par Amt \*)

**Submitted By:**

ENTITY: Coastal Carolina University  
 BY: David Frost  
 ITS: VP of Finance and Administration  
 Tel: 843-349-2227  
 Email: dfrost@coastal.edu

Final Production/Par Amt: \$0.00

**Transaction Type/Method of Sale:**

Public Offering: Competitive:  Negotiated: \_\_\_\_\_  
 Direct Placement: Competitive: \_\_\_\_\_ Negotiated: \_\_\_\_\_  
 Governmental Loan/Governmental Purchaser  
 Other: \_\_\_\_\_

MSRB (EMMA) Continuing Disclosure Requirement (Y/N): Y  
 MSRB (EMMA) Continuing Disclosure Responsible Party: Coastal Carolina University

### 2. FINANCING (NEW PORTION)

Project #: \_\_\_\_\_ Project Name: \_\_\_\_\_  
 Project Address/Location: \_\_\_\_\_ Amount: \_\_\_\_\_  
 Project Type: \_\_\_\_\_ County: \_\_\_\_\_  
 Projected Avg Interest Rate: \_\_\_\_\_ Final Maturity: \_\_\_\_\_

### 3. FINANCING (REFUNDED PORTION)

Series to be Refunded	Refunded Maturities	Principal Refunded	IR of Refunded Bds	Est. Yield of Refunding Bds	Est NPV Svgs. (\$)	Est NPV Svgs. (% of Ref. Bds)
2013	2023-2040	\$ 43,580,000	3.24%	1.89%	\$ 5,120,263	11.74%
		\$ -			\$ -	
		\$ -			\$ -	
Total		\$ 43,580,000	*****	*****	\$ 5,120,263	

### 4. FINANCING WORKING GROUP

Financial Advisor: Stephens Inc. Disclosure Counsel: Howell, Linkous & Nettles, LLC  
 Bond Counsel: Pope Flynn, LLC Issuer's Counsel: Carlos Johnson  
 Underwriter: TBD Trustee: STO  
 Paying Agent: US Bank Other: N/A

### 5. FINANCING/PROJECT DESCRIPTION

(Briefly, explain the financing/project, the anticipated costs, &amp; the basis for these cost estimates. Use an attachment if needed)

The proposed Series 2021 Bonds will provide proceeds to effect a refunding of certain outstanding debt of the University and pay the costs of issuance. The refinancing consist of a current refunding of the \$54,705,000 original principal amount Higher Education Revenue Bonds, Series 2013, presently outstanding in the principal amount of \$43,580,000. Costs of Issuance ("COI") of the Series 2021 Bonds are calculated at the anticipated par amount of \$40.9 million in accordance with the approved fee schedule for counsel, published schedules of rating agencies, past experience, and to take into account that certain larger items, such as underwriter's discount, will not be known until the pricing of the bonds and will vary with market conditions. COI as listed in Sections 8/9 assume a stand-alone issuance.

### 6. FINANCING/PROJECT APPROVAL DATES

Financing Approvals		Notes:
Issuer/Borrower Approval:	05/07/21	
JBRC Approval:	00/00/00	
SFAA Approval:	09/08/21	Proposed

Project Approvals - Phase II (State Entities Only)		Notes:
Issuer/Borrower Approval:	00/00/00	
JBRC Approval:	00/00/00	
SFAA Approval:	00/00/00	

### 7. TAX AND ARBITRAGE MATTERS & SPEND DOWN SCHEDULE

a. Is any portion of the project, once completed, to be managed by a third-party pursuant to a management contract? (if yes, please attach copy) Yes No  
\_\_\_\_\_ X

b. Will any third-party payments (from support organizations, private entities or the federal government) related to the facility, however indirectly, be used to pay debt service on the bonds? \_\_\_\_\_ X

c. If yes to any of the above, please provide a square footage and cost estimate of the portion affected. Sq. Footage - \_\_\_\_\_  
Cost Estimate - \_\_\_\_\_ \$0



Est. Expenditures - Through 6 Months  
 Est. Expenditures - Through 12 Months  
 Est. Expenditures - Through 18 Months  
 Est. Expenditures - Through 24 Months  
 Est. Expenditures - Through 36 Months  
 Est. Expenditures - Through 48 Months  
 - Estimated Expenditures: Thru FY:

Bond Proceeds	FYE	Spend Down Schedule Notes
\$ 44,747,622	3/9/2022	Refunding, COI
\$ -		
\$ -		
\$ -		
\$ -		
\$ -		
\$ 44,747,622		

**8. ESTIMATED/ACTUAL PROJECT SOURCES AND USES**

Sources	Est. Project Budget (Sources)	Est. Project Budget (Uses)	Uses
(1) Bond Proceeds: (a) Par	\$ 40,900,000	\$ 44,272,839	Project Fund
(b) Premium/Accr. Int.	\$ 3,847,622		Capitalized Interest Fund
(2) Issuer/Borrower Contr.	\$		Debt Service Reserve Fund
(3) Debt Service Fund Trans.	\$		Redemption Price/Escrow Deposit
(4) Debt Service Reserve Fund Contribution	\$	\$ 474,783	Cost of Issuance (Incl. UW Disc.)
(5) Other (Specify)			Accrued Interest
Type -	\$		Other
Type -	\$		Other
(6) SCHFDA MFHRB Sources			Other
(a) LIHTC	\$		Other
(b) State Housing TC	\$		Other
(c) Owner's Equity/Other	\$		Other
<b>Total Project Sources</b>	<b>\$ 44,747,622</b>	<b>\$ 44,747,622</b>	<b>Total Project Uses</b>
Surplus/Deficit		\$ -	

**9. ESTIMATED/ACTUAL BOND COI EXPENDITURES (\*\* Added COI entities beyond the following need an attached description \*\*)**

COI Entity	Selected COI Vendor	Vendor #	Engagement Date (w/Engagement Ltr Attached)	Est. Fee For Services	Act. Fee For Services	(\$ Δ)
Financial Advisor	Stephens Inc.			\$ 50,000	\$ -	\$ 50,000
Bond Counsel	Pope Flynn, LLC			\$ 30,675	\$ -	\$ 30,675
Disclosure Counsel	Howell, Linkous & Nettles			\$ 25,000	\$ -	\$ 25,000
Issuer's Counsel	Carlos Johnson			\$ -	\$ -	\$ -
Underwriter's Counsel				\$ -	\$ -	\$ -
Transaction Counsel				\$ -	\$ -	\$ -
Legal Expenses				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Rating Agency - S&P				\$ -	\$ -	\$ -
Rating Agency - Moody's				\$ 55,000	\$ -	\$ 55,000
Rating Agency - Fitch				\$ -	\$ -	\$ -
Underwriter's Compensation				\$ 286,300	\$ -	\$ 286,300
Registrar / Paying Agent	U.S. Bank National Assoc.			\$ 7,500	\$ -	\$ 7,500
Escrow Agent				\$ -	\$ -	\$ -
Accountant				\$ -	\$ -	\$ -
Verification Agent				\$ -	\$ -	\$ -
Printing				\$ 5,000	\$ -	\$ 5,000
Publishing				\$ -	\$ -	\$ -
Advertising				\$ -	\$ -	\$ -
Contingency				\$ 15,308	\$ -	\$ 15,308
Issuer's Fee	SC JEDA / SC SHFDA			\$ -	\$ -	\$ -
				<b>\$ 474,783</b>	<b>\$ -</b>	<b>\$ 474,783</b>

**Est. / Actual COI Fees (% of Transaction):**

Financial Advisor: % of Transaction  
 Bond Counsel: % of Transaction  
 Total Legal Costs: % of Transaction  
 Rating Agencies: % of Transaction

0.12%	#DIV/0!
0.08%	#DIV/0!
0.14%	#DIV/0!
0.13%	#DIV/0!

UW Comp: % of Transaction  
 Other COI: % of Transaction  
 Total COI: % of Transaction

0.70%	#DIV/0!
0.07%	#DIV/0!
1.16%	#DIV/0!



Pope Flynn, LLC  
1411 Gervais Street, Suite 300  
Post Office Box 11509 (29211)  
Columbia, SC 29201  
MAIN 803.354.4900  
FAX 803.354.4899  
www.popeflynn.com

September 1, 2021

Mr. Delbert H. Singleton, Jr.  
Assistant Executive Director and Authority Secretary  
South Carolina State Fiscal Accountability Authority  
1200 Senate Street, Suite 600  
Columbia, South Carolina 29201

Re: Not Exceeding \$46,000,000 Higher Education Revenue Refunding Bonds of Coastal Carolina University

Dear Delbert:

On behalf of Coastal Carolina University (the "University"), in connection with the authorization of the above referenced bonds (the "Bonds"), and in anticipation of the South Carolina State Fiscal Accountability Authority (the "Authority") meeting scheduled for September 8, 2021, we respectfully enclose the following for consideration by the Authority:

1. A copy of a bond resolution adopted by the Board of Trustees of Coastal Carolina University (the "Board of Trustees") on October 2, 2015, providing for the issuance of revenue bonds of the University;
2. A copy of a supplemental resolution adopted by the Board of Trustees on May 6, 2021, authorizing the issuance of the Bonds;
3. A proposed form of opinion of Bond Counsel;
4. An executed opinion of Pope Flynn, LLC relating to the sufficiency of the proceedings and information submitted to the Authority in connection with its consideration of the approval of the Bonds; and
5. A proposed form of resolution of the Authority (an electronic copy is being provided contemporaneously with this letter).

We have provided the Office of State Treasurer with copies of the Bond Counsel Selection Form, the New Debt Information Form (NDIF) – Initial Form, and a copy of this submission package. Please let us know should you require anything further or if you have any questions regarding the enclosed.

Best regards,

Gary T. Pope, Jr.

c: David Frost, Sr., Vice President for Finance & Chief Financial Officer, Coastal Carolina University  
Kevin Kibler, Director of Debt Management Division, Office of State Treasurer

Enclosures



## A RESOLUTION

APPROVING THE ISSUANCE AND SALE, IN ONE OR MORE SERIES, OF HIGHER EDUCATION REVENUE REFUNDING BONDS OF COASTAL CAROLINA UNIVERSITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$46,000,000; AND OTHER MATTERS RELATING THERETO.

As an incident to the adoption of this resolution (this "Resolution"), the South Carolina State Fiscal Accountability Authority (the "Authority") recites the following:

WHEREAS, the Board of Trustees of Coastal Carolina University (the "Board of Trustees"), the governing body of Coastal Carolina University, South Carolina (the "University"), is authorized by Title 59, Chapters 136 and 147 and Title 11, Chapter 21 of the Code of Laws of South Carolina 1976, as amended (the "Enabling Act") to make provision for the issuance of revenue bonds ("Revenue Bonds") from time to time in order to raise funds to defray the cost of financing or refinancing in whole or in part the cost of construction, reconstruction, improvement, and equipment of buildings for the purposes of the University including, dormitories, apartment buildings, dwelling houses, dining halls, cafeterias, parking facilities, sports facilities, and inns or for any one or more of these purposes, all in accordance with and pursuant to the provisions of the Enabling Act.

WHEREAS, on November 10, 1994, the Board of Trustees adopted a resolution entitled "A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" as thereafter from time to time amended and supplemented (the "Original General Bond Resolution"). The Board of Trustees provided for the amendment and restatement of the Original General Bond Resolution pursuant to the adoption of an Amended and Restated General Bond Resolution, adopted on October 2, 2015, entitled "A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" (the "2015 Amended and Restated General Bond Resolution," as an amendment and restatement of the Original General Bond Resolution,

the “Bond Resolution”), as a means of providing for the issuance from time to time of revenue bonds of a particular series pursuant to the provisions of a Supplemental Resolution of the Board of Trustees, provided all conditions required by the Bond Resolution are met. Pursuant to the Bond Resolution, the Board of Trustees previously issued and there remain outstanding Revenue Bonds of the University.

WHEREAS, on May 6, 2021, the Board of Trustees adopted a supplemental resolution entitled “A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE, IN ONE OR MORE SERIES, OF HIGHER EDUCATION REVENUE REFUNDING BONDS OF COASTAL CAROLINA UNIVERSITY, SOUTH CAROLINA IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$46,000,000; AND OTHER MATTERS RELATING THERETO” (the “2021 Supplemental Resolution”) authorizing the issuance of Higher Education Revenue Refunding Bonds, Series 2021 (the “Series 2021 Bonds”) for the purpose of providing funds to defease all or a portion of the Outstanding \$54,705,000 original principal amount Higher Education Revenue Bonds, Series 2013 of Coastal Carolina University, South Carolina (the “Series 2013 Bonds”) and refund all or a portion of the June 1, 2023 through June 1, 2040 maturities of the Series 2013 Bonds (the “Refunded Bonds”).

WHEREAS, the 2021 Supplemental Resolution authorized the use of proceeds of the Series 2021 Bonds for the purposes of: (i) defeasing all or a portion of the Outstanding Series 2013 Bonds and refunding all or a portion of the Refunded Bonds (the “Refunding”); (ii) funding the Series 2021 Debt Service Reserve Requirement, if any; (iii) providing for credit enhancement with respect to Series 2021 Bonds, if any; and (iv) paying certain costs and expenses relating to the issuance of the Series 2021 Bonds.

WHEREAS, the Board of Trustees has determined that prevailing market conditions indicate that a debt service savings will be achieved through the Refunding, and the University hereby requests the Authority to approve at this time the issuance by the University of the Series 2021 Bonds as set forth in the 2021 Supplemental Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH CAROLINA STATE FISCAL ACCOUNTABILITY AUTHORITY, IN MEETING DULY ASSEMBLED:

ARTICLE I

FINDINGS OF FACT

Section 1.01

The Bond Resolution and the 2021 Supplemental Resolution, each in the form adopted by the Board of Trustees, have been presented to the Authority.

Section 1.02

Any capitalized term used in this Resolution, but not defined herein, shall have the meaning ascribed to such term in the Bond Resolution or the 2021 Supplemental Resolution.



ARTICLE II

AUTHORIZATION TO ISSUE AND SELL THE SERIES 2021 BONDS

Section 2.01

The Authority hereby approves and authorizes the issuance and sale of the Series 2021 Bonds in an aggregate principal amount not to exceed \$46,000,000 in the manner and under the conditions prescribed by the 2021 Supplemental Resolution.

Section 2.02

On the basis of the foregoing and after due consideration of the facts above recited and other matters appurtenant thereto, this Resolution has been adopted.

Dated: September 8, 2021.

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A RESOLUTION

PROVIDING FOR THE ISSUANCE AND SALE, IN ONE OR MORE SERIES, OF HIGHER EDUCATION REVENUE REFUNDING BONDS OF COASTAL CAROLINA UNIVERSITY, SOUTH CAROLINA IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$46,000,000; AND OTHER MATTERS RELATING THERETO.

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2021 SUPPLEMENTAL RESOLUTION

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May 6, 2021

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EXHIBIT A – FORM OF BOND

EXHIBIT B – CONTINUING DISCLOSURE UNDERTAKING

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF COASTAL CAROLINA UNIVERSITY, IN MEETING DULY ASSEMBLED:

## ARTICLE I

### FINDINGS OF FACT

#### Section 1.01 Findings.

As an incident to the adoption of this Supplemental Resolution (hereinafter, the “2021 Supplemental Resolution”), and the issuance of the Higher Education Revenue Refunding Bonds provided for herein, the Board of Trustees of Coastal Carolina University (the “Board of Trustees”), the governing body of Coastal Carolina University (the “University”), finds, as a fact, that each of the statements hereinafter set forth in this Article I is in all respects true and correct.

(A) The Board of Trustees has previously made general provision for the issuance from time to time of revenue bonds of the University (the “Bonds”) through the means of a General Bond Resolution adopted on November 10, 1994, entitled “A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING” as thereafter from time to time amended and supplemented (the “Original General Bond Resolution”). The Board of Trustees has provided for the amendment and restatement of the Original General Bond Resolution pursuant to the adoption of an amended and restated General Bond Resolution, adopted on October 2, 2015, and entitled “A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING” (the “2015 Amended and Restated General Bond Resolution” which as a restatement and amendment of the Original General Bond Resolution, comprises the “General Bond Resolution”). All capitalized terms which are not defined herein shall have the meanings set forth in the General Bond Resolution.

(B) It is provided in and by the General Bond Resolution that, upon adoption of a “Supplemental Resolution,” there may be issued one or more series of Bonds for the purposes of providing funds to defray the cost of financing or refinancing in whole or in part the cost of construction, reconstruction, and improvement and equipment of buildings for the purposes of the University, including, without limiting the generality of the foregoing, dormitories, apartment buildings, dwelling houses, dining halls, cafeterias, parking facilities, sports facilities and inns or for any one or more of these purposes, any other facility which, pursuant to the Enabling Act (as defined herein), may be financed by



the University from the proceeds of its revenue bonds, including the Costs of Issuance and capitalized interest on Bonds, all in accordance with and pursuant to the provisions of the Enabling Act.

(C) Pursuant to the General Bond Resolution, the Board of Trustees previously issued and there remain Outstanding (i) the \$6,147,000 original principal amount Revenue Refunding Bond, Series 2012 of Coastal Carolina University, South Carolina, (ii) the \$54,705,000 original principal amount Higher Education Revenue Bonds, Series 2013 of Coastal Carolina University, South Carolina (the "Series 2013 Bonds"), (iii) the \$35,480,000 original principal amount Higher Education Revenue Bond, Series 2014 of Coastal Carolina University, South Carolina, (iv) the \$87,020,000 original principal amount Higher Education Revenue Bonds, Series 2015 of Coastal Carolina University, (v) the \$22,415,000 original principal amount Revenue Bonds, Series 2016 of Coastal Carolina University, and (vi) \$6,766,591 original principal amount Revenue Refunding Bonds, Series 2017 of Coastal Carolina University.

(D) Following a review of debt service requirements of the Series 2013 Bonds and prevailing market conditions, the Board of Trustees finds that debt service savings will be achieved through the defeasance of all or a portion of the Outstanding Series 2013 Bonds and the refunding of all or a portion of the June 1, 2023 through June 1, 2040 maturities of the Series 2013 Bonds (the "Refunded Bonds"). The Refunded Bonds are currently Outstanding in the principal amount of \$43,580,000.

(E) It is currently estimated that approximately \$45,000,000 of refunding bonds will be required to defease the Outstanding Series 2013 Bonds and redeem the Refunded Bonds, and pay the costs of issuance incurred in connection therewith. Based on the findings made herein, the Board of Trustees has determined to authorize the issuance of refunding bonds in a principal amount not to exceed \$46,000,000 (the "Series 2021 Bonds"), the final amount to be determined by the Chairman and the State Treasurer upon the receipt of bids for the Series 2021 Bonds.

(F) In no event shall the present value of the Principal and Interest Requirements for the Series 2021 Bonds be greater than the present value of the Principal and Interest Requirements on the Refunded Bonds. Obtaining such savings is a precondition to the closing of the Series 2021 Bonds and a table illustrative of such savings will be prepared and included as a closing document at the delivery of the Series 2021 Bonds.

(G) In order to defray the cost of refunding the Refunded Bonds, and to pay related financing costs and expenses, the Board of Trustees has determined to adopt this 2021 Supplemental Resolution in accordance with the terms and provisions of the General Bond Resolution in order to effect the issuance of the Series 2021 Bonds.

[End of Article I]

## ARTICLE II

### DEFINITIONS AND AUTHORITY

#### Section 2.01 Definitions.

(A) All terms which are defined in Article I of the General Bond Resolution shall have the same meanings, respectively, in this 2021 Supplemental Resolution as such terms are given in the General Bond Resolution.

(B) In addition, as used in this 2021 Supplemental Resolution, unless the context shall otherwise require, the following terms shall have the following respective meanings:

“2021 Supplemental Resolution” means this Supplemental Resolution dated May 6, 2021.

“Beneficial Owner” means, for any Series 2021 Bond which is held by a nominee, the beneficial owner of such Series 2021 Bond.

“Board of Trustees” has the meaning given such term in Section 1.01 hereof.

“Bond Counsel” means Pope Flynn, LLC, or any successor firm, or an attorney or firm of attorneys of recognized standing in the field of law relating to municipal, state, and public agency financing.

“Bond Payment Date” means each date, as determined pursuant to Section 3.04 hereof, on which interest on any Series 2021 Bonds shall be payable or on which both a Principal Installment and interest on Series 2021 Bonds shall be payable.

“Chairman” means the Chairman of the Board or in his absence the Vice Chairman of the Board of Trustees.

“Continuing Disclosure Undertaking” shall mean that certain Continuing Disclosure Undertaking substantially in the form attached hereto as Exhibit B, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Corporate Trust Office,” when used with respect to the Paying Agent and the Registrar, means the office at which the principal corporate trust business of such party shall be administered and to the extent the State Treasurer shall act as Paying Agent and Registrar, “Corporate Trust Office” shall mean the Office of the State Treasurer.

“Costs of Issuance Fund” means each fund by that name established for the Series 2021 Bonds pursuant to the provisions of Section 5.03 hereof.

“Date of Issue” means, with respect to the Series of Bonds issued hereunder, the date of delivery of such Series of Bonds.

“Depository” means The Depository Trust Company, New York, New York, or other recognized securities depository selected by the University, which securities depository maintains a book-entry system with respect to Series 2021 Bonds and shall include any substitute for or successor to the securities depository initially acting as Depository.

“Depository Nominee” shall mean, as to any Depository, such Depository or the nominee of such Depository in whose name there shall be registered on the registration books maintained by the Registrar the Series 2021 Bond certificates to be delivered to and immobilized at such Depository during the continuation with such Depository of participation in its book-entry system. Cede & Co. shall serve as the initial Depository Nominee hereunder.

“Enabling Act” shall mean Title 59, Chapters 136 and 147 and Title 11, Chapter 21 of the Code of Laws of South Carolina 1976, as amended.

“Escrow Agent” if any, shall mean the entity designated by the University and the Trustee to act as agent of the Trustee and hold the irrevocable trust on behalf of the Trustee pursuant to Section 8.01 of the General Bond Resolution.

“General Bond Resolution” has the meaning given to that term in Section 1.01(A) hereof.

“Municipal Bond Insurance Policy” shall mean the municipal bond insurance policy, if any, issued by an insurer, insuring the payment when due of the principal of and interest on any Series 2021 Bonds.

“Official Notice of Sale” shall be the offer of Series 2021 Bonds containing the terms and conditions for the sale and award thereof, as established by the Chairman and the State Treasurer.

“Official Statement” means any Official Statement of the University to be prepared and distributed in connection with a public sale or private sale for public reoffering and delivery of Series 2021 Bonds in such form as approved by the Chairman and as more particularly described in Section 6.02.

“Participants” means those broker-dealers, banks and other financial institutions for which the Depository holds Series 2021 Bonds as depository.

“Preliminary Official Statement” means any Preliminary Official Statement of the University to be prepared and distributed in connection with a public sale or a private sale for public reoffering and delivery of Series 2021 Bonds, in such form as approved by the Chairman and as more particularly described in Section 6.02.

“Record Date” shall mean the 15th day of the month preceding each Bond Payment Date.

“Refunded Bonds” has the meaning given to that term in Section 1.01(D) hereof.

“Series 2021 Bonds” mean the Bonds, in one or more Series, of the University authorized and issued pursuant to the Enabling Act, the General Bond Resolution, and this 2021 Supplemental Resolution.

“Series 2021 Debt Service Reserve Fund” shall mean any Debt Service Reserve Fund for the Series 2021 Bonds created pursuant to Section 5.02 hereof.

“Series 2021 Debt Service Reserve Requirement” shall mean the Series 2021 Debt Service Reserve Requirement, if any, as determined by the Chairman and the State Treasurer to be the amount necessary to market the Series 2021 Bonds of a Series, at interest rates comparable to that enjoyed by credits of the nature of Series 2021 Bonds, provided that any such Series 2021 Debt Service Reserve Requirement shall be funded only at a level which will not result in a requirement to yield restrict any

invested funds in the Series 2021 Debt Service Reserve Fund to the applicable yield on the Series 2021 Bonds.

“Sinking Fund Date” has the meaning given to that term in Section 3.06 hereof.

“State Treasurer” means the Treasurer of the State of South Carolina or the Office of the State Treasurer of South Carolina.

“Taxable Series” means a Series of Series 2021 Bonds so designated by the Chairman, the interest upon which is not excludable from income for federal income tax purposes.

“University” has the meaning given to that term in Section 1.01 hereof.

Section 2.02 Authority for this 2021 Supplemental Resolution.

This 2021 Supplemental Resolution is adopted pursuant to the provisions of the Enabling Act and the General Bond Resolution.

[End of Article II]

**ARTICLE III**  
**AUTHORIZATION AND TERMS OF THE SERIES 2021 BONDS**

Section 3.01    Principal Amount and Designation of Series.

(A) Pursuant to the provisions of the General Bond Resolution, there is hereby authorized, in one or more Series, Bonds of the University entitled to the benefits, protection and security of the provisions thereof in the aggregate principal amount not exceeding \$46,000,000. Subject to the provisions of paragraph (B) of this Section, the Series 2021 Bonds shall be designated “Coastal Carolina University Higher Education Revenue Refunding Bonds, Series 2021” or such other Series designation as may be determined by the Chairman.

(B) Notwithstanding anything in this 2021 Supplemental Resolution to the contrary, the Series designation of the Bonds authorized herein may, prior to the sale thereof, be changed from “Series 2021” to any other designation, including a designation reflecting the year of issuance or alphanumeric designation to distinguish between or among Series 2021 Bonds or other Bonds issued from time to time, as may be determined by the Chairman in his sole discretion.

Section 3.02    Purposes.

The Series 2021 Bonds, together with other funds available to the University, are authorized for the purposes of:

- (1) defeasing all or a portion of the Outstanding Series 2013 Bonds and refunding all or a portion of the Refunded Bonds;
- (2) funding the Series 2021 Debt Service Reserve Requirement, if any;
- (3) providing for credit enhancement with respect to Series 2021 Bonds, if any; and
- (4) paying related Costs of Issuance.

Section 3.03    Direction to Chairman and State Treasurer.

The Chairman and the State Treasurer are hereby authorized to effect the issuance of the Series 2021 Bonds in the aggregate principal amount of not exceeding \$46,000,000 upon the terms and conditions set forth herein to meet the purposes set forth in Section 3.02 hereof.

Section 3.04    Maturity Schedule; Interest Payment Dates.

The Series 2021 Bonds shall mature in the principal amounts and on June 1 in the years as shall be determined by the Chairman and the State Treasurer; provided, that final maturity of the Series 2021 Bonds shall occur not later than June 1, 2040. The Series 2021 Bonds shall bear interest at rates determined in the manner prescribed by Section 3.08 and Article VII hereof on the basis of a 360-day year of twelve 30-day months. Each Series of the Series 2021 Bonds shall be dated its Date of Issue, and interest on the Series 2021 Bonds shall be payable on June 1 and December 1 with the initial Interest Payment Date falling on the June 1 or December 1 immediately following the Date of Issue (provided that if such June 1 or December 1 falls within 60 days of the Date of Issue, the initial Interest Payment Date may be, but is not required to be, the following June 1 or December 1).



Section 3.05 Optional Redemption.

(A) The Chairman, in his discretion and on advice received, shall determine whether Series 2021 Bonds shall be subject to redemption prior to maturity at the option of the University, including applicable redemption dates and prices.

(B) In the event that the University shall from time to time, in accordance with the provisions of Section 3.05(A) hereof, elect to redeem Series 2021 Bonds, it shall give notice to the Trustee, Registrar and Paying Agent of each optional redemption. Such notice shall specify the date fixed for redemption and the amount and maturities of the Series 2021 Bonds which are to be redeemed. Such notice may be conditional upon any event or occurrence set forth in such notice, and the obligation of the Registrar to provide the notice of redemption shall not be conditioned on the prior deposit of the amount due at the redemption date.

Section 3.06 Mandatory Sinking Fund Redemption.

(A) Certain of the Series 2021 Bonds, as determined in accordance with conditions established by the Chairman and the State Treasurer prior to the sale of such Series 2021 Bonds, may be subject to mandatory redemption on such dates (hereinafter, the "Sinking Fund Dates") and under the terms and conditions determined by the Chairman and the State Treasurer, through the operation of sinking fund provisions, at the principal amount thereof, plus interest thereon to the redemption date.

(B) If a portion of the Series 2021 Bonds of a Series is subject to mandatory sinking fund redemption as provided in Paragraph (A) above, there shall be deposited with the Paying Agent on or before each Sinking Fund Date an amount sufficient to redeem or to pay (after credit as provided below) those principal amounts of Series 2021 Bonds so designated for mandatory redemption on the applicable Sinking Fund Date.

(C) The University, at its option, to be exercised prior to the 45th day immediately preceding any Sinking Fund Date, may:

- (1) cause to be paid to the Paying Agent as a prepayment of sums then to become due, such amount of funds as the University may determine, with written instructions to the Paying Agent, signed in the name of the University, to be applied prior to said 45th day to the purchase of Series 2021 Bonds which are subject to mandatory redemption, or
- (2) deliver any principal amount of Series 2021 Bonds which are subject to mandatory sinking fund redemption to the Registrar for cancellation,

and shall receive a credit in respect of its next ensuing mandatory sinking fund payment for any such Series 2021 Bond; which prior to said Sinking Fund Date have been purchased or redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Registrar and not theretofore applied as a credit against any sinking fund payment.

(D) Upon receipt of the funds and instructions specified in Paragraph (C)(1) above, the Paying Agent shall use all reasonable efforts to expend such funds in the purchase of such Series 2021 Bonds, at a price not exceeding the principal amount thereof plus interest accrued to such Sinking Fund Date. Any such funds not so expended by the Paying Agent shall be applied to the payment of the Series 2021 Bonds maturing on such Sinking Fund Date or returned to the Trustee for the benefit of the University. The Series 2021 Bonds so purchased or presented for cancellation as provided above shall be canceled by the Registrar as provided in Section 4.06 of the General Bond Resolution and shall be

credited, at their principal amount, until the full amount thereof has been so credited against the next ensuing and future sinking fund payments in chronological order to the extent otherwise payable to the University.

(E) The amount of any such mandatory sinking fund redemptions shall be reduced to the extent Series 2021 Bonds of the applicable Series and maturity have been purchased by the University or redeemed by the University pursuant to any optional redemption provisions, in such manner as the University shall direct, or, absent such direction, on a pro rata basis.

Section 3.07 Partial Redemption.

If less than all of the Series 2021 Bonds are to be redeemed pursuant to any section of this 2021 Supplemental Resolution, the Series and maturities of the Series 2021 Bonds to be redeemed shall be as determined by the University. If less than all of a maturity of a Series of Series 2021 Bonds is to be redeemed, the particular Series 2021 Bonds or portions of Series 2021 Bonds of the applicable maturity and Series to be redeemed shall be selected not less than 45 days prior to the date fixed for redemption in the manner provided by Section 4.04 of the General Bond Resolution.

Section 3.08 Conditions Relating to Naming Interest Rates.

The Series 2021 Bonds shall bear such rate or rates of interest as shall at the sale of Series 2021 Bonds referred to in Section 6.01 hereof be determined by the Chairman and the State Treasurer to be in the best interest of the University; provided, however, that:

- (1) all Series 2021 Bonds of the same maturity and Series shall bear the same rate of interest;
- (2) each interest rate named shall be a multiple of 1/20th or 1/8th of one percentage point; and
- (3) all other restrictions as may be imposed by the State Treasurer and the Chairman (including any modifications of any of Paragraphs (1) and (2) above that are deemed to be in the best interest of the University) prior to the sale of the Series 2021 Bonds shall apply.

Section 3.09 Purchase of Municipal Bond Insurance Policy; Series 2021 Debt Service Reserve Requirement.

If in the judgment of the Chairman and the State Treasurer the purchasing of a Municipal Bond Insurance Policy, and/or a debt service reserve fund funding substitute as permitted by Section 5.05(E) of the General Bond Resolution and Section 5.03 hereof to satisfy the Series 2021 Debt Service Reserve Requirement for Series 2021 Bonds, will enhance the marketing of the Series 2021 Bonds such that a savings to the University would otherwise be realized, the Chairman is hereby authorized to effect the purchase of such Municipal Bond Insurance Policy and/or funding substitute. In this respect, the Chairman is hereby authorized to execute and deliver, upon advice of Bond Counsel, any necessary reimbursement agreements or other insurance agreements with the provider of any Municipal Bond Insurance Policy or debt service reserve fund funding substitute. The University hereby covenants to comply with the covenants and agreements as shall be contained in any such reimbursement or insurance agreement, as if such covenants and agreements were set forth verbatim herein and in the General Bond Resolution. Such covenants and agreement shall be deemed to be supplemental and amendatory to the General Bond Resolution.

Section 3.10 Authentication; Payment of Interest.

(A) Each of the Series 2021 Bonds shall be authenticated on such date as it shall be delivered and shall bear interest from its Date of Issue as provided in the General Bond Resolution.

(B) The interest on all Series 2021 Bonds shall be paid by check or draft mailed from the Corporate Trust Office of the Paying Agent to the person in whose name the Series 2021 Bond is registered at the close of business on the applicable Record Date. Any Holder of \$1,000,000 or more in principal amount of Series 2021 Bonds shall be entitled by written request to the Paying Agent (which notice shall be valid for all future payments until rescinded) to direct that any payments of interest on such Series 2021 Bonds be transmitted to such Holder by wire transfer. Such request shall provide the Paying Agent with specific direction as to the manner of making such payment.

Section 3.11 Denomination; Numbering.

The Series 2021 Bonds shall be issued in the denomination of \$5,000 or any multiple thereof, not exceeding the principal amount of the Series 2021 Bonds maturing in such year. Each Series 2021 Bond shall be numbered by the Registrar in such a fashion as to reflect the fact that it is one of the Series 2021 Bonds, and to identify the Holder thereof on the books kept by the Registrar.

Section 3.12 Appointment of Trustee; Maintenance of Paying Agent and Registrar.

(A) The State Treasurer is hereby appointed to act as Trustee under this 2021 Supplemental Resolution. The State Treasurer shall signify its acceptance of the duties of the Trustee under this 2021 Supplemental Resolution and the General Bond Resolution upon delivery of the Series 2021 Bonds.

(B) As long as any Series 2021 Bonds remain Outstanding, the University shall maintain a Paying Agent and a Registrar therefor selected by the Chairman and State Treasurer, which may be the Trustee. The Series 2021 Bonds shall be presented for payment, and notices and demands to or upon the Trustee and the University in respect to the Series 2021 Bonds may be served, at the Corporate Trust Office of the Paying Agent. The Series 2021 Bonds shall be presented for registration of transfers and exchanges in accordance with the provisions of the General Bond Resolution at the Corporate Trust Office of the Registrar.

Section 3.13 Form of Bonds.

The Series 2021 Bonds shall be substantially in the form attached hereto as Exhibit A, with such changes, modifications or amendments to the form attached hereto as Exhibit A as shall, upon advice of Bond Counsel, be approved by the Chairman and the State Treasurer.

### Section 3.14 Book-Entry System.

Unless otherwise determined by the Chairman and the State Treasurer prior to the publication of the Official Notice of Sale for any Series of Series 2021 Bonds, the Series 2021 Bonds will be eligible securities for the purpose of the Book-Entry System of transfer maintained by the Depository, and transfers of beneficial ownership of the Series 2021 Bonds shall be made only through the Depository and its Participants in accordance with rules specified by the Depository. Such beneficial ownership must be of a \$5,000 principal amount of the Series 2021 Bonds of the same maturity and Series or any integral multiple of \$5,000, with each increment of \$5,000 being separately of a single maturity.

The Series 2021 Bonds shall be issued in fully registered form, and, if issued as book entry-only securities, shall be issued in one certificate for each of the maturities and Series of the Series 2021 Bonds, in the name of Cede & Co., as Depository Nominee. When any principal of, premium, if any, or interest on the Series 2021 Bonds becomes due, the Trustee shall cause the Paying Agent to transmit to the Depository an amount equal to such installment of principal, premium, if any, and interest. Such payments will be made to the Depository Nominee as long as it is owner of record on the applicable Record Date. The Depository Nominee shall be considered to be the owner of the Series 2021 Bonds so registered for all purposes of this 2021 Supplemental Resolution, including, without limitation, payments as aforesaid and receipt of notices and exercise of rights of Series 2021 Bond owners.

The Trustee shall notify the Depository of any notice of redemption required to be given pursuant to this 2021 Supplemental Resolution not less than 30 nor more than 60 days prior to the date fixed for redemption.

The Depository is expected to maintain records of the positions of Participants in the Series 2021 Bonds, and the Participants and persons acting through Participants are expected to maintain records of the Beneficial Owners in the Series 2021 Bonds. The University makes no assurances that the Depository and its Participants will act in accordance with such rules or expectations on a timely basis, and the University shall have no responsibility for any such maintenance of records of transfer or payments by the Depository to its Participants, or by the Participants or persons acting through Participants to the Beneficial Owners.

If (a) the Depository determines not to continue to act as Depository for the Series 2021 Bonds, or (b) the University has advised the Depository of the University's determination that the Depository is incapable of discharging its duties, the University shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the University of the Series 2021 Bonds together with an assignment duly executed by the Depository, the University shall execute and deliver to the successor depository, Series 2021 Bonds of the same Series, principal amount, interest rate and maturity.

If the University is unable to retain a qualified successor to the Depository or the University has determined that it is in the best interest of the University not to continue the Book-Entry System of transfer or that the interest of the Beneficial Owners of the Series 2021 Bonds might be adversely affected if the Book-Entry System of transfer is continued (the University undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify Beneficial Owners of the Series 2021 Bonds by mailing an appropriate notice to the Depository, upon receipt by the University of the Series 2021 Bonds together with an assignment duly executed by the Depository, the University shall execute, and cause to be authenticated and delivered pursuant to the instructions of the Depository, Series 2021 Bonds in fully registered form, in substantially the form set forth in this 2021 Supplemental Resolution, and in denominations of \$5,000 or any integral multiple thereof.

The Chairman and the State Treasurer shall determine the Paying Agent and Registrar for each Series of the Series 2021 Bonds, prior to the sale thereof.

Section 3.15      Defeasance and Redemption of Series 2013 Bonds.

Provided the Series 2021 Bonds are issued, the University shall defease, redeem, or both, all or a portion of the Outstanding Series 2013 Bonds at delivery of the Series 2021 Bonds in accordance with the General Bond Resolution and the proceedings authorizing the Series 2013 Bonds by delivery of the proceeds thereof in accordance with Section 5.01 hereof. Prior to, or in connection with such delivery, the Chairman is authorized to effect the defeasance of the Series 2013 Bonds maturing June 1, 2022, by directing the Trustee to deposit the Principal and Interest Requirement due June 1, 2022, from the Debt Service Fund (to the extent it has been previously deposited) into an irrevocable trust account. At the Direction of the Trustee or the Chairman, the Paying Agent shall be required to cause the publication of a notice of redemption for the Refunded Bonds, which may be conditional; the form of such notice shall be determined by the Chairman. The University and an Escrow Agent are hereby authorized to enter into or provide any executed form of documentation, including an escrow deposit agreement with the Escrow Agent to create an irrevocable trust, to effect the defeasance of the June 1, 2022 maturity of the Series 2013 Bonds and the defeasance and the redemption of the Refunded Bonds, and take any further action or actions as may be necessary to effect the same.

[End of Article III]



**ARTICLE IV  
EXECUTION; NO RECOURSE**

Section 4.01    Execution.

The Series 2021 Bonds shall be executed and authenticated in accordance with the applicable provisions of the General Bond Resolution.

Section 4.02    No Recourse.

All covenants, stipulations, promises, agreements and obligations of the University contained in the General Bond Resolution or in this 2021 Supplemental Resolution shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the University and not those of any officer or employee of the University in his or her individual capacity, and no recourse shall be had for the payment of the principal or redemption price of or interest on the Series 2021 Bonds or for any claim based thereon or on the General Bond Resolution or on this 2021 Supplemental Resolution, either jointly or severally, against any officer or employee of the University or any person executing the Series 2021 Bonds.

[End of Article IV]

**ARTICLE V  
DISPOSITION OF PROCEEDS**

Section 5.01    Disposition of Proceeds of Series 2021 Bonds.

(A)    Upon the delivery of the Series 2021 Bonds, the net proceeds received by the Trustee for the benefit of the University shall be applied as follows:

- (1)    there shall be deposited by the University with the Trustee (i) for further deposit to the Escrow Agent on behalf of the Trustee at the discretion of the University and the Trustee, amounts sufficient to defease the Refunded Bonds or (ii) amounts necessary to redeem the Refunded Bonds; such deposited moneys shall be utilized by the Trustee or Escrow Agent to deliver to the holders of the Refunded Bonds such moneys to provide for the redemption of the Refunded Bonds at the call date of the same;
- (2)    for deposit into the Series 2021 Debt Service Reserve Fund, if established pursuant to Section 5.02, an amount necessary to satisfy the 2021 Debt Service Reserve Fund Requirement, or, if necessary, to purchase an instrument or insurance policy sufficient to satisfy the 2021 Debt Service Reserve Fund Requirement; and
- (3)    the remaining net proceeds of the sale of the Series 2021 Bonds, including any premium and sums to be used to pay costs of issuance, shall be deposited in the appropriate Costs of Issuance Fund, to provide for the payment for the costs of issuance of the Series 2021 Bonds as shall be deemed necessary by the Chairman, including, but not limited to, the premium on a Municipal Bond Insurance Policy, if any.

(B)    Neither the purchaser of the Series 2021 Bonds nor any Holder of the Series 2021 Bonds shall be liable for the proper application of the proceeds of the Series 2021 Bonds.

Section 5.02    Establishment and Funding of Series 2021 Debt Service Reserve Fund Account and Series 2021 Debt Service Reserve Requirement.

Pursuant to the provisions of Section 5.05 of the General Bond Resolution, a Debt Service Reserve Fund has been established and is currently held by the Trustee. The provisions of Section 5.05 of the General Bond Resolution provide for the establishment and creation of a separate and specific account or accounts under the Debt Service Reserve Fund, as, if, and when necessary, with respect to the issuance of each Series of Bonds.

If so determined by the Chairman and the State Treasurer in their discretion prior to the sale of the Series 2021 Bonds issued hereunder, a specific the 2021 Debt Service Reserve Fund Requirement with respect to the Series 2021 Bonds shall be established, and an account within the Debt Service Reserve Fund shall be created and be designated by the appropriate year and letter, as applicable, to adequately distinguish and identify such account from other accounts. The amount of and manner of funding the 2021 Debt Service Reserve Fund Requirement with respect to the Series 2021 Bonds shall be determined by the Chairman and the State Treasurer in accordance with the General Bond Resolution.

Section 5.03 Cost of Issuance Fund.

There is hereby established the Costs of Issuance Fund which shall be maintained by the Trustee for the benefit of the University. Upon the issuance of the Series 2021 Bonds, such Costs of Issuance Fund shall be designated with the appropriate year and letter to adequately distinguish such fund from other funds. A portion of the proceeds of the Series 2021 Bonds shall be deposited in the Costs of Issuance Fund pursuant to Section 5.01 hereof. Pending the use thereof, the Trustee shall invest moneys in the Costs of Issuance Fund in Investment Securities. All earnings on moneys in the Costs of Issuance Fund shall accrue to the benefit of such fund. Any moneys remaining in the Costs of Issuance Fund, after payment of all Costs of Issuance, shall be paid into the Maintenance Reserve Fund or, at the discretion of the University, may be used for any other lawful purpose of the University.

[End of Article V]

**ARTICLE VI**  
**AUTHORIZATION TO SELL AND AWARD THE SERIES 2021 BONDS**

Section 6.01    Manner of Sale.

The Series 2021 Bonds shall be sold competitively. Bids for such sale shall be received at such time and such date as is selected by the State Treasurer and the Chairman. In the discretion of the Chairman and the State Treasurer, the Series 2021 Bonds may be advertised for sale by publication of a notice, which may be abbreviated from the Official Notice of Sale, in a newspaper of general circulation in the State or in *The Bond Buyer* (a financial journal published in New York, New York), or both. The Official Notice of Sale employed as a part of any such competitive sale shall be distributed in a form customarily used by similar State institutions with respect to issues of revenue bonds upon the advice and approval of the State Treasurer.

Section 6.02    Distribution of Official Statement.

The Chairman is hereby authorized to cause to be prepared a Preliminary Official Statement with respect to the offering and sale of the Series 2021 Bonds and, subsequent to the sale of the Series 2021 Bonds, a final Official Statement. The Chairman, or his designee, is hereby authorized to deem final the Preliminary Official Statement pursuant to United States Securities and Exchange Commission Rule 15c2-12.

Section 6.03    Award of the Series 2021 Bonds.

Upon receipt of bids for the Series 2021 Bonds, the Chairman and the State Treasurer shall, and they are hereby authorized to, award the Series 2021 Bonds to the bidder offering the lowest interest cost therefore, the method of calculation of which shall be set forth in the Official Notice of Sale and determined at the discretion of the Chairman and the State Treasurer, without further action on the part of the Board of Trustees if the Chairman and the State Treasurer shall determine that it is in the interest of the University to make such award.

[End of Article VI]

## ARTICLE VII

### CONTINUING DISCLOSURE

#### Section 7.01 Continuing Disclosure.

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

- (1) An annual independent audit, within 30 days of the University’s receipt of the audit; and
- (2) Event specific information within thirty days of an event adversely affecting more than five percent of the Revenues of the University.

The only remedy for failure by the University to comply with the covenant in the above paragraph shall be an action for specific performance of such covenant. The University specifically reserves the right to amend or delete such covenant to reflect any change in or repeal of Section 11-1-85, without the consent of any Bondholder.

(B) In addition, the University hereby covenants and agrees that it will comply with and carry out the provisions of the Continuing Disclosure Undertaking, in substantially the form attached hereto as Exhibit B. Notwithstanding any other provision of this 2021 Supplemental Resolution, failure of the University to comply with the Continuing Disclosure Undertaking shall not be considered an event of default under the General Bond Resolution or this 2021 Supplemental Resolution, and no liability for damages shall attach therefor. The sole remedy for such failure to comply shall be that any Bondholder may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the University to comply with its obligations under this paragraph.

[End of Article VII]



## **ARTICLE VIII TAX COVENANTS**

### Section 8.01 Compliance with the Code Generally.

The Board of Trustees hereby represents and covenants that it will comply with all requirements of the Code, and that they will not take any action which will, or fail to take any action (including, without limitation, filing the required information report with the Internal Revenue Service) which failure will, cause interest on the Series 2021 Bonds to become includable in the gross income of the Holder thereof for federal income tax purposes pursuant to the provisions of the Code. Without limiting the generality of the foregoing, the Board of Trustees represents and covenants that:

(A) All property financed or refinanced by the net proceeds of the Series 2021 Bonds will be owned by the University in accordance with the rules governing the ownership of property for federal income tax purposes.

(B) The Board of Trustees shall not permit the proceeds of a Series of the Series 2021 Bonds or any Facilities financed with the proceeds of the Refunded Bonds to be used in any manner that would result in (a) 10% or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any natural person or in any activity carried on by a person other than a natural person other than a governmental unit as provided in Section 141(b) of the Code, or (b) 5% or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit as provided in Section 141(c) of the Code.

(C) The University is not and will not become a party to any contracts with any person for the use or management of any facility provided with the proceeds of the Series 2021 Bonds that do not conform to the guidelines set forth in Revenue Procedure 2017-13 (or the successor provisions of any subsequent official guidance).

(D) The University will not sell or lease any project or any leasehold interest in any project site, or any property the acquisition of which was funded in whole or in part, with proceeds from the sale of the Refunded Bonds to any person unless it obtains the opinion of Bond Counsel that such lease or sale will not affect the tax exemption of the Refunded Bonds or Series 2021 Bonds.

(E) The Series 2021 Bonds will not be federally guaranteed within the meaning of Section 149(b) of the Code. The University shall not enter into any leases or sales or service contracts with any federal government agency and will not enter into any such leases or contracts unless it obtains the opinion of Bond Counsel that such action will not affect the tax exemption of the Series 2021 Bonds.

### Section 8.02 Rebate.

(A) In addition to the covenants contained in Section 8.01 hereof, the Board of Trustees covenants that it will comply with the provisions of Section 148(f) of the Code pertaining to the rebate of certain investment earnings on the proceeds of the Series 2021 Bonds to the United States Government. In this connection, the Board of Trustees covenants to compute, on or before the dates required of them in Section 148(f) of the Code, the rebatable amounts, if any, pertaining to the Series 2021 Bonds and to establish a Rebate Fund pursuant to the Rebate Certificate referred to in Paragraph (B) of this Section wherein shall be deposited in a timely fashion all amounts required under said Section 148(f) with respect to the Series 2021 Bonds and to pay to the United States Government from the Rebate Fund in the manner and the amounts prescribed in Section 148(f) of the Code.

(B) In order to comply with the requirements of Paragraph (A) of this Section, the Board of Trustees further agrees to execute a Rebate Certificate on or before the delivery of a Series of the Series 2021 Bonds pursuant to which the Rebate Fund will be established, and from which Rebate Fund the University will pay the necessary amounts to the United States Government.

(C) Notwithstanding anything in this Section to the contrary, the University will not be obligated to comply with any or all of the provisions set forth above in this Section if the University and the Trustee shall receive a written opinion of Bond Counsel to the effect that such non-compliance will not adversely affect the federal tax-exempt status of the Series 2021 Bonds.

(D) Notwithstanding the prior provisions of this Section, the Chairman, if applicable, is hereby authorized to make the necessary findings and elections to enable the University to proceed under the spending exceptions contained in Section 148(f)(4)(C) of the Code and Section 1.148-7 of the regulations promulgated under the Code, should he determine in his discretion the same to be in the best interests of the University.

Section 8.03 Taxable Series.

The Chairman is hereby authorized to designate any Series of the Series 2021 Bonds as a Taxable Series. In such event, the above Sections 8.01 and 8.02 shall not apply to such Taxable Series.

[End of Article VIII]

**ARTICLE IX  
MISCELLANEOUS**

Section 9.01    Combining of Series 2021 Bonds and Other Authorized Bonds.

Notwithstanding anything contained in this 2021 Supplemental Resolution to the contrary, if so determined by the Chairman and the State Treasurer, in their discretion and upon the determination that it would be in the best interest of the University, the Series 2021 Bonds may be combined with any other Bonds of the University for sale. If the Chairman and the State Treasurer deem it prudent, Series 2021 Bonds may be sold with other Bonds as a single Series of Bonds.

Section 9.02    Severability.

If any one or more of the covenants or agreements provided in this 2021 Supplemental Resolution on the part of the Board of Trustees, the Chairman, the University, the State Treasurer, the Trustee, the Paying Agent or the Registrar to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this 2021 Supplemental Resolution.

Section 9.03    Table of Contents and Section Headings Not Controlling.

The Table of Contents and the Headings of the several Articles and Sections of this 2021 Supplemental Resolution have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this 2021 Supplemental Resolution.

Section 9.04    Repealing Clauses.

All resolutions, or parts thereof, inconsistent herewith, be and the same are hereby rescinded and repealed to the extent of such inconsistencies.

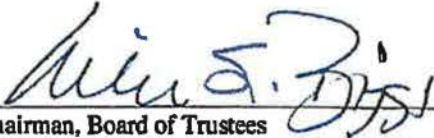
Section 9.05    Series 2021 Bonds Issued as Several Series.

In the event Series 2021 Bonds are sold in more than one Series, separate funds and accounts shall be created and maintained for each Series of Series 2021 Bonds and appropriate numeric or alphanumeric designations shall be established so as to appropriately account for the funds established pursuant to Articles V hereof, as contemplated by Article V of the General Bond Resolution. Notwithstanding anything in the 2021 Supplemental Resolution to the contrary, in the event that Series 2021 Bonds are sold in more than one Series, all references in this 2021 Supplemental Resolution to Series 2021 Bonds shall, as the context may require, be read as referring to the applicable Series of Series 2021 Bonds.

[End of Article IX]

DONE IN MEETING DULY ASSEMBLED this 6th day of May 2021.

COASTAL CAROLINA UNIVERSITY

  
Chairman, Board of Trustees

(SEAL)

Attest:

  
Secretary, Board of Trustees

## FORM OF BOND

UNITED STATES OF AMERICA  
 STATE OF SOUTH CAROLINA  
 COASTAL CAROLINA UNIVERSITY  
 HIGHER EDUCATION REVENUE REFUNDING BOND  
 SERIES 2021

No. R-1

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>	<u>CUSIP</u>
_____%	____, 20__	____ 1, 20__	

Registered Holder: CEDE &amp; CO.

Principal Amount: \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

KNOW ALL MEN BY THESE PRESENTS, that the Board of Trustees of Coastal Carolina University (the "Board"), a body corporate and politic and the governing body of Coastal Carolina University, South Carolina, a state-owned institution of higher learning (the "University"), is justly indebted, and, for value received, hereby promises to pay, but only from the Revenues (as hereinafter defined) pledged to the payment of this Bond (this "Bond"), to the Registered Holder or registered assigns on the Maturity Date set forth above, the Principal Amount set forth above (unless this Bond be subject to redemption and shall have been fully called for previous redemption and payment of the redemption price made or provided for), and interest (computed on the basis of a 360-day year consistent 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 not interest shall have been paid, from \_\_\_\_\_ 1, \_\_\_\_\_, interest being payable to the maturity hereof on the first day of \_\_\_\_ and \_\_\_\_ of each year (each an "Interest Payment Date"), commencing \_\_\_\_ 1, 20 \_\_, 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 that Interest Payment Date (the "Record Date"), by check or draft mailed to the Registered Owners by U.S. Bank National Association (the "Paying Agent") at its address as it appears on the registration books (the "Books of Registry") of the Board as maintained by U.S. Bank National Association as bond registrar (the "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 Columbia, South Carolina. Both the principal 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 the payment of public and private debts.

THIS BOND IS A SPECIAL OBLIGATION OF THE UNIVERSITY AND IS PAYABLE SOLELY FROM AND SECURED BY A PLEDGE OF THE NET REVENUES (AS DEFINED HEREIN). THIS BOND DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE UNIVERSITY OR AN INDEBTEDNESS OR A PLEDGE OF THE FAITH, CREDIT, AND TAXING POWER OF THE STATE OF SOUTH CAROLINA WITHIN THE MEANING OF ANY PROVISION, LIMITATION, OR RESTRICTION OF THE CONSTITUTION OR LAWS OF THE STATE OF SOUTH CAROLINA (OTHER THAN ARTICLE X, SECTION 13, PARAGRAPH 9 OF THE



CONSTITUTION WHICH AUTHORIZES OBLIGATIONS OF STATE INSTITUTIONS PAYABLE SOLELY FROM A REVENUE-PRODUCING SOURCE NOT INVOLVING ANY TAX).

This Bond is issued pursuant to a General Bond Resolution adopted by the Board on November 10, 1994 as amended and restated by that Amended and Restated General Bond Resolution, adopted on October 2, 2015 (the "General Bond Resolution") and a Supplemental Resolution adopted by the Board on May 4, 2021 (the "2021 Supplemental Resolution" and, together with the Amended and Restated General Bond Resolution, the "Resolution"), and in full compliance with the Constitution and Laws of the State of South Carolina, including particularly Article X, Section 13, Paragraph 9 of the South Carolina Constitution, and Title 59, Chapters 136 and 147 of the Code of Laws of South Carolina 1976, as amended (the "Act"), in order to provide funds to refund the outstanding principal amount of the \$[ ] original principal amount Coastal Carolina University Higher Education Revenue Bonds, Series 2013, and to pay the Costs of Issuance (as such term is defined in the Resolution) of the Series 2021 Bonds.

BOTH THE PRINCIPAL OF AND INTEREST ON THIS BOND ARE SECURED BY A PLEDGE OF THE REVENUES (AS SUCH TERM IS DEFINED IN THE RESOLUTION) OF THE UNIVERSITY, AFTER THE PAYMENT OF ALL EXPENDITURES (AS SUCH TERM IS DEFINED IN THE RESOLUTION) OF THE UNIVERSITY (THE "NET REVENUES"), AND THE NET REVENUES ARE IRREVOCABLY PLEDGED TO THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THIS BOND. THE PLEDGE OF NET REVENUES MADE TO SECURE THE PAYMENT OF THIS BOND HAS PRIORITY OVER ALL OTHER PLEDGES OF NET REVENUES EXCEPT THE LIEN IN FAVOR OF BONDS HEREAFTER ISSUED UNDER THE RESOLUTION ON A PARITY WITH THIS BOND.

[Optional redemption provisions to be added here, if applicable]

[Mandatory redemption provisions to be added here, if applicable]

[In the event this Bond shall be called for redemption, notice of redemption, describing this Bond and specifying the redemption date, shall be given by sending the notice, by first class mail, postage prepaid, not less than 30 days and not more than 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; but failure to give notice to the Registered Owner of any Bond being redeemed, or any defect in any notice given, shall not affect the validity of the proceedings for the redemption of any other Bond or portion thereof. Interest on the Bonds or portion thereof to be redeemed shall cease to accrue from and after the redemption date specified in the notice, unless the Board defaults in making due provision for the payment of the redemption price of the Bonds or the portions thereof to be redeemed.]

[In the event that only part of the principal amount of this Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of this Bond to the Registrar. Upon surrender of this Bond, the University shall execute and the Registrar shall authenticate and deliver to the Registered Owners hereof, at the office of the Registrar, or send to the Registered Owner by registered mail at his request, risk, and expense, a new fully-executed Bond or Bonds, in the denomination of \$5,000 or an integral multiple thereof, equal in aggregate principal amount to, and of the same maturity and interest rate as, the unredeemed portion thereof.]

All principal, premium, if any, and interest 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 authorized in writing, upon surrender hereof together with a written instrument of

transfer satisfactory to the Registrar duly executed by the Registered Owner of this Bond at any time. Each transfer, to be valid, shall be made on the Books of Registry to be kept by the Registrar and similarly noted on this Bond. Any purported assignment in contravention of the foregoing requirements shall be, as to the University, absolutely null and void. The person in whose name this Bond shall be registered shall be deemed and regarded as the absolute owner 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 University upon this 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 this Bond against the University. 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 University, as in the case where the Registered Owner is a trustee or nominee for two or more beneficial owners of an interest on this Bond.

The Registrar shall not be required (a) to exchange or transfer this Bond (i) for the period beginning on the Record Date and ending on the next succeeding Interest Payment Date or (ii) for a period of fifteen days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice or redemption or (b) to transfer any Bonds called for redemption.

The Registered Owner of this Bond may surrender it to the Registrar with instruments of transfer satisfactory to the Registrar duly executed by the Registered Owner or his duly authorized attorney and, upon payment of any charges which the University may make as provided in the Resolution, shall be entitled to receive in exchange therefor a Bond of equal principal amount, interest rate, and maturity.

Whenever the terms of this Bond require any action to be taken on a Saturday, Sunday or legal holiday or bank holiday in the State of South Carolina or in any state where the corporate trust office of the Paying Agent is located, the action shall be taken on the first business day occurring thereafter.

Reference to the Resolution, copies of which are on file in the office of the Board and at the corporate trust office of the Paying Agent in \_\_\_\_\_, is hereby made for a description of the Bonds, definitions of capitalized terms used herein, the funds applicable to the payment of the Bonds, the covenants and agreements of the Board, including the provisions by which the obligations of the Board under the Resolution and the lien and pledge thereof on the Revenues may be discharged as to this Bond by depositing with the Paying Agent in trust under the Resolution, moneys and certain securities sufficient for the payment of this Bond and the interest hereon, the terms and conditions under which the Resolution may be amended or modified with or without the consent of the registered Owner of this Bond, and the other terms and conditions upon which this Bond is issued.

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; and that the amount of this Bond does not exceed any constitutional or statutory limitation thereon.

This Bond shall not be entitled to any benefit under the Resolution 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 authorized officer of the Registrar.

IN WITNESS WHEREOF, COASTAL CAROLINA UNIVERSITY, SOUTH CAROLINA has caused this Bond to be signed in its name by the Chairman, by his manual or facsimile signature, attested by the Secretary by his manual or facsimile signature, under the Seal of the University impressed or reproduced hereon, and this Bond to be originally dated the \_\_\_\_ day of \_\_\_\_\_, 2021.

COASTAL CAROLINA UNIVERSITY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman, Board of Trustees for  
Coastal Carolina University

(SEAL)

Attest:

\_\_\_\_\_  
Secretary, Board of Trustees for  
Coastal Carolina University

CERTIFICATION OF AUTHENTICATION

This Bond has been registered in the name of \_\_\_\_\_, on the Books of Registry of the University held by the Registrar under the provisions of the within-mentioned Resolution.

U.S. BANK NATIONAL ASSOCIATION, as Registrar

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

Date of Authentication: \_\_\_\_\_, 2021.

The following abbreviations shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT _____	Custodian _____
TEN ENT --	as tenants by the entireties	(Cust)	(Minor)
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	Under Uniform Gift to Minors Act of the State of _____	

Additional abbreviations may be used though not in the list above.

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(please print or type name and address of Transferee and Social Security or other identifying number of Transferee)

the within Bond of and all rights and title thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

\_\_\_\_\_  
NOTE: The signature to this assignment must correspond with the name(s) on the face of the foregoing bond in every particular, without alteration.

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 program.



## CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “Disclosure Undertaking”) is executed and delivered by Coastal Carolina University (the “Issuer”) in connection with the issuance of its \$ \_\_\_\_\_ Higher Education Revenue Refunding Bonds, Series \_\_\_\_ (the “Series \_\_\_\_ Bonds”). The Series \_\_\_\_ Bonds are being issued pursuant to a General Bond Resolution adopted by the Board of Trustees (the “Board”) for the Issuer on November 10, 1994, as amended and restated by an Amended and Restated General Bond Resolution adopted by the Board on October 2, 2015 (the “General Bond Resolution”), and a Supplemental Resolution adopted by the Board on May 6, 2021 (the “2021 Supplemental Resolution” and, together with the Amended and Restated General Bond Resolution, the “Resolution”). 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 Series 2021 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 Resolution or elsewhere in this Disclosure Undertaking, which apply to any capitalized terms used in this Disclosure Undertaking, 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 Series 2021 Bonds (including persons holding Series 2021 Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2021 Bonds for federal income tax purposes.

“Dissemination Agent” means any person designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

“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.

“Listed Events” means any of the events listed in Section 5(a) 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 \_\_\_\_\_, \_\_\_\_\_, prepared in

connection with the Series 2021 Bonds.

“Participating Underwriter” means any of the original underwriters of the Series 2021 Bonds required to comply with the Rule in connection with the offering of the Series 2021 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.

“State” means the State of South Carolina.

Section 3. Provision of Annual Reports. (a) The Issuer shall, not later than **February 1** of each year, commencing with the report for the fiscal year ended June 30, \_\_\_\_, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Undertaking. Not later than 15 business days prior to said date, the Issuer shall provide the Annual Report to the Dissemination Agent, if other than the Issuer. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Undertaking; provided, however, that the audited financial statements of the Issuer may be submitted separately from the balance 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 complete audited financial statements for the preceding fiscal year prepared in accordance with accounting principles generally accepted within the United States of America as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the Issuer’s audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the 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) Updates of the financial information and operating data as of a date not earlier than the end of the preceding fiscal year for the type of information included under the headings in the Official Statement:

- (i) FINANCIAL FACTORS—Five Year Summary;
- (ii) FINANCIAL FACTORS—Management’s Discussion and Analysis;
- (iii) FINANCIAL FACTORS—Debt Service Requirements;
- (iv) FINANCIAL FACTORS—Summary of Historical Net Revenues and Expenditures of the University (using the then-current definition of “Revenues” and “Expenditures”);
- (v) THE UNIVERSITY – Enrollment and Admissions;
- (vi) THE UNIVERSITY – Tuition and Fees; and
- (vii) DEBT STRUCTURE OF THE UNIVERSITY – Outstanding Debt.

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.

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 Series 2021 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 Series 2021 Bonds, or other material events affecting the tax status of the Series 2021 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 Series 2021 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;

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

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the Financial Obligation of the 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 Series 2021 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 Series 2021 Bonds shall have been paid in full or the Series 2021 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 Series 2021 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 Series 2021 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, or change in the identity, nature or status of an obligated person with respect to the Series 2021 Bonds, or the type of business conducted;

(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 Series 2021 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 Series 2021 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 Series 2021 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 Columbia, South Carolina. A default under this Disclosure Undertaking shall not be deemed an event of default under the Resolution, 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. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Undertaking, and in any separate written agreement between the Issuer and the Dissemination Agent.

Section 13. 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 Series 2021 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.

**COASTAL CAROLINA UNIVERSITY**

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

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

EXHIBIT A

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

Issuer: Coastal Carolina University, South Carolina

Obligations: \$ \_\_\_\_\_ Higher Education Revenue Refunding Bonds, Series 2021

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

CUSIP Nos. \_\_\_\_\_

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

COASTAL CAROLINA UNIVERSITY,  
SOUTH CAROLINA

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

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



**Pope Flynn, LLC**  
1411 Gervais Street, Suite 300  
Post Office Box 11509 (29211)  
Columbia, SC 29201

**MAIN 803.354.4900**  
**FAX 803.354.4899**  
**www.popeflynn.com**

September 1, 2021

South Carolina State Fiscal Accountability Authority  
Columbia, South Carolina

Re: Not Exceeding \$46,000,000 Coastal Carolina University Higher Education  
Revenue Refunding Bonds, Series 2021

Ladies and Gentlemen:

We are acting as bond counsel to Coastal Carolina University (the "University") in connection with the proposed issuance by the University of the above-referenced bonds (the "Bonds"). At your request, we are delivering this opinion in connection with the University's request<sup>1</sup> to the South Carolina State Fiscal Accountability Authority (the "SFAA") dated September 1, 2021 (the "Petition"), to approve the issuance of the Bonds pursuant to the South Carolina Constitution and Acts of the General Assembly of the State of South Carolina, including particularly Title 59, Chapters 136 and 147 of the Code of Laws of South Carolina 1976, as amended (the "Act") for the purpose of refinancing certain outstanding bonds of the University.

In that capacity, we have examined originals or copies of the Petition, the Bond Resolution duly adopted by the Board of Trustees of Coastal Carolina University (the "Board of Trustees") on October 2, 2015, a Supplemental Resolution duly adopted by the Board of Trustees on May 6, 2021 (together, the "Bond Resolution"), and a proposed resolution of the SFAA in the form submitted as part of the Petition (the "SFAA Resolution," and together with the Petition, and the Bond Resolution, the "Transaction Documents").

In rendering the opinion expressed below, we have relied solely on our examination of the Transaction Documents. We have not made any investigation as to any factual matter or as to the accuracy or completeness of any representation, warranty, data, or any other information, whether written or oral, that may have been made by or on behalf of the University, the SFAA or the parties to any of the documents related to the Bonds. Further, in rendering the opinion expressed below, we do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the federal laws of the United States of America and the laws of the State of South Carolina, and the opinion is limited to the federal laws of the United States of America and the laws of the State of South Carolina. Nothing herein should be understood to render or express a credit or business judgement regarding the issuance of the Bonds.

Based upon the stated examination and assumptions, and subject to the stated qualifications and limitations, we are of the opinion, under existing law, that the Transaction Documents comply with all requirements of the Act, contain all required facts, information, and findings by the

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<sup>1</sup> Transmitted by Pope Flynn, LLC to Delbert H. Singleton, Jr., as SFAA Secretary by transmittal letter dated September 1, 2021.

respective authorities, and are legally sufficient to allow the SFAA to approve the issuance of the Bonds through the adoption of the SFAA Resolution.

Except as set forth above, we express no opinion in connection with the issuance and sale of the Bonds. The opinion expressed above is rendered solely for your benefit in considering the approval of the issuance of the Bonds under the Act. The opinion may neither be relied on by you for any other purpose nor be furnished to, used, circulated, quoted or relied on by any other person or entity for any other purpose, without our prior written consent in each instance. This opinion speaks only as of the date hereof and we disclaim any obligation to update the opinion expressed above for events occurring or coming to our attention after the date of this letter.

Very truly yours,



Pope Flynn, LLC

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COASTAL CAROLINA UNIVERSITY

A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING.

2015 AMENDED AND RESTATED  
GENERAL BOND RESOLUTION

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BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF TRUSTEES OF COASTAL CAROLINA UNIVERSITY, IN A MEETING DULY ASSEMBLED:

**ARTICLE I  
FINDINGS OF FACT; DEFINITIONS AND INTERPRETATIONS**

Section 1.01. Recitals and Statement of Purpose.

Incident to the adoption of this resolution and the issuance of the bonds provided for herein, the Board of Trustees of Coastal Carolina University (the "Board"), a body corporate and politic and the governing body of Coastal Carolina University (the "University"), finds as a fact, that each of the statements hereinafter set forth is in all respects true and correct.

The University, a state-supported institution of higher learning of the State of South Carolina and an agency thereof, is authorized by the provisions of Sections 59-136-300 through 59-136-390 of the Code of Laws of South Carolina, 1976, as amended ("Chapter 136"), to issue revenue bonds of the University for the purpose of financing or refinancing in whole or in part the costs of constructing, reconstructing, improving, and equipping buildings for the purposes of the University, all as set forth in Chapter 136, and for other matters as set forth therein.

Under the provisions of Chapter 136, the Board is authorized to issue revenue bonds (the "Bonds") for the purposes, *inter alia*, of constructing dormitories, apartment buildings, dwelling houses, dining halls, cafeterias, parking facilities, sports facilities and inns. For the payment of the Bonds, the Board is authorized to pledge and has heretofore pledged all revenues of the University except revenues derived from appropriations from the General Assembly of the State of South Carolina and tuition moneys which are designated as such and used to pay the debt service on state institution bonds issued on behalf of the University. Specifically, such revenues that are pledged to the payment of the Bonds include all academic and student fees received by the University; revenues derived from the operation of the University cafeteria, bookstore, dormitories, athletic facilities, vending machines, parking facilities, and similar operations; all gifts, bequests, contributions, donations, and grants received by the Board for use or permitted to be used in connection with the operation of the University; all proceeds of insurance available to the University; and all proceeds of all goods, including, without limitation, equipment and inventory owned, leased, or used in the conduct of the activities of the University, together with other incidental moneys.

In accordance with the provisions of Chapter 136 and the provisions of a General Bond Resolution duly adopted by the Board on November 10, 1994 (as amended, the "General Bond Resolution"), the Board previously issued and there remain outstanding the following issues of Bonds: (a) the remaining principal maturities of an original issue of \$3,885,000 Coastal Carolina University Refunding Revenue Bond, Series 2004, dated June 16, 2004 (the "Series 2004 Bond"), the remaining principal maturities of an original issue of \$13,175,000 Coastal Carolina University Refunding Revenue Bonds, Series 2006, dated November 1, 2006 (the "Series 2006 Bonds"), and (c) the remaining principal maturities of an original issue of \$6,147,000 Coastal Carolina University Refunding Revenue Bond, Series 2012, dated June 1, 2012 (the "Series 2012 Bond"). The Series 2004 Bond, the Series 2006 Bonds, and the Series 2012 Bond are herein collectively referred to as the "Prior Outstanding Bonds."



Subsequent to the issuance of the Prior Outstanding Bonds, the Board provided for the amendment and restatement of the General Bond Resolution pursuant to the adoption of an amended and restated General Bond Resolution, adopted on October 26, 2012, entitled "A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" (the "2012 Amended and Restated General Bond Resolution" and as an amendment and restatement of the General Bond Resolution, the "Amended and Restated Bond Resolution"). The Board previously issued and there remain outstanding the following issues of Bonds issued after the adoption of the 2012 Amended and Restated General Bond Resolution: (a) the remaining principal maturities of an original issue of \$54,705,000 Coastal Carolina University Higher Education Revenue Bonds, Series 2013, dated February 1, 2013 (the "Series 2013 Bonds"), the remaining principal maturities of an original issue of \$34,480,000 Coastal Carolina University Higher Education Revenue Bonds, Series 2014, dated June 1, 2014 (the "Series 2014 Bonds"), and (c) the remaining principal maturities of an original issue of \$87,020,000 Coastal Carolina University Higher Education Revenue Bonds, Series 2015, dated February 1, 2015 (the "Series 2012 Bond", and together with the Series 2013 Bonds and the Series 2014 Bonds, the "Subsequent Outstanding Bonds")(the "Prior Outstanding Bonds" and the Subsequent Outstanding Bonds, the "Outstanding Bonds").

The Board previously determined in the 2012 Amended and Restated General Bond Resolution to provide for a mechanism to separate the method by which it may finance the costs of athletic facilities from the method by which it may finance its dormitories and other auxiliary facilities and determined to avail itself of the authority of the Higher Education Revenue Bond Act which is codified at Sections 59-147-10 through 59-147-110 of the Code of Laws of South Carolina, 1976, as amended. In order to implement such determinations, certain provisions of the General Bond Resolution were modified in the 2012 Amended and Restated Bond Resolution to provide that at a date (the "Effective Date") in the future, the revenues pledged to secure the Bonds would not include Athletic Revenues or the proceeds of any Athletic Admissions Fee or Special Athletics Fee (each as defined herein), and that no Bond proceeds will be used to finance the cost of Athletic Facilities as of and after the Effective Date, which term is defined as the earliest date on which one of the following conditions has been met with respect to each Series of Prior Outstanding Bonds: (1) the Series of Prior Outstanding Bonds shall have been paid at their respective stated maturities or redemption dates, if redeemed as a whole; (2) the Series of Prior Outstanding Bonds shall have been defeased in accordance with the provisions of Article VIII of the General Bond Resolution; or (3) the consent of the Holders of the Series of Prior Outstanding Bonds shall have been obtained in accordance with the provisions of Article X of the Amended and Restated General Bond Resolution.



The Board has now determined that clarification as to the implementation of the Effective Date is required and such Effective Date shall not occur until (i) the conditions recited in the paragraph immediately above are met, and (ii) the Board takes formal action by resolution to declare the date of the Effective Date and provide for any ministerial provisions to provide for the orderly segregating of revenues. The Effective Date shall be the date prescribed in the resolution declaring the Effective Date.

In order to clarify certain provisions of the Amended and Restated General Bond Resolution for the reasons stated above, the Board has determined to restate and amend the Amended and Restated General Bond Resolution by adopting this resolution (herein defined as the "2015 Amended and Restated General Bond Resolution"). This 2015 Amended and Restated General Bond Resolution restates provisions of the Amended and Restated General Bond Resolution and clarifies certain provisions of the Amended and Restated General Bond Resolution in accordance with the authorizations contained in Article X of the Amended and Restated General Bond Resolution, which amendments are for clarification purposes and become effective immediately upon the date of adoption of this 2015 Amended and Restated General Bond Resolution. Certain other provisions of the Amended and Restated General Bond Resolution, as specifically noted herein, shall become effective and applicable on the Effective Date.

Upon the Effective Date, this 2015 Amended and Restated General Bond Resolution will provide the vehicle pursuant to which Bonds secured by a pledge of all revenues of the University, except revenues derived from (i) Athletic Revenues, or any Athletic Admissions Fee or Special Athletics Fee, (ii) appropriations received from the General Assembly of the State of South Carolina, and (iii) institution tuition moneys collected to pay debt service on State institution bonds issued on behalf of the University, may be issued, from time to time. Each of the provisions of this 2015 Amended and Restated General Bond Resolution shall apply to all Outstanding Bonds and Bonds to be issued and delivered after the adoption of this 2015 Amended and Restated General Bond Resolution, except that, amendments to certain provisions which become effective on and after the Effective Date, shall not be applicable until on and after the Effective Date.

Section 1.02. Defined Terms.

The terms defined in this Section 1.02 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Resolution shall have the respective meanings specified in this Section 1.02. (Upon the Effective Date, the definitions found in Section 1.03 herein will be incorporated in this Section 1.02 and will replace corresponding definitions herein.)

“Accountant” shall mean the South Carolina State Auditor, an independent certified public accountant, or a firm of independent certified public accountants designated by the University.

“Accreted Value” shall mean with respect to any Capital Appreciation Bond, except as otherwise provided by a Supplemental Resolution, an amount equal to the principal amount of the Capital Appreciation Bond (determined on the basis of the original principal amount per \$5,000 at maturity thereof) plus the amount, assuming semi-annual compounding of earnings, which would be produced on the investment of the principal amount, beginning on the dated date of the Capital Appreciation Bond and ending at the maturity date thereof, at a yield which, if produced until maturity, will produce \$5,000 at maturity. The accreted value of any Capital Appreciation Bond shall mean, as of any Valuation Date, the amount set forth for that date in the Supplemental Resolution authorizing Capital Appreciation Bonds, and as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from the preceding Valuation Date to the next succeeding Valuation Date, and (2) the difference between the Accreted Values for such Valuation Dates.

“Act” shall mean Title 59, Chapters 136 and 147 of the Code of Laws of South Carolina, 1976, either or both, as from time to time amended, and all other statutory authorizations, now or hereinafter adopted, authorizing and enabling the University to provide for the issuance of the Bonds.

“Annual Budget” shall mean the annual budget required by Section 7.09 hereof and adopted in conformance therewith.

“Auxiliary Facilities Project” shall mean the acquisition, construction, reconstruction, renovation, improvement and equipment of dormitories, apartment buildings, dwelling houses, dining halls, cafeterias, parking facilities, sports facilities, and inns or any combination thereof.

“Balloon Indebtedness” shall mean indebtedness in the form of Bonds of a Series twenty-five percent (25%) or more of the principal payments of which are due in a single year, which portion of the principal is not required by the proceedings authorizing the issuance of the indebtedness to be amortized by redemption prior to its maturity date.

“Board” shall mean the Board of Trustees of Coastal Carolina University, a body corporate and politic, and any successor governing body of the University.

“Bond Counsel” shall mean any attorney or firm of attorneys of nationally recognized

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.

“Bond Holders”, “Bondholders”, “Holders”, or any similar term, shall mean the registered owner of any Outstanding Bond or Bonds.

“Bonds” shall mean all bonds and other obligations, including lease-purchase obligations, of the University issued pursuant to and under the authority of Sections 2.02, 2.03, and 2.04 hereof, and Outstanding from time to time. When written in all lower-case letters, the term “bonds” shall mean the documented promise to pay borrowed money, unless the context clearly indicates another meaning.

“Books of Registry” shall mean the registration books with respect to any Series of Bonds maintained by the Registrar in accordance with Section 3.04 hereof.

“Capital Appreciation Bonds” shall mean any Bonds as to which interest is payable only at the maturity, prior redemption, or acceleration of the Bonds. For the purposes of (i) receiving payment of the redemption price of a Capital Appreciation Bond that is redeemed prior to maturity, (ii) receiving payment of a Capital Appreciation Bond if the principal of all Bonds of a Series is declared immediately due and payable following an Event of Default as provided in Section 9.02 of this Resolution, or (iii) computing the principal amount of Bonds held by the Holder of a Capital Appreciation Bond in giving any notice, consent, request, or demand pursuant to this Resolution, or for any purpose whatsoever including, without limitation, for transfer and exchange, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value on the date set for redemption, or the date of declaration, or the date of computation of the principal amount, or on the date of transfer or exchange, as the case may be, or in any other case, on the analogous date as of which the principal amount is intended to be calculated.

“Capital Lease” shall mean any lease of property which, in accordance with generally accepted accounting principles, has been or should be capitalized on the lessee’s balance sheet or for which the amount of the asset and liability thereunder as if so capitalized should be disclosed in a note to the balance sheet.

“Chairman” shall mean the Chairman of the Board or in his absence the Vice Chairman of the Board.

“Code” shall mean the Internal Revenue Code of 1986, as amended, any successor provision of law, and regulations promulgated thereunder.

“Construction Fund” shall mean any fund established with and maintained by the Trustee and derived from certain of the proceeds of the sale of any Series of Bonds and intended to defray the cost of all or a portion of any Project and to pay all Costs of Acquisition and Construction in connection therewith, as established in a Supplemental Resolution authorizing the issuance of any Series of Bonds.

“Costs of Acquisition and Construction” shall mean, to the extent permitted by the Act,

all costs of acquisition, construction, reconstruction, improvement, and equipment of Projects, including the Costs of Issuance and capitalized interest on Bonds. Costs of Acquisition and Construction shall include the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

“Costs of Issuance” shall mean all items of expense, directly or indirectly payable or reimbursable by or to the University and related to the authorization, sale, and issuance of Bonds, including, but not limited to, printing costs; costs of preparation and reproduction of documents; filing and recording fees; initial fees and charges of any Trustee; legal fees and charges; fees and disbursements of consultants and professionals; costs of credit ratings; fees and charges for preparation, execution, transportation, and safekeeping of Bonds; costs and expenses of refunding; premiums or other charges for insurance or other credit enhancement for the payment of Bonds; financing charges; accrued interest with respect to the initial investment of proceeds of Bonds; and any other costs, charges, or fees in connection with the original issuance of Bonds.

“Debt Guarantee” shall mean any guarantee or other liability (other than any endorsement for collection or deposit in the ordinary course of business and other than performance bonds but only to the extent that such performance bonds do not also constitute guarantees of payment), direct or indirect, with respect to any obligation of another Person, through an agreement or otherwise, including without limitation:

(a) any other endorsement or discount with recourse or undertaking substantially equivalent to or having economic effects similar to a guarantee in respect to any obligation; and

(b) any agreement (1) to purchase, or to advance or supply funds for the payment or purchase, of any obligation, (2) to purchase, sell, or lease property, products, materials, or supplies, or transportation services in respect of enabling any other Person to pay any obligation or to assure the holder thereof against loss regardless of the delivery or non-delivery of the property, products, materials, or supplies or transportation services, or (3) to make any loan, advance, or capital contribution to, or other investment in, or to otherwise provide funds to or for, any other Person in respect of enabling the Person to satisfy any obligation (including any liability for a dividend, stock liquidation payment, or expense) or to enable the Person to assure a minimum equity, working capital, or other balance sheet condition in respect of any obligation.

The amount of any Debt Guarantee shall be equal to the outstanding amount of the obligation directly or indirectly guaranteed.

“Debt Service Fund” shall mean the fund established and so designated by the provisions of Section 5.04 hereof.

“Debt Service Reserve Fund” shall mean the fund established and so designated by the provisions of Section 5.05 hereof and to be maintained in the amounts, if any, and in separate accounts established with respect to each Series of Bonds as set forth in the Supplemental Resolution providing for the issuance of that Series of Bonds.

“Debt Service Reserve Fund Requirement” shall mean that amount, if any, with respect

to each Series of Bonds as set forth in the Supplemental Resolution providing for the issuance of that Series of Bonds.

“Default” or “Event of Default” shall mean any of those defaults specified in and defined by Article IX hereof.

“Expenditures” shall mean all those expenditures made by the Board for the administration and operation of the University including, without limitation, those made for salaries and other personnel and contractual services; materials and supplies; rent; repair, maintenance, and replacement; and travel, but excluding:

(a) those expenditures to be paid from State appropriations to pay educational and other expenses of the University as set forth in the appropriations act adopted by the State in such year;

(b) payment of debt service on State institution bonds issued on behalf of the University;

(c) the costs of any undertaking chargeable to construction or other capital projects;

(d) losses on the sale or other disposition of investments or capital assets which do not result from the ordinary course of business;

(e) financing expenses, underwriting discounts, call premiums, gains, or losses on the extinguishment of debt due to the refinancing of the same, and other related or incidental non-recurring expenses resulting from the issuance or refinancing of Bonds, Special Facilities Bonds, or Junior Bonds; and

(f) payments for the principal of, premium, if any, and interest on the Bonds, Special Facilities Bonds, and Junior Bonds.

“Fiscal Year” shall mean the period of twelve (12) calendar months, beginning on the first day of July of each year and ending with the 30th day of June of the following year, until changed to a different twelve month period by the Board.

“Higher Education Facilities Project” shall mean the acquisition, construction, reconstruction, renovation and improvement of land, buildings, and other improvements to real property and equipment for the purpose of providing facilities serving the needs of the University including, but not limited to, dormitories, apartment buildings, dwelling houses, bookstores and other University-operated stores, laundries, dining halls, cafeterias, parking facilities, student recreational, entertainment and fitness related facilities, inns, conference and other nondegree educational facilities and similar auxiliary facilities of the University and any other facilities which are auxiliary to any of the foregoing excluding, however, Athletic Facilities; and those academic facilities as may be authorized by joint resolution of the General Assembly.

“Interest Payment Date” shall mean the date or dates set forth in a Supplemental Resolution on which interest payments are due with respect to the Series of Bonds authorized thereunder.



“Investment Securities” shall mean those investments authorized for investment of State funds under Section 11-9-660 of the Code of Laws of South Carolina, 1976, as now or hereafter amended from time to time.

“Junior Bonds” shall mean bonds secured by a pledge of Revenues junior and subordinate in all respects to the pledge securing the Bonds.

“Maintenance Reserve Fund” shall mean the fund established and so designated by the provisions of Section 5.06 hereof.

“Net Revenues” shall mean the Revenues less amounts necessary for payments of Expenditures.

“Net Revenues Available for Debt Service” shall mean for the period in time in question (i) Revenues, excluding the balance of all funds and accounts created pursuant to the provisions hereof or any Supplemental Resolution, less (ii) amounts necessary for payments of Expenditures.

“Outstanding Bonds” or “Outstanding” shall mean all Bonds which have been duly authenticated and delivered hereunder except:

(a) Bonds theretofore cancelled by the Trustee or theretofore delivered by the Trustee for cancellation;

(b) Bonds (or portions thereof) for the payment or redemption of which cash funds shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of the Bonds); provided that, if Bonds are to be redeemed prior to the maturity thereof, notice of redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of notice satisfactory in form to the Trustee shall have been filed with the Trustee;

(c) Bonds in lieu of which others have been authenticated, unless proof satisfactory to the Trustee is presented to the Trustee that the Bonds are held by bona fide purchasers as that term is defined in Article 8 of the South Carolina Uniform Commercial Code, as amended, in which case the Bond or Bonds so replaced and the Bond or Bonds authenticated and delivered therefor shall both be deemed Outstanding; and

(d) Bonds (or portions thereof) deemed to have been paid within the meaning of Article VIII hereof.

“Paying Agent” shall mean any bank or trust company appointed by the University from time to time as Paying Agent or Paying Agents in accordance with Section 6.19 hereof to serve as Paying Agent for one or more Series of Bonds issued hereunder.

“Person” shall mean natural persons, firms, associations, corporations, and public bodies.

“Principal and Interest Requirements” with respect to any Bonds shall mean the amount required to pay principal of (whether at maturity or pursuant to mandatory redemption requirements applicable thereto), redemption premium, if any, and interest (exclusive of funded

interest) on the Bonds during the period of time for which Principal and Interest Requirements are being calculated; provided (i) with respect to Balloon Indebtedness, the amount of the balloon portion payable in the period shall be computed as if the balloon portion were amortized from the date of the Balloon Indebtedness over a period of twenty (20) years (or, if the term of the balloon portion is less than twenty (20) years, over a period equal to the term) on a level debt service basis at an interest rate equal to the rate borne by the Balloon Indebtedness on the date calculated (or, if the Balloon Indebtedness is also Variable Rate Indebtedness, at the interest rate calculated in accordance with phrase (ii) that follows), except that if the period of calculation includes the actual maturity date of the balloon portion of the Balloon Indebtedness, the full amount of principal payable at the maturity date shall be included in the calculation; (ii) the interest on Variable Rate Indebtedness shall be calculated at one hundred ten percent (110%) of the average rate borne by the Variable Rate Indebtedness during the preceding twelve (12) months, or if the Variable Rate Indebtedness is yet to be incurred, at one hundred ten percent (110%) of the average rate such Variable Rate Indebtedness would have borne during the preceding twelve (12) months based on the applicable index or other method of determining the interest rate under the terms of the Supplemental Resolution providing for the incurrence of the Variable Rate Indebtedness; and (iii) interest as used in this definition shall include interest on Capital Appreciation Bonds accruing, but not payable, during the period of time for which Principal and Interest Requirements are being calculated.

“Principal Payment Date” shall mean the date or dates set forth in a Supplemental Resolution on which principal payments are due with respect to the Series of Bonds authorized thereunder.

“Project” means an Auxiliary Facilities Project, a Higher Education Facilities Project, or both.

“Purchaser” shall mean, with respect to any Series of Bonds, the initial purchaser(s) of that Series of Bonds.

“Record Date” shall mean, with respect to any Series of Bonds, (i) the fifteenth (15th) day (whether or not a business day) of the calendar month immediately preceding an Interest Payment Date in the event that the Interest Payment Date is the first day of a month, (ii) the last day (whether or not a business day) of the calendar month immediately preceding each Interest Payment Date in the event that the Interest Payment Date is the fifteenth (15th) day of a month, or (iii) any other day as may be provided in the Supplemental Resolution authorizing the issuance of that Series; provided, however, that in the case of a Default in the payment of interest due on a Series of Bonds, the Trustee shall establish a special record date for payment of the defaulted interest, notice whereof to be mailed by first-class mail, postage prepaid, by the Trustee to the Holder of that Series of Bonds not less than ten (10) days prior to the special record date.

“Registrar” shall mean any bank or trust company appointed by the University from time to time as Registrar or Registrars in accordance with Section 6.18 hereof to serve as Registrar for one or more Series of Bonds issued hereunder.

“Resolution” shall mean this 2015 Amended and Restated General Bond Resolution as from time to time amended or supplemented by one or more Supplemental Resolutions.

“Revenue Fund” shall mean the fund established and so designated by the provisions of Section 5.02 hereof.

“Revenues” shall mean all revenues of the University except revenues derived from appropriations received from the General Assembly of the State and institution tuition moneys collected to pay debt service on State institution bonds issued on behalf of the University. The term “Revenues” shall include, without limitation:

- (i) all academic and student fees received by the University;
- (ii) revenues derived from the operation of the University cafeteria, bookstore, dormitories, athletic facilities, vending machines, parking facilities, and similar operations;
- (iii) all gifts, bequests, contributions, donations, and grants received by the Board for use or permitted to be used in connection with the operation of the University;
- (iv) all proceeds of insurance available to the University;
- (v) all proceeds of all goods, including, without limitation, equipment and inventory owned, leased, or used in the conduct of the activities of the University;
- (vi) all investment income on any fund or account created hereby or by a Supplemental Resolution except any Construction Fund and any Debt Service Reserve Fund with respect to any Series of Bonds prior to completion of acquisition and construction of Projects being financed thereby;
- (vii) all proceeds of all present and future accounts, contract rights, instruments, chattel paper, general intangibles, deposit accounts, documents, and agreements relating or attributable to, or arising out of, the operation of the University facilities; and
- (viii) the balance of all funds and accounts created pursuant to the provisions hereof or any Supplemental Resolution until used for the purposes prescribed herein;

but excluding:

- (a) gifts, bequests, contributions, donations, and State appropriations restricted to a particular purpose inconsistent with their use both for the payment of principal of, premium, if any, or interest on the Bonds and for the payment of Expenditures;
- (b) investment income restricted to a purpose inconsistent with its use both for the payment of principal of, premium, if any, or interest on the Bonds and for the payment of Expenditures;
- (c) any amounts received by way of government grants restricted to a purpose inconsistent with their use both for the payment of principal of, premium, if any, or interest on the Bonds and for the payment of Expenditures;

(d) any revenues which are pledged as security for the payment of Special Facilities Bonds; and

(e) for purposes of Sections 2.03 and 7.01 hereof, the proceeds of any borrowings.

“Secretary” shall mean the Secretary of the Board or in his absence any assistant or acting secretary of the Board.

“Serial Bonds” shall mean Bonds which are not Term Bonds.

“Series” or “Series of Bonds” or “Bonds of a Series” shall mean all Bonds designated as being of the same series, issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Resolution.

“Special Facilities” shall mean any future facilities, the revenues and expenses resulting from the operation of which can be segregated from the Revenues and expenses of the University, and which the Board shall designate by resolution.

“Special Facilities Bonds” shall mean bonds issued by the University pursuant to the provisions of and for the purposes set forth in and secured as provided in Section 2.06 hereof.

“State” shall mean the State of South Carolina.

“State Authority” shall mean the South Carolina State Fiscal Accountability Authority, as successor to the State Budget and Control Board of South Carolina.

“State Treasurer” shall mean the Office of the State Treasurer of South Carolina.

“Supplemental Resolution” shall mean any resolution adopted by the Board providing for the issuance of Bonds and any resolution adopted by the Board pursuant to and in compliance with the provisions of Article X hereof amending or supplementing the provisions of this Resolution.

“Term Bond” shall mean any Bond designated by the Supplemental Resolution providing for its issuance as being subject to mandatory redemption requirements.

“Trust Estate” shall mean the Trustee’s interest in the several funds created hereunder, including the initial deposit of proceeds, future deposits, and investment earnings on the deposits.

“Trustee” shall mean the State Treasurer when so acting or any other bank, trust company, or financial institution which is authorized by the University and approved by the State Treasurer to be the custodian of the funds established under this Resolution.

“University” shall mean Coastal Carolina University, a state-supported institution of higher learning of the State and an agency and instrumentality thereof, and any successor or successors thereto.

“Valuation Date”, with respect to any Capital Appreciation Bonds, shall have the meaning ascribed to the term in the Supplemental Resolution authorizing the issuance of the Capital Appreciation Bonds.

“Variable Rate Indebtedness” shall mean indebtedness in the form of Bonds the interest rate on which is not established at a fixed or constant rate at the time the indebtedness is incurred.

Section 1.03. Defined Terms as of the Effective Date.

The following terms as defined in this Section 1.03 of this Resolution shall take effect and become a part of Section 1.02 as of the Effective Date and, where applicable, shall replace in their entirety such corresponding definitions found in Section 1.02 hereof.

“Athletic Admissions Fee” shall mean any specially designated admissions fee or charge which may, in addition to other charges, be imposed by the Board in its discretion upon persons admitted to any event held at any of the Athletic Facilities, for the purpose of providing funds to assist in the repayment of Athletic Revenue Bonds.

“Athletic Department” means the athletic department of the University.

“Athletic Facilities” mean all of the facilities of the University designated from time to time by the Board as intercollegiate athletic facilities, including any facilities providing support for facilities where intercollegiate athletic events are held, including without limitation, any related infrastructure for administration, maintenance, practice, training, physical therapy and related facilities of the Athletic Department, whether now owned or hereafter acquired by the University.

“Athletic Revenue Bonds” shall mean any indebtedness of the University secured in whole or in part by Athletic Revenues or the proceeds of any Athletic Admissions Fee or Special Athletics Fee pursuant to the provisions of an authorization of the Board separate and apart from this Resolution.

“Athletic Revenues” means (1) all revenues or other income received by the Athletic Department from the operation of the Athletic Department and the Athletic Facilities, including, without limitation, amounts received from the sale of tickets for and guarantees with respect to intercollegiate athletic events, from any athletic conference with respect to the University’s share of proceeds from conference members’ television and bowl appearances, from the University’s participation in conference and National Collegiate Athletic Association tournaments, from sales, if permitted, or rentals of executive boxes at Athletic Facilities, from sales of game programs and concessions or commissions therefrom, from the University’s sports radio and television rights, from corporate sponsorships, and from license fees; (2) all gifts bequests, contributions and donations received by the Board or the University from any persons, including from any University-sanctioned athletic booster organization for use in connection with the operation of the Athletic Department; (3) any other unrestricted revenues of the Athletic Department not otherwise pledged that may be made applicable by the Board to the payment of the principal of, premium, if any, and interest on the Athletic Revenue Bonds, including such revenues as may fall into the category of non-mandatory transfers as such term is used in generally accepted



accounting principles; and (4) all income from the investment of the above; however, excluding: (i) gifts, bequests, contributions and donations restricted to a particular purpose inconsistent with their use for the payment of principal of or premium or interest on the Athletic Revenue Bonds; (ii) the proceeds of any borrowing; (iii) State appropriations of any sort; (iv) investment income restricted to a purpose inconsistent with the payment of operating expenses of the Athletic Department or debt service on Athletic Revenue Bonds (whether or not so restricted); and (v) interest earned on any construction fund or construction account created with the proceeds of borrowing by the University.

“Effective Date” means (i) the earliest date on which one of the following conditions has been met with respect to each Series of Prior Outstanding Bonds: (1) the Series of Prior Outstanding Bonds shall have been paid at their respective stated maturities or redemption dates, if redeemed as a whole; (2) the Series of Prior Outstanding Bonds shall have been defeased in accordance with the provisions of Article VIII of the General Bond Resolution; or (3) the consent of the Holders of the Series of Prior Outstanding Bonds shall have been obtained in accordance with the provisions of Article X of the Amended and Restated General Bond Resolution; and (ii) subsequent to the satisfaction of all conditions in (i) as to each Series of Prior Outstanding Bonds, the Board takes formal action by resolution to declare the date of the Effective Date and provide for any ministerial provisions to provide for the orderly segregating of revenues. The date of the Effective Date shall be the date prescribed in the resolution declaring the Effective Date.

“Expenditures” shall mean all those expenditures made by the Board for the administration and operation of the University including, without limitation, those made for salaries and other personnel and contractual services; materials and supplies; rent; repair, maintenance, and replacement; and travel, but excluding:

- (a) those expenditures to be paid from State appropriations to pay educational and other expenses of the University as set forth in the State Appropriations Act;
- (b) payment of debt service on State institution bonds issued on behalf of the University;
- (c) those expenditures paid from Athletic Revenues, or any Athletic Admissions Fee or Special Athletics Fee;
- (d) the costs of any undertaking chargeable to construction or other capital projects;
- (e) losses on the sale or other disposition of investments or capital assets which do not result from the ordinary course of business;
- (f) financing expenses, underwriting discounts, call premiums, gains, or losses on the extinguishment of debt due to the refinancing of the same, and other related or incidental non-recurring expenses resulting from the issuance or refinancing of Bonds, Special Facilities Bonds, or Junior Bonds; and
- (g) payments for the principal of, premium, if any, and interest on the Bonds,

Special Facilities Bonds, and Junior Bonds.

“Revenues” shall mean all revenues of the University except revenues derived from appropriations received from the General Assembly of the State and institution tuition moneys collected to pay debt service on State institution bonds issued on behalf of the University. The term “Revenues” shall include, without limitation:

- (i) all academic and student fees received by the University;
- (ii) revenues derived from the operation of the University cafeteria, bookstore, dormitories, vending machines, parking facilities, and similar operations;
- (iii) all gifts, bequests, contributions, donations, and grants received by the Board for use or permitted to be used in connection with the operation of the University;
- (iv) all proceeds of insurance available to the University;
- (v) all proceeds of all goods, including, without limitation, equipment and inventory owned, leased, or used in the conduct of the activities of the University;
- (vi) all investment income on any fund or account created hereby or by a Supplemental Resolution except any Construction Fund and any Debt Service Reserve Fund with respect to any Series of Bonds prior to completion of acquisition and construction of Projects being financed thereby;
- (vii) all proceeds of all present and future accounts, contract rights, instruments, chattel paper, general intangibles, deposit accounts, documents, and agreements relating or attributable to, or arising out of, the operation of the University facilities; and
- (viii) the balance of all funds and accounts created pursuant to the provisions hereof or any Supplemental Resolution until used for the purposes prescribed herein;

but excluding:

- (a) gifts, bequests, contributions, donations, and State appropriations restricted to a particular purpose inconsistent with their use both for the payment of principal of, premium, if any, or interest on the Bonds and for the payment of Expenditures;
- (b) investment income restricted to a purpose inconsistent with its use both for the payment of principal of, premium, if any, or interest on the Bonds and for the payment of Expenditures;
- (c) any amounts received by way of government grants restricted to a purpose inconsistent with their use both for the payment of principal of, premium, if any, or interest on the Bonds and for the payment of Expenditures;
- (d) Athletic Revenues, or the proceeds from any Athletic Admissions Fee or

Special Athletics Fee;

(e) any revenues which are pledged as security for the payment of Special Facilities Bonds; and

(f) for purposes of Sections 2.03 and 7.01 hereof, the proceeds of any borrowings.

“Special Athletics Fee” means any fee as may be established by the Board in its discretion from time to time and imposed upon students in attendance at any academic session of the University in order to provide funds to assist the repayment of Athletic Revenue Bonds.

Section 1.04. General Rules of Interpretation.

(a) Articles, sections, and paragraphs mentioned by number are the respective articles, sections, and paragraphs of this Resolution 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 the Bond at its stated maturity or the purchase of the Bond.

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

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**ARTICLE II**  
**AUTHORIZATION AND ISSUANCE OF BONDS**

Section 2.01. Authorization of Bonds.

There is hereby authorized to be issued Bonds of the University to be designated as set forth in the Supplemental Resolution authorizing the particular Series of Bonds, which Bonds may be issued pursuant to this Resolution and in accordance with the terms, conditions, and limitations set forth herein, in Series, in the amounts, and from time to time as the Board may from time to time deem to be necessary or advisable for any public purpose of the University for which Bonds may be issued under this Resolution and the Act.

Section 2.02. General Provisions for Issuance of Bonds.

(a) The Bonds shall be issued in a Series by means of a Supplemental Resolution adopted by the Board in accordance with the provisions of this Article and Article X hereof. Each Supplemental Resolution shall designate the Bonds provided for thereby by an appropriate Series designation and by any further particular designations, if any, as the Board deems appropriate; and shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount of the Series of Bonds; (ii) the purpose or purposes for which the Bonds of the Series are being issued, which shall be one or more of the purposes set forth in Sections 2.03, 2.04, or 2.05 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 2.03 hereof, the Project for which the Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project to be financed by the Series of Bonds, and, in the event of the acquisition by purchase or condemnation of any facilities already constructed, a determination of what repairs, replacements, additions, and betterments will be necessary in order that the facilities may be effective for their purpose and an estimate of the cost required therefor; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the mandatory redemption amounts and due dates, if any, for the Term Bonds of the Series; (vii) the interest rate or rates of the Bonds of the Series, or the manner of determining the rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of, and manner of numbering and lettering, the Bonds of the Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of the Series, the period or periods, if any, during which premiums or prices shall be payable, and the terms and conditions, if any, of redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agents and Registrars therefor or the manner of selecting them if other than the Trustee; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application, and investment, if any, of the proceeds of the sale or other disposition, which use, application and investment shall not be inconsistent with the provisions hereof; (xii) any other provisions which may be required to be included therein by other provisions of this Resolution; and (xiii) any other necessary or desirable provisions not inconsistent with the provisions of this Resolution.

(b) Bonds of a Series may be executed and delivered by the University and authenticated and delivered by the Registrar, as authenticating agent, to the University or upon its order upon compliance with Sections 2.03 or 2.04 hereof.

Section 2.03. Conditions for the Issuance of Bonds.

(a) Anytime and from time to time, one or more Series of Bonds (exclusive of Bonds issued pursuant to the provisions of Section 2.04 hereof) may be issued for any purposes as may be permitted by the Act upon compliance with the provisions of Section 2.02 hereof and this Section in any principal amounts as may be determined by the Board. Prior to the issuance of Bonds under this Section 2.03, the following conditions shall be satisfied:

(i) There shall be filed with the Board a certificate of the Trustee stating (A) either (1) that no Default exists in the payment of the principal of, premium, if any, or interest on any Bonds or Junior Bonds, and all mandatory redemption requirements, if any, required to have been made or satisfied shall have been made or satisfied, or (2) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Resolution authorizing their issuance will cure the Default or permit the making or satisfaction of the redemption requirements, and (B) either (1) that to the knowledge of the Trustee, the University is not in Default under the terms and provisions of this Resolution in any manner properly within the purview of the Trustee, or (2) setting forth the circumstances of each Default known to the Trustee.

(ii) There shall be filed with the Trustee a certificate of the Chairman stating (A) either (1) that no Default exists in the payment of the principal of, premium, if any, or interest on any Bonds or Junior Bonds, and all mandatory redemption requirements, if any, required to have been made or satisfied shall have been made or satisfied, or (2) that the application of the proceeds of the sale of the Series of Bonds to be issued as required by the Supplemental Resolution authorizing their issuance will cure the Default or permit the making or satisfaction of the redemption requirements, and (B) either (1) that to the best of the knowledge of the Chairman, the University is not in Default in the performance of any other of its covenants and agreements contained in this Resolution, or (2) setting forth the circumstances of each Default known to him.

(b) If a certificate filed pursuant to part (i) or (ii) of Section 2.03(a) hereof should disclose a Default or Defaults hereunder, there shall be filed with the Trustee an opinion of Bond Counsel satisfactory to the Trustee that, in the case of any Default disclosed in a certificate filed pursuant to part (i) or (ii) of Section 2.03(a), no Default deprives the Bondholders of the security afforded by this Resolution in any material respect.

(c) For the issuance of Bonds to finance the Costs of Acquisition and Construction, or a portion thereof, of any Projects:

(i) as determined by an Accountant, Net Revenues Available for Debt Service for the most recent Fiscal Year for which financial statements have been delivered pursuant to Section 7.11 hereof shall have been not less than the annual Principal and Interest Requirements for the preceding Fiscal Year; provided that if in that Fiscal Year there was in the Debt Service Fund or any Construction Fund created by a Supplemental Resolution any funded capitalized interest, then in that event, Net Revenues Available for Debt Service for that Fiscal Year plus funded capitalized interest on Bonds paid out in that Fiscal Year shall have been not less than the amount required in that Fiscal Year to pay the installments of the principal of and interest on the Bonds for that Fiscal Year; and



(ii) for each of the five (5) Fiscal Years from and including the Fiscal Year in which the date of delivery and issuance of the Bonds of that Series falls, forecasted Net Revenues Available for Debt Service which forecast shall be made by or on behalf of the Chairman, plus funded capitalized interest on Bonds in that Fiscal Year for which interest shall have been capitalized, shall be not less than the amount required to pay the installments of the principal of and interest on the Bonds for that Fiscal Year.

(d) The Bonds shall be issued to secure funds for the purpose of financing or refinancing, in whole or in part, the Costs of Acquisition and Construction of Projects, including the funding of the Debt Service Reserve Fund; to refund Bonds; or to refund Junior Bonds, or any notes, bonds, or other obligations issued to finance or refinance the Costs of Acquisition and Construction of Projects, including the funding of the Debt Service Reserve Fund.

(e) There shall be on deposit in the Debt Service Reserve Fund cash, securities, surety bond, insurance policy, letter of credit, or the equivalent thereof, or any combination thereof, as provided in Section 5.05 hereof (inclusive of any proceeds of Bonds to be deposited in the Debt Service Reserve Fund) having an aggregate value not less than the Debt Service Reserve Fund Requirement, if any, with respect to each Series of Bonds to be then Outstanding and the Bonds then proposed to be issued.

#### Section 2.04. Issuance of Refunding Bonds.

Without complying with the provisions of Section 2.03 hereof except as otherwise provided herein, the University by means of a Supplemental Resolution in compliance with the Act and any other statutory provisions authorizing the issuance of revenue refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds for the purpose of refunding (including by purchase) Bonds, including amounts to pay principal, redemption premium, and interest to the date of redemption (or purchase), of the refunded Bonds and the Costs of Issuance of the refunding Bonds and to fund any necessary reserves or other accounts; provided that the present value of the Principal and Interest Requirements on all Bonds to be Outstanding after the issuance of the refunding Bonds shall not be greater than would have been the present value of the Principal and Interest Requirements were the refunding not to occur. The Trustee and the University may rely on a certificate of an Accountant in making the determination in the immediately preceding sentence.

#### Section 2.05. Issuance of Junior Bonds.

The University may at any time issue Junior Bonds in any amount as it may from time to time determine, payable from the Revenues; provided that such Junior Bonds are issued to secure funds to defray the cost of financing or refinancing, in whole or in part, the costs of construction, reconstruction, improvement, and equipment of buildings for the purposes of the University, or to refund Bonds, Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing or refinancing, in whole or in part, the costs of construction, reconstruction, improvement, and equipment of buildings for the purposes of the University; and provided further that the pledge of revenues securing Junior Bonds shall at all times be subordinate and inferior to the pledge securing the Bonds. Junior Bonds shall be payable from Revenues held in the Revenue Fund after provision has been made for all payments required to be made hereunder with respect to the Bonds.

Section 2.06. Special Facilities Bonds.

The University shall have at all times the right to enter into contracts, leases, or other agreements pursuant to which it will agree to construct, operate, and pay the costs of Special Facilities to be financed by its issuance of Special Facilities Bonds (which may also be Junior Bonds), subject to the following conditions:

(a) The Board shall determine that the rents, revenues, or receipts to be derived from the Special Facilities shall be at least equal to the principal, interest, and any reserve requirements contained in the proceedings authorizing the Special Facilities Bonds and to pay all operation, maintenance, and other costs and expenses applicable to the Special Facilities; and

(b) The revenues derived from the Special Facilities need not be deposited in the Revenue Fund, and may be pledged to secure Special Facilities Bonds, but no debt service or other costs or expenses related to any Special Facilities may be paid from Revenues deposited in the Revenue Fund except as provided in Section 2.05 hereof with respect to Special Facilities Bonds which are also Junior Bonds.

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## **ARTICLE III THE BONDS**

### Section 3.01. Execution.

(a) Unless or except as is otherwise set forth in the Supplemental Resolution providing for the issuance of a Series of Bonds and as may be required by the Act, the Bonds shall be executed on behalf of the University by the Chairman by his manual or facsimile (if permitted by the terms of the Act) signature and the corporate seal of the University or a facsimile thereof shall be impressed or reproduced thereon and attested by the Secretary by his manual or facsimile (if permitted by the terms of the Act) signature.

(b) In case any officer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be that officer before the delivery of the Bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

### Section 3.02. Authentication.

Upon compliance with the provisions of Sections 2.03 or 2.04 hereof, and upon the order of the University, the Registrar shall authenticate Bonds authorized to be issued hereunder. Only those Bonds as shall have endorsed thereon a certificate of authentication duly executed manually by the Registrar shall be entitled to any right or benefit under this Resolution. No Bond shall be valid or obligatory for any purpose unless and until the certificate of authentication shall have been duly executed by the Registrar, and the executed certificate of the Registrar upon any Bond shall be conclusive evidence that the Bond has been authenticated and delivered. The Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Registrar, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series.

### Section 3.03. Mutilated, Lost, Stolen, or Destroyed Bonds.

In the event any Bond is mutilated, lost, stolen, or destroyed, the University may execute and the Registrar may authenticate a new Bond having the same date, maturity, and denomination as that mutilated, lost, stolen, or destroyed; provided that, in the case of any mutilated Bond, it shall first be surrendered to the University and in the case of any lost, stolen, or destroyed Bond, there shall be first furnished to the University and the Registrar evidence of the loss, theft, or destruction satisfactory to the University and the Registrar, together with indemnity satisfactory to them; provided that, in the case of a Holder which is a bank or insurance company, the agreement of the bank or insurance company to indemnify shall be sufficient. In the event any Bond shall have matured, instead of issuing a duplicate Bond, the University may pay it without surrender thereof. The University and the Registrar may charge the Holder of the Bond with their reasonable fees and expenses in this connection.

Section 3.04. Registration and Transfer of Bonds; Persons Treated as Owners.

(a) Each Bond shall be fully registered and transferable only upon the Books of Registry of the University which shall be kept for that purpose at the corporate trust office of the Registrar described in the Supplemental Resolution authorizing that Series of Bonds, by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any Bond, the University shall issue, subject to the provisions of Section 3.07 hereof, in the name of the transferee, a new Bond or Bonds of the same Series and of the same aggregate principal amount as the unpaid principal amount of the surrendered Bond.

(b) Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name it shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of, premium, if any, and interest on any Bond shall be made only to or upon the order of the Holder thereof, or his duly authorized attorney, and neither the University, the Registrar, nor the Trustee shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All the payments made in this manner shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums paid.

Section 3.05. Form of Bonds; Denominations; Medium of Payment.

Except as is otherwise provided in the Supplemental Resolution authorizing their issuance, the Bonds: (a) shall be in fully registered form without coupons; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof (or, in the case of Capital Appreciation Bonds, in denominations representing \$5,000 Accreted Value at maturity or integral multiple thereof); provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, the new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, 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.

Section 3.06. Numbers, Date, and Payment Provisions.

(a) The Bonds shall be numbered and designated in any manner as the Board, with the concurrence of the Trustee, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case, it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for the Bond, in which case it shall bear interest from the date of its delivery, or as otherwise provided in the Supplemental Resolution authorizing its issuance; provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefor, it shall bear interest from the next succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on the Bond is in default, it shall bear interest from the date to which interest on it has been paid or

if no interest has been paid, the Bond shall bear interest from the date of delivery thereof or as otherwise provided in the Supplemental Resolution authorizing the issuance of the Bond.

(b) The principal of and redemption premium, if any, on the Bonds and Accreted Value on any Capital Appreciation Bonds shall be payable when due in lawful money of the United States of America upon presentation and surrender of the Bonds at the office of the Paying Agent described in the Supplemental Resolution authorizing the issuance of the Bonds. Payment of interest on Bonds other than Capital Appreciation Bonds shall be made by check or draft drawn upon the Paying Agent and mailed to the registered Holder at his address as it appears upon the Books of Registry. The Paying Agent shall maintain a record of the amount and date of any payment of principal or interest or Accreted Value on the Bonds (whether at the maturity date or the redemption date prior to the maturity or upon the maturity thereof by declaration or otherwise).

Section 3.07. Exchange of Bonds.

Bonds, upon surrender thereof at the office of the Registrar described in the Supplemental Resolution authorizing the issuance of that Series of Bonds, with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney, may, at the option of the Bondholder thereof, and upon payment by the Bondholder of any charges which the Registrar may make as provided in Section 3.08 herein, be exchanged for a principal amount of Bonds of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 3.08. Regulations with Respect to Exchanges and Transfer.

In all cases in which the privilege of exchanging or transferring Bonds is exercised, the University shall execute and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Resolution. All Bonds surrendered in any exchanges or transfers shall forthwith be cancelled by the Registrar. There shall be no charge to the Bondholder for the exchange or transfer of Bonds except that the Registrar may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to the exchange or transfer. Neither the University nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the next succeeding Interest Payment Date or (ii) for a period of fifteen (15) days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption or (b) to transfer any Bonds called for redemption.

Section 3.09. Temporary Bonds.

Any Series of Bonds may be initially issued in temporary form, exchangeable for definitive Bonds to be delivered as soon as practicable and subject to the agreement of the University and the Purchaser. The temporary Bonds may be printed, lithographed, or typewritten, shall be of any denominations and may be numbered in any manner as may be determined by the Board, shall be without coupons, and may contain reference to any of the provisions of this Resolution as may be appropriate. Every temporary Bond shall be executed by the University upon the same conditions and in substantially the same manner as the definitive Bonds. If the University issues temporary Bonds, it will execute and furnish definitive Bonds without delay,



and thereupon the temporary Bonds shall be surrendered for cancellation at the office of the Registrar and the Trustee shall deliver and exchange for the temporary Bonds an equal, aggregate principal amount of definitive Bonds having the same aggregate principal amount and in authorized denominations of the same Series, maturity or maturities, and interest rate or rates. Until exchanged, the temporary Bonds shall be entitled to the same benefits under this Resolution as definitive Bonds under this Resolution.

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**ARTICLE IV  
REDEMPTION OF BONDS BEFORE MATURITY**

Section 4.01. Redemption of Bonds.

The Bonds of a Series may be subject to redemption prior to their stated maturities upon the terms and conditions and at the dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Resolution providing for the issuance of that Series, and upon the further terms and condition as are hereinafter set forth.

Section 4.02. Selection of Bonds for Redemption.

In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in the order as is set forth in the Supplemental Resolution providing for the issuance of that Series. Unless otherwise provided by Supplemental Resolution, if less than all of the Bonds having the same maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Registrar in any manner as the Registrar in its discretion may deem fair and appropriate; provided, however, that the portion of any Bond of a denomination (or, in the case of Capital Appreciation Bonds, Accreted Value at maturity) of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of Bonds for redemption, the Registrar shall treat each Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount or Accreted Value at maturity of the Bond by \$5,000.

Section 4.03. Notice of Redemption.

(a) Unless or except as is otherwise provided in the Supplemental Resolution authorizing the issuance of the Bonds, the provisions of this Section 4.03 apply to each Series of Bonds. In the event any of the Bonds or portions thereof are called for redemption, notice shall be given in the name of the University by the Paying Agent of the redemption of the Bonds to be redeemed, the redemption date, the place or places where amounts due upon redemption will be payable, and the numbers of the Bonds to be redeemed. The notice shall be given by mailing a copy of the redemption notice by first class mail, postage prepaid, at least thirty (30) days, but not more than sixty (60) days, prior to the date fixed for redemption to the Holder of each Bond or portion thereof to be redeemed at the address shown on the Books of Registry. Failure duly to give notice by mailing, or any defect in the notice, to the Holder of any Bond designated for redemption shall not affect the validity of any proceedings for the redemption of any other Bonds. All Bonds or portions thereof called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit with the Paying Agent; and the Bonds shall not be deemed to be Outstanding under the provisions of this Resolution.

(b) The University may provide that the notice of redemption is subject to being revoked by the University prior to the date of redemption upon the terms and conditions set forth in the notice.

Section 4.04. Partial Redemption of Bond.

In the event that only part of the principal sum 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 the Bond to the Registrar. Upon surrender of the Bond, the University shall execute and the Registrar shall authenticate and deliver to the Holder thereof, at the office of the Registrar, or send to the Holder by registered mail at his request, risk, and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity, and interest rate as, the unredeemed portion of the Bond surrendered.

Section 4.05. Effect of Redemption.

If a Bond is subject by its terms to prior redemption and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of the Bond (or of the principal amount thereof to be redeemed) at the then applicable redemption price or together with the then applicable premium, if any, and the interest to accrue to the redemption date on the Bond (or the principal amount thereof to be redeemed) are held for the purpose of payment by the Trustee or other Paying Agent for the Series of Bonds of which that Bond is one, then on the redemption date designated in the notice, the Bond (or the principal amount thereof to be redeemed) called for redemption shall become due and payable and interest on the Bond (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue.

Section 4.06. Cancellation.

All Bonds which have been redeemed shall be cancelled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing the destruction shall be furnished by the Registrar to the University and the Trustee upon the request of either the University or the Trustee.

Section 4.07. Purchase of Bonds.

The Trustee shall, if and to the extent practicable, endeavor to purchase Bonds or portions of Bonds at the written direction of the University at the time, in the manner, and at the price as may be specified by the University but in no event greater than the price equal to the then redemption price of the Bonds. The Trustee may purchase Bonds with any moneys then held by the Trustee and available for the redemption or purchase of Bonds and in excess of that set aside for the payment of Bonds called for redemption; provided, that any limitations or restrictions on redemption or purchases contained in this Resolution or applicable Supplemental Resolution shall be complied with. The Trustee shall incur no liability for any purchase made in accordance with this Section or for its inability to effect purchase in excess of the redemption price thereof.

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**ARTICLE V**  
**ESTABLISHMENT OF FUNDS; PAYMENTS THEREFROM;**  
**INVESTMENT OF MONEYS**

Section 5.01. Listing of Funds and Accounts.

The following are the funds and accounts established by this Resolution and held by the Trustee:

- (i) Revenue Fund;
- (ii) Debt Service Fund;
- (iii) Debt Service Reserve Fund;
- (iv) Maintenance Reserve Fund; and
- (v) Construction Fund.

One or more accounts may, by direction of the University or by the terms of a Supplemental Resolution, be established within any of the above funds. It is intended by this Resolution that the funds referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in this Article V.

Section 5.02. Revenue Fund.

(a) There is hereby established a Revenue Fund to be maintained in trust by the Trustee and into which shall be deposited all Revenues, if any. Moneys in the Revenue Fund shall be disbursed on the occasions as provided herein, and shall be made use of only in the manner specified in this Article V and in the order of priority set forth in this Article V. The Trustee may invest moneys held in the Revenue Fund, from time to time, in Investment Securities; provided, however, that the Revenue Fund shall be administered in a manner so as to maintain the cash liquidity thereof to permit the timely cash transfers contemplated by this Article V.

(b) The Bonds shall be payable solely from the Revenues after provision has been made for payment of Expenditures, in the manner provided herein, and the Revenues herein made applicable thereto are hereby irrevocably pledged to the payment of the Bonds, and to the payments into the various funds herein provided for, to the extent and in the manner provided for by this Resolution. The Bonds, including payment of the principal thereof, redemption premium, if any, and interest thereon, shall be equally and ratably secured hereunder by the pledge of the Revenues and other moneys and securities hereby made, and by the lien on the funds created herein, including the Investment Securities, without priority by reason of Series, number, date of adoption of Supplemental Resolution providing for the issuance thereof, the purposes or Projects for which the Bonds are issued, the date, date of sale, execution, issuance or delivery of the Bonds, or otherwise, and without regard to which section hereof the Bonds are issued under,

except as hereinafter otherwise expressly provided. The pledge and the Bonds shall constitute a prior and paramount lien and charge on the Revenues and other moneys from time to time held hereunder, subject only to the provisions of this Resolution restricting or permitting the application thereof for the purposes and on the terms and conditions set forth in this Resolution. The Revenues and the other moneys and securities hereby pledged shall immediately be subject to the lien and the pledge without any physical delivery thereafter or further act, and the lien and the pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise, against the University, whether or not the parties have notice thereof.

(c) The covenants and agreements herein set forth to be performed by the University shall be for the equal and proportionate benefit, security, and protection of all Holders of the Bonds without preference, priority, or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds or any of the others for any reason or cause whatsoever, except as expressly provided herein or in the Bonds, and, except as aforesaid, all Bonds shall rank pari passu and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 5.03. Payments for Expenditures.

First, all Expenditures shall be paid when and as they come due by the University from moneys drawn down by the University from time to time from the Revenue Fund.

Section 5.04. Debt Service Fund.

(a) There is hereby established a Debt Service Fund to be maintained in trust by the Trustee. This fund is intended to provide for the payment of the principal of, premium, if any, and interest on the Bonds as they respectively fall due. Payments into this fund shall be made in the manner prescribed by this Resolution and all moneys in the Debt Service Fund shall be used solely to pay the principal of, redemption premium, if any, and interest on the Bonds, and for no other purpose; and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the Bonds. Earnings on investments of the Debt Service Fund shall be transferred to the Revenue Fund; provided, however, that by Supplemental Resolution the University may provide that earnings on moneys in the Debt Service Fund representing capitalized interest on any Series of Bonds may, during the construction period of any Project financed by that Series of Bonds, be transferred to the Construction Fund established for that Series of Bonds.

(b) Each six months, after the payments of Expenditures then due have been made, there shall be transferred from the Revenue Fund into the Debt Service Fund sufficient moneys so as to comply with the following provisions for the payment of the Principal and Interest Requirements on the Bonds then Outstanding:

(i) On or before the fifteenth (15th) day of the calendar month prior to the next succeeding Interest Payment Date, there shall be deposited into the Debt Service Fund that amount which will, together with any other funds on deposit from whatever source in the Debt Service Fund which will be applied to the next interest payment, provide sufficient funds to pay the aggregate amount of interest to become due on the Bonds on the next succeeding Interest Payment Date. In making the transfers required by



this paragraph any amounts credited to the Debt Service Fund representing accrued interest received on the sale of Bonds, interest accruing during the month in which the credit is made capitalized from the proceeds of Bonds, and any other transfers and credits otherwise made or required to be made to the Debt Service Fund for the payment of interest on the Bonds shall be taken into consideration and allowed for.

(ii) On or before the fifteenth (15th) day of the calendar month prior to the next succeeding Principal Payment Date on any Serial Bond, there shall be deposited into the Debt Service Fund that amount which will, together with any other funds on deposit from whatever source in the Debt Service Fund which will be applied to the payment of principal next to become due, provide sufficient funds to pay the aggregate amount of the principal of Serial Bonds to become due on the next succeeding Principal Payment Date.

(iii) On or before the fifteenth (15th) day of the calendar month prior to the next succeeding Principal Payment Date upon which a mandatory redemption of Term Bonds falls due, there shall be deposited into the Debt Service Fund an amount which will, together with any other funds on deposit in the Debt Service Fund available therefor, be equal to the amount (excluding accrued interest) required to redeem the principal amount of those Term Bonds required by the sinking fund installment then falling due on the Term Bonds of that Series. At any time before Bonds of a Series subject to redemption from amounts deposited pursuant to this paragraph have been selected for redemption, or after the redemption date thereof, the University may, in lieu of making all or any portion of a payment with respect to that Series of Bonds required by this paragraph, deliver to the Trustee for cancellation Bonds of that Series subject to redemption from amounts so paid, in which event the payments required by this paragraph shall be reduced by the applicable redemption price of the Bonds delivered for cancellation. The Trustee shall apply the moneys credited to the Debt Service Fund as mandatory redemption requirements to the retirement of the Term Bonds of each Series by redemption in accordance with the Supplemental Resolution providing for the issuance of that Series of Bonds, without further authorization or direction, on each mandatory redemption date with respect to the Term Bonds of that Series or, if directed by the University, semiannually on both the redemption date and the date six (6) months prior to the redemption date, so that the aggregate amount applied will equal the amounts required to be credited to the Debt Service Fund as mandatory redemption requirements for the Term Bonds of that Series on the mandatory redemption date by the Supplemental Resolution providing for the issuance thereof; provided, however, that if the last mandatory redemption requirement for the Term Bonds becomes due on the stated maturity date thereof, the amount of the mandatory redemption requirement may be applied to the payment thereof at maturity. The Trustee shall, if so directed by the University, apply the moneys credited to the Debt Service Fund as mandatory redemption requirements for the retirement of the Term Bonds of a Series to the purchase of the Bonds at a purchase price (including accrued interest and any brokerage or other charge) not to exceed the redemption price then applicable upon the redemption of those Bonds from mandatory redemption requirements, plus accrued interest, in which event the principal amount of the Bonds required to be redeemed on the next ensuing mandatory redemption date shall be reduced by the principal amount of the Bonds purchased; provided, however, that no Bonds of the Series shall be purchased during the interval

between the date on which notice of redemption of the Bonds from mandatory redemption requirements is given and the mandatory redemption date set forth in the notice, unless the Bonds so purchased are Bonds called for redemption in the notice or are purchased from moneys other than those credited to the Debt Service Fund with respect to the mandatory redemption requirements. In the event that moneys in the Debt Service Fund, other than moneys credited thereto as mandatory redemption requirements, are to be applied to the retirement of one or more Series of Bonds, the University may direct the Trustee within thirty (30) days of the deposit of the moneys to apply the moneys to the purchase of Bonds of that Series and may direct from which of the Series of Bonds purchases may be made and may elect that all purchases shall be made from only one Series or from more than one Series. The price payable on any purchase shall not exceed the highest redemption price applicable at the time or any time thereafter with respect to the Series of Bonds. Any moneys not applied to the purchase of Bonds shall be applied to the redemption of Bonds of any Series then subject to redemption from those moneys. In the event that the moneys may be applied to the redemption of more than one Series of Bonds, the moneys shall be applied by the Trustee to the redemption of Bonds of each Series in proportion which the principal amount of Bonds of each Series then Outstanding and subject to redemption from the moneys bears to the total principal amount of Bonds of all Series then Outstanding and subject to redemption from the moneys. The purchase or redemption of Term Bonds pursuant to this paragraph shall be credited against the mandatory redemption requirement of the Term Bonds in any order of the mandatory redemption dates as determined by the University. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph. Neither the University nor the Trustee shall be required to redeem Bonds pursuant to this paragraph if the moneys available for redemption are less than \$50,000. The Trustee shall give notice of all redemptions, in the name and on behalf of the University in accordance with the provisions of Article IV hereof. Any purchase of Bonds pursuant to this paragraph may be made with or without tenders of Bonds at public or private sale, as shall be determined by the Trustee; provided, however, the University may direct the Trustee in any method to be followed in purchasing Bonds. The accrued interest to be paid on the purchase or redemption of Bonds shall be paid from the Debt Service Fund. All Bonds purchased or redeemed pursuant to this paragraph shall be cancelled and not reissued.

(iv) If, on any occasion when the payments required by Paragraphs (i), (ii), and (iii), supra, are to be made, the sum total of the payments required by Paragraphs (i), (ii), and (iii), supra, will not provide, together with any other funds in the Debt Service Fund to be applied to the payment of principal and interest, sufficient funds to meet the payment of the next succeeding installment of either principal (whether due at stated maturity or by mandatory redemption) or interest, or both, as the case may be, there shall be added to the payments to be made pursuant to Paragraphs (i), (ii), and (iii), supra, with respect to any Series of Bonds, from the Revenue Fund and the account, if any, in the Debt Service Reserve Fund established with respect to that Series of Bonds, in that order, a sum equal to the deficiency; the effect of this subparagraph (iv) being to insure that moneys in the Debt Service Fund and the Revenue Fund be applied equally and ratably to the payment of Bonds, without priority between Series, provided that the moneys, if any,

in the Debt Service Reserve Fund account established with respect to any Series of Bonds be applied solely to the payment of debt service on the Bonds of that Series.

(c) If at any time the amounts held by the Trustee in the Debt Service Fund and the Debt Service Reserve Fund are sufficient to pay principal of and interest on the Bonds then Outstanding to maturity or prior redemption, together with any amounts due the Trustee, the Trustee shall notify the University, and thereafter the Trustee shall, if directed by the University, apply the amounts in the Debt Service Fund and the Debt Service Reserve Fund to the payment of the principal and interest and shall be required to pay over any further moneys to the University unless and until it shall appear that there is a deficiency in the funds held by the Trustee.

Section 5.05. Debt Service Reserve Fund.

(a) There is hereby established a Debt Service Reserve Fund to be maintained in trust by the Trustee in the amounts, if any, and in separate accounts established with respect to each Series of Bonds as set forth in the Supplemental Resolution providing for the issuance of each Series of Bonds. The Debt Service Reserve Fund account established with respect to any Series of Bonds is intended to ensure the timely payment of the principal of and interest on the Bonds of that Series and to provide for the redemption of Bonds of that Series prior to their stated maturities. Moneys in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall be used for the following purposes, and for no other:

(i) To prevent a Default in the payment of the principal of or interest on the Bonds of that Series, by reason of the fact that moneys in the Debt Service Fund are insufficient for those purposes.

(ii) To pay the principal of, interest on, and redemption premium, if any, of the Bonds of that Series in the event that all Outstanding Bonds of that Series be redeemed as a whole.

(iii) To effect partial redemption of the Bonds of that Series, provided that the redemption be undertaken in accordance with the provisions of the Supplemental Resolution permitting a partial redemption of Bonds and the balance remaining in the Debt Service Reserve Fund account following the partial redemption shall not be less than the Debt Service Reserve Fund Requirement, if any, with respect to the Bonds of that Series Outstanding following the partial redemption.

(iv) To effect the retirement of Bonds of that Series through purchase under the conditions herein prescribed.

(b) Pursuant to Section 5.16 hereof, the Trustee shall establish the value of the cash and securities held in the Debt Service Reserve Fund. Whenever the market value or the cash and securities in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall exceed the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds, the excess may either (i) be used to repurchase and retire Bonds of that Series at prices not exceeding the call price first to become available or then prevailing or (ii) subject to the provisions of paragraph (h) of this Section 5.05, be transferred to the Debt Service Fund to be

applied to the payment of debt service on that Series of Bonds. Purchases of Bonds shall be effected by the University through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Paying Agent to cancel and destroy those Bonds and to deliver certificates evidencing that act to the University.

(c) Other than as provided in paragraphs (b), (e), (g), and (h) of this Section 5.05, withdrawals from the Debt Service Reserve Fund shall be made only to make available to the Trustee the moneys which it requires to effect payment of principal of and interest and premium, if any, on the Bonds in accordance with this Section 5.05. Withdrawals shall be made not less than one (1) day nor more than five (5) days prior to the occasion when installments of principal and interest and premium, if any, become due or the applicable redemption or Bond purchase date, as applicable.

(d) Whenever the value of cash and securities and accrued interest (or the equivalent security permitted under paragraph (e) of this Section 5.05) in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall be less than the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds, there shall be deposited from the Revenue Fund after the payments required under Section 5.04 have been made into the Debt Service Fund on or before the fifteenth day of each month into the Debt Service Reserve Fund account an amount which, together with equal, successive, monthly deposits in the same amount, will provide cash and securities in the Debt Service Reserve Fund account of a value not less than the Debt Service Reserve Fund Requirement with respect to that Series within twelve (12) months next succeeding the determination.

(e) In lieu of the deposit of moneys into the Debt Service Reserve Fund account established with respect to any Series of Bonds to meet the Debt Service Reserve Fund Requirement with respect to that Series, the University may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds. The amount of moneys required to be deposited to the Debt Service Reserve Fund account shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn from the Debt Service Reserve Fund account and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund account.

(f) The insurer providing the surety bond or insurance policy described in paragraph (e) above shall be an insurer whose municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in the issues being rated investment grade by Standard & Poor's Corporation. The letter of credit issuer described in paragraph (e) above shall be a bank or trust company whose long-term obligations are rated at least investment grade by Standard & Poor's Corporation. The surety bond, letter of credit, or insurance policy shall have a term of at least five years. The obligation of the issuer of the surety bond, letter of credit, or insurance policy may not be encumbered by a lien senior to the rights of the Trustee thereunder. At least six months prior to the expiration of any surety bond, letter of credit, or insurance policy (except upon the final maturity of the Series of Bonds secured thereby), the University shall either (i) substitute a surety bond, letter of credit, or insurance



policy meeting the requirements of this Section with a commencement date no later than the expiration date of the surety bond, letter of credit, or insurance policy being replaced thereby, or (ii) provide cash and securities in the Debt Service Reserve Fund account of a value not less than the Debt Service Reserve Fund Requirement. If a disbursement is made pursuant to a surety bond, an insurance policy, or a letter of credit provided pursuant to this paragraph (f), the University shall be obligated either (i) to reinstate the maximum limits of the surety bond, insurance policy, or letter of credit or (ii) to deposit into the Debt Service Reserve Fund account funds in the amount of the disbursements made under the surety bond, insurance policy, or letter of credit, or a combination of those alternatives, as shall provide that the amount credited equals the Debt Service Reserve Fund Requirement within a time period not longer than one year. The University shall replace any surety bond, insurance policy, or letter of credit with one issued by an issuer having a rating as described above if the issuer of a surety bond, insurance policy, or letter of credit on deposit in the Debt Service Reserve Fund shall cease to meet the rating requirements described above within twelve months of notice to the University that the rating has been reduced.

(g) If the University obtains a surety bond, insurance policy, or letter of credit after the deposit of moneys to the Debt Service Reserve Fund account established with respect to any Series of Bonds, excess moneys shall be transferred to the Construction Fund established for that Series of Bonds, or if one does not exist, to the Debt Service Fund and applied to pay debt service on that Series of Bonds; provided that if, in an opinion of Bond Counsel addressed to the Trustee, the excess moneys do not constitute “proceeds” within the meaning of Section 148(d) of the Code, they shall be transferred to the University for use by the University for any lawful purposes.

(h) Earnings on investment of moneys held in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall be credited to and become a part of the Revenue Fund and whenever the value of the cash and securities in the Debt Service Reserve Fund account exceeds the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds, the excess shall be transferred to the Revenue Fund; provided, however, that by Supplemental Resolution authorizing the issuance of any Series of Bonds the University may provide that any excess may, during the construction period of any Project financed by that Series of Bonds, be transferred to the Construction Fund established for that Series of Bonds.

**THE FOLLOWING NEW SECTION 5.05 SHALL BECOME EFFECTIVE ON THE EFFECTIVE DATE:**

Section 5.05. Debt Service Reserve Fund.

(a) *There is hereby established a Debt Service Reserve Fund to be maintained in trust by the Trustee in the amounts, if any, and in separate accounts established with respect to each Series of Bonds as set forth in the Supplemental Resolution providing for the issuance of each Series of Bonds. The Debt Service Reserve Fund account established with respect to any Series of Bonds is intended to ensure the timely payment of the principal of and interest on the Bonds of that Series and to provide for the redemption of Bonds of that Series prior to their stated maturities. Moneys in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall be used for the following purposes, and for no other:*



(i) To prevent a Default in the payment of the principal of or interest on the Bonds of that Series, by reason of the fact that moneys in the Debt Service Fund are insufficient for those purposes.

(ii) To pay the principal of, interest on, and redemption premium, if any, of the Bonds of that Series in the event that all Outstanding Bonds of that Series be redeemed as a whole.

(iii) To effect partial redemption of the Bonds of that Series, provided that the redemption be undertaken in accordance with the provisions of the Supplemental Resolution permitting a partial redemption of Bonds and the balance remaining in the Debt Service Reserve Fund account following the partial redemption shall not be less than the Debt Service Reserve Fund Requirement, if any, with respect to the Bonds of that Series Outstanding following the partial redemption.

(iv) To effect the retirement of Bonds of that Series through purchase under the conditions herein prescribed.

(b) Pursuant to Section 5.16 hereof, the Trustee shall establish the value of the cash and securities held in the Debt Service Reserve Fund. Whenever the market value or the cash and securities in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall exceed the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds, the excess may either (i) be used to repurchase and retire Bonds of that Series at prices not exceeding the call price first to become available or then prevailing or (ii) subject to the provisions of paragraph (g) of this Section 5.05, be transferred to the Debt Service Fund to be applied to the payment of debt service on that Series of Bonds. Purchases of Bonds shall be effected by the University through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Paying Agent to cancel and destroy those Bonds and to deliver certificates evidencing that act to the University.

(c) Other than as provided in paragraphs (b), (e), (f), and (g) of this Section 5.05, withdrawals from the Debt Service Reserve Fund shall be made only to make available to the Trustee the moneys which it requires to effect payment of principal and interest and premium, if any, on the Bonds in accordance with this Section 5.05. Withdrawals shall be made not less than one (1) day nor more than five (5) days prior to the occasion when installments of principal and interest and premium, if any, become due or the applicable redemption or Bond purchase date, as applicable.

(d) Whenever the value of cash and securities and accrued interest (or the equivalent security permitted under paragraph (e) of this Section 5.05) in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall be less than the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds, there shall be deposited from the Revenue Fund after the payments required under Section 5.04 have been made into the Debt Service Fund on or before the fifteenth day of each month into the Debt Service Reserve Fund account an amount which, together with equal, successive, monthly deposits in the same amount, will provide cash and securities in the Debt Service Reserve Fund account of a value not less than the Debt Service Reserve Fund Requirement with respect to that Series within twelve (12) months next succeeding the determination.

(e) *In lieu of the deposit of moneys into the Debt Service Reserve Fund account established with respect to any Series of Bonds to meet the Debt Service Reserve Fund Requirement with respect to that Series, the University may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds. The amount of moneys required to be deposited to the Debt Service Reserve Fund account shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn from the Debt Service Reserve Fund account and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund account. In the event the University determines to satisfy a Debt Service Reserve Fund Requirement with a surety bond, an insurance policy or a letter of credit as provided herein, such funding mechanism must be provided in the manner set forth in the applicable Supplemental Resolution and upon the conditions set forth in the applicable Supplemental Resolution.*

(f) *If the University obtains a surety bond, insurance policy, or letter of credit after the deposit of moneys to the Debt Service Reserve Fund account established with respect to any Series of Bonds, excess moneys shall be transferred to the Construction Fund established for that Series of Bonds, or if one does not exist, to the Debt Service Fund and applied to pay debt service on that Series of Bonds; provided that if, in an opinion of Bond Counsel addressed to the Trustee, the excess moneys do not constitute "proceeds" within the meaning of Section 148(d) of the Code, they shall be transferred to the University for use by the University for any lawful purposes.*

(g) *Earnings on investment of moneys held in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall be credited to and become a part of the Revenue Fund and whenever the value of the cash and securities in the Debt Service Reserve Fund account exceeds the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds, the excess shall be transferred to the Revenue Fund; provided, however, that by Supplemental Resolution authorizing the issuance of any Series of Bonds the University may provide that any excess may, during the construction period of any Project financed by that Series of Bonds, be transferred to the Construction Fund established for that Series of Bonds.*

Section 5.06. Maintenance Reserve Fund.

There is hereby established a Maintenance Reserve Fund to be maintained in trust by the Trustee. This fund is intended to provide for the payment of capital improvements of the University and to make up any deficiency or shortfall in any of the other funds established hereunder. Payments into this fund shall be made from the Revenue Fund after the end of each Fiscal Year from excess Revenues as directed by the University. Withdrawals shall be made from the Maintenance Reserve Fund upon the direction of the University for the purpose of paying the cost of capital improvements of the University or to make up any shortfall or deficiency in any of the other funds established hereunder. Earnings on investments of amounts held in the Maintenance Reserve Fund shall be credited to the Maintenance Reserve Fund.

Section 5.07. Payments for Junior Bonds.

After the payments required by Sections 5.03 through 5.06 hereof are made, provision shall then be made for the payment of all Junior Bonds in the order of priority contemplated by the proceedings authorizing the issuance of the Junior Bonds.

Section 5.08. Use of Surplus Revenues.

All money remaining at the end of any Fiscal Year after making the payments and dispositions required by Sections 5.03 through 5.07 may be deposited into the Maintenance Reserve Fund or used for any other lawful purpose of the University.

Section 5.09. Establishment of Construction Fund.

There shall be created and established a Construction Fund with respect to each Series of Bonds (other than for Bonds issued to refund any obligations of the University) in the Supplemental Resolution providing for their issuance, the moneys in which shall be used to defray the cost of the Project and to pay any Costs of Acquisition and Construction with respect to the facilities financed.

Section 5.10. Deposits Into Construction Fund.

On the occasion of the delivery of any Series of Bonds, the proceeds therefrom shall be paid into the Construction Fund established for that Series as set forth in a Supplemental Resolution authorizing their issue.

Section 5.11. Withdrawals from Construction Fund.

Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Resolution establishing the Construction Fund.

Section 5.12. Investment of Funds.

(a) Any moneys held as part of any fund or account created under this Resolution shall be invested and reinvested by the Trustee to the extent practicable and, if invested, shall be invested only in Investment Securities. Any investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of those funds and the interest accruing thereon and any profit realized from investments shall be credited as provided herein, and any loss resulting from investments shall be charged as provided herein. The Trustee is directed to sell and reduce to cash funds a sufficient amount of investments whenever the cash balance in the fund is insufficient to make any necessary transfers or withdrawals from the fund.

(b) No Investment Security in any fund or account may mature beyond the latest maturity date of any Bonds Outstanding at the time the Investment Security is deposited.

Section 5.13. Transfer of Surplus Construction Fund Moneys.

Except as may be otherwise provided in the Supplemental Resolution establishing the Construction Fund, all funds remaining in any Construction Fund established under a Supplemental Resolution upon completion of the facilities intended to be financed thereby shall be paid into the Debt Service Fund and shall be used only to pay the principal of, premium, if any, and interest on the Bonds of the Series issued under the terms of the Supplemental Resolution or to acquire Outstanding Bonds of that Series at a price (exclusive of accrued interest) not exceeding the face amount thereof.

Section 5.14. Trustee's Liability Limited.

The Trustee shall not be liable or responsible for (a) any diminution in the value of any investments made pursuant to this Article V or for any loss arising from any sale or other disposition thereof or (b) for any violation of any statute or of any policy or rules or regulations of the Internal Revenue Service with respect to "arbitrage bonds".

Section 5.15. Pooled Investment of Moneys Held in Funds.

The moneys in the funds established under this Resolution may be pooled with each other for investment purposes.

Section 5.16. Valuation.

(a) For the purpose of determining the amount on deposit in any fund or account, Investment Securities in which money in the fund or account is invested shall be valued at the market value of such obligations.

(b) The Trustee shall provide the University with account balances for each of the funds and accounts held by the Trustee established under this Resolution no later than thirty (30) days following the end of each Fiscal Year.

(c) For purposes of any valuation hereunder, the value of any surety bond, insurance policy or letter of credit credited to the Debt Service Reserve Fund shall be the amount available to the Trustee under the instrument as of the time of the calculation.

\* \* \* \* \*

**ARTICLE VI  
TRUSTEE AND OTHER FIDUCIARIES**

Section 6.01. Appointment of Trustee.

The University hereby appoints the State Treasurer as the Trustee. The Trustee shall be and is hereby vested with all rights and powers necessary to enable it to discharge its duties hereunder but the right of the Bondholders to appoint a trustee hereunder is limited to the circumstances set forth in Section 6.14 hereof.

Section 6.02. Functions of Trustee.

The Trustee shall have the following additional functions:

(a) To act as custodian of the Revenue Fund, the Debt Service Fund, the Debt Service Reserve Fund, and the Maintenance Reserve Fund; and

(b) To make reports to the University on a monthly or such other basis as may be requested by the University, but not less often than semi-annually:

(i) Establishing balances on hand; and

(ii) Establishing the sufficiency of the Debt Service Reserve Fund.

Section 6.03. Duty of Trustee with Respect to Deficits in Debt Service Fund.

It shall be the further duty of the Trustee to give written notice to the University ten (10) days prior to each bond payment date, if there is any deficiency in the Debt Service Fund which would result in a need for further moneys to meet the payment of interest and principal falling due on the next ensuing bond payment date, and the extent, if any, to which resort must be had to the Debt Service Reserve Fund to meet the deficiency.

Section 6.04. Acceptance by Trustee Required.

Prior to the delivery of any Bonds, the Trustee appointed pursuant to Section 6.01 hereof shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by this Resolution, by executing and delivering to the University a written acceptance thereof.

Section 6.05. Liability as to Recitals in Resolution and Bonds.

The recitals of fact made in this Resolution and in the Bonds shall be taken as statements of the University, and the Trustee shall not be deemed to have made any representation as to their correctness nor shall the Trustee be deemed to have made any representation whatsoever as to the validity or sufficiency of this Resolution or of the Bonds issued hereunder. Nor shall the Trustee be under responsibility or duty with respect to the issuance of the Bonds, or the application of the proceeds thereof, except to the extent provided for herein. Nor shall the Trustee be liable in connection with the performance of its duties hereunder, except for its own negligence or default.



Section 6.06. Trustee May Rely on Notices, etc.

The Trustee shall at all times be protected in acting upon any notice, resolution, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

Section 6.07. Notice to Bondholders if Default Occurs.

If a Default occurs hereunder, then the Trustee shall give notice thereof to the University and the Trustee shall give written notice thereof by first-class mail to the last known Holders of all Bonds then Outstanding shown by the Books of Registry.

Section 6.08. Intervention by Trustee.

In any judicial proceeding to which the University is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondholders, the Trustee may intervene on behalf of the Bondholders and shall do so if requested in writing by the Holders of at least twenty-five per centum (25%) in aggregate principal amount of all Bonds then Outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 6.09. Merger or Consolidation of Trustee.

Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any conversion, sale, merger, consolidation, or transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed, or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 6.10. Resignation by Trustee.

The Trustee may at any time resign and be discharged of its duties and obligations hereunder by giving to the University and the Bondholders written notice of its resignation, specifying a date (not less than sixty (60) days after the giving of the notice) when the resignation shall take effect. The resignation shall take effect upon the date specified in the notice unless previously a successor shall have been appointed as hereinafter provided, in which event the resignation shall take effect immediately upon the appointment and qualification of the successor.

Section 6.11. Removal of Trustee.

(a) The Trustee, if other than the State Treasurer, may be removed at any time by the Holders of not less than fifty percent (50%) of the principal amount of Bonds at that time Outstanding.

(b) The Trustee, if other than the State Treasurer, may likewise be removed at any time by the University with the consent and approval of the Holders of not less than fifty percent (50%) of the principal amount of the Bonds at such time Outstanding.

Section 6.12. Appointment of Successor Trustee.

In case at any time the Trustee shall resign, or be removed or become incapable of acting, or be adjudged a bankrupt or insolvent, or a receiver of its property shall be appointed, or any public officer shall take charge or control of its property or affairs, a successor thereto shall be promptly appointed by a resolution of the Board duly adopted. The successor shall in all instances be a bank, national corporation, or trust company duly chartered pursuant to the laws of the United States of America or of a state thereof, shall have at the time of its appointment a combined capital stock surplus and undivided profits of not less than \$100,000,000 and shall be authorized by law to perform all duties imposed upon it by this Resolution and all Supplemental Resolutions.

Section 6.13. Concerning Any Successor Trustee.

(a) Upon acceptance of appointment by the successor Trustee as provided in this Section, the University shall give notice of the succession of the Trustee to the trusts hereunder by first class mail to the Holders at the addresses shown on the Books of Registry. Each Trustee appointed hereunder shall signify its acceptance of the duties and obligations imposed upon it by this Resolution as Trustee by executing and delivering to the University a written acceptance of its duties and obligations.

(b) Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor and also to the University an instrument in writing accepting appointment hereunder, and thereupon the successor, without any further act, deed, or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties, and obligations of its predecessor; but the predecessor shall, nevertheless, on the written request of the University, or of its successor, execute and deliver an instrument transferring to the successor Trustee all the estates, properties, rights, powers, and trusts of the predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the University be required by any successor Trustee for more fully and certainly vesting in the successor the estate, rights, powers, and duties hereby vested or intended to be vested in the predecessor, any instruments in writing, shall, on request, be executed, acknowledged, and delivered by the University. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Resolution shall have been filed or recorded.

Section 6.14. When Bondholder May Seek Successor Trustee.

If, in a proper case, no appointment of a successor Trustee shall be promptly made pursuant to Section 6.12 hereof, any Bondholder may make application to any court of competent jurisdiction for the appointment of a successor and said court may thereupon, after such notice, if any, as such court may prescribe, appoint a successor.

Section 6.15. Effect of Trustee Merging With Another Bank.

If the Trustee is other than the State Treasurer, any bank into which the Trustee may be merged, or with which it may be consolidated, or any bank resulting from any merger or consolidation to which it shall be a party, or any bank to which the Trustee may sell or transfer all or substantially all of its business, shall become the successor without the execution or filing of any paper or the performance of any further act; provided, always, that if the University shall be dissatisfied with the institution resulting from the merger, consolidation or other action spoken of above, then the University may at any time within thirty (30) days after such action name a new Trustee (with the qualifications prescribed by Section 6.12 hereof) in lieu of the Trustee then acting.

Section 6.16. Trustee to Secure Funds and Securities Held in Trust.

(a) Unless the same be secured as trust funds in the manner provided by the regulations of the Comptroller of the Currency as from time to time in effect, all funds or securities in the custody of the Trustee, in excess of the amount of such deposit, if any, insured by the Federal Deposit Insurance Corporation, shall be secured and kept secured by direct obligations of the United States of a market value at least equal to the sum on deposit and not insured as aforesaid by the Federal Deposit Insurance Corporation.

(b) All securities which shall be given to secure any fund as required by the provisions of this Article shall be placed in the custody of a duly chartered bank or trust company, other than the Trustee, which is a member of the Federal Deposit Insurance Corporation. Such other bank or trust company shall have a combined working capital and surplus of not less than \$100,000,000.

Section 6.17. Disposition of Paid Bonds.

It shall be the duty of the Trustee to cancel all Bonds which shall have been paid, whether upon their maturity or redemption prior to maturity; such cancellation shall be done in such fashion as to render such Bonds incapable of further negotiation or hypothecation. In any event the Trustee shall furnish appropriate certificates to the University indicating the disposition of such Bonds. Upon effecting such cancellation, the Trustee shall furnish appropriate certificates to the University setting forth the disposition made of the Bonds so cancelled.

Section 6.18. Appointment of Registrar.

(a) The University shall appoint from time to time a Registrar or Registrars as Registrar of the Bonds of one or more Series. The Registrar shall be required to keep all books and records as shall be consistent with prudent industry practice and to make them available for inspection by the University, the Trustee, and the Paying Agent at all reasonable times. In addition, the Registrar shall have the duty of authenticating the Bonds of the Series as to which it serves as Registrar and such other duties as may be required of it under this Resolution and the applicable Supplemental Resolution.

(b) Any Registrar shall be a bank or trust company duly organized under the laws of the United States of America or any state thereof, having at the time of appointment a combined

capital stock, surplus and undivided profits of at least \$100,000,000 and authorized by law to perform all the duties imposed upon it by this Resolution and the relevant Supplemental Resolutions. The Registrar may at any time resign and be discharged of the duties and obligations created by this Resolution by giving at least sixty (60) days notice to the Trustee, the Paying Agent, and the University. The Registrar may be removed at any time, at the direction of the University, by an instrument filed with the Registrar, the Trustee, and the Paying Agent.

(c) In the event of the resignation or removal of the Registrar, the Registrar shall deliver any Bonds held by it in that capacity to its successor, or if there be no successor, to the Trustee.

(d) In the event that the University shall fail to appoint a Registrar hereunder, or in the event that the Registrar shall resign or be removed, or be dissolved, or if the property or affairs of the Registrar shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the University shall not have appointed its successor as Registrar, the Trustee shall ipso facto be deemed to be the Registrar for all purposes of this Resolution until the appointment by the University of the Registrar or successor Registrar, as the case may be.

#### Section 6.19. Appointment of Paying Agent.

(a) The University shall from time to time appoint a Paying Agent or Paying Agents as Paying Agent for the Bonds of one or more Series. The Paying Agent shall be required:

(i) to hold all sums held by it for the payment of the principal of, premium, if any, and interest on the Bonds in trust for the benefit of the Holders until such sums shall be paid to the Holders or otherwise disposed of as herein provided; and

(ii) to keep all books and records as shall be consistent with prudent industry practice, to make them available for inspection by the University and the Trustee at all reasonable times.

(b) Any Paying Agent shall be a bank or trust company duly organized under the laws of the United States of America or any state thereof, having at the time of appointment a combined capital stock, surplus and undivided profits of at least \$100,000,000 and authorized by law to perform all the duties imposed upon it by this Resolution and the relevant Supplemental Resolutions. Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Bond Resolution by giving at least sixty (60) days notice to the University and the Trustee. The Paying Agent may be removed at any time at the direction of the University, by an instrument filed with the Paying Agent and the Trustee.

(c) In the event of the resignation or removal of any Paying Agent, the Paying Agent shall pay over, assign, and deliver any moneys held by it in that capacity to its successor or, if there be no successor, to the Trustee.

Section 6.20. Trust Estate May Be Vested in Separate or Co-Trustee.

(a) It is the purpose of this Resolution that there shall be no violation of any law of any jurisdiction (including particularly the law of South Carolina) denying or restricting the right of banking corporations or associations to transact business as Trustee in those jurisdictions. It is recognized that in case of litigation under this Resolution, and, in particular, in case of the enforcement of either on Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights, or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional institution which warrants all of the requirements of Section 6.01 hereof as a co-trustee. The following provisions of this Section 6.20 are adopted to these ends.

(b) In the event that the Trustee appoints an additional institution as a co-trustee (and the Trustee is hereby expressly granted that power), each and every remedy, power, right, claim, demand, cause of action, immunity, and estate expressed or intended by this Resolution to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in the co-trustee but only to the extent necessary to enable the co-trustee to exercise the powers, rights, and remedies, and every covenant and obligation necessary to the exercise thereof by the co-trustee shall run to and be enforceable by either of them.

(c) Should any instrument in writing from the University be required by the co-trustee appointed by the Trustee for more fully and certainly vesting in and confirming to it the properties, rights, powers, trusts, duties, and obligations, any instruments in writing shall, on request, be executed, acknowledged, and delivered by the University. In case any co-trustee, or a successor to any, shall dissolve, become incapable of acting, resign, or be removed, all the estates, properties, rights, powers, trusts, duties, and obligations of the co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment as herein set forth of a new trustee or successor to the co-trustee.

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## **ARTICLE VII COVENANTS**

### Section 7.01. Rates and Charges.

The Board covenants and agrees that it will at all times fix, charge, and collect, or cause to be fixed, charged, and collected, all academic and other student fees, rentals, rates, and other charges for facilities of the University in connection therewith as may be necessary or proper, which academic and other student fees, rates, rentals, and other charges, together with other Revenues, shall at all times be at least sufficient after making due and reasonable allowances for contingencies (a) to pay all current Expenditures, (b) to produce at least 125% of the annual Principal and Interest Requirements on the Outstanding Bonds (less payments made from the proceeds of Bonds), to be funded from Revenues during the Fiscal Year with respect to which the rates are being established, (c) to maintain the Debt Service Reserve Fund Requirement, if any, with respect to any Series of Bonds in the Debt Service Reserve Fund, (d) to discharge all obligations relating to Junior Bonds other than payments of principal which are intended to be and can be refinanced by the University prior to the date on which the payments of principal become due, (e) to comply in all respects with the terms of the Act and this Resolution or any other contract or agreement with the Holders of the Bonds, and (f) to meet any other obligations of the University which are charges, liens, or encumbrances upon the Revenues.

### Section 7.02. Condition of University's Obligation; Payment of Principal and Interest.

(a) Each and every covenant herein made, including all covenants made in the various sections of this Article VII, is predicated upon the condition that any obligation for the payment of money incurred by the University shall not create a pecuniary liability of the University or a charge upon its general credit, but shall be payable solely from the Net Revenues which are required to be set apart and transferred to the Debt Service Fund and the Debt Service Reserve Fund, which Net Revenues are hereby specifically pledged to the payment thereof in the manner and to the extent in this Resolution specified and nothing in the Bonds or in this Resolution shall be considered as pledging any other funds or assets of the University.

(b) The Bonds, together with interest thereon, shall be limited obligations of the University payable from the Debt Service Fund and the Debt Service Reserve Fund and shall be a valid claim of the respective Holders thereof only against those funds and the Net Revenues, which Net Revenues to the extent provided in paragraph (a) of this Section 7.02 are hereby pledged and assigned for the equal and ratable payment of the Bonds and shall be used for no other purposes than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly authorized in this Resolution. The Bonds do not now and shall never constitute an indebtedness of the University within the meaning of any state constitutional provision or statutory limitation (other than Article X, Section 13, Paragraph 9 of the South Carolina Constitution authorizing obligations of institutions of the State payable solely from special sources not involving revenue from any tax or license), and shall never constitute nor give rise to a pecuniary liability of the University or a charge against the general credit of the University, the State, or any of its agencies or political subdivisions or against the taxing power of the State. No recourse shall be had for the payment of the Bonds, or interest thereon, or any part thereof, against the several funds of the University, except in the manner and to the extent provided in this Resolution. The Bonds, and interest thereon, shall not be a charge, lien, or

encumbrance, legal or equitable, upon any property of the University or upon any income, receipts, or revenues of the University other than the Net Revenues that have been pledged to the payment thereof.

Section 7.03. Performance of Covenants; Authority of the Board.

The Board covenants that it will faithfully perform at all times all covenants, undertakings, stipulations and provisions contained in the Act, in this Resolution, in the Bonds executed, authenticated, and delivered hereunder, and in all proceedings pertaining thereto. The Board covenants that it is duly authorized under the Constitution and laws of the State to issue the Bonds authorized hereby, to adopt this Resolution, and to pledge the Revenues hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the adoption of this Resolution has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the University according to the import thereof.

Section 7.04. Instruments of Further Assurance.

The Board covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all resolutions supplemental hereto and all further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning, and confirming unto the Trustee all and singular the Revenues pledged hereby to the payment of the principal of and interest and premium, if any, on the Bonds.

Section 7.05. Inspection of Revenue and Project Books.

The Board covenants and agrees that all books and documents in its possession relating to the Revenues and any Project shall at all times be open to inspection by any accountants or other agents as the Trustee may from time to time designate.

Section 7.06. No Other Hypothecation of Revenues.

The Board represents and covenants that none of the Revenues has been hypothecated, mortgaged, or otherwise pledged or encumbered, save and except as herein enumerated and provided. The Board agrees that it will not hypothecate, mortgage, pledge, encumber, convey, or grant any of the Revenues, nor will it permit any of the Revenues to be hypothecated, mortgaged, pledged, encumbered, conveyed, or granted except as herein enumerated and provided.

Section 7.07. Maintenance of Facilities.

The Board covenants and agrees that during the time when any Bonds are Outstanding, it will keep the facilities of the University in as reasonably safe condition as its operation shall permit and keep the facilities of the University in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof. The University may, also at its own expense, make from time to time any additions or alterations to the facilities of the University that it may deem desirable for its purposes that do not adversely affect the ability of the University to generate Revenues.

Section 7.08. Insurance.

The Board represents and agrees that it will:

(a) keep, or cause to be kept, the property of the University insured against physical loss or damage to the extent and in a manner similar to the practice maintained by other universities and colleges;

(b) secure, or cause to be secured, fidelity bonds indemnifying the University against defalcation of all persons handling moneys of the University, or signing checks of any bank accounts of the University, other than any paying agent or the Trustee; the Board further agrees that all moneys received as a consequence of any defalcation, covered by any fidelity bond, shall be used to restore the fund depleted by the defalcation; and

(c) carry, or cause to be carried, workmen's compensation and public liability insurance in the amounts and to the extent as is customarily carried by similar universities engaged in similar businesses of comparable size; all sums received from insurance policies, except public liability policies, may to the extent necessary, be applied to the repair and replacement of the damaged or destroyed property, or, in the event that the moneys are not used for such purposes, then they shall be deposited in and become a part of the Revenue Fund.

Section 7.09. Annual Budget.

Prior to the beginning of each Fiscal Year, the Board shall cause to be prepared, and shall provide to the Trustee, the Annual Budget for the operation of the auxiliary facilities and services for the next ensuing Fiscal Year. The Annual Budget shall include a detail of all Revenues and all Expenditures for each auxiliary function as well as a consolidated summary of all auxiliary functions. The Annual Budget shall clearly set forth the following:

(a) annual amounts intended to be withdrawn by the University from the Revenue Fund as described in Section 5.03 hereof;

(b) annual amounts necessary to pay the Principal and Interest Requirements on the Bonds then Outstanding; and

(c) all amounts intended to be deposited into the Maintenance Reserve Fund in that Fiscal Year.

Section 7.10. Fiscal Year.

Until changed to a different twelve months' period by the Board or by law, the University shall be operated on the basis of a Fiscal Year, which commences on the first day of July of each year and ends on the 30th day of June of the following year.

Section 7.11. Annual Audits.

The University shall provide the Trustee within three hundred (300) days after the close of the Fiscal Year a copy of an audited financial report as to the obligations and activities of the University during the Fiscal Year. The financial report will set forth in reasonable detail a balance sheet and statements of income, retained earnings, and charges in financial position showing the financial condition of the University at the close of the Fiscal Year and the results of operations of the University for the Fiscal Year, and accompanied by a report thereon, containing an opinion of a firm of independent certified public accountants selected by the University. The financial report shall also be accompanied by a certificate of the University stating that the University is not in Default hereunder or describing the nature of any Default.

Section 7.12. Sale and Disposition of Facilities.

(a) The University shall have the right to dispose of any obsolete or worn out equipment, furniture, and furnishings which may be at any time a part of its facilities, but all moneys realized therefrom shall be treated as a part of the Revenues.

(b) Pursuant to a resolution of the Board, the University, upon the written recommendation of the chief financial officer that the action will not adversely affect the ability of the University to discharge its obligations under this Resolution, may abandon any portion of its facilities which it finds to be no longer serviceable or may change the use thereof.

(c) The University may sell or otherwise dispose of or change the use of (other than as provided in Paragraphs (a) and (b) of this Section 7.12) any portion of its facilities, provided that:

(i) The Trustee shall be provided with an appraisal from an independent certified appraiser stating that in its opinion the purchase price or other consideration to be received represents the full market value of the portion of the facilities sought to be sold or otherwise disposed of; and

(ii) A resolution of the Board shall have been adopted, to which shall have been appended a recommendation of the chief financial officer as to the same and a copy of the appraisal referred to above, approving the sale or other disposition and prescribing that the proceeds of the sale or other disposition shall be deposited in a separate fund with the Trustee and applied either (a) to the Revenue Fund, or (b) to the Debt Service Fund to be applied to the partial payment of current debt service on the Bonds or the redemption of the Bonds in the manner provided for redemptions in this Resolution; and

(iii) The University shall have obtained any required approvals of the State Authority.

Section 7.13. Continuing Disclosure.

The Board covenants to comply with the requirements of Section 11-1-85 of the Code of Laws of South Carolina, 1976, as amended ("Section 11-1-85"), by filing with a central repository for availability in the secondary bond market when requested:

(a) an annual independent audit, within thirty (30) days of the University's receipt of the audit; and

(b) event specific information, within thirty (30) days of an event adversely affecting more than five percent (5%) of the University's revenue.

The only remedy for failure by the University to comply with the covenant in this Section 7.13 shall be an action for specific performance of this covenant. The University specifically reserves the right to amend this covenant to reflect any change in Section 11-1-85, without the consent of any Bondholder.

**THE FOLLOWING NEW SECTION 7.14 SHALL BECOME EFFECTIVE ON THE EFFECTIVE DATE:**

Section 7.14. Athletic Revenue Bonds.

*No provision of this Resolution shall be construed so as to prevent the University from issuing Athletic Revenue Bonds secured in whole or in part by Athletic Revenues, or any Athletic Admissions Fee or Special Athletics Fee.*

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**ARTICLE VIII  
DEFEASANCE OF BONDS**

Section 8.01. Defeasance of Bonds.

(a) If all of the Bonds issued pursuant to this Resolution shall have been paid and discharged, then the obligations of the University under this Resolution, the pledge of Revenues made hereby, and all other rights granted hereby shall cease and determine. Bonds shall be deemed to have been paid and discharged within the meaning of this Article under each of the following circumstances:

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

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

(iii) If the University shall elect to redeem Bonds prior to their stated maturities, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided by Section 4.03 hereof, and shall have deposited with the Trustee, 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 thereof prior to the date of redemption of the Bonds to be defeased, the principal of and interest on which, when due, will provide moneys, which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium or premiums, if any, due and to become due on and prior to the redemption date or dates, as the case may be; or

(iv) If there shall have been deposited with the Trustee 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, deposited with the Trustee at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on the Bonds on the maturity thereof.

(b) In addition to the above requirements of paragraphs (a) (i), (ii), (iii), or (iv), in order for this Resolution to be discharged, all other fees, expenses, and charges of the Trustee, the Paying Agent, and the Registrar have been paid in full at that time.

Section 8.02. Deposit of Moneys.

Any moneys which at any time shall be deposited with the Trustee by or on behalf of the University for the purpose of paying and discharging any Bonds shall be and are hereby assigned, transferred, and set over to the Trustee in trust for the respective Holders of the Bonds, and the moneys shall be and are hereby irrevocably pledged to the payment and discharge

thereof. If, through lapse of time or otherwise, the Holders of the Bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Trustee to transfer the funds to the University.

Section 8.03. Election to Redeem Bonds.

The University covenants and agrees that any moneys which it shall deposit with the Trustee shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Article, and whenever it shall have elected to redeem Bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Trustee to cause notice of redemption to be given in its name and on its behalf.

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**ARTICLE IX**  
**DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS**

Section 9.01. Events of Default.

If any of the following events occurs, it is hereby defined as and declared to be and to constitute an “Event of Default” or “Default”:

- (a) Default in the due and punctual payment of any interest on any Bond; or
- (b) Default in the due and punctual payment of the principal of any Bond (or premium, if any), whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon any mandatory redemption date; or
- (c) Subject to the provisions of Section 9.10 hereof, Default in the performance or observance of any other of the covenants, agreements, or conditions on the part of the University in this Resolution or in the Bonds contained; or
- (d) If a court having jurisdiction over the premises shall enter a decree or order for relief in respect of the University in an involuntary case under any applicable bankruptcy, insolvency, reorganization, or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of the University or for any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days; or
- (e) If the University shall commence a voluntary case under any applicable bankruptcy, insolvency, reorganization, or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of the University or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, shall admit in writing its inability to pay its debts that become due, or shall take any action in furtherance of any of the foregoing.

Section 9.02. Acceleration.

Except as otherwise provided with respect to any Series of Bonds in the Supplemental Resolution authorizing their issuance, upon the occurrence of an Event of Default, the Trustee may, and upon the written request of the Holders of not less than twenty-five per centum (25%) in aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the University, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and the principal and interest shall thereupon become and be immediately due and payable.

Section 9.03. Remedies of Trustee.

(a) Upon the happening and continuance of any Event of Default, the Trustee may, and upon the written request of the Holders of not less than twenty-five per centum (25%) in aggregate principal amount of Bonds then Outstanding shall, take one or more of the following actions as it may deem advisable;

(i) By mandamus or other suit, action, or proceedings at law or in equity, enforce the rights of the Bondholders against the University, and any of its officers, agents, and employees, and require and compel the University, or any officer, agent, or employee to perform and carry out its or his duties and obligations under the Act and this Resolution and its or his covenants or agreements with the Bondholders;

(ii) By any action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; and

(iii) Bring suit upon the Bonds.

(b) Upon the occurrence of an Event of Default, the Trustee shall have the power to proceed with any right or remedy granted by the Constitution and laws of the State, as it may deem best, including any suit, action, or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law. The rights herein specified are to be cumulative to all other available rights, remedies, or powers and shall not exclude any such rights, remedies, or powers.

Section 9.04. Rights of Bondholders.

(a) If an Event of Default shall have occurred, and if requested so to do by the Holders of not less than twenty-five per centum (25%) in aggregate principal amount of Bonds then Outstanding, the Trustee shall be obliged to exercise one or more of the rights and powers conferred by this Article IX as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bondholders.

(b) No remedy by the terms of this Resolution conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

(c) No delay or omission in exercising any right or power accruing upon any Default or Event of Default shall impair any right or power or shall be construed to be a waiver of any Default or Event of Default or acquiescence therein and every right and power may be exercised from time to time and as often as may be deemed expedient.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 9.05. Application of Moneys.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of the moneys and of the expenses, liabilities, and advances incurred or made by the Trustee, be deposited in the Debt Service Fund and all moneys in the Debt Service Fund shall be applied as follows:

*First* – To the payment of the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on that installment, to the persons entitled thereto, without any discrimination or privilege; and

*Second* – To the payment of the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Resolution), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full principal of and premium, if any, on the Bonds due on any particular date, then to the payment ratably, according to the amount of the principal and premium, if any, due on such date, to the persons entitled thereto without any discrimination or privilege; and

*Third* – To the payment to the persons entitled thereto of interest at the rate of interest borne by the Bonds on all past due installments of principal and interest from their respective due dates and, if the amount available shall not be sufficient to pay in full the whole amount of interest so due, then to the payment ratably, according to the amount of interest then due, to the persons entitled thereto without any discrimination or privilege and without any distinction between interest on past due interest and interest on past due principal.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, the moneys shall be applied at the times, and from time to time, as the Trustee shall determine, having due regard to the amount of moneys available for application in the future. Whenever the Trustee shall apply funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which application is to be made and upon that date interest on the amounts of principal to be paid on that date shall cease to accrue. The Trustee shall give notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any date, and shall not be required to make payment to the Holder of any Bond until it shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.



(c) Whenever all principal of, premium, if any, and interest on all Bonds have been paid under the provisions of this Section 9.05 and all expenses and charges of the Trustee shall have been paid, any balance remaining in the Debt Service Fund shall be paid to the Revenue Fund.

Section 9.06. Remedies Vested in Trustee.

All rights of action (including the right to file proof of claims) under this Resolution or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall be for the equal benefit of the Holders of the Bonds then Outstanding.

Section 9.07. Rights and Remedies of Bondholders.

No Bondholder shall have the right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Resolution or for the execution of any trust hereof or for the appointment of a receiver or for any other remedy hereunder, unless all of the following conditions have first been satisfied: (i) a Default has occurred of which the Trustee has been notified, (ii) the Default or Event of Default shall occur and the Holders of at least twenty-five per centum (25%) in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute action, suit, or proceeding in its own name, (iii) the Trustee has been offered indemnity, and (iv) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its, his, or their own name or names; and the notification, request, and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Resolution, and to any action or cause of action for the enforcement of this Resolution, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Resolution by its, his, or their action or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds then Outstanding. Nothing in this Resolution contained shall, however, affect, or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on any Bond at and after the maturity thereof, or the obligation of the University to pay, but only from the sources herein described, the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Holders thereof at the time, place, from the source, and in the manner provided in the Bonds.

Section 9.08. Termination of Proceedings.

In case the Trustee shall have proceeded to enforce any right under this Resolution by the appointment of a receiver, by entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then the University and the Trustee shall be restored to their former positions and rights hereunder, and

all rights and remedies and powers of the Trustee shall continue as if no proceedings had been taken.

Section 9.09. Waivers of Events of Default.

The Trustee shall waive any Event of Default hereunder and its consequences upon the written request of the Holders of a majority in aggregate principal amount of all Bonds then Outstanding; provided, however, that there shall not be waived any Default in the payment of (i) the principal of or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or (ii) any interest when due on any Bond, unless prior to the waiver, all arrears of interest, with interest at the rate of interest borne by the Bonds on overdue installments of interest, and all arrears of payments of principal then due (whether at the stated maturity thereof or upon proceedings for redemption) with interest as aforesaid on the arrears, and all expenses of the Trustee in connection with the Default shall have been paid or provided for, and in case of any waiver, or in case any proceeding taken by the Trustee on account of any Default shall have been discontinued or abandoned or determined adversely, then the University, the Trustee, and the Bondholders shall be restored to their former positions and rights hereunder respectively, but no waiver shall extend to any subsequent or other Default, or impair any right consequent thereon.

Section 9.10. Notice of Defaults; Opportunity of the University to Cure Defaults.

No event under Section 9.01(e) hereof shall constitute an Event of Default until actual notice of the Default by registered or certified mail shall be given by the Trustee or by the Holders of not less than twenty-five per centum (25%) of the aggregate principal amount of Bonds then Outstanding to the University, and the University shall have had thirty (30) days after receipt of the notice to correct the Default or cause it to be corrected, and shall not have corrected it or caused it to be corrected within the applicable period; provided, however, if the Default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the University as the case may be, within the applicable period, is diligently pursued, and the Default is corrected within ninety (90) days after the notice hereinabove specified has been received.

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**ARTICLE X  
AMENDING AND SUPPLEMENTING OF RESOLUTION**

Section 10.01. Amending and Supplementing of Resolution Without Consent of Holders of Bonds.

(a) The Board, from time to time and at any time and without the consent or concurrence of any Holder of any Bond, may adopt a resolution amendatory hereof or supplemental hereto (i) for the purpose of providing for the issuance of Bonds pursuant to the provisions of Article II hereof or (ii) if the provisions of the Supplemental Resolution shall not materially adversely affect the rights of the Holders of the Bonds then Outstanding, for anyone or more of the following purposes:

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

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

(iv) To surrender any right, power, or privilege reserved to or conferred upon the University by the terms of this Resolution;

(iv) To confirm as further assurance any lien, pledge, or charge, or the subjection to any lien, pledge, or charge, created or to be created by the provisions of this Resolution;

(v) To grant or confer upon the Bondholders any additional right, remedies, powers, authority, or security that lawfully may be granted to or conferred upon them, or to grant to or to confer upon the Trustee for the benefit of the Holders of the Bonds any additional rights, duties, remedies, powers, authority, or security; and

(vi) To modify any of the provisions of this Resolution in any other respects provided that the modification shall not be effective until after the Bonds Outstanding at the time the Supplemental Resolution is adopted shall cease to be Outstanding, or until the Holders thereof consent thereto pursuant to Section 10.02 hereof, and any Bonds issued subsequent to any modification shall contain a specific reference to the modifications contained in the Supplemental Resolution.

(b) Except for Supplemental Resolutions providing for the issuance of Bonds pursuant hereto, the University shall not adopt any Supplemental Resolution authorized by the foregoing provisions of this Section unless in the opinion of counsel (which opinion may be combined with the opinion required by Section 10.04 hereof) the adoption of the Supplemental Resolution is permitted by the foregoing provisions of this Section and the provisions of the

Supplemental Resolution do not adversely affect the rights of the Holders of the Bonds then Outstanding.

Section 10.02. Amending and Supplementing of Resolution With Consent of Holders of Bonds.

(a) With the consent of the Holders of not less than a majority in principal amount of the Bonds then Outstanding, the Board from time to time and at any time may adopt a resolution 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 Resolution, or modifying or amending the rights and obligations of the University under this Resolution, or modifying or amending in any manner the rights of the Holders of the Bonds then Outstanding; provided, however, that, without the specific consent of the Holder of each Bond which would be affected thereby, no Supplemental Resolution amending or supplementing the provisions hereof or thereof shall: (i) change the fixed maturity date of any Bond or the dates for the payment of interest thereon or the terms of the redemption thereof, or reduce the principal amount of any Bond or the rate of interest thereon or the redemption price (or the redemption premium) payable upon the redemption or prepayment thereof; (ii) reduce the aforesaid percentage of Bonds, the Holders of which are required to consent to any Supplemental Resolution amending or supplementing the provisions of this Resolution; (iii) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby; (iv) authorize the creation of any pledge of the Revenues and other moneys pledged hereunder, prior, superior, or equal to the pledge of and lien and charge thereon created herein for the payment of the Bonds; or (v) deprive any Holder of the Bonds of the lien on the Revenues afforded by this Resolution. Nothing in this paragraph contained, however, shall be construed as making necessary the approval of the Holders of the Bonds of the adoption of any Supplemental Resolution authorized by the provisions of Section 10.01 hereof.

(b) The proof of the giving of any consent by Bondholders required by this Section and of the holding of Bonds for the purpose of giving consents shall be made in accordance with the provisions of Article XI hereof. It shall not be necessary that the consents of the Holders of the Bonds approve the particular form of wording of the proposed amendment or supplement or of the Supplemental Resolution effecting the amending or supplementing hereof pursuant to this Section. The University shall mail a notice at least once, not more than thirty (30) days after the effective date of any amendment or supplement, of the amendment or supplement postage prepaid, to each Holder of Bonds then Outstanding at his address appearing upon the Books of Registry and to the Trustee, but failure to mail copies of the notice to any of the Holders shall not affect the validity of the Supplemental Resolution effecting the 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 Resolution authorized by Section 10.01 hereof. No action or proceeding to set aside or invalidate any Supplemental Resolution or any of the proceedings for its adoption shall be instituted or maintained unless the action or proceeding is commenced within sixty (60) days after the mailing of the notice required by this paragraph.

Section 10.03. Notation Upon Bonds; New Bonds Issued Upon Amendments.

Bonds delivered after the effective date of any action taken as provided in this Article may bear a notation as to the action, by endorsement or otherwise and in form approved by the University. In that case, upon demand of the Holder of any Bond Outstanding after the effective date and upon the presentation of the Bond for that purpose at the office of the Trustee, and at any additional offices as the University may select and designate for that purpose, a suitable notation shall be made on the Bond. If the University shall determine, new Bonds, modified as in the opinion of the University 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 Holder of any Bond then Outstanding shall be exchanged without cost to the Holder for Bonds then Outstanding, upon surrender of the Outstanding Bonds.

Section 10.04. Effectiveness of Supplemental Resolution.

Upon the adoption (pursuant to this Article and applicable law) by the Board of any Supplemental Resolution amending or supplementing the provisions of this Resolution and the delivery to the Trustee of an opinion of Bond Counsel that the Supplemental Resolution is in due form and has been duly adopted in accordance with the provisions hereof and applicable law and that the provisions thereof are valid and binding upon the University, or upon any later date as may be specified in the Supplemental Resolution, (a) this Resolution and the Bonds shall be modified and amended in accordance with the Supplemental Resolution, (b) the respective rights, limitations of rights, obligations, duties, and immunities under this Resolution of the University, the Trustee, and the Holders of the Bonds shall thereafter be determined, exercised, and enforced under this Resolution subject in all respect to the modifications and amendments, and (c) all of the terms and conditions of any Supplemental Resolution shall be a part of the terms and conditions of the Bonds and of this Resolution for all purposes.

Section 10.05. Supplemental Resolution Affecting Trustees.

No Supplemental Resolution changing, amending, or modifying any of the rights, duties, and obligations of any Trustee appointed by or pursuant to the provisions of this Resolution may be adopted by the Board or be consented to by the Holders of the Bonds without written consent of the Trustee affected thereby.

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