

# **TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY**

**Meeting of Tuesday, January 31, 2023 -- 9:30 A. M.**

**Room 252, Edgar A. Brown Building**

## ***REGULAR SESSION AGENDA INDEX***

<b>Item No.</b>	<b>Agency</b>	<b>Subject</b>
<b>A.</b>	<b>ADOPTION OF PROPOSED AGENDA</b>	
<b>B.</b>	<b>REGULAR SESSION</b>	
1.	Tobacco Settlement Revenue Management Authority	Adoption of Budget
2.	Tobacco Settlement Revenue Management Authority	Financial Statement for the Fiscal Year Ended June 30, 2022
<b>C.</b>	<b>ADJOURNMENT</b>	

TOBACCO SETTLEMENT

REVENUE MANAGEMENT AUTHORITY

REGULAR SESSION

MEETING OF January 31, 2023

ITEM NUMBER 1

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AGENCY: Office of the State Treasurer

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SUBJECT: Adoption of Budget

In accord with South Carolina Code of Laws Section 11-49-60 (12), the Authority is asked to adopt the attached proposed fiscal year budget for the period July 1, 2023, through June 30, 2024, as submitted by the State Treasurer. The proposed budget is anticipated to cover, in part, expenses including, but is not limited to, professional services, payment of insurance premiums for members of the Authority Board, and other expenses related to the operation and administration of the Authority.

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AUTHORITY ACTION REQUESTED:

Adopt the operating budget for the Authority's fiscal year budget for the period July 1, 2023, through June 30, 2024.

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ATTACHMENTS:

Loftis 1/3/2023 letter; Proposed Budget; Code Section 11-49-60 (12)



**THE HONORABLE CURTIS M. LOFTIS, JR.**  
State Treasurer

January 3, 2023

Mr. Delbert Singleton  
Secretary, Tobacco Settlement  
Revenue Management Authority  
600 Wade Hampton State Office Building  
Columbia, South Carolina 29201

Re: Tobacco Settlement Revenue Management Authority  
Annual Budget 2022-2023

Dear Delbert:

In accordance with South Carolina Code of Laws Section 11-49-60(12), I am pleased to submit herewith the annual budget proposed for the Tobacco Settlement Revenue Management Authority for the Fiscal Year beginning July 1, 2023 and ending June 30, 2024.

Please place this item on the agenda for the Authority's meeting on January 31, 2023.

Respectfully submitted,

A handwritten signature in blue ink, which appears to read "Curtis M. Loftis, Jr.", is written over the typed name and title.

Curtis M. Loftis, Jr.  
State Treasurer

Enclosure

**Tobacco Settlement Revenue Management Authority**  
(A Component Unit of the State of South Carolina)

Operating Budget for the Budget Year Ending June 30, 2023

(Cash Basis)

	Fiscal Year 2022 / 2023		Expenditure Variance	Fiscal Year 2023 / 2024
	Budgeted	Projected @ 12/31/2022	Budget / Projected Over / (Under)	Budget
Funds held By Tobacco Authority:				
Cash Balance, Beginning	\$ 5,142,625	\$ 5,129,625 <sup>1</sup>		\$ 5,110,915 <sup>6</sup>
Revenue:				
Tobacco settlement revenue	<u>73,000,000</u>	<u>80,000,000</u> <sup>2</sup>		<u>77,000,000</u>
Total Cash Available	78,142,625	85,129,625		82,110,915
Expenditures				
Administrative and operating expense				
Professional fees and expenses				
Audit and accounting	16,000	13,700 <sup>3</sup>	(2,300)	16,000
Arbitrage, deallocation and disclosure	16,000	- <sup>3</sup>	(16,000)	16,000
Insurance				
Tort insurance for authority members	5,010	5,010 <sup>3</sup>	-	5,010
General operating				
Contingency	-	-	-	-
Distributions per Proviso				
Attorney General	1,253,000	1,253,000 <sup>4</sup>		1,253,000
South Carolina Law enforcement Division	450,000	450,000 <sup>4</sup>		450,000
Department of Revenue	325,000	325,000 <sup>4</sup>		325,000
Department of Health and Human Services	<u>70,972,000</u>	<u>77,972,000</u> <sup>5</sup>		<u>74,972,000</u>
Total Cash Disbursements	<u>73,037,010</u>	<u>80,018,710</u>	<u>\$ (18,300)</u>	<u>77,037,010</u>
Cash Balance, Ending	<u>\$ 5,105,615</u>	<u>\$ 5,110,915</u> <sup>6</sup>		<u>\$ 5,073,905</u>

Notes and Assumptions as of December 31, 2022.

- 1 Ending cash balance retained by TSRMA at June 30, 2022.
- 2 Revised Estimate (per AG) of TSRMA Revenues to be received Spring 2023.
- 3 Actual Expenditure as of December 31, 2022.
- 4 TSRMA Revenue to be distributed - Proviso 118.11 of FY2022-23.
- 5 Estimated remainder revenue to be distributed - Proviso 118.11 of FY2022-23.
- 6 Estimated cash balance to be retained by TSRMA at June 30, 2023.

TOBACCO SETTLEMENT REVENUE  
MANAGEMENT AUTHORITY

REGULAR SESSION

MEETING OF January 31, 2023

ITEM NUMBER 2

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AGENCY: Tobacco Settlement Revenue Management Authority

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SUBJECT: Financial Statement for the Fiscal Year Ended June 30, 2022

South Carolina Code of Laws Section 11-49-100 requires that the Tobacco Settlement Revenue Management Authority “keep an accurate account of all of its activities and all of its receipts and expenditures and annually, in the month of January shall make a report of its activities to the [State Fiscal Accountability Authority], the report to be in a form prescribed by the [State Fiscal Accountability Authority].” The Authority is asked to approve the submittal of its Financial Statement to the State Fiscal Accountability Authority in accord with Section 11-49-100.

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AUTHORITY ACTION REQUESTED:

In accord with Code Section 11-49-100, receive as information the Tobacco Settlement Revenue Management Authority’s Financial Statement for the Fiscal Year Ended June 30, 2022, and approve the submittal of the Financial Statement to the State Fiscal Accountability Authority.

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ATTACHMENTS:

Loftis 1/3/2023 letter with attachment; Code Section 11-49-100



**THE HONORABLE CURTIS M. LOFTIS, JR.**

State Treasurer

January 3, 2023

To the members of the Tobacco Settlement Revenue Management Authority and  
The State Fiscal Accountability Authority

In accordance with S.C. Code Section 11-49-100, which requires that the Tobacco Settlement Revenue Management Authority provide an annual report of its activities to the State Fiscal Accountability Authority (then State Budget and Control Board) during the month of January, I am providing copies of the Authority's audited financial statements for the fiscal year ended June 30, 2022. Management's Discussion and Analysis and the Notes to Financial Statements contained therein describe the Authority's activities in all material respects.

I have asked Mr. Singleton to place this item on the agenda for the Authority's meeting on January 31, 2023.

Respectfully submitted,

A handwritten signature in blue ink, which appears to read "Curtis M. Loftis, Jr.", is written over the words "Respectfully submitted,".

Curtis M. Loftis, Jr.  
State Treasurer

Enclosure

TOBACCO SETTLEMENT REVENUE  
MANAGEMENT AUTHORITY  
(A Component Unit of the State of South Carolina)

Financial Statements

June 30, 2022



September 26, 2022

Members of the Tobacco Settlement Revenue  
Management Authority  
Columbia, South Carolina

This report on the audit of the financial statements of the Tobacco Settlement Revenue Management Authority for the fiscal year ended June 30, 2022, was issued by The Hobbs Group, P.A., Certified Public Accountants, under contract with the South Carolina Office of the State Auditor.

If you have any questions regarding this report, please let us know.

Respectfully submitted,

George L. Kennedy, III, CPA  
State Auditor

GLKIII/trb



TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A Component Unit of the State of South Carolina)

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## INDEPENDENT AUDITORS' REPORT

Mr. George L. Kennedy, III, CPA  
State Auditor  
Office of the State Auditor  
Columbia, South Carolina

### REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

#### *Opinion*

We have audited the financial statements of Tobacco Settlement Revenue Management Authority (the "Authority"), a component unit of the State of South Carolina as of and for the year ended June 30, 2022, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Authority as of June 30, 2022, and the changes in its financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### *Basis for Opinion*

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Authority and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### *Responsibilities of Management for the Financial Statements*

The Authority's management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation

and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### *Auditor's Responsibilities for the Audit of the Financial Statements*

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

### *Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information on pages 4 through 8 and 22 through 23 be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the

Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

#### Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated September 26, 2022 on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control over financial reporting and compliance.

Columbia, South Carolina  
September 26, 2022

*The Hollar Group, P.A.*

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)  
FOR THE YEAR ENDED JUNE 30, 2022

This section of the annual financial report of the Tobacco Settlement Revenue Management Authority (the "Authority") presents the analysis of the Authority's financial performance during the fiscal year that ended on June 30, 2022. Please read it in conjunction with the financial statements and their accompanying notes, which follow this section.

### **The Authority**

The Authority was created by Act No. 387 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina (the "General Assembly"), Regular Session of 2000, as codified at Section 11-49-10 of the South Carolina Code of Laws 1976, as amended (the "Act"), as an instrumentality of the State of South Carolina (the "State"). The Act created the Authority to receive all of the State's payments under the Master Settlement Agreement (the "MSA"). The MSA was entered into on November 23, 1998, among the attorneys general of 46 states (including South Carolina), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands (collectively the "Settling States") and the four largest United States tobacco manufacturers: Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, and Lorillard Tobacco Company (collectively the "Original Participating Manufacturers" or "OPMs"). The MSA resolved cigarette smoking-related litigation among the Settling States and the OPMs, released the OPMs from past and present smoking-related claims by the Settling States, and provides for a continuing release of future smoking-related claims in exchange for certain payments to be made to the Settling States. The MSA also provides for the imposition of certain tobacco advertising and marketing restrictions, among other things. The Authority is not a party to the MSA.

The State is entitled to certain periodic payments made under the MSA. Pursuant to the Act, the Authority has been assigned all Tobacco Settlement Receipts ("TSRs"), which are the State's right, title and interest in payments due after June 30, 2001 under the MSA. The assignment of the TSRs is irrevocable during any time when bonds are outstanding, plus one year and one day thereafter, and is a part of the contractual obligation owed to the Authority's bondholders.

### **Overview of the Financial Statements**

This analysis is intended to serve as an introduction to the Authority's financial statements. The Authority's financial statements consist of three components: 1) government-wide financial statements, 2) governmental fund financial statements, and 3) notes to the financial statements.

- *The Statement of Net Position and Governmental Fund Balance Sheet* include all of the Authority's assets and liabilities and provide information about the nature and amounts of investments in resources (assets) and the obligations to Authority creditors (liabilities). They also provide the basis for computing rate of return, evaluating the capital structure of the Authority and assessing the liquidity and financial flexibility of the Authority. The *Statement of Net Position* reports information about the Authority using accounting methods similar to those used by private sector companies and presents all assets and liabilities of the Authority – both current and long-term. The *Governmental Fund Balance*

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)  
FOR THE YEAR ENDED JUNE 30, 2022

*Sheet* of the General Fund focuses only on the Authority's resources available for expenditure at the end of the fiscal year.

- All the current year's activity is accounted for in the *Statement of Activities* and *Governmental Fund Statement of Revenues, Expenditures and Changes in Fund Balance*. These statements measure the success of the Authority's operations over the past year and can be used to determine the Authority's credit-worthiness and ability to meet its financial objectives. The *Statement of Activities* presents information on how the Authority's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. The *Governmental Fund Statement of Revenues, Expenditures, and Changes in Fund Balance* focuses only on the Authority's near-term inflows and outflows of resources available for expenditure for the fiscal year.

### Summary of Financial Results

The Authority's financial results are summarized, discussed and compared to the prior fiscal year in the sections following.

#### *Government-Wide Financial Statements*

Statement of Net Position. The following table summarizes the Authority's Net Position for the period ending June 30, 2022, along with comparative data for the prior fiscal year.

			Increase (Decrease)	
	June 30, 2022	June 30, 2021	Difference	%
Assets				
Cash and cash equivalents	\$ 5,195,699	\$ 5,283,253	\$ (87,554)	-1.7%
Tobacco settlement payments receivable	40,000,000	38,000,000	2,000,000	5.3%
Total assets	45,195,699	43,283,253	1,912,446	4.4%
Liabilities				
Due to Health and Human Services	66,074	122,419	(56,345)	-46.0%
Total liabilities	66,074	122,419	(56,345)	-46.0%
Net position				
Restricted by statute	40,000,000	38,000,000	2,000,000	5.3%
Unrestricted	5,129,625	5,160,834	(31,209)	-0.6%
Total net position	\$ 45,129,625	\$ 43,160,834	\$ 1,968,791	4.6%

The Authority's assets include cash and cash equivalents, and accrued earnings on those cash and cash equivalents. Certain of the Authority's assets are classified as restricted by statute because they are subject to external legal constraint for appropriation by the State in accordance with the expenditure provisions of Section 11-11-170 of the South Carolina Code of Laws 1976, as amended (the "Expenditure Act"). The remaining assets are held by the Authority to pay its authorized operating expenses.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)  
FOR THE YEAR ENDED JUNE 30, 2022

The Authority's cash and cash equivalents decreased by 1.7 % over the course of the fiscal year. This decrease is due to the Authority remitting a significant portion of the funds it previously held on behalf of the South Carolina Department of Health and Human Services ("HHS") which were due to HHS per State proviso. The Authority held \$66,074 of cash due to HHS, which represented a 46.0% decrease due to the amounts remitted to HHS as discussed above. Tobacco settlement payments receivable increased by \$2,000,000, or 5.3%, due to an increase in anticipated payments during fiscal year 2022 based on expected cigarette sales. Total assets increased by 4.4% reflecting these same factors.

Net position restricted by statute is comprised of that portion of TSRs forecasted to be earned in the current fiscal year but received in the ensuing fiscal year. The amount of TSRs is dependent on many factors including future tobacco consumption, certain adjustments, and the financial capability of the OPMs and consequently, except as noted above, do not meet asset recognition criteria under accounting principles generally accepted in the United States of America ("GAAP").

Statement of Activities. The following table summarizes the Authority's activities for the period ending June 30, 2022 with comparative amounts for the prior fiscal year.

	June 30, 2022	June 30, 2021	Increase (Decrease)	
			Difference	%
General revenues				
Tobacco settlement revenues	\$ 88,543,750	\$ 88,349,252	\$ 194,498	0.2%
Investment earnings	478,440	976,325	(497,885)	-51.0%
Total general revenues	89,022,190	89,325,577	(303,387)	-0.3%
Expenses				
General government	2,059,210	2,059,210	-	0.0%
Total expenses	2,059,210	2,059,210	-	0.0%
Excess of general revenues over expenses before transfers	86,962,980	87,266,367	(303,387)	-0.3%
Transfers				
Transfers to state funds and programs pursuant to proviso	(84,994,189)	(83,297,577)	(1,696,612)	2.0%
Total transfers	(84,994,189)	(83,297,577)	(1,696,612)	2.0%
Change in net position	1,968,791	3,968,790	(1,999,999)	-50.4%
Net position - beginning of year	43,160,834	39,192,044	3,968,790	10.1%
Net position - end of year	\$ 45,129,625	\$ 43,160,834	\$ 1,968,791	4.6%

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)  
FOR THE YEAR ENDED JUNE 30, 2022

General revenues of approximately \$88.5 million reflect the receipt of and accrual for TSRs and investment earnings. Revenues increased year over year by \$194,498 or 0.2% which represent decreases in tobacco settlement payments that have been received by the Authority for the year ended June 30, 2022 offset by an increase of \$2,000,000 for the amount of estimated tobacco settlement payments receivable which will be collected in April 2023. These payments are dependent on remittances received by the State under the MSA each year. In addition, investment earnings of \$478,440 were earned during the year ended June 30, 2022, which decreased by \$497,885 due to a decrease in cash balances held during the fiscal year as compared to the year ended June 30, 2021. During the year ended June 30, 2021, a significant amount of cash balances were held on behalf of HHS but the majority was remitted prior to year-end.

The Authority's expenses primarily consisted of its administrative expenses and directed transfers to other state agencies for diligent enforcement. Total expenses were the same year over year. Transfers to the state fund decreased by \$1,696,612 as a result of the decrease in tobacco settlement payments received during the year ended June 30, 2022, which are subsequently transferred to State funds and programs.

*Governmental Funds*

As of the end of the current fiscal year, the ending fund balance in the Authority's governmental fund was \$45,129,625, an increase of \$1,968,791 by comparison to the prior fiscal year due to an increase in receipt of TSRs. Of the total fund balance, \$40,000,000 is restricted for statutory expenditures. The factors contributing to the change in fund balance year over year are the same as those described above in the discussion and analysis of the government-wide financial statements.

**Long-Term Debt Activity**

On March 22, 2001, the Authority issued \$934,530,000 aggregate principal amount of Tobacco Settlement Asset-Backed Bonds (the "Series 2001 Bonds") pursuant to an indenture between the Authority and United States Trust Company of New York (subsequently acquired by the Bank of New York), as trustee, dated as of March 1, 2001, and the Tobacco Settlement Revenue Management Authority Act. On June 26, 2008, the Authority defeased the Series 2001 Bonds with certain cash funds and proceeds of \$275,730,000 Tobacco Settlement Revenue Management Authority Tobacco Settlement Revenue Asset-Backed Refunding Bonds, Series 2008 (the "Series 2008 Bonds") issued pursuant to an indenture between The Bank of New York Trust Company, N.A., as trustee, and the Tobacco Settlement Revenue Management Authority. All of the Series 2001 Bonds are deemed paid within the meaning of and with the effect expressed in, and accordingly are no longer outstanding under, the Trust Indenture. On June 1, 2012, the Authority redeemed the outstanding Series 2008 Bonds as Turbo Redemptions; accordingly, all of the Authority's debt has been fully discharged.

The Authority has no present plans to undertake the issuance of additional debt.



TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)  
FOR THE YEAR ENDED JUNE 30, 2022

**Budgetary Highlights**

The Authority annually adopts an operating budget as required by its by-laws. From a budgetary perspective, the Authority realized a \$31,209 deficiency of revenues over expenditures during the fiscal year ended June 30, 2022 which arose due to factors described in the Summary of Financial Results contained herein. The difference between the budgetary excess, as compared to the excess reported on the Statement of Activities, is due primarily to the lack of recognition of the \$2,000,000 increase in tobacco settlement payments receivable under the budgetary basis of accounting.

**Economic Factors and Outlook**

As noted above, the amount of TSRs is dependent on many factors including future tobacco consumption, certain adjustments, and the financial capability of the OPMs; accordingly, the amount of future TSRs, and particularly the financial effects of the Disputed Payments Settlement thereon, cannot be presently determined with precision. Additionally, the coronavirus disease's ("COVID-19") effect on the Authority will depend on future developments, including the duration, spread and intensity of the pandemic, all of which are uncertain and difficult to predict considering the rapidly evolving landscape. Should COVID-19 have a significant impact on future cigarette sales, it could have a related impact on the Authority's revenues, however, at this time the Authority is not currently aware of any significant anticipated effects of COVID-19.

Since all of the Authority's debt has been fully discharged and the Authority has no present plans to undertake the issuance of additional indebtedness, the effects of these factors on the Authority's debt profile have been abated. The Authority's continuing responsibility thereafter is limited to the receipt and distribution of future TSRs as prescribed by law.

**Contacting the Authority**

Persons needing additional information concerning this report or otherwise needing to contact the Authority should address requests to:

SC Office of the Treasurer  
1200 Senate Street, Suite 214  
Wade Hampton Office Building  
Columbia, SC 29201

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

STATEMENT OF NET POSITION

JUNE 30, 2022

	Governmental Activities
Assets	
Cash and cash equivalents	\$ 5,195,699
Tobacco settlement payments receivable	40,000,000
Total assets	<u>45,195,699</u>
Liabilities	
Due to Health and Human Services	<u>66,074</u>
Total liabilities	<u>66,074</u>
Net position	
Restricted by statute	40,000,000
Unrestricted	5,129,625
Total net position	<u>\$ 45,129,625</u>

The Notes to Financial Statements are an integral part of this statement.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

STATEMENT OF ACTIVITIES

FOR THE YEAR ENDED JUNE 30, 2022

	Governmental Activities
Program expenses	
General government	\$ 2,059,210
Total expenses	<u>2,059,210</u>
Net program expense	<u>2,059,210</u>
General revenues	
Tobacco settlement revenues	88,543,750
Investment earnings	<u>478,440</u>
Total general revenues	<u>89,022,190</u>
Change in net position before transfers	86,962,980
Transfers	<u>(84,994,189)</u>
Transfers to state funds and programs pursuant to proviso	<u>(84,994,189)</u>
Change in net position	1,968,791
Net position	
Beginning of the year	<u>43,160,834</u>
End of the year	<u>\$ 45,129,625</u>

The Notes to Financial Statements are an integral part of this statement.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
GOVERNMENTAL FUND BALANCE SHEET  
FOR THE YEAR ENDED JUNE 30, 2022

	<u>General Fund</u>
Assets	
Cash and cash equivalents	\$ 5,195,699
Tobacco settlement payments receivable	<u>40,000,000</u>
Total assets	<u>45,195,699</u>
Liabilities	
Due to Health and Human Services	<u>66,074</u>
Total liabilities	<u>66,074</u>
Fund balance	
Restricted by statute	40,000,000
Committed to operating expenses	<u>5,129,625</u>
Total fund balance	<u>45,129,625</u>
Total liabilities and fund balance	<u>\$ 45,195,699</u>

The Notes to Financial Statements are an integral part of this statement.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

GOVERNMENTAL FUND STATEMENT OF  
REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE  
FOR THE YEAR ENDED JUNE 30, 2022

	<u>General Fund</u>
Revenues	
Tobacco settlement revenues	\$ 88,543,750
Investment earnings	478,440
Total revenues	<u>89,022,190</u>
Expenditures	
General government	2,059,210
Total expenditures	<u>2,059,210</u>
Excess of revenues over expenditures before transfers	86,962,980
Transfers	
Transfers to state funds and programs pursuant to proviso	<u>(84,994,189)</u>
Total transfers	<u>(84,994,189)</u>
Net change in fund balance	1,968,791
Fund balance	
Beginning of the year	43,160,834
End of the year	<u><u>\$ 45,129,625</u></u>

The Notes to Financial Statements are an integral part of this statement.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2022

**Note 1. Reporting Entity**

The Tobacco Settlement Revenue Management Authority (the "Authority") is a public body and an instrumentality of the State of South Carolina (the "State") established in 2001 pursuant to Section 11-49-10 et seq. of the South Carolina Code of Laws 1976, as amended. The State transferred to the Authority all of its rights and interests under the Master Settlement Agreement (the "MSA") and the Consent Decree and Final Judgment (the "Decree") between all participating States and the participating Tobacco manufacturers. These rights include the State's share of all Tobacco Settlement revenue received after June 30, 2001 and in perpetuity to be received under the MSA.

The core of a financial reporting entity is the primary government which has a separately elected governing body. As required by accounting principles generally accepted in the United States of America, the financial reporting entity includes both the primary government and all of its component units. Component units are legally separate organizations for which the elected officials of the primary government are financially accountable. In turn, component units may have component units.

An organization other than a primary government may serve as a nucleus for a reporting entity when it issues separate financial statements. That organization is identified herein as a primary entity. The Authority has determined that it qualifies as a primary entity, it is a component unit of the State of South Carolina, and it has no component units.

A primary government or entity is financially accountable if its officials or appointees appoint a voting majority of an organization's governing body including situations in which the voting majority consists of the primary entity's officials serving as required by law (e.g., employees who serve in an ex-officio capacity on the component unit's board are considered appointments by the primary entity) and (1) it is able to impose its will on that organization or (2) there is a potential for the organization to provide specific financial benefits to, or impose specific financial burdens on, the primary entity. The primary entity also may be financially accountable if an organization is fiscally dependent on it even if it does not appoint a voting majority of the board. An organization is fiscally independent if it holds all of the following powers:

- (1) Determines its budget without another government having the authority to approve and modify that budget.
- (2) Levies taxes or sets rates or charges without approval by another government.
- (3) Issues bonded debt without approval by another government.

The organization is fiscally dependent on the primary government or entity that holds one or more of the above powers. Based on these criteria, the Authority is a blended component unit of the primary government of the State. Accordingly, the financial statements are blended in the State's special revenue funds in the State's Annual Comprehensive Financial Report.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2022

**Note 1. Reporting Entity (continued)**

The Authority is governed by a board, which consists of five members. The members are the Governor or his designee, the State Treasurer, the Comptroller General, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee. The Governor serves as chairman; in the absence of the Governor, the meeting is chaired by the State Treasurer. All members of the Board serve ex officio.

**Note 2. Summary of Significant Accounting Policies**

**General**

In its accounting and financial reporting in conformity with accounting principles generally accepted in the United States of America, the Authority follows the pronouncements of the Governmental Accounting Standards Board ("GASB").

**Measurement Focus, Basis of Accounting, and Financial Statement Presentation**

GASB Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, requires government-wide financial statements to be prepared using the accrual basis of accounting and the economic resources measurement focus. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Government-wide financial statements (i.e., the statement of net position and the statement of activities) do not provide information by fund. Significantly, the statement of net position may include non-current assets and liabilities, which generally are not included in the fund statements. The statement of net position includes three components of net position.

- (1) Net investment in capital assets consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any bonds, mortgages, notes or other borrowings that are attributable to the acquisition, construction, or improvement of those assets. If there are significant unspent related debt proceeds at year-end, the portion of the debt attributable to the unspent proceeds is not included in the calculation of invested in capital assets, net of related debt. Rather, that portion of the debt is included in the same net position component as the unspent proceeds. The Authority does not have any capital assets; thus this classification is not used.
- (2) Restricted net position consists of net position subject to external constraints imposed by creditors (such as through debt covenants), contributors, or laws or regulations of other governments, or constraints imposed by law through constitutional provisions or enabling legislation. The Authority reports that portion of its net position restricted by statutory constraints as restricted net position.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2022

**Note 2. Summary of Significant Accounting Policies (continued)**

**Measurement Focus, Basis of Accounting, and Financial Statement Presentation (continued)**

- (3) Unrestricted net position consists of net position that does not meet the definition of restricted net position or invested in capital assets, net of related debt. The Authority reports that portion of its net position not externally constrained, primarily funds available for payment of its authorized operating expenses, as unrestricted net position.

The statement of activities demonstrates the degree to which direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include (1) charges to customers who purchase, use, or benefit from the services provided by a given function or segment and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Unrestricted interest income and other items not properly included among program revenues are reported as general revenues. The Authority has no program revenues.

In addition to the government-wide financial statements, the Authority has prepared financial statements for the Authority's only governmental fund. Governmental fund financial statements use the modified accrual basis of accounting and the current financial resources measurement focus. Tobacco Settlement Revenues ("TSRs") are recognized as soon as they are considered measurable and available. Revenues are considered available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the Authority considers revenues to be available if they are collected within one year after the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred.

The Authority reports one governmental fund, the General Fund, which is the general operating fund of the Authority. It is used to account for all financial resources of the Authority. As a blended component unit of the State, the Authority's General Fund is reported as a special revenue fund in the financial statements of the State.

**Asset Recognition Criteria for TSRs**

The Authority implemented GASB Technical Bulletin No. 2004-1: *Tobacco Settlement Recognition and Financial Reporting Entity Issues* (the "Bulletin"), effective July 1, 2003. The Bulletin requires the Authority to recognize TSRs when the event giving rise to recognition occurs (the domestic shipment of cigarettes by the tobacco manufacturers) in the government-wide financial statements, and when the event occurs and the TSRs become available in the fund financial statements. Other than the asset recognition criteria required by the Bulletin, future collections are not measurable and are therefore not recorded as assets in either the government-wide financial statements or the government fund financial statements.



TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2022

**Note 2. Summary of Significant Accounting Policies (continued)**

**Cash and Cash Equivalents**

Cash includes cash on hand, demand deposits, and short-term investments with original maturities of three months or less from the date acquired by the Authority.

**Investments**

Investments, if any, are recorded on the Statement of Net Position and the Governmental Fund Balance Sheet at fair value. All investment income, including changes in the fair value of investments, is reported as revenue in the Statement of Activities and the Statement of Revenues, Expenditures, and Changes in Fund Balance.

**Fund Balance**

The Authority reports fund balance in accordance with GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. This Statement establishes fund balance classifications for governmental funds that comprise a hierarchy based primarily on the extent to which a government is bound to observe constraints imposed upon the use of the resources reported therein. The Statement requires governments to disclose information in the notes about the processes through which constraints are imposed, as well as accounting policies that determine whether restricted, committed, assigned, and unassigned amounts are considered to be spent.

The Authority conforms its fund balance reporting to the classification and hierarchy structure of the State, generally as follows:

*Restricted*

Fund balance is reported as restricted when constraints placed on resource use are either (a) externally imposed by creditors, grantors, contributors, laws or regulation of other governments, or (b) imposed by law through constitutional provisions or enabling legislation. Enabling legislation authorizes the State to assess, levy, charge, or otherwise mandate payments of resources from resource providers and includes a legally enforceable requirement that those resources be used only for the specific purposes stipulated in the legislation. A legally enforceable requirement is one that an outside party can compel the government to honor.

*Committed*

Fund balance is reported as committed if the Authority's by-laws or official actions, including adoption of its annual budget, constrain the use of its resources. Committed constraints can be removed only through similar action that created the constraint.

*Assigned*

Fund balance is reported as assigned if the fund balance is constrained by the Authority's intent to expend resources for specific purposes. Such intent may be expressed by an official or body pursuant to delegation by the Authority.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2022

**Note 2. Summary of Significant Accounting Policies (continued)**

**Fund Balance (continued)**

*Non-spendable*

Fund balance is reported as non-spendable if the balance has a lack of availability in form or substance of the assets and liabilities reported in the fund to meet its obligations in the near future.

*Unassigned*

Fund balance is reported as unassigned for all residual amounts not otherwise classified.

The Authority has no assigned, non-spendable or unassigned fund balance.

The Authority's bond enabling act provides a covenant for the irrevocable assignment of certain of the Authority's assets during any time bonds are outstanding, plus one year and one day thereafter. All of the Authority's outstanding bonds were retired on June 1, 2012. Accordingly, until June 2, 2013, certain of the Authority's assets were classified as restricted by bond covenants because they were subject to a legally enforceable external constraint by the terms of the Trust Indenture.

Subsequent to June 2, 2013, assets previously restricted by bond covenants are available to the State in accordance with the expenditure provisions of Section 11-11-170 of the South Carolina Code of Laws 1976, as amended (the "Expenditure Act"). The Authority classifies all TSRs held at, or received or receivable subsequent to June 2, 2013, as restricted by statute, since the Expenditure Act constrains the use of that portion of the Authority's resources. The remaining portion of net position is reported as unrestricted.

Likewise, in the Governmental Fund Balance Sheet, the portion of fund balance that is subject to the Expenditure Act is reported as restricted by statute; however, the remaining portion of fund balance is reported as committed to operating expense inasmuch as that portion of fund balance is constrained by the Authority's annually adopted budget. The Authority has full statutory power to adopt, revise and rescind its budget, and to expend funds for the costs of administering its operations.

The Authority classifies the expenditure of funds when incurred based on the nature of the expenditure, with externally directed expenditures generally made from restricted funds, and expenditures made within the discretion of the Authority or subject to its own budget, primarily its authorized operating expenditures, made from committed funds.

The Authority is required by State proviso to transfer any remaining TSRs, after transfers to the South Carolina Attorney General and Law Enforcement Division, to the South Carolina Department of Health and Human Services ("HHS"). At HHS' request, the Authority held \$66,074 of cash due to HHS at June 30, 2022 and has recorded a liability to HHS as a result for the remaining transfer of these funds.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2022

**Note 2. Summary of Significant Accounting Policies (continued)**

**Administrative Expenses**

The State of South Carolina and certain of its agencies perform certain accounting, administrative, legal and enforcement services for the Authority, and the value of these services is accounted for as general government expenses in the financial statements. Note 6 – Related Party Transactions contains descriptions of and amounts expended for these purposes.

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**Note 3. Deposits**

Prior to June 2, 2013, the Authority's cash deposits held by the trustee were held in several restricted accounts in the name of the Authority, subject to investment restrictions imposed by the Trust Indenture. The Authority has not adopted a formal policy for these deposits because the Trust Indenture contains these restrictions.

Subsequent to June 2, 2013, all of the Authority's cash deposits are under the control of the State Treasurer who, by law, has sole authority for investing State funds. State law requires full collateralization of all bank balances under the control of the State Treasurer, who must correct any deficiencies in collateral within two days. At June 30, 2022, all bank balances under the control of the State Treasurer were fully insured or collateralized with securities held by the State's agent in the name of the State Treasurer.

The following schedule reflects the Authority's deposits at their fair and reported values at June 30, 2022, and reconciles the amounts reported in the statement of net position to the notes.

Notes		Statements	
Deposits			
Held by State Treasurer	\$ 5,195,699	Cash and cash equivalents	\$ 5,195,699
Totals	<u>\$ 5,195,699</u>		<u>\$ 5,195,699</u>

Further information concerning among other things values and risks of deposits and investments under the control of the State Treasurer, including disclosure under GASB Statement No. 40, Deposits and Investments - Risk Disclosures, is disclosed in the Annual Comprehensive Financial Report of the State of South Carolina, which may be accessed at [www.cg.sc.gov](http://www.cg.sc.gov).

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2022

**Note 4. Bonds Payable**

On March 22, 2001, the Authority issued \$934,530,000 aggregate principal amount of Tobacco Settlement Asset-Backed Bonds (the "Series 2001 Bonds") pursuant to an indenture between the Authority and United States Trust Company of New York (subsequently acquired by the Bank of New York), as trustee, dated as of March 1, 2001, and the Tobacco Settlement Revenue Management Authority Act. On June 26, 2008, the Authority defeased the Series 2001 Bonds with certain cash funds and proceeds of \$275,730,000 Tobacco Settlement Revenue Management Authority Tobacco Settlement Revenue Asset-Backed Refunding Bonds, Series 2008 (the "Series 2008 Bonds") issued pursuant to an indenture between The Bank of New York Trust Company, N.A., as trustee, and the Tobacco Settlement Revenue Management Authority. On June 1, 2012, the Authority redeemed the outstanding Series 2008 Bonds as Turbo Redemptions; accordingly, all of the Authority's debt has been fully discharged.

At June 30, 2022, a total of \$64,890,000 of the Authority's legally and economically defeased Series 2001 Bonds remained outstanding; however, all of the Series 2001 Bonds are deemed paid within the meaning of and with the effect expressed in, and accordingly are no longer outstanding under, the Trust Indenture.

**Note 5. Disputed Payments**

Under the provisions of the MSA, the participating manufacturers ("PMs") are potentially entitled to an adjustment of their required payments under the MSA (an "NPM Adjustment") in the event that all of the PMs, in the aggregate, lose more than two percentage points of market share compared to the market share of the PMs in 1997. However, the annual adjustment cannot be applied against settling states that have enacted and diligently enforced an escrow fund statute during the applicable year. Each year since 1999, the PMs have requested that the Independent Auditor, PricewaterhouseCoopers, apply the NPM Adjustment. In accordance with the terms of the MSA, the Independent Auditor will not apply any given year's adjustment until a panel of three arbitrators determines the diligent enforcement efforts of all states. In 2003, the MSA signatories settled the NPM Adjustment disputes for 1999 through 2002.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2022

**Note 5. Disputed Payments (continued)**

In May 2013, South Carolina joined 21 other states and the PMs in agreeing to terms of a settlement of the NPM adjustment disputes for the years 2003 through 2012. In October 2017, the terms of the settlement for 2003 through 2012, were memorialized in the NPM Adjustment Settlement Agreement (the "Agreement"). Between 2013 and October 2017, the number of signatory states increased to 35, and during that same period, those states and the PMs agreed to settle the 2013 through 2015 NPM Adjustment disputes. Thereafter, in November 2018, an addendum to the Agreement resolved the 2016 and 2017 disputed payments. In July 2020, the Agreement was further extended to resolve the 2018 through 2022 disputes. The State of New York settled its disputed payments in a separate agreement with the PMs. The Agreement and addendum provided that the signatory states would receive certain payments released from the disputed payments account and that the PMs would be entitled to take certain credits from MSA payments. In addition to the financial terms of the settlement, the PMs agreed to reduce withholding amounts for future disputed payments, and the parties agreed to a modification of the diligent enforcement standards for future NPM Adjustment disputes.

As of its most recent payment dates of April 15, 2022 and April 18, 2022, South Carolina has received \$153,143,683 released from the MSA Disputed Payment Account (DPA) related to the Agreement on a cumulative basis. For the same time period, South Carolina related MSA payment credits and DPA funds disbursed to the PMs totaled \$89,480,879 on a cumulative basis.

The \$89,480,879 in South Carolina related MSA payment credits and DPA funds disbursed to the PMs was retained by the PMs as a result of the settling of NPM adjustment disputes. The State of South Carolina has chosen not to continue litigating the PMs assertion that South Carolina has not diligently enforced statutes created in response to the MSA between the State of South Carolina and the PMs.

South Carolina's current estimated minimum exposure related to the NPM adjustment is \$19,327,474 (Sales Year 2021) relating to challenges of diligent enforcement and other settlement factors. At this time the result of this dispute cannot be determined.

**Note 6. Related Party Transactions**

The State of South Carolina, through the Office of Attorney General, the State Law Enforcement Division, and the South Carolina Department of Revenue, provides certain legal and enforcement services to the Authority. During the fiscal year ended June 30, 2022, the Authority made or provided for \$2,028,000 in expenditures from its general fund to these state agencies to cover costs of providing these services. The Office of State Treasurer provides administrative, investment, operations, record keeping, and other support services to the Authority; however, no reimbursements were made by the Authority during the fiscal year ended June 30, 2022 to cover costs of providing these services.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY

(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2022

**Note 7. Risk Management**

The Authority is exposed to risks of loss from torts and maintains State coverage for these risks. Management believes such coverage is sufficient to preclude any significant uninsured losses for the covered risks. There were no significant reductions in insurance coverage from coverage in the prior year. The insurer promises to pay to or on behalf of the insured for covered economic losses sustained during the policy period in accord with insurance policy and benefit program limits except for the deductibles. The Authority and other entities pay premiums to the State's Insurance Reserve Fund ("IRF") which issues policies, accumulates assets to cover the risks of loss, and pays claims incurred for covered losses related to torts. The IRF is a self-insurer whose rates are determined actuarially.

No payments for uninsured losses were made during the fiscal year ended June 30, 2022.

**Note 8. Subsequent Events**

The Authority has evaluated all events subsequent to the statement of net position date of June 30, 2022 through the date of issuance of these financial statements, September 26, 2022, and has determined that there are no subsequent events requiring disclosure.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
REQUIRED SUPPLEMENTARY INFORMATION (UNAUDITED)  
BUDGETARY COMPARISON SCHEDULE  
GENERAL FUND  
FOR THE YEAR ENDED JUNE 30, 2022

	Budgeted Amounts		Actual	Variance
	Original	Final		Positive/(Negative)
Revenues				
Tobacco settlement receipts	\$ 62,000,000	\$ 62,000,000	\$ 86,543,750	\$ 24,543,750
Investment earnings	-	-	478,440	478,440
Total revenues	62,000,000	62,000,000	87,022,190	25,022,190
Expenditures				
Contractual services	32,000	32,000	26,200	5,800
Fixed charges and contributions	7,014	7,014	5,010	2,004
Total expenditures	39,014	39,014	31,210	7,804
Transfers				
Transfers to other state agencies	62,039,014	62,039,014	87,022,189	(24,983,175)
Total transfers	62,039,014	62,039,014	87,022,189	(24,983,175)
Excess (deficiency) of revenues over expenditures	\$ (78,028)	\$ (78,028)	\$ (31,209)	\$ 46,819

See accompanying notes to required supplementary information.

TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY  
(A COMPONENT UNIT OF THE STATE OF SOUTH CAROLINA)  
REQUIRED SUPPLEMENTARY INFORMATION (UNAUDITED)  
NOTES TO BUDGETARY COMPARISON SCHEDULE  
GENERAL FUND  
FOR THE YEAR ENDED JUNE 30, 2022

**Note 1. Basis of Presentation**

Section 11-49-60 of the South Carolina Code of Laws 1976, as amended requires the Authority to adopt an annual budget for its operational expenditures. The accompanying budgetary comparison schedule compares the Authority's legally adopted budget to actual results on the budgetary basis.

**Note 2. Budgetary Revisions**

The Authority maintains budgetary control at the object category of expenditure and must approve any transfer of appropriations between the object categories.

**Note 3. Differences in Budgetary and GAAP Reporting**

The accompanying budgetary comparison schedule compares the Authority's legally adopted budget with actual results in accordance with the Authority's basis of budgeting. The Authority's primarily cash basis budgetary accounting principles, however, differ significantly from GAAP. These different accounting principles may result in basis differences in the excess (deficiency) of revenues over expenditures. Basis differences arise because the basis of budgeting differs from the GAAP basis used to prepare the governmental fund statement of revenues, expenditures and changes in fund balance. The primary differences reflected in the budgetary comparison schedule for the fiscal year ended June 30, 2022 were as follows:

Total revenues, budgetary basis	\$ 87,022,190
Increase in accrual for TSRs not accounted for under the budgetary basis	<u>2,000,000</u>
Total revenues, GAAP basis	<u><u>\$ 89,022,190</u></u>
Total expenditures, budgetary basis	\$ 31,210
Transfers accounted for as expenditures for GAAP	<u>2,028,000</u>
Total expenditures, GAAP basis	<u><u>\$ 2,059,210</u></u>



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INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND  
ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS  
PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Mr. George L. Kennedy III, CPA  
State Auditor  
Office of the State Auditor  
Columbia, South Carolina

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities and the major fund of Tobacco Settlement Revenue Management Authority (the "Authority") as of and for the year ended June 30, 2022, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements, and have issued our report thereon dated September 26, 2022.

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

In planning and performing our audit of the financial statements, we considered the Authority's internal control over financial reporting (internal control) as a basis for designing procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any

deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

#### REPORT ON COMPLIANCE AND OTHER MATTERS

As part of obtaining reasonable assurance about whether the Authority's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

#### PURPOSE OF THIS REPORT

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Columbia, South Carolina  
September 26, 2022

*The Heller Group, P.A.*

# STATE FISCAL ACCOUNTABILITY AUTHORITY

Meeting of Tuesday, January 31, 2023 – 9:30 A.M.

Room 252, Edgar A. Brown Building

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## REGULAR SESSION AGENDA INDEX -- Page 1

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<u>Item</u>	<u>Agency</u>	<u>Subject</u>
<b>A.</b>	<b>MEETING OF THE TOBACCO SETTLEMENT REVENUE MANAGEMENT AUTHORITY</b>	
<b>B.</b>	<b>MEETING OF STATE FISCAL ACCOUNTABILITY AUTHORITY</b>	
<b>C.</b>	<b>ADOPTION OF PROPOSED AGENDA</b>	
<b>D.</b>	<b>MINUTES OF PREVIOUS MEETINGS</b>	
<b>E.</b>	<b>REGULAR SESSION</b>	
1.	State Treasurer's Office	Bond Counsel Selection
2.	Office of the State Auditor	Overview of Fiscal Year 2022 Statewide Financial Audit
3.	Department of Administration, Executive Budget Office	2022 Comprehensive Permanent Improvement Projects
4.	Department of Administration, Executive Budget Office	Permanent Improvement Projects
5.	Department of Administration, Facilities Management and Property Services	SC Department of Public Safety Lease of 2070 Northbrook Boulevard, North Charleston, SC 29406
6.	Division of Procurement Services	Audit and Certification – Florence Darlington Technical College
7.	Division of Procurement Services	Audit and Certification – The Citadel
8.	Division of Procurement Services	Procurement Exemption for the South Carolina Revenue and Fiscal Affairs Office's (RFA) acquisition of professional economist services

# STATE FISCAL ACCOUNTABILITY AUTHORITY

Meeting of Tuesday, January 31, 2023 – 9:30 A.M.

Room 252, Edgar A. Brown Building

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## REGULAR SESSION AGENDA INDEX -- Page 2

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<u>Item</u>	<u>Agency</u>	<u>Subject</u>
9.	Division of Procurement Services	Psychiatric Residential Treatment Facility for juveniles - Approval of Project Delivery Method and Contract Duration
10.	Department of Mental Health	Legal - Approval of settlement of Chicora Life Center, LC vs. The Charleston Dorchester Mental Health Center, an outpatient facility of the South Carolina Department of Mental Health; and JOHN and JANE DOES 1-100 (2019-CP-10-00798)
11.	Clemson University	Not Exceeding \$106,000,000 of General Obligation State Institution Bonds (Issued on Behalf of Clemson University) of the State of South Carolina
12.	Executive Director	Qualified Public Educational Facilities (2022 Volume Cap Carryforward)
13.	Executive Director	South Carolina State Ceiling Allocation Plan 2023 Administrative Updates
14.	State Fiscal Accountability Authority	Future Meeting

MEETING OF January 31, 2023

ITEM NUMBER 1

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**AGENCY:** State Treasurer's Office

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**SUBJECT:** Bond Counsel Selection

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**CONDUIT/OTHER ISSUES:**

<b>Description of Issue</b>	<b>Agency/Institution (Borrower)</b>	<b>Bond Counsel</b>	<b>Issuer's Counsel</b>	<b>Date STO Approved</b>
\$15,000,000; South Carolina Jobs-Economic Development Authority ("SC JEDA"); Educational Facilities Revenue Bonds, Series 2023; East Link Academy	East Link Academy Conduit: SCJEDA	Haynsworth Sinkler Boyd, P.A. – Kimberly Witherspoon and Kathy McKinney	Burr Forman – Michael Seezen and Assatta Williams	12/12/2022

**GENERAL OBLIGATION / REVENUE ISSUES:**

<b>Description of Issue</b>	<b>Agency/Institution (Borrower)</b>	<b>Bond Counsel</b>	<b>Issuer's Counsel</b>	<b>Date STO Approved</b>
\$106,000,000; State of South Carolina General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series 2023	State of South Carolina (on behalf of Clemson University)	Pope Flynn Group – Gary Pope	South Carolina Attorney General	12/9/2022

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**AUTHORITY ACTION REQUESTED:**

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

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**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 January 31, 2023 meeting:**

**CONDUIT/OTHER ISSUES:**

<b>Description of Issue</b>	<b>Agency/Institution (Borrower)</b>	<b>Bond Counsel</b>	<b>Issuer's Counsel</b>	<b>Date STO Approved</b>
\$15,000,000; South Carolina Jobs-Economic Development Authority ("SC JEDA"); Educational Facilities Revenue Bonds, Series 2023; East Link Academy	East Link Academy Conduit: SCJEDA	Haynsworth Sinkler Boyd, P.A. – Kimberly Witherspoon and Kathy McKinney	Burr Forman – Michael Seezen and Assatta Williams	12/12/2022

**GENERAL OBLIGATION / REVENUE ISSUES:**

<b>Description of Issue</b>	<b>Agency/Institution (Borrower)</b>	<b>Bond Counsel</b>	<b>Issuer's Counsel</b>	<b>Date STO Approved</b>
\$106,000,000; State of South Carolina General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series 2023	State of South Carolina (on behalf of Clemson University)	Pope Flynn Group – Gary Pope	South Carolina Attorney General	12/9/2022

STATE FISCAL ACCOUNTABILITY AUTHORITY

REGULAR SESSION

MEETING OF January 31, 2023

ITEM NUMBER 2

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AGENCY: Office of the State Auditor

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SUBJECT: Overview of Fiscal Year 2022 Statewide Financial Audit

Auditing standards require that at the conclusion of an audit of financial statement, the auditor communicate certain matters to those charged with governance. The attached communication addresses all matters required to be communicated related to the audit of statewide financial statements for the year ended June 30, 2022. The financial statements were issued with a report date of November 29, 2022 and are available on the Office of the State Audit website at [osa.sc.gov/reports](http://osa.sc.gov/reports).

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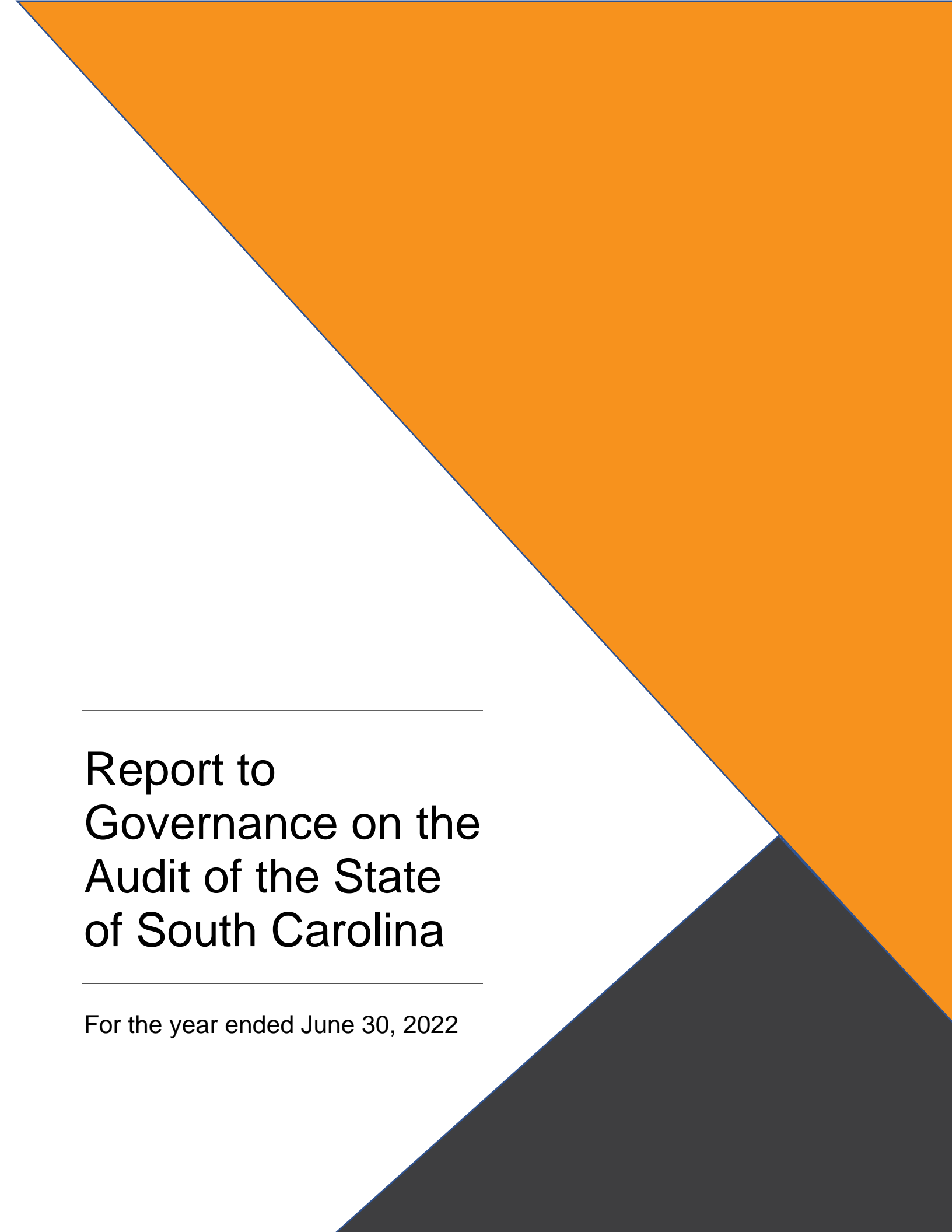
AUTHORITY ACTION REQUESTED:

Receive the communication from the Office of the State Auditor related to the audit of the State with financial statements as information.

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ATTACHMENTS:

Letter to Authority members dated 11/29/2022



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# Report to Governance on the Audit of the State of South Carolina

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For the year ended June 30, 2022





November 29, 2022

The Honorable Henry D. McMaster, Governor  
Members of the State Fiscal Accountability Authority  
and Members of the General Assembly  
State of South Carolina  
Columbia, South Carolina

We hereby transmit our *Report to Governance on the Audit of the State of South Carolina*.

We have jointly audited with CliftonLarsonAllen LLP the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the State of South Carolina (the State) as of and for the year ended June 30, 2022, and have issued our report thereon dated November 29, 2022. Our report includes a reference to other auditors who audited the financial statements of certain agencies and component units of the State as described in our report on the State's financial statements.

The purpose of this report is to communicate certain information related to our audit required by professional standards.

George L. Kennedy, III, CPA  
State Auditor

# Contents

<b>1</b>	<b>Introduction</b>
<b>2</b>	<b>How to Access the ACFR</b>
<b>3</b>	<b>Overview/Communication to Governance</b>
<b>5</b>	<b>Report on Internal Control and on Compliance</b>
<b>9</b>	<b>Material Weaknesses</b>
<b>13</b>	<b>Management Responses</b>
<b>17</b>	<b>Exhibit A – Corrected Misstatements</b>
<b>21</b>	<b>Exhibit B – Uncorrected Misstatements</b>
<b>23</b>	<b>Exhibit C – Management Representations</b>

# Introduction

## Purpose of this report

The State Fiscal Accountability Authority (Authority) has oversight responsibility for the financial reporting process for the State of South Carolina. This report communicates matters to you regarding our audit of the State's Annual Comprehensive Financial Report (ACFR) for the year ended June 30, 2022.

The matters covered by this Report are guided by the requirements of Statements of Auditing Standards 114, *The Auditor's Communication With Those Charged With Governance*, and 115, *Communicating Internal Control Related Matters Identified in an Audit*, issued by the American Institute of Certified Public Accountants.

## How this Report is organized

This report includes two required communications related to our audit of the State's ACFR for the year ended June 30, 2022:

- **Overview/Communication to Governance** (page 3) - This communication informs members of the Authority of certain matters related to the audit while providing an overview of the audit.
- **Report on Internal Control Over Financial Reporting and on Compliance Matters** (page 5)
  - During our audit, we may become aware of deficiencies in internal control. This report summarizes the deficiencies we identified that we consider to be either significant deficiencies or material weaknesses. For the fiscal year ended June 30, 2022, we identified 3 deficiencies that we consider to be material weaknesses.
- **Exhibits** (beginning on page 17) – The following exhibits are referenced in the overview/communication which begins on page 3.
  - Corrected misstatements – Exhibit A summarizes the misstatements identified as a result of audit procedures that were corrected by management.
  - Uncorrected misstatements – Exhibit B summarizes the misstatements identified as a result of audit procedures that management determined were immaterial in their impact on the financial statements as a whole and therefore were not corrected.
  - Management representations – Exhibit C summarizes the representations we requested from management.

## Materiality

Materiality is defined as the magnitude of an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.

Consideration of materiality is a matter of the auditor's professional judgment made in light of surrounding circumstances and involves both quantitative and qualitative considerations.

## Questions?

For questions about this report, please contact:

### **SC Office of the State Auditor**

George Kennedy  
State Auditor  
803-832-8929  
[gkennedy@osa.sc.gov](mailto:gkennedy@osa.sc.gov)

### **CliftonLarsonAllen**

Remi Omisore  
Principal  
410-308-8157  
[Remi.Omisore@claconnect.com](mailto:Remi.Omisore@claconnect.com)

## How to Access the ACFR

An electronic version of the ACFR for the fiscal year ended June 30, 2022, can be accessed through the Office of the State Auditor website at [osa.sc.gov/Reports](https://osa.sc.gov/Reports).

# Overview/Communication to Governance

Matter	Response
Auditors' report	The auditor's report is dated November 29, 2022 and reflects an unmodified opinion.
Significant accounting policies	Management is responsible for the State's accounting policies, which are described in Note 1 of the ACFR.
Significant accounting estimates	<p>Accounting estimates are an integral part of the financial statements. The most significant estimates include:</p> <ul style="list-style-type: none"> <li>- Capital assets and depreciation expense</li> <li>- Net other post-employment benefits (OPEB) plan liability</li> <li>- Allowance for doubtful accounts receivable</li> <li>- Medicaid claims liability</li> <li>- Unclaimed property liability</li> <li>- Incurred but not reported claims</li> <li>- Net pension liability</li> <li>- Tax refunds payable</li> <li>- Second injury claims payable</li> <li>- Lease receivable and liability (lessor and lessee)</li> </ul>
Corrected misstatements	Corrected misstatements by opinion unit are included at Exhibit A.
Uncorrected misstatements	Uncorrected misstatements by opinion unit are included at Exhibit B.
Management representations	Representations from management are included at Exhibit C.
Management consultations with other independent accountants	To our knowledge, management has not consulted with or obtained opinions (written or oral) from other independent accountants during the past year.
Other audit findings or issues	Our letter communicating internal control related issues begins on page 5.
Other information in documents containing audited financial statements	The auditors' opinion, the audited financial statements, and notes to financial statements should only be used in their entirety. Inclusion of the audited financial statements in other documents should only be done with our approval and review of the document.
Accounting and reporting changes	<p>As described in Note 2 to the financial statements, the State adopted the following accounting standards for the year ended June 30, 2022:</p> <ul style="list-style-type: none"> <li>- GASB 87, <i>Leases</i> (impact disclosed in Note 15)</li> <li>- GASB Statement 89, <i>Accounting for Interest Cost Incurred Before the End of a Construction Period</i> (no impact)</li> <li>- GASB Statement 92, <i>Omnibus 2020</i> (no impact)</li> <li>- GASB Statement 97, <i>Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code 457 Deferred Compensation Plans</i> (no impact)</li> <li>- GASB 99, <i>Omnibus 2022</i> (no impact)</li> </ul>
Circumstances affecting the form and content of the auditor's report	The report was modified for the implementation of GASB Statement No. 87, <i>Leases</i> , and the correction of an error. See Note 15 for additional information.
Significant unusual transactions Difficulties encountered Disagreements with management Significant issues discussed prior to engagement Audits of group financial statements Quality of component auditor's work Limitations on the group audit	No matters to report.

# Report on Internal Control and on Compliance



CliftonLarsonAllen  
LLPCLAAconnect.com

**Independent Auditors' Report on Internal Control Over Financial  
Reporting and on Compliance and Other Matters Based on an Audit  
of Financial Statements Performed in Accordance  
with *Government Auditing Standards***

The Honorable Henry D. McMaster, Governor  
Members of the State Fiscal Accountability Authority  
and Members of the General Assembly  
State of South Carolina  
Columbia, South Carolina

We have jointly audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the State of South Carolina (the State) as of and for the year ended June 30, 2022, and the related notes to the financial statements, which collectively comprise the State's basic financial statements and have issued our report thereon dated November 29, 2022.

The financial statements of the Connector 2000 Association, Inc., South Carolina Research Authority, InvestSC Inc. and South Carolina Medical Malpractice Association, were not audited in accordance with *Government Auditing Standards* and accordingly this report does not include reporting on internal control over financial reporting or instances of reportable noncompliance associated with the Connector 2000 Association, Inc., South Carolina Research Authority, InvestSC Inc. and South Carolina Medical Malpractice Association. Our report includes a reference to other auditors who audited the financial statements of certain agencies and component units of the State, which represent the indicated percent of total assets and deferred outflows and total revenues as described in our report on the State's financial statements and as presented in the following table. This report does not include the results of the other auditors' testing of internal control over financial reporting or compliance and other matters that are reported on separately by those other auditors.



The Honorable Henry D. McMaster, Governor  
Members of the State Fiscal Accountability Authority  
and Members of the General Assembly  
State of South Carolina

	<u>Percentage Audited by CliftonLarsonAllen LLP Separately</u>		<u>Percentage Audited by Other Auditors</u>	
	<u>Total Assets and Deferred Outflows of Resources</u>	<u>Total Revenue</u>	<u>Total Assets and Deferred Outflows of Resources</u>	<u>Total Revenue</u>
<b><u>Government-wide</u></b>				
Governmental activities	-	-	45%	7%
Business-type activities	-	-	88%	86%
Component units	16%	14%	86%	89%
<b><u>Fund Statements</u></b>				
Governmental Funds	-	-	14%	7%
Enterprise Funds	-	-	88%	86%
Internal Service Funds	-	-	55%	6%
Fiduciary Funds	-	-	99%	98%
Discretely Presented Component Units	16%	14%	86%	89%

### **Report on Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the State's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the State's internal control. Accordingly, we do not express an opinion on the effectiveness of the State's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We identified certain deficiencies in internal control, described in the accompanying schedule of findings and responses as items 2022-001, 2022-002, and 2022-003 that we consider to be material weaknesses.

### **Report on Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the State's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

The Honorable Henry D. McMaster, Governor  
Members of the State Fiscal Accountability Authority  
and Members of the General Assembly  
State of South Carolina

**State of South Carolina's Response to Finding**

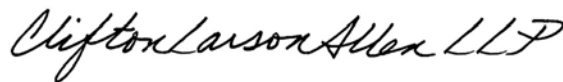
*Government Auditing Standards* requires the auditor to perform limited procedures on the State of South Carolina's response to the findings identified in our audit and described in the accompanying schedule of findings and responses. The State's response was not subjected to the other auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on the response.

**Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the State's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the State's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Columbia, South Carolina  
November 29, 2022



Baltimore, Maryland  
November 29, 2022

## **Material Weaknesses**

**2022-001 Material Weakness in Financial Reporting – Preparation of Statewide Accounting Records and Annual Comprehensive Financial Report (ACFR) and Audit Adjustments – Comptroller General's Office**

***Condition***

Internal controls over financial reporting were inadequate to prevent or detect material misstatements during the preparation of the State's Annual Comprehensive Financial Report (ACFR) and in the supporting accounting records, requiring the Comptroller General's Office (CGO) to post audit adjustments to the State's ACFR and restate previously reported balances.

The CGO is responsible for compilation of the ACFR from reporting packages and audited financial statements submitted from State agencies. There were several misstatements to current year and prior year balances which were not detected or corrected by the CGO supervisory staff during the review process and as a result, audit adjustments were recorded.

***Criteria***

Statements on Auditing Standards (AU-C 200.14) requires that management acknowledge and understand that they have responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

***Effect***

Amounts, as well as disclosures, included in the financial statements were inaccurate and, as a result, audit adjustments and revisions to the ACFR were required. A prior period adjustment was required to correct an error to previously reported balances.

***Cause***

These errors were not detected during CGO supervisory staff review.

***Repeat Finding***

Yes, see finding 2021-001 in the Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards

***Recommendation***

We recommend the CGO review its current processes and procedures over (1) identifying and recording adjustments related to reporting packages and other audited financial statements for inclusion in the statewide ACFR and (2) internal review of the ACFR in its entirety in order to strengthen its review procedures.

***Views of responsible officials and planned corrective actions***

See management's response on page 14.

**2022-002 Material Weakness in Reporting for Statewide Cash and Investment Balances and Prior Period Adjustments – Comptroller General’s Office**

***Condition***

In connection with the State converting its legacy accounting system to the South Carolina Enterprise Information System (SCEIS), a series of related cash accounts in the new general ledger was not properly coded to the State’s Annual Comprehensive Financial Report (ACFR) which is prepared annually. As a result, before the omission was discovered by the Comptroller General’s Office (CGO) during the current year, material activity had been omitted from prior year ACFRs.

***Criteria***

The CGO develops policies and procedures over financial reporting to ensure the accuracy of the ACFR. Among these is the use of SCEIS functionality to compile the State’s financial statements, including evaluating the completeness of SCEIS information, and identifying and posting adjusting journal entries necessary for the information to comply with generally accepted accounting principles.

Additionally, a critical component of the financial reporting process is the submission by agencies of reporting packages to the CGO to support the amounts that are included within SCEIS. Section 1.0 of the Comptroller General’s Reporting Policies and Procedures Manual states that all reporting package balances must be consistent with balances within SCEIS.

***Effect***

The cumulative activity in the general ledger accounts improperly omitted from the General Fund’s cash and investment balances that were being reported in the ACFRs resulted in necessary material adjustments to the General Fund’s beginning fund balance in the current year’s ACFR.

***Cause***

During the multi-year conversion of the State’s legacy system to SCEIS, a series of general ledger accounts had been created but unwittingly not coded to be included within the ACFR. Subsequent post-conversion reviews and reconciliations of activity between SCEIS and the ACFR did not effectively detect the omission of certain activity in these accounts until the current year.

***Repeat Finding***

No.

***Recommendation***

We recommend that the State implement procedures to identify, research, and appropriately code all accounts within the State’s reporting entity. Among the procedures and controls that should be instituted is a reconciliation of the State’s pooled cash and investments to cash and investment ownership by individual fund. After seeking potential programming assistance from IT personnel, this reconciliation should be performed quarterly through a collaborative effort of the CGO and the State Treasurer’s Office. Differences noted, if any, should be researched and corrected.

We also recommend that the CGO update its cash and investment reporting package instructions to other agencies and coordinate with them to ensure the information they report in their reporting packages is complete and accurate. Agency reporting packages should include all information needed to be reconciled to SCEIS by fund and general ledger account.

***Views of responsible officials and planned corrective actions***

See management’s response on page 14.

**2022-003 Material Weakness in Financial Reporting – Accuracy of Agency Reporting Package – Department of Health and Human Services**

***Condition***

Internal controls over the financial close and reporting process related to grants receivable and deferred revenue reporting package were inadequate to ensure accurate submission of the reporting packages to the Comptroller General's Office (CGO). The Department of Health and Human Services' grant reporting package contained material misstatements that were subsequently corrected.

***Criteria***

Section 1.7 of the Comptroller General's Reporting Policies and Procedures Manual states, "Each agency's executive director and finance director are responsible for submitting to the Comptroller General's Office reporting packages that are accurate and prepared in accordance with instructions, complete, and timely." This requirement acts as a control over financial reporting for the State's financial statements.

***Effect***

Errors in the reporting package resulted in audit adjustments.

***Cause***

The agency reporting package that was submitted to the CGO contained errors that were not detected by agency supervisory staff review.

***Repeat Finding***

No.

***Recommendation***

We recommend that the agency review their procedures over reporting package preparation and submission to ensure reporting packages are submitted in accordance with CGO directives.

***Views of responsible officials and planned corrective actions***

See management's response on page 16.

## **Management's Response**



State of South Carolina  
**Office of Comptroller General**

1200 Senate Street  
305 Wade Hampton Office Building  
Columbia, South Carolina 29201

Telephone: (803) 734-2121  
Fax: (803) 734-1765  
E-Mail: [cgooffice@cg.sc.gov](mailto:cgooffice@cg.sc.gov)

**RICHARD ECKSTROM, CPA**  
COMPTROLLER GENERAL

**WILLIAM E. GUNN**  
CHIEF OF STAFF

November 29, 2022

Mr. George L. Kennedy III, CPA  
State Auditor  
1401 Main Street, Suite 1200  
Columbia, South Carolina 29201

Mr. Remi Omisore, CPA, CISA, CIA, MBA  
CliftonLarsonAllen LLP  
1966 Greenspring Drive, Suite 300  
Timonium, Maryland 21093

Dear Sirs:

For comment 001:

During fiscal year 2022 the Comptroller General's Office was finally able to hire two additional CPAs to help meet the office's acute staffing needs. These two hirings took several years to accomplish due to the tight labor market for qualified governmental accountants. As these new hires get fully trained and gain experience, Financial Reporting management will be able to take on a more robust reviewer's role to resolve this finding. This issue has become a common problem among governmental entities in general as universities are increasingly graduating fewer accountants while at the same time significantly curtailing their course offerings in governmental accounting in response to weakening student demand.

For comment 002:

The Comptroller General's Office has corrected the miscoded activity within the State's general ledger that had been incorrectly coded for ACFR reporting purposes since the SCEIS reporting system was set up in 2007. Furthermore, the Comptroller General's Office, the State Treasurer's Office, and SCEIS are in the process of creating reports and processes necessary to identify the State's cash and investment balances by actual account holders. This will allow the reconciliation



of cash and investment balances that are reported within the ACFR to STO's cash and investment management system reports that support the SCEIS general ledger.

If you have any questions, please contact me at (803) 734-2542 or email me at [dstarkey@cg.sc.gov](mailto:dstarkey@cg.sc.gov).

Sincerely,

A handwritten signature in blue ink, reading "David A. Starkey". The signature is fluid and cursive, with the first name "David" being the most prominent.

David A. Starkey, CPA  
Senior Assistant Comptroller General

DS/js

cc: Richard A. Eckstrom

## **2022-003 Material Weakness in Financial Reporting – Accuracy of Agency Reporting Package – Department of Health and Human Services**

### **Views of responsible officials and planned corrective actions**

Management agrees with the finding.

*Actions taken in response to finding:*

*SCDHHS staff has updated the procedures for completion of the Grant and Contribution Revenue Forms Reporting Package, in reference to the Medicaid Accruals. These procedures will show the reports where the numbers entered on the Reporting Package are found, showing examples of each report, with the numbers to enter on the Reporting Package highlighted.*

*We have also contracted with an external entity to assist us with writing procedures for Reporting Packages, to ensure that they cover the entire process, and the steps are logical and accurate.*

## Exhibit A – Corrected Misstatements

# SUMMARY OF CORRECTED MISSTATEMENTS - AUDIT

State of South Carolina  
Governmental Activities  
Year Ended June 30, 2022

Exhibit A

## CORRECTED MISSTATEMENTS OF AMOUNTS

Effect of misstatements on:

Description	Assets	Liabilities	Fund Balance / Net Assets	Net Expense/Revenue and Change in Net Assets / Fund Balance
While performing our review over the compilation of the audited financial statements for inclusion in the statewide ACFR, we noted that a CGO adjustment for SC Transportation Infrastructure Bank (TIB) was considered necessary after a discrepancy was noted. We noted that Unavailable Revenue (Deferred Inflow) for TIB was understated by approximately \$18 million and a CGO correcting adjustment was necessary.	-	(18,000,000)	-	18,000,000
While performing procedures over tax receivables, it was noted that one of the reporting packages contained a clerical error, which resulted in receivables being overstated in the general fund.	(18,515,000)	-	-	18,515,000
Department of Health and Human Services (Agency J020) - While performing procedures over the proper reporting of grants receivable, deferred revenue, and payable balances, it was noted that the Department of Health and Human Services' Reporting package summary did not tie to the Accounts Payable Reporting Package. As a result of the inquiry, an adjustment was needed to: increase grant receivables due from federal government, deferred revenues, and federal operating grants.	329,231,881	16,316,950	-	(345,548,831)
Subtotals	310,716,881	(1,683,050)	-	(309,033,831)
Income tax effect				
Net current year misstatements (Iron Curtain Method)	310,716,881	(1,683,050)	-	(309,033,831)
Net prior year misstatements	-	-	-	-
Combined current and prior year misstatements (Rollover Method)	\$ 310,716,881	\$ (1,683,050)	\$ -	\$ (309,033,831)
Financial statement totals	\$ 45,945,054,000	\$ 18,356,215,000	\$ (28,313,998,000)	\$ 4,861,806,000
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	1%	0%		-6%
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	1%	0%		-6%

# SUMMARY OF CORRECTED MISSTATEMENTS - AUDIT

State of South Carolina

General Fund

Year Ended June 30, 2022

Exhibit A

## CORRECTED MISSTATEMENTS OF AMOUNTS

Effect of misstatements on:

Description	Assets	Liabilities	Fund Balance / Net Assets	Net Expense/Revenue and Change in Net Assets / Fund Balance
While performing procedures over tax receivables, it was noted that one of the reporting packages contained a clerical error, which resulted in receivables being overstated in the general fund.	(18,515,000)	-	-	18,515,000
Department of Health and Human Services (Agency J020) - While performing procedures over the proper reporting of grants receivable, deferred revenue, and payable balances, it was noted that the Department of Health and Human Services' Reporting package summary did not tie to the Accounts Payable Reporting Package. As a result of the inquiry, an adjustment was needed to properly state grant receivables due from federal government, deferred revenues, and federal operating grants.	329,231,881	16,316,950	-	(345,548,831)
Net current year misstatements (Iron Curtain Method)	310,716,881	16,316,950	-	(327,033,831)
Net prior year misstatements	-	-	-	-
Combined current and prior year misstatements (Rollover Method)	\$ 310,716,881	\$ 16,316,950	\$ -	\$ (327,033,831)
Financial statement totals	\$ 13,531,403,000	\$ 2,873,941,000	\$ (10,634,079,000)	\$ (3,553,519,000)
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	2%	1%		9%
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	2%	1%		9%

## SUMMARY OF CORRECTED MISSTATEMENTS - AUDIT

State of South Carolina

Local Government Infrastructure

Year Ended June 30, 2022

## CORRECTED MISSTATEMENTS OF AMOUNTS

Effect of misstatements on:

Description	Assets	Liabilities	Fund Balance / Net Assets	Net Expense/Revenue and Change in Net Assets / Fund Balance
While performing our review over the compilation of the audited financial statements for inclusion in the statewide ACFR, we noted that a CGO adjustment for SC Transportation Infrastructure Bank (TIB) was considered necessary after a discrepancy was noted. We noted that Unavailable Revenue (Deferred Inflow) for TIB was understated by approximately \$18 million and a CGO correcting adjustment was necessary.	-	(18,000,000)	-	18,000,000
Net current year misstatements (Iron Curtain Method)	-	(18,000,000)	-	18,000,000
Net prior year misstatements	-	-	-	-
Combined current and prior year misstatements (Rollover Method)	\$ -	\$ (18,000,000)	\$ -	\$ 18,000,000
Financial statement totals	\$ 2,438,295,000	\$ (107,773,000)	\$ (2,312,522,000)	\$ (93,766,000)
Current year misstatement as a % of financial statement totals (Iron Curtain Method)		17%		-19%
Current and prior year misstatement as a % of financial statement totals (Rollover Method)		17%		-19%

## **Exhibit B – Uncorrected Misstatements**

## SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT

State of South Carolina

Unemployment Compensation Fund

Year Ended June 30, 2022

## UNCORRECTED MISSTATEMENTS OF AMOUNTS

Effect of misstatements on:

Description	Assets	Liabilities	Fund Balance / Net Assets	Net Expense/Revenue and Change in Net Assets / Fund Balance
During our testing of cash, we noted that the balance of the Unemployment Compensation Trust deposits held by the STO/US Treasury was partially double-counted.	(6,100,000)	-	6,100,000	-
Net current year misstatements (Iron Curtain Method)	(6,100,000)	-	6,100,000	-
Net prior year misstatements	-	-	-	-
Combined current and prior year misstatements (Rollover Method)	\$ (6,100,000)	\$ -	\$ 6,100,000	\$ -
Financial statement totals	\$ 1,648,985,000	\$ 107,692,000	\$ (1,541,293,000)	\$ (25,462,800)
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	0%		0%	
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	0%		0%	



## **Exhibit C – Management Representations**



State of South Carolina  
**Office of Comptroller General**

1200 Senate Street  
305 Wade Hampton Office Building  
Columbia, South Carolina 29201

Telephone: (803) 734-2121  
Fax: (803) 734-1765  
E-Mail: [cgooffice@cg.sc.gov](mailto:cgooffice@cg.sc.gov)

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL

WILLIAM E. GUNN  
CHIEF OF STAFF

November 29, 2022

Mr. Remi Omisore, CPA  
CliftonLarsonAllen LLP  
1966 Greenspring Drive, Suite 300  
Timonium, Maryland 21103

Mr. George L. Kennedy, III, CPA  
State Auditor  
South Carolina Office of the State Auditor  
1401 Main Street, Suite 1200  
Columbia, South Carolina 29201

This representation letter is provided in connection with your audit of the financial statements of the State of South Carolina (the State), which comprise the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information as of June 30, 2022, and the respective changes in financial position and, where applicable, cash flows for the year then ended, and the related notes to the financial statements, for the purpose of expressing opinions on whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

Except where otherwise stated below, immaterial matters less than \$1,000,000 are not considered to be exceptions requiring disclosure for the purpose of the following representations. This amount is not necessarily indicative of amounts that would require adjustment to or disclosure in the financial statements.

We confirm, to the best of our knowledge and belief, as of November 29, 2022, the following representations made to you during your audit.

**Financial Statements**

1. We have fulfilled our responsibilities, as set out in the terms of our engagement letter dated June 1, 2022 and South Carolina 2021-2022 Appropriations Act Section 97.2, for the preparation and fair presentation of the financial statements in accordance with U.S. GAAP. The financial statements include all properly classified funds and other financial information of the primary government and all component units required by U.S. GAAP to be included in the financial reporting entity.

November 29, 2022  
CliftonLarsonAllen LLP and South Carolina Office of the State Auditor  
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15. The State has no loss to be sustained as a result of other-than-temporary declines in the fair value of investments, except for the amounts that have been reflected in the financial statements.
16. The State has no transfers, reservations or designations of fund equity or interfund borrowings that were not properly authorized and approved, or uncollectible interfund loans that have not been properly reflected in the financial statements or disclosed to you.
17. We have no knowledge that during the year the amount of "uncollateralized" deposits or "uninsured, unregistered securities held by the counterparty, or by its trust department or agent but not in the State's name" significantly exceeded the amounts in those categories as of the financial statement date.
18. Receivables recorded in the financial statements represent valid claims against debtors for transactions arising on or before the financial statement date and have been reduced to their estimated net realizable value.
19. The State has no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, deferred outflows and inflows of financial resources, fund balance, or net position.
20. Capital assets have been evaluated for impairment as a result of significant and unexpected decline in service utility. Impairment loss and insurance recoveries have been properly recorded.
21. The State is responsible for determining the fair value of certain investments as required by Governmental Accounting Standards Board (GASB) Statements. The amounts reported represent the State's best estimate of fair value of investments required to be reported under the Statements. The State also has disclosed the methods and significant assumptions used to estimate the fair value of its investments, and the nature of investments reported at net asset value or amortized cost, as applicable.
22. The State has identified and properly accounted for all nonexchange transactions.
23. The following information about financial instruments with off-balance sheet risk and financial instruments with concentrations of credit risk, if applicable, has been properly disclosed in the basic financial statements:
  - a) The extent, nature, and terms, of financial instruments with off-balance sheet risk;
  - b) The amount of credit risk for financial instruments with off-balance sheet credit risk and information about the collateral supporting such financial instruments.
  - c) Significant concentrations of credit risk arising from all financial instruments and information about the collateral supporting such financial instruments.
24. We believe that all material expenditures that have been deferred to future periods will be recoverable.
25. The State has complied with all debt related covenants.
26. We believe that the actuarial assumptions and methods the State uses to measure pension and other post-employment benefit plan liabilities, related deferred inflows and outflows, and costs for financial accounting and disclosure purposes are consistent with prevailing assumptions and methods used.

November 29, 2022  
CliftonLarsonAllen LLP and South Carolina Office of the State Auditor  
Page 2

2. We acknowledge and have fulfilled our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge the State's responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
4. We have recorded or disclosed all accounting estimates that could be material to the financial statements in accordance with the requirements of U.S. GAAP. We believe those estimates and the key factors and significant assumptions underlying those estimates, including those measured at fair value, are reasonable and have been consistently applied. While our estimates are reviewed periodically, estimates could change materially within the next year.
5. Related party relationships and transactions, including, but not limited to, revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
6. All events occurring subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
7. Special and extraordinary items have been appropriately classified and reported, if applicable.
8. The effects of uncorrected misstatements are immaterial, both individually and in the aggregate, to the financial statements for each opinion unit. A list of the uncorrected misstatements is attached to the representation letter.
9. We have made all adjustments to convert our financial information from budgetary to accrual and modified accrual basis and acknowledge that we are responsible for the accuracy and completeness of such accrual basis adjustments.
10. The State's reporting entity includes all entities that are component units of the State. Such component units have been properly presented as either blended or discretely presented. Investments in joint ventures in which the State holds an equity interest have been properly recorded on the statement of net position. The basic financial statements disclose all other joint ventures and other related organizations.
11. The effects of all known actual or possible litigation, claims, and assessments have been accounted for and disclosed in accordance with U.S. GAAP.
12. Guarantees, whether written or oral, under which the State is contingently liable, if any, have been properly recorded or disclosed in accordance with U.S. GAAP.
13. Arrangements with financial institutions involving repurchase, reverse repurchase, or securities lending agreements, compensating balances, or other arrangements involving restrictions on cash balances and line-of-credit or similar arrangements, have been properly recorded or disclosed in the financial statements.
14. The State has no material amounts of obsolete, damaged, or unusable items included in inventories at greater than salvage values.

November 29, 2022  
CliftonLarsonAllen LLP and South Carolina Office of the State Auditor  
Page 4

27. We believe the methodology used to measure the State's Medicaid liability was consistent with the prior year and is proper based on available data and that there have not been any material subsequent claims or events that would require a change in that methodology.
28. We have no knowledge that the State plans to make significant amendments to its pension or other post-employment benefit plans.
29. We are not aware of any pollution remediation obligations which would require an adjustment to, or disclosure in, the financial statements in accordance with GASB 49, *Accounting and Financial Reporting for Pollution Remediation Obligations*, except as already reported.
30. We are not aware of any intangible assets which would require an adjustment to or disclosure in the financial statements in accordance with GASB Statements, except as already reported.
31. We have properly accounted for financing arrangements that use derivatives in accordance with GASB Statements.
32. We have evaluated GASB Statement No. 77 *Tax Abatement Disclosures* and have determined that there are no tax abatements for which the State would have to disclose in the financial statements.

**Information Provided**

33. We have provided you with:
  - a) Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters.
  - b) Additional information that you have requested from us for the purpose of the audit.
  - c) Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
  - d) All minutes, which we make available to you at [www.sfaa.sc.gov](http://www.sfaa.sc.gov), of the meetings of the State Fiscal Accountability Authority, except that you must obtain summaries of actions for recent meetings for which minutes have not yet been prepared from the Secretary of the State Fiscal Accountability Authority because our office customarily is not provided such summaries before the Authority's official minutes are drafted.
  - e) All communications, of which we are aware, from regulatory agencies, grantors, lenders, and other funding sources concerning noncompliance with the provisions of laws, regulations, contracts, and grant agreements.
  - f) Access to all audit or relevant monitoring reports of which we are aware, if any, received from funding sources.
34. All material transactions have been recorded in the accounting records and are reflected in the financial statements.
35. We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud. We understand the term "fraud" includes misstatements arising from fraudulent reporting and misstatements arising from misappropriation of assets.

Misstatements arising from fraudulent financial reporting are intentional misstatements, or omissions of amounts or disclosures in financial statements intended to deceive financial users. Misstatements arising from misappropriations of assets involve the theft of the State's assets where the effect of the theft causes basic financial statements not to be presented in conformity with U.S. GAAP.

36. Except for what we have disclosed to you in our meeting on November 15, 2022, we have no knowledge, nor have we been informed by State investigative agencies (including the State Inspector General's Office and the State Law Enforcement Division), of any fraud or suspected fraud that affects the entity and involves:
- Management;
  - Employees who have significant roles in internal control; or
  - Others when the fraud could have a material effect on the financial statements.
37. Except for what we have disclosed to you, we have no knowledge of any instances of noncompliance or suspected noncompliance with laws and regulations and provisions of contracts and grant agreements, or waste or abuse whose effects should be considered when preparing financial statements.
38. We have disclosed to you all known actual or possible litigation, claims, and assessments whose effects should be considered when preparing the financial statements.
39. There are no unasserted claims or assessments that we have been advised of that are probable of assertion and required to be disclosed that have not been previously reported to you. In addition, there are no other material liabilities or gains or loss contingencies that are required to be disclosed that have not been disclosed in the financial statements or previously disclosed to you.
40. We have disclosed to you the identity of the State's related parties and all the related party relationships and transactions of which we are aware. We understand that the term "related party" refers to affiliates of the State; entities for which investments are accounted for using the equity method by the State; and trusts for benefit of employees, such as pension and other post-employment benefit trusts that are managed by or under the trusteeship of management.
41. The State has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets, nor has any asset been pledged as collateral, except as made known to you and disclosed in the financial statements.
42. We have a process to track the status of audit findings and recommendations.
43. We have identified to you any previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.
44. We will provide our views on reported findings, conclusions, and recommendations, as well as our planned corrective actions, for the Report on Internal Control upon the receipt of such items from you.
45. The State is responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to the State of South Carolina, including tax or debt limits and debt contracts; and we have identified and disclosed to you all laws, regulations, and provisions of contracts and grant agreements that we believe have a direct and material effect on the determination of financial

statement amounts or other financial data significant to the audit objectives, including legal and contractual provisions for reporting specific activities in separate funds.

46. Except those that have been disclosed to you, we are not aware of any violations or possible violations of budget ordinances, laws and regulations, provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the financial statements, or as a basis for recording a loss contingency, or for reporting on noncompliance.
47. We are not aware of any noncompliance with any restrictions on resources or on any aspects of contractual and grant agreements that would have a material effect on the financial statements in the event of noncompliance.
48. The State has followed all applicable laws and regulations in adopting, approving, and amending budgets.
49. All funds that meet the quantitative criteria in GASB Statements for presentation as major are identified and presented as such and all other funds that are presented as major are particularly important to financial statement users.
50. Components of net position (net investment in capital assets; restricted; and unrestricted) and fund balance amounts are properly classified and, if applicable, approved.
51. Investments, derivative instruments, and land and other real estate held by endowments are properly valued.
52. Provisions for uncollectible receivables have been properly identified and recorded.
53. Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.
54. Revenues are appropriately classified in the statement of activities within program revenues, general revenues, additions to endowments, and transfers.
55. Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported.
56. Deposits and investment securities and derivative instruments are properly classified as to risk and are properly valued and disclosed.
57. Capital assets, including infrastructure and intangible assets, are properly capitalized, reported, and, if applicable, depreciated.
58. We have appropriately disclosed the State's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position is available and have determined that net position is properly recognized under the policy.
59. We acknowledge our responsibility for the required supplementary information (RSI). The RSI is measured and presented within prescribed guidelines and the methods of measurement and

presentation have not changed from those used in the prior period. We have disclosed to you any significant assumptions and interpretations underlying the measurement and presentation of the RSI.

60. We acknowledge our responsibility for the combining and other schedules presented in the financial statements as supplementary information (and listed as such in the table of contents) and we believe the supplementary information, including its form and content, is fairly presented in accordance with U.S. GAAP. The methods of measurement and presentation of the supplementary information have not changed from those used in the prior period, except for the impact of the implementation of new accounting pronouncements as disclosed in the financial statements, and we have disclosed to you any significant assumptions or interpretations underlying the measurement and presentation of the supplementary information.
61. We acknowledge our responsibility for the preparation of the other information included in our annual report, which is comprised of the introductory section and statistical section (other information). The other information is consistent with the financial statements and does not contain any material misstatements.
62. We have implemented GASB Statement Number 87, *Leases*, during the audit period. We have implemented the new accounting standard in accordance with the guidance prescribed in the statement. We have sufficient and appropriate documentation supporting all estimates and judgements underlying the amounts recorded and disclosed in the financial statements. We have analyzed all lease contracts and have considered, and recorded material embedded leases contained within other contracts in accordance with GASB statement No. 87.
63. As described in the notes of the financial statements, the State has restated the prior year financial statements to correct a misstatement related to cash reporting; we have properly implemented the change and acknowledge responsibility for the adjustment.

Signature:  Title: COMPTROLLER GENERAL

Signature:  Title: SENIOR ASSISTANT COMPTROLLER GENERAL

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: 2022 Comprehensive Permanent Improvement Plan

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Section 2-47-55 of the 1976 South Carolina Code of Laws provides that all state agencies responsible for providing and maintaining physical facilities are required to submit a Comprehensive Permanent Improvement Plan to the Joint Bond Review Committee and the State Fiscal Accountability Authority. The Comprehensive Permanent Improvement Plan is a planning tool that informs decisionmakers of the permanent improvement projects state agencies and institutions of higher education plan to undertake during the next five fiscal years. Each project included in the plan must subsequently be brought forward for consideration individually. The Executive Budget Office of the South Carolina Department of Administration has 1) compiled a statewide report entitled "State of South Carolina 2022 Comprehensive Permanent Improvement Plan, Fiscal Years 2022-23 through 2026-27" from agency submissions; 2) provided the information to the Joint Bond Review Committee and the State Fiscal Accountability Authority pursuant to the statute; and 3) made accessible complete and full details of agency submissions on the Department's website at: <https://www.admin.sc.gov/budget/cpip>.

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AUTHORITY ACTION REQUESTED:

Approve the 2022 Comprehensive Permanent Improvement Plan.

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ATTACHMENTS:

Agenda item worksheet; State of South Carolina Comprehensive Permanent Improvement Plan, Fiscal Years 2022-23 through 2026-27; Section 2-47-55 of the 1976 South Carolina Code of Laws

## STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

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Meeting Scheduled for: January 31, 2023

Regular Agenda

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**1. Submitted By:**

(a) Agency: Department of Administration

(b) Authorized Official Signature:

  
Brian J. Gaines Director, Executive Budget Office

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**2. Subject: 2022 Comprehensive Permanent Improvement Plan**

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**3. Summary Background Information:**

Section 2-47-55 of the 1976 South Carolina Code of Laws provides that all state agencies responsible for providing and maintaining physical facilities are required to submit a Comprehensive Permanent Improvement Plan to the Joint Bond Review Committee and the State Fiscal Accountability Authority. The Comprehensive Permanent Improvement Plan is a planning tool that informs decisionmakers of the permanent improvement projects state agencies and institutions of higher education plan to undertake during the next five fiscal years. Each project included in the plan must subsequently be brought forward for consideration individually. The Executive Budget Office of the South Carolina Department of Administration has 1) compiled a statewide report entitled "State of South Carolina 2022 Comprehensive Permanent Improvement Plan, Fiscal Years 2022-23 through 2026-27" from agency submissions; 2) provided the information to the Joint Bond Review Committee and the State Fiscal Accountability Authority pursuant to the statute; and 3) made accessible complete and full details of agency submissions on the Department's website at:

<https://www.admin.sc.gov/budget/cpip>.

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

Approve the 2022 Comprehensive Permanent Improvement Plan.

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**5. What is the recommendation of the Department of Administration?**

Approve the 2022 Comprehensive Permanent Improvement Plan.

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**6. Recommendation of other Division/Agency (as required)?**

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

(b) Division/Agency Name: \_\_\_\_\_

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**7. List of Supporting Documents:**

1. State of South Carolina Comprehensive Permanent Improvement Plan, Fiscal Years 2022-23 through 2026-27.
2. Section 2-47-55 of the 1976 South Carolina Code of Laws.

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

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**SUBJECT:** Permanent Improvement Projects

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The Authority is asked to approve the following permanent improvement project establishment requests and budget revisions as requested by the Department of Administration, Executive Budget Office as noted herein. All items were reviewed favorably by the Joint Bond Review Committee (JBRC).

- (a) Project: JBRC Separate Item: Clemson University  
H12.9952: Advanced Materials Innovation Complex Construction
- Request: Establish Phase II Full Construction Budget to construct an Advanced Materials Innovation Complex.
- Included in CPIP: Yes – 2022 CPIP Priority 4 of 9 in FY23 (estimated at \$130,000,000)
- CHE Approval: 12/02/22
- Phase I Approval: December 2021 (estimated at \$130,000,000) (SFAA)

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Institution Bonds				105,000,000	105,000,000
Other, Maintenance & Stewardship	1,800,000		1,800,000	23,200,000	25,000,000
All Sources	<u>1,800,000</u>		<u>1,800,000</u>	<u>128,200,000</u>	<u>130,000,000</u>

**Summary of Work:** This project will construct a 143,000 square foot facility that will include a variety of classrooms, wet and dry laboratories, faculty and administrative offices, lecture halls, seminar rooms and shared spaces that, per the university, will encourage greater collaboration among students, faculty, staff and industry partners in the science and engineering disciplines. The new building will include a built-up modified bitumen roof membrane system that will come with a minimum 20-year material and 5-year workmanship warranty.

**Rationale:** Per the university, this facility is essential to support the significant research and enrollment growth in Chemistry, Materials Science and Engineering, and Chemical and Biomolecular Engineering programs and related programs, and to maintain Clemson's contributions to the state as a public, top-tier research university. Research expenditures in these fields are expected to reach approximately \$17 million annually by 2026, which is critical to supporting the research goals in the university's strategic plan. The current lack of chemistry facilities and laboratory space on campus will limit the university's ability to serve more students in these programs, making this facility critical to serving the state's growing educational and workforce needs.

**Facility Characteristics:** The new building to be constructed will be approximately 143,000 square feet and will house the Chemistry, Materials Science and Engineering, and Chemical and Biomolecular Engineering Departments and related programs. The building will support approximately 120 faculty and staff located in the building and up to 180 graduate assistants assigned to the research labs. In addition, the undergraduate labs will accommodate more than 12,000 students a week.

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: Permanent Improvement Projects

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Financial Impact: This phase of the project will be funded from State Institution Bonds (\$105 million to be issued) and Maintenance and Stewardship Funds (uncommitted balance \$57 million at October 17, 2022). Revenue to this fund is generated from tuition, matriculation and other debt retirement and plant transfers revenues that are not formally obligated to fund debt service in the current period and that are responsibly transferred to and managed by the State Treasurer until the time of their State Treasurer approved qualified use. The project is expected to result in an increase of \$1,209,000 (year 1), \$1,254,270 (year 2), and \$1,282,628 (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 \$1,005 per student per semester, and has increased from \$738 to \$1,005 for the academic years 2014-2015 to 2022-2023. The project will be constructed to meet Green Globes Certification Standards with projected energy savings of \$6,457,232 over a 30-year period.

Full Project Estimate: \$130,000,000 (internal) funded by State Institution Bonds and Maintenance and Stewardship Funds.

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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 1: College of Charleston  
H15.9680: Buist Residence Hall 2024 Renovation
- Request:** Establish Phase I Pre-Design Budget to complete interior renovations and exterior envelope maintenance on the Buist Rivers Residence Hall.
- Included in CPIP:** Yes – 2022 CPIP Priority 6 of 9 in FY23 (estimated at \$5,000,000)
- CHE Approval:** 12/01/22

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Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, Housing Revenue				372,725	372,725
All Sources				<u>372,725</u>	<u>372,725</u>

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**Summary of Work:** The project will replace the plumbing and electrical infrastructure; replace the two-pipe HVAC and domestic hot water systems that are original to the building; replace lighting with LED fixtures; redesign the six community restrooms for increased privacy/security; and renovate the community lounge, laundry and kitchen spaces. All interior finishes, furniture and signage will also be replaced. On the exterior, envelope maintenance (flashing repairs and recaulking) will be completed.

**Rationale:** The copper pipes for HVAC are over 50 years old and are corroding, creating leaks through rooms below. Concealed HVAC pipe insulation is believed to contain asbestos. The last significant renovation was in 2008 and included roof replacement, new windows, and resealing exterior stucco. Select HVAC and restroom upgrades, and a new fire sprinkler and alarm system were also included.

**Facility Characteristics:** Buist Rivers Residence Hall is 30,364 gross square feet and was constructed in 1967 (55 years old). The four-level building is a 108-bed traditional style residence hall and was the College's first dedicated all-female residential facility. The ground floor consists of common spaces. Each of the upper three floors contain 18 double-capacity student rooms, one community lounge and two community restrooms. In a typical academic year, the facility houses 108 undergraduate students among three identical floors. The residence hall also contains three administrative offices, a centralized laundry facility, a student lounge/assembly room, and a staff apartment.

**Financial Impact:** This project will be funded from Housing Revenue Funds (uncommitted balance \$15.97 million at September 22, 2022). Revenues to this fund are generated through the Student Housing Fee, paid per-semester by students who reside in on-campus housing. The fee varies based on amenities, condition, and age of the college's 13 residence halls and 24 historic student residences. The project is expected to result in a decrease of \$6,000 (year 1), \$6,180 (year 2), and \$6,365 (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 \$906 per student per semester, and has increased from \$781 to \$906 for the academic years 2014-2015 to 2022-2023. \$483 of the \$966 is currently pledged for debt service. The balance of the fee, \$483 per student, per semester, is used to fund ongoing capital projects and maintenance.



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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: Permanent Improvement Projects

Full Project Estimate: \$14,909,020 (internal) funded by Housing Revenue Funds.

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

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**SUBJECT:** Permanent Improvement Projects

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(c) Project: JBRC Item 2: Francis Marion University  
H18.9582: Smith University Center Renovations & Improvements

Request: Increase Phase II Full Construction Budget and Change Source of Funds to complete renovations to the women's and men's locker rooms, showers, athletic training facilities and offices.

Included in CPIP: No – The required increase was not known at the time of the 2022 CPIP submission.  
Phase I Approval: September 2021 (estimated at \$4,000,000) (SFAA)

Change Source of Funds & Phase II Approval: Approval 2022 (estimated at \$4,000,000) (SFAA)  
CHE Approval: 12/01/22

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Revenue Bonds		4,000,000	4,000,000		4,000,000
Other, FMU Maintenance Reserve	60,000	(60,000)		1,000,000	1,000,000
All Sources	<u>60,000</u>	<u>3,940,000</u>	<u>4,000,000</u>	<u>1,000,000</u>	<u>5,000,000</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: After the first design review meeting occurred, it was determined that additional funds are needed in order to renovate the 8 priority areas (locker rooms, training room, office space, commons lobby, weight room, gymnasium, exterior entrances, and decommissioning the indoor pool). 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 (48 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

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: Permanent Improvement Projects

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: This increase will be funded from Maintenance Reserve Funds (uncommitted balance \$15.49 million at December 2, 2022). The project is expected to result in a decrease of \$25,000 (year 1), and \$50,000 (years 2 thru 3), in annual operating expenses. A portion of tuition is designated for capital improvements, currently \$200 per student per semester, and has increased from \$100 to \$200 for the academic years 2014-2015 to 2022-2023.

Full Project Estimate: \$5,000,000 (internal) funded by Athletic Revenue Bonds and Maintenance Reserve Funds. Construction completion is expected in June 2023.

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

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**SUBJECT:** Permanent Improvement Projects

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(d) Project: JBRC Item 3: Winthrop University  
H47.9606: New Cafeteria

Request: Establish Phase I Predesign Budget to construct a new cafeteria to replace the existing Thomson Cafeteria.

Included in CPIP: Yes – 2022 CPIP Priority 6 of 18 in FY23 (estimated at \$10,000,000)  
CHE Approval: 11/16/22

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Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
FY22 Capital Reserve				157,500	157,500
All Sources				<u>157,500</u>	<u>157,500</u>

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**Summary of Work:** This project will construct a new standalone approximately 15,600 square feet cafeteria. The location for the new cafeteria was sited during the campus master plan in a gravel parking lot. However, during the study for the sizing of the cafeteria the Richardson residence hall site was proposed (Richardson is closed and slated for abatement & demolition). Through the programming/schematic design process both these options will be reviewed by the design firm, who will provide a recommendation on the siting. Additionally, the final extent of the construction will be determined during the Phase I process. All roofing material options will be evaluated during the Phase I process and the roof will come with a minimum 20-year material and workmanship warranty.

**Rationale:** The age, layout and condition, as well as inherent infrastructure issues in the current Thomson Cafeteria make renovation a more expensive option than constructing a new one, per the university. Additionally, the work would have to be completed over multiple summers to not impact food service to students. Constructing a new cafeteria facility will allow existing Thomson to stay on-line during construction. Once the existing cafeteria is vacated, studies will be completed for future re-purposing of the space.

**Facility Characteristics:** Thomson Cafeteria is 26,859 square feet and was constructed in 1964 (58 years old). It is one of the main sources of food service to the Winthrop campus. The cafeteria will be used by the 1,622 on campus residents plus faculty and staff.

**Financial Impact:** This phase of the project will be funded from FY22 Capital Reserve Funds (uncommitted balance \$2.5 million at September 30, 2022). The project is not expected to result in any change in annual operating expenditures. No student fees or tuition will be increased as a consequence of the project. A portion of tuition is designated for capital improvements, currently \$543 per student per semester, and has decreased from \$593 to \$543 for the academic years 2014-2015 to 2022-2023.

**Full Project Estimate:** \$10,500,000 (internal) funded by FY22 Capital Reserve. Phase II will be funded by \$8,000,000 in Revenue Bonds and \$2,342,500 in FY22 Capital Reserve Funds.

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

**SUBJECT:** Permanent Improvement Projects

- (e) **Project:** JBRC Item 4: Winthrop University  
H47.9587: Lee Wicker Hall: Auxiliary Building Infrastructure & Envelope Upgrade
- Request:** Establish Phase II Full Construction Budget to replace the roof and address exterior repairs.
- Included in CPIP:** Yes – 2022 CPIP Priority 5 of 18 in FY23 (estimated at \$1,100,000)
- Phase I Approval:** May 2021 (estimated at \$1,750,000) (SFAA)
- CHE Approval:** 12/01/22

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, Auxiliary Housing	26,250		26,250	2,773,750	2,800,000
All Sources	<u>26,250</u>		<u>26,250</u>	<u>2,773,750</u>	<u>2,800,000</u>

**Summary of Work:** The project scope will address roof replacement, envelope repairs, and architectural details (wood boxing) to Lee Wicker Residence Hall. The existing roof materials are transite shingles, which were originally a Johns Manville product and is an asbestos-cement product but became a generic term for other company's similar products. The university expects that the new steep-slope roof system will be either standing metal or asphalt shingles. The final material selection will depend on product availability and pricing. The university expects that the new low-slope roof system will be a two-ply SBS modified bitumen roof system. The new roof will come with a minimum 20-year material and workmanship warranty. The building envelope repairs, and architectural detail work involves the exterior brick masonry that normally stops just below the architectural detailing (boxing) thus exposing the envelope to the elements and often allows wildlife into the building. The project will replace the boxing around the perimeter of the building.

**Rationale:** The existing transite tile roof is 60 years old and has tiles that are falling off, leaving a void for water entry. The water is also damaging the underlying roof decking.

**Facility Characteristics:** Lee Wicker Residence Hall is 69,382 square feet and was constructed in 1943 (79 years old). The existing roof was installed in 1962 (60 years old). The roof and mechanical, electrical, and plumbing systems are original to the building. The residence has houses approximately 282 students.

**Financial Impact:** This phase of the project will be funded from Other, Auxiliary Housing Funds (uncommitted balance \$12.31 million at October 31, 2022). The project is expected to result in a decrease of \$10,000 (years 1 thru 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 \$543 per student per semester, and has decreased from \$593 to \$543 for the academic years 2014-2015 to 2022-2023.

**Full Project Estimate:** \$2,800,000 (internal) funded by Auxiliary Housing Funds. The estimated cost to complete this project has increased from Phase I and the 2022 CPIP submission due to current increases of construction costs.

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

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**SUBJECT:** Permanent Improvement Projects

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- (f) **Project:** JBRC Item 6: Department of Administration  
D50.6082: SLED Former Forensics Laboratory Renovation
- Request:** Establish Phase II Full Construction Budget to renovate the former SLED Forensics Laboratory.
- Included in CIP:** Yes – SLED 2022 CIP Priority 1 of 2 in FY23 (estimated at \$9,124,500)
- Phase I Approval:** October 2021 (estimated at \$9,124,758) (SFAA)
- Phase I Increase Approval:** December 2021 (estimated at \$9,124,755) (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, SLED (Record Search Fees)	156,871	45,624	202,495	17,238,142	17,440,637
All Sources	<u>156,871</u>	<u>45,624</u>	<u>202,495</u>	<u>17,238,142</u>	<u>17,440,637</u>

**Summary of Work:** This Construction Management at Risk project, which was issued to Hood Construction, will repurpose this facility into an office building by completing an entire interior renovation to include new interior walls, ceilings, doors, building systems, and full modernization of the two existing elevators. The existing thermoplastic polyolefin (TPO) roof membrane system will be replaced with a PVC/KEE thermoplastic room membrane and come with a minimum 20-year material and workmanship warranty. Additionally, the security fencing will be extended. During the Phase I process it was determined that no structural modifications would be required. The existing building structure will meet the requirements of a Class IV type occupancy.

**Rationale:** The construction of the new replacement Forensics Laboratory will vacate the former Forensics Laboratory building. Renovation of this facility into an office building will allow for functional consolidation of work units and allow the removal of personnel from buildings not suitable for utilization as office facilities. This step will allow the Regulatory department, currently spread into multiple locations, to be consolidated into a single location. The Midlands District and Narcotics units will then be allowed to return to the Broad River Road campus. The renovated building will be a modernized facility for safe use by the occupants and the owner, per the agency.

**Facility Characteristics:** The Forensics Laboratory building is 70,155 square feet and was constructed in 1989 (33 years old). Approximately 67,023 square feet of this building will be renovated in this project. Approximately 260 employees of SLED Investigations, Administrative, Fusion Center and Regulatory operations, will utilize the renovated space.

**Financial Impact:** The project will be funded from SLED Record Search Fees (uncommitted balance \$38 million at October 24, 2022). Revenue to this fund is generated from SLED Record Search Fees. The project is expected to result in an increase of \$211,950 (year 1), and \$423,900 (years 2 and 3), in annual operating expenses.

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: Permanent Improvement Projects

Full Project Estimate: \$17,440,637 (internal) funded by SLED Record Search Fee Funds. Contract execution is expected in March 2023 and completion of construction in September 2024. The estimated cost to complete the project has increased from Phase I and the 2022 CPIP submission due to a 7,023 square foot increase to be renovated, addition of information technology and furniture, fixtures and equipment, and increases in construction costs.

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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 7: Governor's School for the Arts and Humanities  
H64.9525: Dining Hall Renovation

Request: Establish Phase I Pre-Design Budget to expand the dining space.

Included in CPIP: Yes – 2022 CPIP Priority 1 of 1 in FY23 (estimated at \$512,950)

CHE Approval: N/A

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Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Appropriated State, FY23 Proviso 118.19 (9)				15,389	15,389
All Sources				<u>15,389</u>	<u>15,389</u>

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**Summary of Work:** The project will expand the dining hall by approximately 2,444 square feet to accommodate up to 140 seats by relocating offices. The work will include the demolition of several non-load bearing walls, relocation of serving lines, new flooring, and all new furniture. No major renovations, or renovations to any exterior walls is required.

**Rationale:** The dining hall is only rated to accommodate 75 people and the current dining facilities are not readily usable by students with mobility challenges and does not meet current standards for accessibility. Having maintained the original furnishings that are over 20 years old, the dining area is outdated and institutional.

**Facility Characteristics:** The Dining Hall is approximately 2,037 square feet and was constructed in 1991 (31 years old). The facility is used to serve all meals for students, staff, and for special events such as parent weekends, orientation, and any other large student events. There are 238 students and 75 staff that dine their daily.

**Financial Impact:** This phase of the project will be funded from FY23 Appropriated State (nonrecurring) Funds (uncommitted balance \$512,950 at October 27, 2022). The project is not expected to result in any change in annual operating expenditures.

**Full Project Estimate:** \$1,235,900 (internal) funded by FY23 Appropriated State (nonrecurring) Fund. Phase II will be funded by \$210,000 in funds contractually obligated for this project from Aramark, \$497,561 in FY23 Appropriated State (nonrecurring) Funds, and the agency is requesting an additional \$512,950 in their FY2023-2024 Budget Request to fund the remainder of the project.



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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 12: Department of Public Safety  
K05.9617: Blythewood Complex Chiller Replacement

Request: Establish Phase II Full Construction Budget to replace a 530-ton chiller, cooling tower, and associated pumps at the DPS/DMV headquarters' buildings.

Included in CIP: Yes – 2022 CIP Priority 2 of 3 in FY23 (estimated at \$2,000,000)

Phase I Approval: April 2022 (estimated at \$1,292,000) (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
Appropriated State, FY22 Carryforward				708,000	708,000
Other, DPS Building	19,400		19,400	954,452	973,852
All Sources	<u>19,400</u>		<u>19,400</u>	<u>1,662,452</u>	<u>1,681,852</u>

Summary of Work: The project will replace a 530-ton chiller, cooling tower, and associated pumps at the DPS/DMV headquarters buildings with a 600-ton chiller system. Two 300-ton chillers are currently used to cool the almost 300,000 square foot complex. The 530-ton system is currently used as a temporary back-up to the smaller chillers.

Rationale: An assessment stated the total connected chilled water load for these two buildings is approximately 750 tons. Consequently, the two chillers are not sufficient to maintain essential temperatures and humidity levels, which has been a problem in both buildings. The system has been repaired numerous times, many of the parts are obsolete, and the refrigerant required for its operation is expensive and difficult to locate. Per the agency, this leaves two agency headquarters' facilities with inadequate cooling and no real mechanical redundancy. A new chiller, cooling tower, and associated pumps would solve that problem and provide for greater efficiency. The 300-ton chillers would then only be used when peak temperatures occur and could be cycled on and off as designed.

Facility Characteristics: The existing chiller and cooling tower are original to the buildings constructed in 1993 (29 years old). These systems serve the DPS Headquarters' Building and DMV Headquarters' Building which house 795 employees and receive approximately 1,150 visitors a month.

Financial Impact: This phase of the project will be funded from Appropriated State, FY22 Carryforward (uncommitted balance \$708K at November 14, 2022) and DPS Buildings Funds (\$4.78 million commitment at November 14, 2022). Revenue received to the DPS Building Fund is from the late penalty fee on vehicle registrations. This money is collected by the Department of Motor Vehicles and transferred to DPS. The project is expected to result in a decrease of \$50,000 (year 1), and \$75,000 (years 2 thru 3), in annual operating expenses.

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: Permanent Improvement Projects

Full Project Estimate: \$1,681,852 (internal) funded by Appropriated State, FY22 Carryforward and DPS Building Funds. Contract execution is expected in May 2023 with construction completion in November 2023.

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

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**SUBJECT:** Permanent Improvement Projects

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(i) **Project:** JBRC Item 13: Department of Juvenile Justice  
N12.9619: Laurel Unit Safety Modifications

**Request:** Increase Phase II Full Construction Budget to cover the cost of installing 12-gauge galvanized sheet metal in the ceilings in the Laurel Unit on the Broad River Road Campus in Columbia.

**Included in CPIP:** No – The need for the increase was not known until after submission of the 2022 CPIP.  
**Phase II Approval:** January 2022 (estimated at \$1,759,868) (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
Appropriated State, FY21 Carryforward	1,759,868		1,759,868		1,759,868
Appropriated State, FY22 Carryforward				200,000	200,000
All Sources	<u>1,759,868</u>		<u>1,759,868</u>	<u>200,000</u>	<u>1,958,868</u>

**Summary of Work:** The project is already in progress as an emergency project for which notification was provided to JBRC on November 19, 2021. The project includes two youth pods with 12 beds each (24 total). The scope includes new doors with electric locking mechanisms which will prevent the doors from opening automatically in a power outage. The scope also includes the installation of a raised drywall and metal ceiling in the youth pods and replacement of the acoustical ceiling tile in the housing control areas, anti-ligature lighting, replacement of the tile in the showers with flowrock, secure shower doors, and associated electrical and mechanical work including fire sprinkler head adjustments, plumbing and HVAC. Installing 12-gauge galvanized sheet metal in the ceilings consists of: 1) Installing 3X3, 3/16 angle at the perimeter of all sheet metal, 2) Installing sheet metal and angle with toggle bolts that will be tack welded after install, 3) Stitch weld seams of sheet metal 4) Stitch weld edges of sheet metal to existing registers, 5) Remove 2X2 LED lights, 6) Replace with Shat-r-shield ironclad pro fixture, and 7) Epoxy coat ceilings.

**Rationale:** The existing ceiling and lights in a specific area of Laurel (different from original scope), was compromised by the youth and significantly damaged during an event. Because of this, damaged pieces of the ceiling and lights cause a safety concern and escape issue. Several juveniles got out of the pods within the unit the week of November 15, 2021 and the State Law Enforcement Division was called in to assist. The door locking systems in the facility were compromised and had to be replaced immediately to ensure the safety of juveniles and staff. Additionally, the existing ceiling and lights were significantly damaged by the juveniles, and, because of the damage, pieces of the ceiling and lights could potentially be used as weapons, as could damaged and chipping tile in the showers.

**Facility Characteristics:** The Laurel Unit is 28,765 square feet and was constructed in 1976 (46 years old). Approximately 10,000 square feet of this building will be renovated as part of this

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: Permanent Improvement Projects

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project. The Laurel Unit is a secure confinement space utilized by youth who require additional supports for behavior management. Youth are supervised by staff within the Division of Institutional Services, the division responsible for the care, custody and control of youth in facilities. Approximately 22 youth and 27 staff utilize the associated space in the building monthly.

Financial Impact: This phase of the project will be funded from Appropriated State, FY22 Carryforward Funds (uncommitted balance \$13.23 million at November 30, 2022). The project is not expected to result in any change in annual operating expenditures.

Full Project Estimate: \$1,959,868 (internal) funded by FY21 & FY22 Carryforward Funds. Construction completion is anticipated in January 2023.

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AUTHORITY ACTION REQUESTED:

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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:

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Agenda item worksheet and attachments

**SFAA Items - January 31, 2023**

SFAA Item	JBRC Item2	Agency Code	Agency Name	Project ID	Project Name	Final Approval Type Needed	Action Proposed	Included in CIP??	Current Budget	Requested Change	Phase I	Total Phase II Budget	SOF (excludes proposed Phase II if currently seeking Phase I)	Notes
(a)	sep.	H12	Clemson University	9952	Advanced Materials Innovation Complex Construction	SFAA	Establish Phase II	Yes	1,800,000	128,200,000	1,800,000	130,000,000	Institution Bonds / Other - Maintenance & Stewardship	Approved 12/01/22
(b)	1	H15	College of Charleston	9680	Buist Residence Hall 2024 Renovation	SFAA	Establish Phase I	Yes	-	372,725	372,725	14,929,020	Other - Housing Revenue	Approved 12/01/22
(c)	2	H18	Francis Marion University	9582	Smith University Center Renovations/Improvements	SFAA	Phase II Increase	No	4,000,000	1,000,000	60,000	5,000,000	Revenue Bonds / Other - FMU Maintenance Reserve	Approved 12/01/22
(d)	3	H47	Winthrop University	9606	New Cafeteria	SFAA	Establish Phase I	Yes	-	157,500	157,500	10,500,000	FY22 Capital Reserve	Approved 11/16/22
(e)	4	H47	Winthrop University	9587	Lee Wicker Hall: Auxiliary Building Infrastructure & Envelope Upgrade	SFAA	Establish Phase II	Yes	26,250	2,773,750	26,250	2,800,000	Other - Auxiliary Housing	Approved 12/01/22
(f)	6	D50	Department of Administration	6082	SLED Former Forensics Laboratory Renovation	SFAA	Establish Phase II	Yes	202,495	17,238,142	202,495	17,440,637	Other - SLED Record Search Fees	
(g)	7	H64	Governor's School for the Arts and Humanities	9525	Dining Hall Renovation	SFAA	Establish Phase I	Yes	-	15,389	15,389	1,235,900	Appropriated State - FY23 Proviso 118.19	
(h)	12	K05	Department of Public Safety	9617	Blythewood Complex Chiller Replacement	SFAA	Establish Phase II	Yes	19,400	1,662,452	19,400	1,681,852	Appropriated State - FY22 Carryforward / Other - DPS Building	
(i)	13	N12	Department of Juvenile Justice	9619	Laurel Unit Safety Modifications	SFAA	Phase II Increase	No	1,759,868	200,000	-	1,959,868	Appropriated State - FY21 & FY22 Carryforward	

# STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: **January 31, 2023**

**Regular Agenda**

**1. Submitted By:**

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

  
Brian J. Gaines, Director, Executive Budget Office

**2. Permanent Improvement Projects**

**3. Summary Background Information:**

- (a) Project: JBRC Separate Item: Clemson University  
H12.9952: Advanced Materials Innovation Complex Construction
- Request: Establish Phase II Full Construction Budget to construct an Advanced Materials Innovation Complex.
- Included in CPIP: Yes – 2022 CPIP Priority 4 of 9 in FY23 (estimated at \$130,000,000)
- CHE Approval: 12/02/22
- Phase I Approval: December 2021 (estimated at \$130,000,000) (SFAA)

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Institution Bonds				105,000,000	105,000,000
Other, Maintenance & Stewardship	1,800,000		1,800,000	23,200,000	25,000,000
All Sources	<u>1,800,000</u>		<u>1,800,000</u>	<u>128,200,000</u>	<u>130,000,000</u>

**Summary of Work:** This project will construct a 143,000 square foot facility that will include a variety of classrooms, wet and dry laboratories, faculty and administrative offices, lecture halls, seminar rooms and shared spaces that, per the university, will encourage greater collaboration among students, faculty, staff and industry partners in the science and engineering disciplines. The new building will include a built-up modified bitumen roof membrane system that will come with a minimum 20-year material and 5-year workmanship warranty.

**Rationale:** Per the university, this facility is essential to support the significant research and enrollment growth in Chemistry, Materials Science and Engineering, and Chemical and Biomolecular Engineering programs and related programs, and to maintain Clemson's contributions to the state as a public, top-tier research university. Research expenditures in these fields are expected to reach approximately \$17 million annually by 2026, which is critical to supporting the research goals in the university's strategic plan. The current lack of chemistry facilities and laboratory space on campus will limit the university's ability to serve more students in these programs, making this facility critical to serving the state's growing educational and workforce needs.

**Facility Characteristics:** The new building to be constructed will be approximately 143,000 square feet and will house the Chemistry, Materials Science and Engineering, and Chemical and Biomolecular Engineering Departments and related programs. The building will support approximately 120 faculty and staff located in the building and up to 180 graduate assistants assigned to the research labs. In addition, the undergraduate labs will accommodate more than 12,000 students a week.

**Financial Impact:** This phase of the project will be funded from State Institution Bonds (\$105 million to be issued) and Maintenance and Stewardship Funds (uncommitted balance \$57 million at October 17, 2022). Revenue to this fund is generated from tuition, matriculation and other debt retirement and plant transfers revenues that are not formally obligated to fund debt service in the current period and that are responsibly transferred to and managed by the State Treasurer until the time of their State Treasurer approved qualified use. The project is expected to result in an increase of \$1,209,000 (year 1), \$1,254,270 (year 2), and \$1,282,628 (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 \$1,005 per student per semester, and has increased from \$738 to \$1,005 for the academic years 2014-2015 to 2022-2023. The project will be constructed to meet Green Globes Certification Standards with projected energy savings of \$6,457,232 over a 30-year period.

**Full Project Estimate:** \$130,000,000 (internal) funded by State Institution Bonds and Maintenance and Stewardship Funds.

(b) Project: JBRC Item 1: College of Charleston  
H15.9680: Buist Residence Hall 2024 Renovation

Request: Establish Phase I Pre-Design Budget to complete interior renovations and exterior envelope maintenance on the Buist Rivers Residence Hall.

Included in CPIP: Yes – 2022 CPIP Priority 6 of 9 in FY23 (estimated at \$5,000,000)  
CHE Approval: 12/01/22

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, Housing Revenue				372,725	372,725
All Sources				<u>372,725</u>	<u>372,725</u>

Summary of Work: The project will replace the plumbing and electrical infrastructure; replace the two-pipe HVAC and domestic hot water systems that are original to the building; replace lighting with LED fixtures; redesign the six community restrooms for increased privacy/security; and renovate the community lounge, laundry and kitchen spaces. All interior finishes, furniture and signage will also be replaced. On the exterior, envelope maintenance (flashing repairs and recaulking) will be completed.

Rationale: The copper pipes for HVAC are over 50 years old and are corroding, creating leaks through rooms below. Concealed HVAC pipe insulation is believed to contain asbestos. The last significant renovation was in 2008 and included roof replacement, new windows, and resealing exterior stucco. Select HVAC and restroom upgrades, and a new fire sprinkler and alarm system were also included.

Facility Characteristics: Buist Rivers Residence Hall is 30,364 gross square feet and was constructed in 1967 (55 years old). The four-level building is a 108-bed traditional style residence hall and was the College's first dedicated all-female residential facility. The ground floor consists of common spaces. Each of the upper three floors contain 18 double-capacity student rooms, one community lounge and two community restrooms. In a typical academic year, the facility houses 108 undergraduate students among three identical floors. The residence hall also contains three administrative offices, a centralized laundry facility, a student lounge/assembly room, and a staff apartment.

Financial Impact: This project will be funded from Housing Revenue Funds (uncommitted balance \$15.97 million at September 22, 2022). Revenues to this fund are generated through the Student Housing Fee, paid per-semester by students who reside in on-campus housing. The fee varies based on amenities, condition, and age of the college's 13 residence halls and 24 historic student residences. The project is expected to result in a decrease of \$6,000 (year 1), \$6,180 (year 2), and \$6,365 (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 \$906 per student per semester, and has increased from \$781 to \$906 for the academic years 2014-2015 to 2022-2023. \$483 of the \$966 is currently pledged for debt service. The balance of the fee, \$483 per student, per semester, is used to fund ongoing capital projects and maintenance.

Full Project Estimate: \$14,909,020 (internal) funded by Housing Revenue Funds.



(c) Project: JBRC Item 2: Francis Marion University  
H18.9582: Smith University Center Renovations & Improvements

Request: Increase Phase II Full Construction Budget and Change Source of Funds to complete renovations to the women's and men's locker rooms, showers, athletic training facilities and offices.

Included in CPIP: No – The required increase was not known at the time of the 2022 CPIP submission.  
Phase I Approval: September 2021 (estimated at \$4,000,000) (SFAA)

Change Source of Funds & Phase II

Approval: Approval 2022 (estimated at \$4,000,000) (SFAA)

CHE Approval: 12/01/22

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Revenue Bonds		4,000,000	4,000,000		4,000,000
Other, FMU Maintenance Reserve	60,000	(60,000)		1,000,000	1,000,000
All Sources	<u>60,000</u>	<u>3,940,000</u>	<u>4,000,000</u>	<u>1,000,000</u>	<u>5,000,000</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: After the first design review meeting occurred, it was determined that additional funds are needed in order to renovate the 8 priority areas (locker rooms, training room, office space, commons lobby, weight room, gymnasium, exterior entrances, and decommissioning the indoor pool). 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 (48 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: This increase will be funded from Maintenance Reserve Funds (uncommitted balance \$15.49 million at December 2, 2022). The project is expected to result in a decrease of \$25,000 (year 1), and \$50,000 (years 2 thru 3), in annual operating expenses. A portion

of tuition is designated for capital improvements, currently \$200 per student per semester, and has increased from \$100 to \$200 for the academic years 2014-2015 to 2022-2023.

Full Project Estimate: \$5,000,000 (internal) funded by Athletic Revenue Bonds and Maintenance Reserve Funds. Construction completion is expected in June 2023.

(d) Project: JBRC Item 3: Winthrop University  
H47.9606: New Cafeteria

Request: Establish Phase I Predesign Budget to construct a new cafeteria to replace the existing Thomson Cafeteria.

Included in CPIP: Yes – 2022 CPIP Priority 6 of 18 in FY23 (estimated at \$10,000,000)  
CHE Approval: 11/16/22

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
FY22 Capital Reserve				157,500	157,500
All Sources				<u>157,500</u>	<u>157,500</u>

Summary of Work: This project will construct a new standalone approximately 15,600 square feet cafeteria. The location for the new cafeteria was sited during the campus master plan in a gravel parking lot. However, during the study for the sizing of the cafeteria the Richardson residence hall site was proposed (Richardson is closed and slated for abatement & demolition). Through the programming/schematic design process both these options will be reviewed by the design firm, who will provide a recommendation on the siting. Additionally, the final extent of the construction will be determined during the Phase I process. All roofing material options will be evaluated during the Phase I process and the roof will come with a minimum 20-year material and workmanship warranty.

Rationale: The age, layout and condition, as well as inherent infrastructure issues in the current Thomson Cafeteria make renovation a more expensive option than constructing a new one, per the university. Additionally, the work would have to be completed over multiple summers to not impact food service to students. Constructing a new cafeteria facility will allow existing Thomson to stay on-line during construction. Once the existing cafeteria is vacated, studies will be completed for future re-purposing of the space.

Facility Characteristics: Thomson Cafeteria is 26,859 square feet and was constructed in 1964 (58 years old). It is one of the main sources of food service to the Winthrop campus. The cafeteria will be used by the 1,622 on campus residents plus faculty and staff.

Financial Impact: This phase of the project will be funded from FY22 Capital Reserve Funds (uncommitted balance \$2.5 million at September 30, 2022). The project is not expected to result in any change in annual operating expenditures. No student fees or tuition will be increased as a consequence of the project. A portion of tuition is designated for capital improvements, currently \$543 per student per semester, and has decreased from \$593 to \$543 for the academic years 2014-2015 to 2022-2023.

Full Project Estimate: \$10,500,000 (internal) funded by FY22 Capital Reserve. Phase II will be funded by \$8,000,000 in Revenue Bonds and \$2,342,500 in FY22 Capital Reserve Funds.

(e) Project: JBRC Item 4: Winthrop University  
H47.9587: Lee Wicker Hall: Auxiliary Building Infrastructure & Envelope Upgrade

Request: Establish Phase II Full Construction Budget to replace the roof and address exterior repairs.

Included in CPIP: Yes – 2022 CPIP Priority 5 of 18 in FY23 (estimated at \$1,100,000)  
Phase I Approval: May 2021 (estimated at \$1,750,000) (SFAA)  
CHE Approval: 12/01/22

Source of Funds	Original Budget Amount	Cumulative Changes Since Original Budget	Current Budget	Adjustment Requested	Total Budget After Current Adjustment
Other, Auxiliary Housing	26,250		26,250	2,773,750	2,800,000
All Sources	<u>26,250</u>		<u>26,250</u>	<u>2,773,750</u>	<u>2,800,000</u>

Summary of Work: The project scope will address roof replacement, envelope repairs, and architectural details (wood boxing) to Lee Wicker Residence Hall. The existing roof materials are transite shingles, which were originally a Johns Manville product and is an asbestos-cement product but became a generic term for other company's similar products. The university expects that the new steep-slope roof system will be either standing metal or asphalt shingles. The final material selection will depend on product availability and pricing. The university expects that the new low-slope roof system will be a two-ply SBS modified bitumen roof system. The new roof will come with a minimum 20-year material and workmanship warranty. The building envelope repairs, and architectural detail work involves the exterior brick masonry that normally stops just below the architectural detailing (boxing) thus exposing the envelope to the elements and often allows wildlife into the building. The project will replace the boxing around the perimeter of the building.

Rationale: The existing transite tile roof is 60 years old and has tiles that are falling off, leaving a void for water entry. The water is also damaging the underlying roof decking.

Facility Characteristics: Lee Wicker Residence Hall is 69,382 square feet and was constructed in 1943 (79 years old). The existing roof was installed in 1962 (60 years old). The roof and mechanical, electrical, and plumbing systems are original to the building. The residence has houses approximately 282 students.

Financial Impact: This phase of the project will be funded from Other, Auxiliary Housing Funds (uncommitted balance \$12.31 million at October 31, 2022). The project is expected to result in a decrease of \$10,000 (years 1 thru 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 \$543 per student per semester, and has decreased from \$593 to \$543 for the academic years 2014-2015 to 2022-2023.

Full Project Estimate: \$2,800,000 (internal) funded by Auxiliary Housing Funds. The estimated cost to complete this project has increased from Phase I and the 2022 CPIP submission due to current increases of construction costs.

(f) Project: JBRC Item 6: Department of Administration  
D50.6082: SLED Former Forensics Laboratory Renovation

Request: Establish Phase II Full Construction Budget to renovate the former SLED Forensics Laboratory.

Included in CPIP: Yes – SLED 2022 CPIP Priority 1 of 2 in FY23 (estimated at \$9,124,500)  
Phase I Approval: October 2021 (estimated at \$9,124,758) (SFAA)  
Phase I Increase Approval: December 2021 (estimated at \$9,124,755) (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, SLED (Record Search Fees)	156,871	45,624	202,495	17,238,142	17,440,637
All Sources	<u>156,871</u>	<u>45,624</u>	<u>202,495</u>	<u>17,238,142</u>	<u>17,440,637</u>

Summary of Work: This Construction Management at Risk project, which was issued to Hood Construction, will repurpose this facility into an office building by completing an entire interior renovation to include new interior walls, ceilings, doors, building systems, and full modernization of the two existing elevators. The existing thermoplastic polyolefin (TPO) roof membrane system will be replaced with a PVC/KEE thermoplastic room membrane and come with a minimum 20-year material and workmanship warranty. Additionally, the security fencing will be extended. During the Phase I process it was determined that no structural modifications would be required. The existing building structure will meet the requirements of a Class IV type occupancy.

Rationale: The construction of the new replacement Forensics Laboratory will vacate the former Forensics Laboratory building. Renovation of this facility into an office building will allow for functional consolidation of work units and allow the removal of personnel from buildings not suitable for utilization as office facilities. This step will allow the Regulatory department, currently spread into multiple locations, to be consolidated into a single location. The Midlands District and Narcotics units will then be allowed to return to the Broad River Road campus. The renovated building will be a modernized facility for safe use by the occupants and the owner, per the agency.

Facility Characteristics: The Forensics Laboratory building is 70,155 square feet and was constructed in 1989 (33 years old). Approximately 67,023 square feet of this building will be renovated in this project. Approximately 260 employees of SLED Investigations, Administrative, Fusion Center and Regulatory operations, will utilize the renovated space.

Financial Impact: The project will be funded from SLED Record Search Fees (uncommitted balance \$38 million at October 24, 2022). Revenue to this fund is generated from SLED Record Search Fees. The project is expected to result in an increase of \$211,950 (year 1), and \$423,900 (years 2 and 3), in annual operating expenses.

Full Project Estimate: \$17,440,637 (internal) funded by SLED Record Search Fee Funds. Contract execution is expected in March 2023 and completion of construction in September 2024. The estimated cost to complete the project has increased from Phase I and the 2022 CPIP submission due to a 7,023 square foot increase to be renovated, addition of information technology and furniture, fixtures and equipment, and increases in construction costs.

(g) Project: JBRC Item 7: Governor’s School for the Arts and Humanities  
H64.9525: Dining Hall Renovation

Request: Establish Phase I Pre-Design Budget to expand the dining space.

Included in CPIP: Yes – 2022 CPIP Priority 1 of 1 in FY23 (estimated at \$512,950)

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, FY23 Proviso 118.19 (9)				15,389	15,389
All Sources				<u>15,389</u>	<u>15,389</u>

Summary of Work: The project will expand the dining hall by approximately 2,444 square feet to accommodate up to 140 seats by relocating offices. The work will include the demolition of several non-load bearing walls, relocation of serving lines, new flooring, and all new furniture. No major renovations, or renovations to any exterior walls is required.

Rationale: The dining hall is only rated to accommodate 75 people and the current dining facilities are not readily usable by students with mobility challenges and does not meet current standards for accessibility. Having maintained the original furnishings that are over 20 years old, the dining area is outdated and institutional.

Facility Characteristics: The Dining Hall is approximately 2,037 square feet and was constructed in 1991 (31 years old). The facility is used to serve all meals for students, staff, and for special events such as parent weekends, orientation, and any other large student events. There are 238 students and 75 staff that dine their daily.

Financial Impact: This phase of the project will be funded from FY23 Appropriated State (nonrecurring) Funds (uncommitted balance \$512,950 at October 27, 2022). The project is not expected to result in any change in annual operating expenditures.

Full Project Estimate: \$1,235,900 (internal) funded by FY23 Appropriated State (nonrecurring) Fund. Phase II will be funded by \$210,000 in funds contractually obligated for this project from Aramark, \$497,561 in FY23 Appropriated State (nonrecurring) Funds, and the agency is requesting an additional \$512,950 in their FY2023-2024 Budget Request to fund the remainder of the project.

(h) Project: JBRC Item 12: Department of Public Safety  
K05.9617: Blythewood Complex Chiller Replacement

Request: Establish Phase II Full Construction Budget to replace a 530-ton chiller, cooling tower, and associated pumps at the DPS/DMV headquarters' buildings.

Included in CPIP: Yes – 2022 CPIP Priority 2 of 3 in FY23 (estimated at \$2,000,000)

Phase I Approval: April 2022 (estimated at \$1,292,000) (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
Appropriated State, FY22 Carryforward				708,000	708,000
Other, DPS Building	19,400		19,400	954,452	973,852
All Sources	<u>19,400</u>		<u>19,400</u>	<u>1,662,452</u>	<u>1,681,852</u>

Summary of Work: The project will replace a 530-ton chiller, cooling tower, and associated pumps at the DPS/DMV headquarters buildings with a 600-ton chiller system. Two 300-ton chillers are currently used to cool the almost 300,000 square foot complex. The 530-ton system is currently used as a temporary back-up to the smaller chillers.

Rationale: An assessment stated the total connected chilled water load for these two buildings is approximately 750 tons. Consequently, the two chillers are not sufficient to maintain essential temperatures and humidity levels, which has been a problem in both buildings. The system has been repaired numerous times, many of the parts are obsolete, and the refrigerant required for its operation is expensive and difficult to locate. Per the agency, this leaves two agency headquarters' facilities with inadequate cooling and no real mechanical redundancy. A new chiller, cooling tower, and associated pumps would solve that problem and provide for greater efficiency. The 300-ton chillers would then only be used when peak temperatures occur and could be cycled on and off as designed.

Facility Characteristics: The existing chiller and cooling tower are original to the buildings constructed in 1993 (29 years old). These systems serve the DPS Headquarters' Building and DMV Headquarters' Building which house 795 employees and receive approximately 1,150 visitors a month.

Financial Impact: This phase of the project will be funded from Appropriated State, FY22 Carryforward (uncommitted balance \$708K at November 14, 2022) and DPS Buildings Funds (\$4.78 million commitment at November 14, 2022). Revenue received to the DPS Building Fund is from the late penalty fee on vehicle registrations. This money is collected by the Department of Motor Vehicles and transferred to DPS. The project is expected to result in a decrease of \$50,000 (year 1), and \$75,000 (years 2 thru 3), in annual operating expenses.

Full Project Estimate: \$1,681,852 (internal) funded by Appropriated State, FY22 Carryforward and DPS Building Funds. Contract execution is expected in May 2023 with construction completion in November 2023.

(i) Project: JBRC Item 13: Department of Juvenile Justice  
N12.9619: Laurel Unit Safety Modifications

Request: Increase Phase II Full Construction Budget to cover the cost of installing 12-gauge galvanized sheet metal in the ceilings in the Laurel Unit on the Broad River Road Campus in Columbia.

Included in CIP: No – The need for the increase was not known until after submission of the 2022 CIP.  
Phase II Approval: January 2022 (estimated at \$1,759,868) (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
Appropriated State, FY21 Carryforward	1,759,868		1,759,868		1,759,868
Appropriated State, FY22 Carryforward				200,000	200,000
All Sources	<u>1,759,868</u>		<u>1,759,868</u>	<u>200,000</u>	<u>1,959,868</u>

Summary of Work: The project is already in progress as an emergency project for which notification was provided to JBRC on November 19, 2021. The project includes two youth pods with 12 beds each (24 total). The scope includes new doors with electric locking mechanisms which will prevent the doors from opening automatically in a power outage. The scope also includes the installation of a raised drywall and metal ceiling in the youth pods and replacement of the acoustical ceiling tile in the housing control areas, anti-ligature lighting, replacement of the tile in the showers with flowrock, secure shower doors, and associated electrical and mechanical work including fire sprinkler head adjustments, plumbing and HVAC. Installing 12-gauge galvanized sheet metal in the ceilings consists of: 1) Installing 3X3, 3/16 angle at the perimeter of all sheet metal, 2) Installing sheet metal and angle with toggle bolts that will be tack welded after install, 3) Stitch weld seams of sheet metal 4) Stitch weld edges of sheet metal to existing registers, 5) Remove 2X2 LED lights, 6) Replace with Shat-r-shield ironclad pro fixture, and 7) Epoxy coat ceilings.

Rationale: The existing ceiling and lights in a specific area of Laurel (different from original scope), was compromised by the youth and significantly damaged during an event. Because of this, damaged pieces of the ceiling and lights cause a safety concern and escape issue. Several juveniles got out of the pods within the unit the week of November 15, 2021 and the State Law Enforcement Division was called in to assist. The door locking systems in the facility were compromised and had to be replaced immediately to ensure the safety of juveniles and staff. Additionally, the existing ceiling and lights were significantly damaged by the juveniles, and, because of the damage, pieces of the ceiling and lights could potentially be used as weapons, as could damaged and chipping tile in the showers.

Facility Characteristics: The Laurel Unit is 28,765 square feet and was constructed in 1976 (46 years old). Approximately 10,000 square feet of this building will be renovated as part of this project. The Laurel Unit is a secure confinement space utilized by youth who require additional supports for behavior management. Youth are supervised by staff within the Division of Institutional Services, the division responsible for the care, custody and control of youth in facilities. Approximately 22 youth and 27 staff utilize the associated space in the building monthly.

Financial Impact: This phase of the project will be funded from Appropriated State, FY22 Carryforward Funds (uncommitted balance \$13.23 million at November 30, 2022). The project is not expected to result in any change in annual operating expenditures.



Full Project Estimate: \$1,959,868 (internal) funded by FY21 & FY22 Carryforward Funds. Construction completion is anticipated in January 2023.

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: SC Department of Public Safety Lease of 2070 Northbrook Boulevard, North Charleston, SC 29406

The South Carolina Department of Public Safety (DPS) requests approval to lease 10,083 rentable square feet of office space at 2070 Northbrook Boulevard in North Charleston, SC from Northbrook LTD, a Florida Limited Partnership. The space will be used by DPS for its Highway Patrol Troop 6 Headquarters & Post A Headquarters; Multi-disciplinary Accident Investigation team; Legal and Community Relations staff; and Telecommunications Center and IT staff. Their current lease at 597 Old Mt Holly Road, where they were paying \$18.00 per rentable square foot, will expire on May 31, 2023.

After contacting state agencies to verify no adequate state space was available, the Department of Administration conducted a solicitation for 3, 5, and 7-year terms. Four proposals were received; however, one is no longer available for lease. Of the three offers remaining, the selected location is the lowest offer.

The requested lease term will be five (5) years and the lease is expected to commence June 1, 2023, and includes an option to extend for one term of two years with the same terms and conditions. The rental rate for the first year of the term will be \$25.47 per rentable square foot (\$22.63 in base rent and \$2.84 in operating expenses) for an annual aggregate amount of \$256,814.01. After the first year, DPS would be responsible for covering any increases in operating costs up to a maximum capped rate of 3% over the immediately preceding year. As such, the minimum DPS would pay over the Initial and Extended Terms is \$1,797,698.07 and the maximum is \$1,803,254.89.

<u>INITIAL TERM</u>	<u>ANNUAL RENT</u>	<u>RENT PER SF</u>	<u>MAX OPERATING EXPENSE INCREASES</u>	<u>TOTAL ANNUAL MAX</u>
June 1, 2023-May 31, 2024	\$256,814.01	\$25.47	\$0.00	\$256,814.01
June 1, 2024-May 31, 2025	\$256,814.01	\$25.47	\$859.07	\$257,673.08
June 1, 2025-May 31, 2026	\$256,814.01	\$25.47	\$884.84	\$257,698.85
June 1, 2026-May 31, 2027	\$256,814.01	\$25.47	\$911.39	\$257,725.40
June 1, 2027-May 31, 2028	\$256,814.01	\$25.47	\$938.73	\$257,752.74
June 1, 2028-May 31, 2029	\$256,814.01	\$25.47	\$966.89	\$257,780.90
June 1, 2029-May 31, 2030	\$256,814.01	\$25.47	\$995.90	\$257,809.91

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

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**SUBJECT:** SC Department of Public Safety Lease of 2070 Northbrook Boulevard, North Charleston, SC 29406

The space will meet the state standard of 210 RSF/person with a density of 137 RSF/person. The following chart represents comparable lease rates of similar space in the Charleston area and were also received in response to this solicitation:

<b>Tenant</b>	<b>Location</b>	<b>*Rate /SF</b>
Existing DPS space	597 Old Mt Holly Road, North Charleston	\$28.00
Vacant	201 Sigma Dr, Summerville	\$33.00
Vacant **	8740 North Park, North Charleston	\$17.00

\*Above rates may be subject to operating expenses and base rent escalations.

\*\* Sold during the solicitation process. Rate was subject to operating expenses as well.

DPS has adequate funds for the lease according to a Budget Approval Form submitted December 29, 2022. Lease payments will be funded through Revenue (4150100016). No option to purchase the property is included in the lease. The lease was approved by JBRC on January 25, 2023.

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**AUTHORITY ACTION REQUESTED:**

As recommended by the Department of Administration, Facilities Management and Property Services, approve the proposed five-year lease and optional two-year extension for 10,083 rentable square feet of office space at 2070 Northbrook in North Charleston, for the SC Department of Public Safety.

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**ATTACHMENTS:**

Agenda item worksheet and attachment

# STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: January 31, 2023

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 of 2070 Northbrook Boulevard, North Charleston, SC 29406

## 3. Summary Background Information:

The South Carolina Department of Public Safety (DPS) requests approval to lease 10,083 rentable square feet of office space at 2070 Northbrook Boulevard in North Charleston, SC from Northbrook LTD, a Florida Limited Partnership. The space will be used by DPS for its Highway Patrol Troop 6 Headquarters & Post A Headquarters; Multi-disciplinary Accident Investigation team; Legal and Community Relations staff; and Telecommunications Center and IT staff. Their current lease at 597 Old Mt Holly Road, where they were paying \$18.00 per rentable square foot, will expire on May 31, 2023.

After contacting state agencies to verify no adequate state space was available, the Department of Administration conducted a solicitation for 3, 5, and 7-year terms. Four proposals were received; however, one is no longer available for lease. Of the three offers remaining, the selected location is the lowest offer.

The requested lease term will be five (5) years and the lease is expected to commence June 1, 2023, and includes an option to extend for one term of two years with the same terms and conditions. The rental rate for the first year of the term will be \$25.47 per rentable square foot (\$22.63 in base rent and \$2.84 in operating expenses) for an annual aggregate amount of \$256,814.01. After the first year, DPS would be responsible for covering any increases in operating costs up to a maximum capped rate of 3% over the immediately preceding year. As such, the minimum DPS would pay over the Initial and Extended Terms is \$1,797,698.07 and the maximum is \$1,803,254.89.

<u>INITIAL TERM</u>	<u>ANNUAL RENT</u>	<u>RENT PER SF</u>	<u>MAX OPERATING EXPENSE INCREASES</u>	<u>TOTAL ANNUAL MAX</u>
June 1, 2023-May 31, 2024	\$256,814.01	\$25.47	\$0.00	\$256,814.01
June 1, 2024-May 31, 2025	\$256,814.01	\$25.47	\$859.07	\$257,673.08
June 1, 2025-May 31, 2026	\$256,814.01	\$25.47	\$884.84	\$257,698.85
June 1, 2026-May 31, 2027	\$256,814.01	\$25.47	\$911.39	\$257,725.40
June 1, 2027-May 31, 2028	\$256,814.01	\$25.47	\$938.73	\$257,752.74

<u>EXTENDED TERM</u>	<u>ANNUAL RENT</u>	<u>RENT PER SF</u>	<u>MAX OPERATING EXPENSE INCREASES</u>	<u>TOTAL ANNUAL MAX</u>
June 1, 2028-May 31, 2029	\$256,814.01	\$25.47	\$966.89	\$257,780.90
June 1, 2029-May 31, 2030	\$256,814.01	\$25.47	\$995.90	\$257,809.91

The space will meet the state standard of 210 RSF/person with a density of 137 RSF/person. The following chart represents comparable lease rates of similar space in the Charleston area and were also received in response to this solicitation:

<b>Tenant</b>	<b>Location</b>	<b>*Rate /SF</b>
Existing DPS space	597 Old Mt Holly Road, North Charleston	\$28.00
Vacant	201 Sigma Dr, Summerville	\$33.00
Vacant **	8740 North Park, North Charleston	\$17.00

\*Above rates may be subject to operating expenses and base rent escalations.

\*\* Sold during the solicitation process. Rate was subject to operating expenses as well.

DPS has adequate funds for the lease according to a Budget Approval Form submitted December 29, 2022. Lease payments will be funded through Revenue (4150100016). No option to purchase the property is included in the lease. The lease was approved by JBRC on January 25, 2023.

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**4. What is the Authority asked to do?** Approve the proposed five-year lease and optional two-year extension for 10,083 rentable square feet of office space at 2070 Northbrook in North Charleston, for the SC Department of Public Safety.

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**5. What is recommendation of the division of Facilities Management and Property Services?** Approve the proposed five-year lease and optional two-year extension for 10,083 rentable square feet of office space at 2070 Northbrook in North Charleston, SC for the SC Department of Public Safety.

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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) Letter from agency



## South Carolina Department of Public Safety

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December 29, 2022

Ms. Brittini Geny  
SC Department of Administration – Real Property Office  
1200 Senate Street  
Columbia, SC 29201

Dear Ms. Geny:

Please consider this letter as formal notice of the SC Department of Public Safety's (SCDPS) approval of the lease terms, as provided by your office, for 2070 Northbrook Boulevard, North Charleston. SCDPS believes that the space will serve the agency well over the next 5-7 years, and provides a closer route to the I-26 corridor. Additionally, the space provides the agency the necessary time to explore possible logistical changes to the troop that serves that portion of the state.

SCDPS accepts the terms as your office has negotiated below:

- 10,083 rentable square feet at a rental rate of \$25.47 per square foot, consisting of \$22.63 per square foot of basic rent, and an additional \$2.84 per square foot of shared building operating expenses.
- The pro rata share of building operating expenses increases as outlined in Article 4 of the lease.

SCDPS requests that the SC Department of Administration bring this lease to seek approval from the Joint Bond Review Committee and the State Fiscal Accountability Authority board.

If further information is required, please contact me at 803-737-4919.

Sincerely,

Michael Oliver  
Chief of Staff  
SC Department of Public Safety

/GAP  
Enc.

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AGENCY: Division of Procurement Services

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SUBJECT: Audit and Certification – Florence Darlington Technical College

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The S.C. Consolidated Procurement Code and ensuing regulations (Procurement Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Procurement Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated procurement authority to Florence Darlington Technical College (the College) as follows:

	<b><u>Certification Limits</u></b>
Supplies and Services	\$ 150,000 per commitment
Consultant Services	\$ 100,000 per commitment
Information Technology	\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

Per SC Code Ann. § 11-35-1210(1)(b) and Regulation 19-445.2020B, the Director of Procurement Services (DPS) may authorize a governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. At the request of the College and with the concurrence of the Office of the State Engineer, the Director of DPS authorized an increase in the College's procurement authority for Construction Services on December 17, 2019, for award of small Construction Contracts up to \$100,000.<sup>1</sup>

In accordance with S.C. Code Ann. § 11-35-1230, DPS audited the procurement operating policies and procedures of the College to determine whether the Agency's system of internal controls over procurement was adequate to ensure compliance, in all material respects, with the Procurement Code. We found the College's system of internal controls over procurement procedures was not adequate to ensure compliance with the Procurement Code as described in the audit report and made recommendations for improvement. With the implementation of the recommended corrective action, the College's system of internal controls over procurement will be adequate to ensure compliance with the Procurement Code as described in the audit report.

Per S.C. Code Ann. § 11-35-1210, the College requested that the Authority reauthorize it to make direct procurements at its current level of certification. However, the findings in DPS's audit do not support recertification.

<sup>1</sup> \$100,000 is the small procurement limit for construction. Up to this amount, the agency need only make a written request for written quotes and obtain three or more quotes.

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AGENCY: Division of Procurement Services

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SUBJECT: Audit and Certification – Florence Darlington Technical College

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AUTHORITY ACTION REQUESTED:

1. Require the College to provide to DPS for approval, written corrective action plans and procedures for each of the deficiencies noted in the audit report by March 15, 2023.
2. Require the College to stop the gift card program at once.
3. Revoke the College's authority to use the Articles for Commercial Sale Exemption for gift cards.
4. Require the College to pay for an independent audit by an auditor selected by the State Auditor's Office to determine whether the College used gift cards for any improper purpose.
5. Require the College to process exempt purchases with a PO approved by the College's Procurement Department, and the College to specify in the PO which exemption it is applying.
6. Require the College to Immediately suspend no less than 50% of its P-Cards until January 31, 2024, and notify DPS of which cards the College has suspended by March 15, 2023.
7. Require the College to report all procurements identified in the report as unauthorized or illegal in accordance with Regulation 19-445.2015 no later than March 15, 2023.
8. Require the College, starting immediately, to report each emergency procurement made during the ensuing year ending January 31, 2024, to the State Board for Technical and Comprehensive Education and DPS within five business days of initiating the procurement and further provide that each report includes a written justification for making an emergency procurement.

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ATTACHMENTS:

Agenda item worksheet and attachment



**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

**Meeting Scheduled for:** January 31, 2023

**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:**

The S.C. Consolidated Procurement Code and ensuing regulations (Procurement Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Procurement Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated procurement authority to Florence Darlington Technical College (the College) as follows:

**Certification Limits**

Supplies and Services	\$ 150,000 per commitment
Consultant Services	\$ 100,000 per commitment
Information Technology	\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

Per SC Code Ann. § 11-35-1210(1)(b) and Regulation 19-445.2020B, the Director of Procurement Services (DPS) may authorize a governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. At the request of the College and with the concurrence of the Office of the State Engineer, the Director of DPS authorized an increase in the College's procurement authority for Construction Services on December 17, 2019, for award of small Construction Contracts up to \$100,000.<sup>1</sup>

In accordance with S.C. Code Ann. § 11-35-1230, DPS audited the procurement operating policies and procedures of the College to determine whether the Agency's system of internal controls over procurement was adequate to ensure compliance, in all material respects, with the Procurement Code. We found the College's system of internal controls over procurement procedures was not adequate to ensure compliance with the Procurement Code as described in the audit report and made recommendations for improvement. With the implementation of the recommended corrective action, the College's system of internal controls over procurement will be adequate to ensure compliance with the Procurement Code as described in the audit report.

Per S.C. Code Ann. §11-35-1210, the College requested that the Authority reauthorize it to make direct procurements at its current level of certification. However, the findings in DPS's audit do not support recertification.

<sup>1</sup> \$100,000 is the small procurement limit for construction. Up to this amount, the agency need only make a written request for written quotes and obtain three or more quotes.

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

1. Require the College to provide to DPS for approval, written corrective action plans and procedures for each of the deficiencies noted in the audit report by March 15, 2023.
2. Require the College to stop the gift card program at once.
3. Revoke the College's authority to use the Articles for Commercial Sale Exemption for gift cards.
4. Require the College to pay for an independent audit by an auditor selected by the State Auditor's Office to determine whether the College used gift cards for any improper purpose.
5. Require the College to process exempt purchases with a PO approved by the College's Procurement Department, and the College to specify in the PO which exemption it is applying.

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6. Require the College to Immediately suspend no less than 50% of its P-Cards until January 31, 2024, and notify DPS of which cards the College has suspended by March 15, 2023.
  7. Require the College to report all procurements identified in the report as unauthorized or illegal in accordance with Regulation 19-445.2015 no later than March 15, 2023.
  8. Require the College, starting immediately, to report each emergency procurement made during the ensuing year ending January 31, 2024, to the State Board for Technical and Comprehensive Education and DPS within five business days of initiating the procurement and further provide that each report include a written justification for making an emergency procurement.
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**5. What is recommendation of the submitting agency involved?**

Require the College to implement the measures set forth above.

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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: \_\_\_\_\_
- 

**8. List of Supporting Documents:**

- (a) S.C. Code Ann. § 11-35-1230
  - (b) S.C. Code Ann. § 11-35-1210
  - (c) Certification Comparison
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**9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.**



**Florence Darlington Technical College**

**INDEPENDENT PROCUREMENT AUDIT REPORT**

**for the Audit Period:**  
**October 1, 2018 to September 30, 2021**

Office of Audit & Certification  
Division of Procurement Services  
October 10, 2022

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## ABBREVIATIONS

CPO	– Chief Procurement Officer
DFWA	– Drug Free Workplace Act
DPS	– Division of Procurement Services
PI Manual	– Manual for Planning and Execution of State Permanent Improvements
MBE	– Minority Business Enterprise
MCC	– Merchant Category Code
PCA	– Purchasing Card Administrator
P-Card	– Purchasing Card
PO	– Purchase Order
Procurement Code	– SC Consolidated Procurement Code and ensuing Regulations
RFQ	– Request for Quote
SCBO	– South Carolina Business Opportunities
SFAA	– State Fiscal Accountability Authority
SIMT	– Southeastern Institute of Manufacturing and Technology
SMBCC	– Small and Minority Business Contracting and Certification
State PO Policy	– State of South Carolina Statewide Purchase Order Policy
STL	– Single Transaction Limit
The College	– Florence Darlington Technical College

## INTRODUCTION

Per S.C. Code Ann. § 11-35-1230 and Reg. 19-445.2020, DPS audited the College's internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual.

The primary objective of our audit was to determine whether, in all material respects, the system of internal controls over the College's procurement process were adequate to ensure compliance with the Procurement Code.

The management of the College is responsible for compliance with the Procurement Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Procurement Code
- Establishing and maintaining an effective organization structure and system of internal control over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Procurement Code
- Establishing clear lines of authority and responsibility for making and approving procurements
- Documenting the agency's procurement procedures including its system of internal controls over procurement activities in an internal procurement procedure manual
- Taking corrective action when instances of noncompliance are identified, including corrective action for 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 the degree of compliance with 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 of the College under S.C. Code Ann. § 11-35-1210 is warranted.

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On May 2, 2017, the SFAA granted the College the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CURRENT CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 150,000 per commitment
Information Technology	*\$ 100,000 per commitment
Consultant Services	*\$ 100,000 per commitment
Construction Contract Award	\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

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

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

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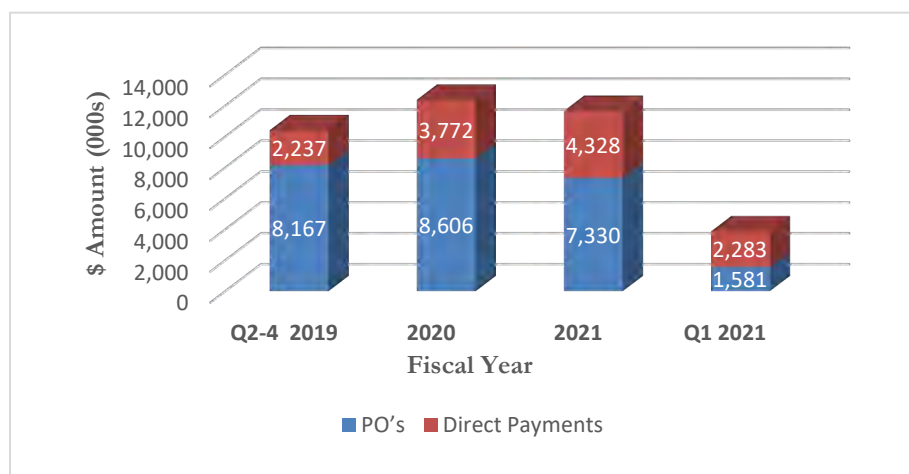
## SCOPE

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 College's compliance with the Procurement Code for the period October 1, 2018 through September 30, 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.

### Total Expenditures

During the audit period the agency made expenditures as follows:

	<b>\$ Amount (000s)</b>			<b>Q1</b>	
	<b>Q2-4</b>			<b>FY2022</b>	<b>Total</b>
	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>		
POs <sup>1</sup>	8,167	8,606	7,330	1,581	25,685
Direct Pays <sup>2</sup>	2,237	3,772	4,328	2,283	12,620
<b>Total Spend</b>	<b>10,404</b>	<b>12,378</b>	<b>11,658</b>	<b>3,864</b>	<b>38,305</b>



<sup>1</sup> **POs** represents all expenditures made with a Purchase Order. These are required for most contract purchases by the terms of the contract and is the preferred procurement instrument when a government unit orders or procures supplies or services from a vendor.

<sup>2</sup> **Direct Pays** are made without purchase order based on the State Purchase Order Policy for executive agencies and internal policies for institutions of higher learning. These may occur with purchases of supplies or services that are exempt from the Procurement Code or for such things as payment for P-Card purchases or purchases less than \$2500.



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#### **B. Inadequate Written Determinations ..... 20**

The College did not include a description of disciplinary action in 19 written determinations out of 24 reported unauthorized or illegal procurements, as required by Procurement Code and the College's policy.

### **VII. MBE Reports Filed Late ..... 21**

The College submitted four annual utilization plans and four quarterly progress reports to SMBCC after established due dates.

**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. Supplies and Services

We audited expenditures exceeding \$10,000 to determine compliance with the Procurement Code. Our review of supplies and services for the audit period identified the following issues:

#### A. Inappropriate Use of Procurement Code Exemptions

The College inappropriately applied Procurement Code exemptions to 12 purchases.

##### Articles for Commercial Sale

The College made nine purchases without competition based on the exemption for “articles for commercial sale by all governmental bodies.” S.C. Code Ann. §11-35-710(8) Six of the nine purchases were for supplies used in services provided through the College’s SIMT. SIMT provides services, including 3D printing and advanced machining, to various clients. Two of the nine purchases were for software used by SIMT in marketing its services.

One purchase was for licenses for a Distance Learning Certified Professional Coder Class Training Package including code books. None of these purchases were acquired for commercial sale.

To qualify for the commercial sale exemption, the items must be sold unaltered, otherwise they are considered raw materials. The only raw materials exemption in the Procurement Code is for the SC Department of Corrections, Division of Prison Industries. S.C. Code Ann. § 11-35-710(2).

The purchase of educational materials, also, does not fit the definition of commercial sale. The Educational Materials Copyrighted exemption may have applied. However, the College did not consider this exemption when making the purchase and did not provide any documents to confirm the materials purchased were copyright protected.

##### Software Licenses

The College listed two purchases as exempt purchases based on the Software Licenses Exemption approved by the Budget and Control Board (Board) pursuant to S.C. Code Ann. §11-35-710A. The College did not provide evidence that the license agreement was initially acquired through a competitive bid process as required by the exemption.

## RESULTS OF AUDIT

### Clinical Technologists Supervision

The College issued PO 021747 totaling \$105,118 to McLeod Regional Medical Center (Hospital) for assistance to the College in recruiting students for the Radiology School program and providing close supervision of students in the clinical setting by Registered Radiologic Technologists. In part, the PO covered salary and benefits for Radiology School instructors. The College made the purchase without competition and without complying with the Procurement Code but based on precedent. This agreement has been ongoing between a hospital and the College since 1990.

### Tuition Payments

The College issued PO 021733 for a Drone Certification Program provided to students based on the Tuition Payments exemption approved by the Board pursuant to S.C. Code Ann. §11-35-710A. This exemption applies to payments made by a governmental body to an institution of higher education not an institution of higher learning's expenditure of tuition monies.

### Advertising

The College issued PO 021290 totaling \$27,454 for the printing and mass mailing of 79,000 copies of a magazine based on the advertising exemption approved by the Board pursuant to S.C. Code Ann. §11-35-710A. This exemption does not apply to the publication and mailing of a magazine.

**Recommendation:** We recommend the College procurement personnel receive additional training regarding the proper use of the Procurement Code's exemptions. The College should report all 12 purchases to DPS as unauthorized or illegal as required by S.C Reg. 19-445.2015.

### **College Response**

The College will follow up with the SC Division of Procurement Services for training on Procurement Code Exemptions to gain knowledge on when they apply and when they do not. The College will also perform the proper competing process or sole source process, as applicable.

### B. Contract Awarded to Nonresponsive Bidder

The College issued PO 020836 totaling \$54,924 for transportation and chaperones for an Upward Bound trip to Washington. The request for quote for these services required that bid prices include all meals. The College awarded the contract to a bidder whose bid price did not include lunches. The Procurement Code required the College to

## RESULTS OF AUDIT

award the contract to the lowest responsive bidder. S.C. Code Ann. §11-35-1550(2)(c). A responsive bidder is one “who has submitted a bid ... which conforms in all material aspects to the invitation for bids.” S.C. Code Ann. §11-35-1410(9) -

**Recommendation:** We recommend the College report this procurement as unauthorized or illegal as required by regulation.

### College Response

The College understands the improper request for quote award - this award was made to an unresponsive bidder. The College will review all bids to ensure all requirements are included in the awarded bidder's package.

#### C. Grant Specified Exemption Procedures Not Followed

The College issued PO 021246 totaling \$40,091 for 21 laptop stations, backpacks, and warranties based on the Grant Specified Exemption approved by the Board pursuant to S.C. Code Ann. §11-35-710A. However, the College did not follow its approved Grant Specified Exemption procedures for this purchase. The College's procedures require a written determination as to why a particular specified piece of equipment or service is essential and critical to the successful completion of the grant-funded project prior to the submittal of the grant request. The College failed to prepare a written justification for the purchase.

**Recommendation:** We recommend the College follow their approved written procedures regarding grant specified exemption purchases. We further recommend the College report this purchase to DPS as unauthorized or illegal as required by S.C Reg. 2015.

### College Response

The College will provide proper justification for grant specific procurements as specified in the College's Procurement Manual.

#### D. .Inadequate Public Notice

The College failed to include a statement of a bidder's right to protest in a Notice of Intent to Award in violation of S.C. Code Ann. §11-35-1520(10). Additionally, the College failed to include a right to protest in the public notices of award for two emergency procurements as required by S.C. Code Ann. § 11-35-1570B.

## RESULTS OF AUDIT

**Recommendation:** We recommend that the College develop a review process to ensure notices of award and intent to award contracts comply with the Procurement Code and obtain training for procurement staff. We further recommend the College report these three purchases to DPS as unauthorized or illegal as required by S.C Reg. 19-445.2015.

### College Response

The Procurement Manager will develop a checklist to ensure notices of award and intent to award contracts comply with the Procurement Code.

#### E. Non-Compliance with DFWA

The College entered into two contracts without obtaining drug-free workplace certifications as required by S.C. Code Ann. § 44-107-30.

**Recommendation:** We recommend that the College develop procedures, including management review and approval, to ensure that awarded contracts comply with the DFWA.

### College Response

The College Procurement department is in the process of revising the Procurement Manual, which will address when the Drug Free Workplace certification is required.

#### F. Late Payments

Thirteen out of 71 procurements tested had invoices that the College did not pay within 30 workdays as required by S.C. Code Ann. § 11-35-45(B).

**Recommendation:** We recommend the College revise and implement procedures to ensure timely payment of invoices.

### College Response

In some cases, invoices are not paid on time because there is an issue with the equipment or services provided. The College will document when payments will be late due to an issue with the items or services delivered, The College will also educate faculty and staff on the importance of payments being made in a timely manner when there is not an issue.

## II. Direct Payments

#### A. Bookstore Purchases Lacked Proper Approvals

The College's procurement files did not include approvals required by the College's internal policies for ten purchases for the bookstore. The College's policies require that the Director of Business Affairs approve bookstore purchases greater than \$2,500. Four

## RESULTS OF AUDIT

of these ten purchases were for gift cards. Because of concerns with gift cards, we expanded our review to look at all gift card purchases. We found that the College made 20 gift card purchases exceeding \$2,500. The Director of Business Affairs did not approve any of these purchases.

Through 20 purchase transactions, the College acquired 14,930 gifts cards totaling approximately \$808k. The College treated these purchases as exempt from the Procurement Code because they were intended for resale in the bookstore. However, the College also gave away gift cards to students and employees. The purchase of gift cards for the purpose of giving them away is not subject to the “articles for commercial sale” exemption from the Procurement Code. Procurements that combine exempt and non-exempt items must be treated as non-exempt. Therefore, to the extent the purchase of any block of gift cards included cards given away by the College, that purchase was not exempt and should have been made following the procedures of the Procurement Code. The College’s records were not adequate for us to determine which procurements of gift cards this might be.

The College did not have a procedure to reconcile the gift card purchases and sales reports to beginning and/or ending quantities on hand. Moreover, the College did not know the number of cards it gave away to students or employees. Management could only provide the number of giveaways tied to Covid vaccine incentives during the months of October, November, and December 2021. The number of cards tied to the Covid vaccine incentive giveaways were 32 totaling \$3k. The number of winners were 18 students and 12 employees (30 total).

The Procurement Code requires the College to “maintain procurement files sufficient to satisfy the requirements of external audit.” S.C. Reg. 19-445.2005B. As discussed above, the College’s records of bookstore purchases of gift cards fail to satisfy this requirement.

Gift cards have a high level of inherent risk for fraud. The volume of purchases coupled with the lack of management oversight and card inventory management result in unacceptable fraud risk.

**Recommendation:** We recommend the College take the following steps:

1. Terminate the program.
2. Comply with the Procurement Code when combining the purchase of exempt and non-exempt items into a single acquisition.



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3. Comply with its policies regarding bookstore purchases and ensure they have proper approvals.
4. Maintain procurement files sufficient to satisfy the requirements of external audit.
5. Arrange for an independent audit to determine whether these gift cards were properly purchased and sold.

We also referred the College's purchases of gift cards to the SC Inspector General to investigate the College's distribution of gift cards.

### College Response

The College will ensure the proper approvals are obtained in compliance with the College's Procurement Manual. An additional reconciliation has been established in the bookstore related to the resale of gift cards. This process has been implemented immediately. FDTC has also identified a daily report that provides daily sales of gift cards.

### B. The College Does Not Have a PO Policy

The College did not have a policy specifying when a purchase can be made without a PO. The risk of unauthorized procurements is increased without a policy stipulating when POs are required.

Per the State 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 State PO Policy states, Direct Payments "should not be used as a matter of convenience as it leads to a reduction in controls and approvals."

Having a policy in place that specifies when a PO is required reduces the risk of non-compliance with the Procurement Code and prevents bypassing the College's procurement procedures.

**Recommendation:** We further recommend the College revise its internal procedures to define when a PO is required and to provide for specific circumstances under which a PO is not required, using the State PO Policy as a guide. The College should send its revised internal procedures to DPS for approval. We further recommend that, for a period of one year, the College process exempt purchases with a PO approved by the College's Procurement Department, and that the PO specify which exemption is being applied.

### College Response

The College is in the process of revising the Procurement Manual, which will include a policy that complies with the SC Procurement Code on when Direct Payments are

## RESULTS OF AUDIT

authorized. Once the manual is revised, the College will send it to the Division of Procurement Services for approval.

### III. Sole Source and Emergency Procurements

We evaluated sole source and emergency procurements made pursuant to S.C. Code Ann. §§ 11-35-1560 and 1570 to assess the appropriateness of the procurement actions and the accuracy of the quarterly reports of these procurements required by § 11-35-2440.

#### A. Sole Source Procurements Lacked Proper Notice

The College did not advertise the intent to award one sole source contract totaling \$324,888 in SCBO for ten business days before entering into a contract as required by S.C. Code Ann. § 11-35-1560. The sole source contract was dated the same date as the SCBO advertisement.

**Recommendation:** We recommend the College develop and implement procedures, including management review and approval, to ensure that sole source procurements are properly advertised in SCBO as required. We also recommend this procurement be reported to DPS as an unauthorized or illegal procurement as required by S.C. Reg. 19-445.2015.

#### College Response

The College Procurement department is in the process of revising the Procurement Manual, which will address the sole source procurement method.

#### B. Sole Source and Emergency Procurements Reported Late

The College failed to report four sole source procurements and four emergency procurements within 30 days after the end of the quarter as required by S.C. Code Ann. §11-35-2440.

**Recommendation:** We recommend the College implement a review process that will include management oversight and approvals to ensure that written determinations are prepared and timely reported for all reportable procurements as required by the Procurement Code.

#### College Response

The College is aware of the reporting requirements and will implement procedures to ensure timely reporting.

## RESULTS OF AUDIT

### C. Inadequate Written Determinations for Emergency Procurements

The College's written determinations for ten emergency procurements were inadequate. The College declared nine of these procurements to be emergencies due to the expiration of a contract. An emergency condition is one that "may arise by reason of flood, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer (CPO) or the head of a purchasing agency or a designee of either office." S.C Reg. 19-445.2110B. Relying in part on this Regulation, the S.C. Supreme Court has held that "[a]n emergency is, by its very nature, a sudden, unexpected onset of a serious condition." Sloan v. Department of Transportation, Opinion No. 26534 (2008). The expiration of a contract in accordance with its terms is not an event that is sudden and unexpected.

On July 1, 2021, the College made an emergency procurement that was a repeat of an emergency the College declared three years earlier. The College declared the initial emergency in July 2018 after a consulting engineer determined a walkway bridge was unsafe and needed to be closed. The engineer also determined that since the bridge served as a fire egress route from the second and third floors of the 5000 building, the College would need an alternate method of getting people out in a fire emergency. The College rented a scaffold stair tower as a temporary solution until the bridge was repaired. Since that time, the College has continued to rent the scaffold stair tower on an emergency basis without conducting a procurement pursuant to the Procurement Code for either the rental of a scaffold stair tower or the repair of the bridge.

Regulation 19-445.2110C limits emergency procurements "to those supplies, services, information technology, or construction items necessary to meet the emergency." Once the emergency condition is alleviated, the governmental body must comply with the Procurement Code. Having met the emergency by the emergency rental of a scaffold stair tower, the College should have conducted a procurement pursuant to the Procurement Code for a longer-term rental while it made arrangements for repair of the bridge.

**Recommendation:** We recommend the College develop and implement procedures to ensure emergency procurements are limited to circumstances that meet the definition of an emergency under Reg. 19-445.2110. We also recommend that the College develop procedures to track contract expiration dates. We further recommend that the College

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include its procurement office in the budget and planning process so procurements requiring longer lead times can be identified and accommodated

### **College Response**

The College will provide training to employees on emergency procurements. The importance of purchasing lead times will be emphasized during the budget process.

#### **IV. Construction**

We tested construction and architectural/engineer and related professional service contracts for compliance with the Procurement Code and the Manual.

##### **Required Payment and Performance Bonds Not Obtained**

The College did not obtain payment and performance bonds from the contractors for four construction projects as required by SC Code Ann. §§11-35-3030(2)(a) and 29-6-250.

**Recommendation:** We recommend the College develop and implement procedures to comply with the Procurement Code pertaining to Construction projects and obtain training for construction personnel. Personnel responsible for procuring construction projects should also refer to the PI Manual for guidance.

### **College Response**

The College is in the process of setting up a checklist to ensure all required documents are received with construction procurement and other procurements. The College's Procurement personnel will also seek training to become more familiar with construction project procurement.

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

The College had 49 P-Cards in use during the audit period and spent \$883,406 in 3,604 transactions. Based on the volume of usage, there is increased risk that misuse or abuse of P-Cards will not be prevented or detected without adequate management oversight.

##### **Program Administration**

We reviewed the College's P-Card Policy and Procedures for compliance with the State P-Card Policy and identified areas of non-compliance.

## RESULTS OF AUDIT

### A. Agency P-Card Manual Inadequate

The College's P-Card Manual was prepared in 2012 and outdated. Part III(A)(1) of the State P-Card Manual sets forth key requirements agencies must include in their internal P-Card manuals. The College's P-Card Manual was deficient in numerous areas.

**Recommendation:** During the audit, the College presented us with a draft P-Card Manual dated March 2021, for our input. We have made comments on this draft and submitted those comments to the College. We recommend the College complete its draft P-Card Manual incorporating our comments and the key requirements outlined in the State P-Card Policy and Procedures. The College should submit its updated procedures to DPS for approval.

#### College Response

The College is revising their P-Card manual. The draft manual will be submitted to DPS for approval by January 2023. Upon approval, the College will perform training with P-Card holders and each holder will receive a copy of the manual.

### B. No Documented Liaison Reviews

The College did not assign P-Card Liaisons to review transactions for compliance with Procurement Code as required by Part III(C) of the State P-Card Policy.

**Recommendation:** We recommend the College assign Liaisons in accordance with the State P-Card Policy and update its internal P-Card Manual to include roles and responsibilities of liaisons. Accepted practice is to use a checklist to document and ensure an adequate review of each purchase.

#### College Response

The College has added roles and responsibilities of liaisons to the P-Card manual and will get the manual to DPS for approval by January 2023. Upon approval, the College will perform training and a checklist to the liaisons.

### C. Independent P-Card Audit Not Performed

The College did not perform or have performed annual independent P-Card audits as required by Part V(A) the State P-Card Policy and Section 14 of the College's Internal Policy. Management provided documentation of account reconciliations approved for payment and stated these were the periodic P-card audits. Monthly account reconciliations and statement reviews are not sufficiently independent to ensure P-Card program compliance.

## RESULTS OF AUDIT

**Recommendation:** We recommend the College comply with the State P-Card Policy and the College's internal policy regarding independent audits or reviews. We further recommend the College document the reviews by following a checklist and having the appropriate staff sign off when completed.

### College Response

The College's external auditor reviews P-Card statements during the annual audit. The College will research an additional independent review.

#### D. Bank Statements Not Appropriately Signed

In three incidences, cardholders did not date their P-Card bank statements. Additionally, in two incidences, the cardholders' managers did not date the bank statements. Without dates, we cannot determine if the cardholders and managers reviewed the statements before the deadline for payment as required by Part III(A)(5)(c) of the State P-Card Policy.

In one incidence, a cardholder did not timely date a bank statement. In one incidence, a manager did not timely date a bank statement. Without timely review, the College cannot make timely payment of its billing statement.

**Recommendation:** We recommend the College develop and implement procedures requiring timely signatures of approval on cardholder statements. We also recommend the College provide refresher training for cardholders and managers who have oversight responsibility for P-Cards.

### College Response

The College is revising their P-Card manual. The draft manual will be submitted to DPS for approval by January 2023. Upon approval, the College will perform training with P-Card holders and each holder will receive a copy of the manual.

#### Transaction Testing

We analyzed the total population of P-Card transactions for blocked MCCs, split transactions, and other unallowable purchases. Additionally, we judgmentally selected two months of P-Card transactions for testing. From the two-month period we tested a sample of 29 transactions for compliance with the Procurement Code and State P-Card Policy. Transaction testing identified areas of non-compliance, which the PCAs or supervisor/approvers did not identify during their monthly review and reconciliation of cardholder statements.

## RESULTS OF AUDIT

### A. Payments Made on Open Accounts

The College made payments on open accounts for eighteen cardholders during the audit period. Part IV(E)(12) of the State P-Card Policy prohibits payments on open accounts.

### B. Split Purchases

Five Cardholders split purchases during the audit period to avoid the \$2,500 STL set by the College. Part IV(C) of the State P-Card Policy prohibits splitting transactions to avoid the STL and further provides that doing so may result in removal of P-Card privileges.

### C. Blocked MCCs

We tested transactions in accordance with the College's list of blocked MCCs. The College made 295 purchases with blocked MCCs during the audit period. Per the College's P-Card Policy, purchases made with blocked MCCs are not allowed.

### D. Personal Purchases

There were five personal purchases made during the audit period totaling \$955.20. Four of these purchases were for the school's former President.

Part IV(E)(1) of the State P-Card Policy prohibits "personal purchases of any kind." The policy further defines personal purchases "as purchases of goods or services intended for non-work-related use or use other than official State business." The College's P-Card Manual requires the Purchasing Card Administrator to close an account if a cardholder makes an unauthorized or personal purchase.

**Recommendation:** We recommend the College retrain cardholders to comply with State P-Card and internal P-Card policies. We further recommend the College implement the use of checklists in the monthly liaison review to identify purchases which violate State and internal P-Card policies.

### **College Response**

The College is revising their P-Card manual. The draft manual will be submitted to DPS for approval by January 2023. Upon approval, the College will perform training with P-Card holders and each holder will receive a copy of the manual.



## RESULTS OF AUDIT

### VI. Unauthorized or Illegal Procurements

We tested Unauthorized or Illegal Procurements to determine compliance with the Procurement Code.

#### A. Unauthorized or Illegal Sole Source Not Reported

The College did not report one unauthorized or illegal sole source procurement totaling \$315k to DPS. The College did not advertise the procurement in SCBO as required by the Procurement Code. The CPO ratified the procurement because it was above the College's certification level, but, the College failed to include the procurement in its quarterly report of unauthorized or illegal procurements as required by S.C Reg. 19-445.2015(I).

**Recommendation:** We recommend the College develop and implement procedures, including management review and approval, to ensure unauthorized or illegal procurements are reported as required.

#### College Response

The College is aware of the reporting requirements and will implement procedures to ensure timely reporting.

#### B. Inadequate Written Determinations

The College's written determinations for 19 out of 24 reported unauthorized or illegal procurements did not include a description of disciplinary action against the person making the procurement as required by S.C Reg. 19-445.2015(H)(2). Seventeen of the determinations were for P-Card purchases. Per the College's P-Card Policy, the PCA must close an account if a cardholder uses the P-Card for unauthorized purposes. Two of the determinations were repeat unauthorized procurements for the same service.

**Recommendation:** We recommend the College include all required elements in their written unauthorized or illegal procurement determinations. We also recommend the College comply with its internal procedures regarding closing of P-Card accounts for improper use.

#### College Response

The College is revising their P-Card manual. The draft manual will be submitted to DPS for approval by January 2023. Upon approval, the College will perform training with P-Card holders and each holder will receive a copy of the manual.



## RESULTS OF AUDIT

### VII. MBE Reports Filed Late

The College did not provide one out of four annual utilization plans and the three provided were not submitted timely to SMBCC. The College did not provide one out of 12 quarterly progress reports to SMBCC and did not provide two others in a timely manner.

S.C. Code Ann. § 11-35-5240 (2) requires governmental bodies to submit “MBE utilization plans” to SMBCC “for approval no later than July thirtieth annually.” Governmental bodies must submit progress reports to SMBCC “no later than thirty days after the end of each fiscal quarter.”

**Recommendation:** We recommend the College develop and implement procedures, including management review, for submitting Annual Utilization Plans and Quarterly Progress reports to the SMBAO as required.

#### **College Response**

The College is aware of the reporting requirements and will implement procedures to ensure timely reporting.

## CERTIFICATION RECOMMENDATION

We found the College's system of internal controls over its procurement process was not adequate to ensure compliance with the Procurement Code as described in the audit report and made recommendations for improvement. With the implementation of the recommended corrective actions, the College's procurement process will be adequate to ensure compliance with the Procurement Code.

We recommend that by February 28, 2023 the College provide a written corrective action plan for the appropriate use of direct payments, including procedures for processing exempt purchases with a Purchase Order as recommended in the report. We further recommend that by March 31, 2023, the College provide a report to Audit and Certification describing the status of its implementation of corrective actions taken in response to this report.

As provided in S.C. Code Ann. § 11-35-1210, we recommend that the College's procurement authority to make direct agency procurements be reduced to the following limits for three years:

### PROCUREMENT AREAS

Supplies and Services<sup>3</sup>

Information Technology<sup>4</sup>

Construction Contract Award

Construction Contract Change Order

Architect/Engineer Contract Amendment

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

### RECOMMENDED CERTIFICATION LIMITS

\*\$ 50,000 per commitment

\*\$ 50,000 per commitment

\$ 50,000 per commitment

\$ 25,000 per change order

\$ 5,000 per amendment



Cherie Ergle, CRMA  
Audit Manager,  
Audit & Certification



Crawford Milling, CPA, CGMA  
Director, Audit & Certification

<sup>3</sup> **Supplies and Services** includes non-IT consulting services

<sup>4</sup> **Information Technology** includes consulting services for any aspect of information technology, systems and networks

**SECTION 11-35-1230.** Auditing and fiscal reporting.

(1) The Division of Procurement Services, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.

(2) In procurement audits of governmental bodies thereafter, the auditors from the Division of Procurement Services shall review the adequacy of the governmental body's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the board. The Division of Procurement Services shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations, the board may revoke certification as provided in Section 11-35-1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body.

**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.

Certification Comparison  
SFAA Meeting  
January 31, 2023

Agency			PROCUREMENT AREA/ COMMODITY CLASS												
AGENCY	CERTIFICATION DATE	CERT NO. Active	Supplies and Services	Supplies	All other Supplies and Services	Services	Consultant Services	Information Technology	Construction Contract Award	Construction Contract Change Order	Architect/ Engineer Contract Amendment	Drugs, Biological for Human use; Contraceptives, Biochemicals and Biochemical Research	Food Products	Major Fire Fighting Equipment	School Bus Supplies & Maintenance
ADJUTANT GENERAL, OFFICE OF THE	8/21/2018	486 Y	100,000						100,000						
ARTS COMMISSION	9/8/2021	514 Y	100,000					100,000							
COMMERCE, DEPT. OF	5/14/2019	493 Y	100,000					100,000							
CORRECTIONS, SC DEPT. OF	8/21/2018	487 Y	1,000,000				100,000	100,000	100,000	100,000	50,000		1,500,000		
EDUCATION, SC DEPT. OF	10/15/2019	498 Y	150,000					100,000							400,000
FORESTRY COMMISSION	10/17/2017	481 Y	200,000				75,000	100,000						1,000,000	
	1/9/2020	507 Y							100,000						
	1/31/2023 tbd	Recommended	200,000					100,000	100,000					1,000,000	
HEALTH & ENVIRONMENTAL CONTROL, DEPT. OF	6/27/2018	484 Y			2,000,000		250,000	225,000				12,000,000			
	2/11/2020	508 Y							100,000						
JUVENILE JUSTICE, DEPT. OF	12/17/2020	510 Y	500,000						100,000	25,000	5,000				
LABOR, LICENSING & REGULATION, DEPT. OF	8/21/2018	488 Y	100,000				100,000								
MOTOR VEHICLES, DEPT. OF	5/12/2020	509 Y	350,000					150,000							
NATURAL RESOURCES, DEPT. OF	5/1/2018	483 Y	300,000												
	9/9/2019	496 Y							100,000						
	1/31/2023 tbd	Recommended	300,000						250,000	50,000					
PARKS, RECREATION & TOURISM, DEPT. OF	5/31/2022	515 Y	250,000						250,000	250,000	50,000				
PUBLIC SAFETY, DEPT. OF	8/30/2022	517 Y	500,000					100,000		25,000	5,000				
STATE LAW ENFORCEMENT DIVISION (SLED)	8/30/2022	519 Y	250,000					100,000							
TRANSPORTATION, DEPT. OF	12/10/2019	503 Y		1,000,000		500,000		100,000	500,000	100,000	25,000				
VOCATIONAL REHABILITATION	10/15/2019	501 Y	250,000					100,000	250,000	100,000	25,000				

**Certification Comparison**  
**SFAA Meeting**  
**January 31, 2023**

Technical Colleges				PROCUREMENT AREA/ COMMODITY CLASS					
AGENCY	CERTIFICATION			Supplies and Services	Consultant Services	Information Technology	Construction Contract Award	Construction	Architect/
	DATE	CERT NO.	Active					Contract Change	Engineer Contract
								Order	Amendment
FLORENCE-DARLINGTON TECH	5/2/2017	477	Y	150,000	100,000	100,000		25,000	5,000
	12/17/2019	505	Y				100,000		
	1/31/2023	tbd	Recommended	50,000		50,000	50,000	25,000	5,000
GREENVILLE TECHNICAL COLLEGE	12/10/2019	504	Y	250,000		150,000	100,000	50,000	25,000
HORRY-GEORGETOWN TECH	5/14/2019	494	Y	250,000		150,000	150,000	25,000	10,000
MIDLANDS TECHNICAL COLLEGE	8/30/2022	518	Y	350,000		150,000	100,000	50,000	10,000
SPARTANBURG COMMUNITY COLLEGE	10/15/2019	500	Y	225,000		225,000	250,000	50,000	10,000
TRI-COUNTY TECHNICAL COLLEGE	12/17/2019	506	Y				100,000		
TRIDENT TECHNICAL COLLEGE	5/14/2019	495	Y	750,000		350,000	100,000	100,000	50,000

**Certification Comparison**  
**SFAA Meeting**  
**January 31, 2023**

Colleges & Universities				PROCUREMENT AREA/ COMMODITY CLASS						
AGENCY	CERTIFICATION			Supplies and Services	Consultant Services	Information Technology	Revenue Generating Contracts	Construction Contract Award	Construction Contract Change Order	Architect/ Engineer Contract Amendment
	DATE	CERT NO.	Active							
CITADEL, THE	5/2/2017	476	Y	500,000	500,000	500,000		500,000	150,000	25,000
	1/31/2023	tbd	Recommended	500,000		500,000		500,000	150,000	25,000
CLEMSON UNIVERSITY	10/23/2018	489	Y	3,000,000	3,000,000	3,000,000	15,000,000	4,000,000	500,000	100,000
COASTAL CAROLINA UNIVERSITY	12/10/2019	502	Y	400,000		150,000	1,500,000	300,000	200,000	75,000
COLLEGE OF CHARLESTON	5/14/2019	492	Y	500,000		200,000		100,000	100,000	15,000
FRANCIS MARION UNIVERSITY	6/28/2022	516	Y	325,000		200,000		50,000	25,000	25,000
LANDER UNIVERSITY	6/27/2018	485	Y	200,000	200,000	150,000		200,000	75,000	50,000
MEDICAL UNIVERSITY OF SOUTH CAROLINA	6/29/2021	512	Y	2,000,000		2,000,000		1,000,000	500,000	100,000
SOUTH CAROLINA, UNIVERSITY OF	10/23/2018	490	Y	3,000,000	3,000,000	3,000,000	15,000,000	4,000,000	500,000	100,000
WINTHROP UNIVERSITY	10/23/2018	491	Y	250,000	250,000	250,000		200,000	50,000	25,000

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AGENCY: Division of Procurement Services

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SUBJECT: Audit and Certification –The Citadel

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The S.C. Consolidated Procurement Code and ensuing regulations (Procurement Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated procurement authority to the Citadel as follows:

	<b><u>Certification Limits</u></b>
Supplies and Services	\$ 500,000 per commitment
Consultant Services	\$ 500,000 per commitment
Information Technology	\$ 500,000 per commitment
Construction Contract Award	\$ 500,000 per commitment
Construction Contract Change Order	\$ 150,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 per amendment

In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of The Citadel to determine whether the internal controls of the College's procurement system were adequate to ensure compliance, in all material respects, with the Procurement Code. The College has started implementation of the recommended corrective action and upon completion of the corrective action, the internal controls of the Citadel's procurement system will be adequate to ensure compliance with the Procurement Code as described in the audit report.

Per S.C. Code Ann. §11-35-1210, The Citadel requests that the Authority reauthorize it to make direct procurements at the current certification for Supplies & Services, Information Technology, Construction Services, Construction Contract Change Orders, and Architect/Engineer Contract Amendments.



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AGENCY: Division of Procurement Services

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SUBJECT: Audit and Certification –The Citadel

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**AUTHORITY ACTION REQUESTED:**

Authorize The Citadel to make direct procurements at the following limits for three years from date of approval:

	<u><b>Certification Limits</b></u>
Supplies and Services <sup>1</sup>	\$ 500,000 per commitment
Information Technology <sup>2</sup>	\$ 500,000 per commitment
Construction Contract Award	\$ 500,000 per commitment
Construction Contract Change Order	\$ 150,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 per amendment

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

Require The Citadel to submit a correction action plan regarding organization and filing of procurement workpaper the Division of Procurement Services no later than February 28, 2023, for submittal to the five-member authority.

<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.

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**ATTACHMENTS:**

Agenda item worksheet and attachment

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

**Meeting Scheduled for:** January 31, 2023

**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:**

The S.C. Consolidated Procurement Code and ensuing regulations (Procurement Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated procurement authority to the Citadel as follows:

	<u><b>Certification Limits</b></u>
Supplies and Services	\$ 500,000 per commitment
Consultant Services	\$ 500,000 per commitment
Information Technology	\$ 500,000 per commitment
Construction Contract Award	\$ 500,000 per commitment
Construction Contract Change Order	\$ 150,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 per amendment

In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of The Citadel to determine whether the internal controls of the College's procurement system were adequate to ensure compliance, in all material respects, with the Procurement Code. The College has started implementation of the recommended corrective action and upon completion of the corrective action, the internal controls of the Citadel's procurement system will be adequate to ensure compliance with the Procurement Code as described in the audit report.

Per S.C. Code Ann. §11-35-1210, The Citadel requests that the Authority reauthorize it to make direct procurements at the current certification for Supplies & Services, Information Technology, Construction Services, Construction Contract Change Orders, and Architect/Engineer Contract Amendments.

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

Authorize The Citadel to make direct procurements at the following limits for three years from date of approval:

	<u><b>Certification Limits</b></u>
Supplies and Services <sup>1</sup>	*\$ 500,000 per commitment
Information Technology <sup>2</sup>	*\$ 500,000 per commitment
Construction Contract Award	\$ 500,000 per commitment
Construction Contract Change Order	\$ 150,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 per amendment

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

Require The Citadel to submit a correction action plan regarding organization and filing of procurement workpaper files to the Division of Procurement Services no later than February 28, 2023, for submittal to the five-member authority.

<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**

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

Authorize The Citadel to make direct procurements at the limits set forth above for three years. Require The Citadel to submit a correction action plan regarding organization and filing of procurement workpaper files to the Division of Procurement Services no later than February 28, 2023, for submittal to the five-member authority.

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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.
- 

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

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

(b) Office Name: \_\_\_\_\_

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**8. List of Supporting Documents:**

- (a) S.C. Code Ann. § 11-35-1230  
(b) S.C. Code Ann. § 11-35-1210  
(c) Certification Comparison
- 

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



**The Citadel  
Military College of South Carolina**

**INDEPENDENT PROCUREMENT AUDIT REPORT**

**For the Audit Period:  
October 1, 2018 to September 30, 2021**

**Office of Audit & Certification  
Division of Procurement Services  
October 10, 2022**

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## ABBREVIATIONS

COTS	– Commercially Available Off-the-Shelf
CPO	– Chief Procurement Officer
DPS	– Division of Procurement Services
ITMO	– Information Technology Management Office
PI Manual	– Manual for Planning and Execution of State Permanent Improvements
MBE	– Minority Business Enterprise
MMO	– Materials Management Office
OCG	– Office of the Comptroller General
OSE	– Office of State Engineer
PCA	– Purchasing Card Administrator
P-Card	– Purchasing Card
PO	– Purchase Order
Procurement Code	– SC Consolidated Procurement Code and ensuing Regulations
SCEIS	– South Carolina Enterprise Information
SMBCC	– Small and Minority Business Contracting and Certification
SPO	– Surplus Property Office
State PO Policy	– State of South Carolina Statewide Purchase Order Policy
The Citadel	- The Citadel Military College of South Carolina's

## INTRODUCTION

DPS audited The Citadel's internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 of the Procurement Code and Reg. 19-445.2020. The primary objective of our audit was to determine whether, in all material respects, The Citadel's system of internal controls over procurement is adequate to ensure compliance with the Procurement Code.

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

- Identifying the agency's procurement activities and understanding and complying with the Procurement Code
- Establishing and maintaining an effective organization structure and system of internal control over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Procurement Code
- Establishing clear lines of authority and responsibility for making and approving procurements
- Documenting the agency's procurement procedures including its system of internal controls over procurement activities in an internal procurement procedure manual
- Taking corrective action when instances of noncompliance are identified, including corrective action for 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 activities, 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 Procurement Code Ann. § 11-35-1210 is warranted.

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On May 2, 2017 the State Fiscal Accountability Authority (SFAA) granted The Citadel the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CURRENT CERTIFICATION LIMITS</u>
Supplies and Services	*\$500,000 per commitment
Consultant Services	*\$500,000 per commitment
Information Technology	*\$500,000 per commitment
Construction Contract Award	*\$500,000 per commitment
Construction Contract Change Order	\$ 150,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 per amendment

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

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

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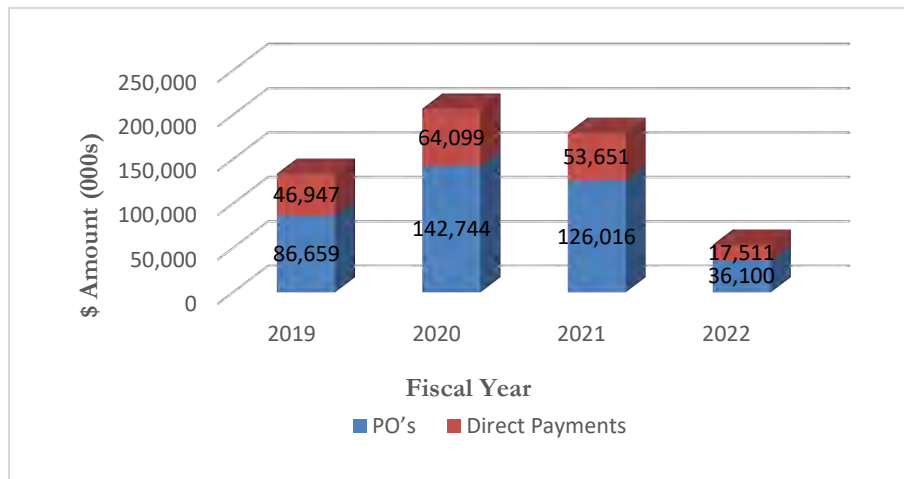
## SCOPE

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 Citadel's compliance with the Procurement Code for the period October 1, 2018 through September 30, 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.

### Total Expenditures

Based on data The Citadel provided, expenditures<sup>1</sup> were made as follows:

	<b>\$ Amount (000s)</b>			<b>Q1</b>	
	<b>Q2,3,4</b>				
	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>Total</b>
POs <sup>2</sup>	86,659	142,744	126,016	36,100	391,519
Direct Pay <sup>3</sup>	46,947	64,099	53,651	17,511	182,209
<b>Total Spend</b>	<b>133,606</b>	<b>206,843</b>	<b>179,667</b>	<b>53,612</b>	<b>573,728</b>



<sup>1</sup> The Citadel was unable to provide an accurate expenditure listing. See Finding II A

<sup>2</sup> **POs** represents all expenditures made with a Purchase Order. These are required for most contract purchases by the terms of the contract, and is the preferred procurement instrument when a government unit orders or procures supplies or services from a vendor.

<sup>3</sup> **Direct Pays** are made without purchase order based on the State PO Policy for executive agencies and internal Policies for institutions of higher learning. These may occur with purchases of supplies or services that are exempt from the Procurement Code or for such things as payment for P-Card purchases or purchases less than \$2500.

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# RESULTS OF AUDIT

## **I. Procurement Manual**

The Citadel's Internal Procurement Procedures Manual, dated May 2021, had not been approved by the CPO. The Citadel's manual did not provide procedures for key provisions of the Procurement Code as required by Procurement Code and Regulation 19-445.2005. Key Provisions not addressed by The Citadel include:

(1) Roles and responsibilities for performance, review, and approval of the various aspects of procurement procedures by position to provide for accountability.

(2) Revenue generating contracts per SC Regulation 19-445.2000.

(3) Contracting audit or legal services. Per SC Code Ann. §§ 11-35-1250 & 11-35-1260.

(4) Requirement of a written determination for the use of source selection method other than competitive sealed bidding.

(5) Designation of approval authority and public notice requirement for sole source procurements per Regulation 19-445.2105.

(6) Proper use of multi-term contracts. Per SC Code Ann. § 11-35-2030.

**Recommendation:** We recommend The Citadel revise its internal procurement manual to provide procedures for procurement personnel conducting commonly used source selection methods, the assignment of roles and responsibilities, and a consistent filing system. Procurement Services provides a Procurement Manual checklist on its website that may assist in revising the manual. Once the manual has been revised, we recommend The Citadel submit the manual to Audit and Certification for approval as required by SC Code Ann. § 11-35-540 and Reg. 19-445.2005. Upon approval, we recommend retraining staff on the revised procedures.

### **College Response**

The Citadel concurs, and will update the manual with the key provisions and submit to CPO for approval on or before March 15, 2023.

## **II. Supplies and Services**

We audited expenditures exceeding \$10,000 made with POs, and expenditures made without a PO to determine compliance with the Procurement Code. Our review of procurements for the audit period identified the following issues:

## RESULTS OF AUDIT

### A. Inaccurate Expenditure Listing

The Citadel was unable to provide an accurate population of expenditures made with POs. The expenditure listing provided totaled approximately \$392M. During field work we discovered that the listing provided overstated the actual expenditures by approximately two and one-half times compared to the 71 POs provided. Without an accurate listing of expenditures, we were not able to effectively select expenditures for testing.

The Citadel was unable to provide an accurate listing of expenditures made without POs. The expenditure listing provided totaled approximately \$182M. During field work we found that the direct pay expenditure listing overstated the actual expenditures by approximately three times compared to the 25 invoices provided. Without an accurate listing of expenditures, we were not able to effectively select expenditures for testing.

**Recommendation:** We recommend that The Citadel evaluate its ERP system's reporting capabilities and its workflow procedures to ensure that key information, such as expenditure amounts, are reported accurately.

### **College Response**

The Citadel concurs, the expenditure report that was generated by the software increased the total amounts. The college will provide training on the platform so that the report does not generate overstated total amounts. The Training will be completed on or before March 15, 2023.

### B. Inappropriate Use of Commercial Resale Exemption

We identified approximately \$8.6M of clothing, military supplies and uniform accessories procured for the Cadet Store and approximately \$2.5M of uniforms and accessories procured for the Tailor Shop without competition. The explanation given was "these items were sold for a profit or were self-sustaining."<sup>4</sup>

The Citadel's website states, "The Cadet Store sells shoes, clothing, accessories, and other cadet items." The website states that the tailor shop "offers alterations on both

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<sup>4</sup> The Citadel places reliance on the fact that The Citadel store is a self-supporting auxiliary enterprise. For many years now, various state institutions of higher learning have unsuccessfully petitioned the General Assembly to exempt all procurements by their 'enterprise' operations from the competitive procedures of the Procurement Code.

## RESULTS OF AUDIT

military uniforms and civilian clothing and custom embroidery.” The tailor shop also buys, alters, and sells items of clothing such as blazer ensembles.

The Procurement Code “applies to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined.” S.C. Code Ann. §11-35-40(2). The Citadel is a governmental body as defined by the Procurement Code. S.C. Procurement Code Ann. §11-35-310(18) Notwithstanding the foregoing, the Procurement Code provides for limited exceptions, a couple of which are cited by the Citadel. Specifically, S.C. Code Ann. §11-35-710 states:

(A) The following exemptions are granted from this chapter:

\*\*\*

(6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations, and from the operation of canteens and bookstores, except as the funds are used for the procurement of construction, architect-engineer, construction-management, and land surveying services.

\*\*\*

(8) articles for commercial sale by all governmental bodies.

Nothing in the Citadel’s records indicate that the procurements found in our testing were made using funds derived “**wholly** from athletic or other student contests, from the activities of student organizations,” or “from the operation of canteens and bookstores.”<sup>5</sup> [emphasis supplied] The fact that these procurements were paid for with “auxiliary funds” does not make the purchases exempt. Purchases are not exempt because they are profit making or self-sustaining.

Therefore, the only question that needs to be addressed is whether the articles, which were the subject of these procurements, were articles acquired “for commercial sale” by the Citadel.

For this audit we have considered, among other things, whether there is an actual commercial market for the items sold; and whether the items are sold without alteration. For example, the typical gift shop meets both conditions. A state park operating a small retail store open to all customers is selling in a commercial marketplace, where customers are free to purchase or not. The items sold—hats, t-shirts, and other items with the park’s

---

<sup>5</sup> To the extent that funds generated under 11-35-710 (6) are commingled with funds from other "auxiliary enterprises" not qualified as exempt by their source, the funds from qualified exempt sources would be tainted, and are no longer exempt.

## RESULTS OF AUDIT

logo—are purchased specifically for that market and sold in the condition received from the supplier.

Many items sold in the Cadet Store, such as Brasso and shoe polish, are commercial off the shelf products available in the general marketplace and sold by the Cadet Store without alteration. Cadets and their families are not constrained to buy these items only at the Cadet Store. Moreover, the Cadet Store will apparently sell these items to anyone who walks in off the street.

Contrast the foregoing example with Citadel uniforms and accessories sold to cadets. The cadets have little, if any, choice whether or where to buy those items. There is no market in the commercial sense. Not only does the Citadel enjoy a monopoly for those sales, but it also requires cadets to purchase them. Likewise, Citadel uniforms themselves have no real market outside the corps of cadets as they are specifically for Citadel cadets. Items that are only of use to Citadel cadets have no value in a commercial marketplace. Furthermore, as discussed below, the Citadel's Tailor Shop alters many uniform items to fit individual cadets, meaning those items are not sold in the same condition as when they were acquired.

The Tailor Shop offers alterations on both military uniforms and civilian clothing and custom embroidery. Services are available to the facility, staff, students, military personnel, police, and all state agencies. However, the items procured for the Tailor Shop are, by the nature of tailor shop operations, altered prior to sale. To qualify for the commercial sale exemption, the items must be sold unaltered, otherwise they are considered raw materials. The only raw materials exemption in the Procurement Code is for the SC Department of Corrections, Division of Prison Industries. S.C. Code Ann. §11-35-710 (2). Therefore, items purchased for sale in the Tailor Shop and then altered and sold to cadets and members of the public are not exempt.

Because there is no real market for them, items obtained for sale in the Cadet Store that are mandatory for cadets, and only usable by cadets, should be acquired through a competitive process. We note that other agencies, like the SC Department of Public Safety, and the SC Department of Corrections, buy uniforms through competitive procurements. Likewise, items purchased by the Tailor Shop for sale should be acquired through a competitive process. On the other hand, we believe that sundries and similar

## RESULTS OF AUDIT

necessities that are sold in the same condition as acquired fall under the commercial sale exemption.

**Recommendation:** We recommend that The Citadel terminate the practice of procuring the type of supplies described in the forgoing analysis for sale in the Cadet Store and any supplies for sale in the Tailor Shop without competition. We further recommend that The Citadel develop and implement procedures to ensure that items procured for use by Auxiliary Enterprises be acquired in accordance with the SC Consolidated Procurement Code as described in the finding.

### College Response

Concur, the Citadel will terminate the use of exemption for commercial resale as a practice of procuring the type of supplies described in the forgoing analysis for sale in the Cadet Store and any supplies for sale in the Tailor Shop without competition. The Citadel will ensure the items procured for use by Auxiliary Enterprises be acquired in accordance with the SC Consolidated Procurement Code as described in the finding effective December 2, 2022.

### C. Improper Use of Exemptions Based on Source of Funds

The Citadel made five purchases totaling approximately \$680k which it treated as exempt from competition based on the source of funds. Two purchases were made from trust funds, and three were made from gift funds.

Per SC Code Ann. § 11-35-40 (2) Application of Procurement Code:

Application to State Procurement. This Procurement Code applies to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in § 11-35-40 (3) (Compliance with Federal Requirements) and except that this Procurement Code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations).

There are no exemptions from the Procurement Code for acquisitions made using trust funds or gift funds. Therefore, these procurements are in violation of the Procurement Code and must be ratified or terminated in accordance with Regulation 19-445.2015 (A)(1).



## RESULTS OF AUDIT

**Recommendation:** We recommend the Citadel develop and implement procedures to ensure the proper application of procurement exemptions and that procurement personnel be trained on the new procedures. All five purchases should be ratified or terminated and reported to DPS as unauthorized or illegal as required by Regulation 19-445.2015.

### College Response

Concur, the Citadel will ratify the purchases and report to DPS the unauthorized purchases on or before February 15, 2023. The procurement procedures will be updated on or before March 15, 2023, and personnel will be trained on the new procedures on or before January 13, 2023.

### III. Sole Source Procurements and Emergency Procurements

We evaluated written determinations for all sole source procurements pursuant to SC Code Ann. § 11-35-1560 to assess the appropriateness of the procurement actions and the accuracy of the quarterly reports required by § 11-35-2440. During the audit period The Citadel reported 238 sole source procurements totaling approximately \$11M to DPS. The Citadel reported 61 emergency procurements totaling approximately \$5.5M.

#### A. Sole Source Procurements Not Reported or Reported Late

The Citadel omitted 50 sole source procurements totaling approximately \$2M from its quarterly reports required by SC Code Ann. § 11-35-2440 and reported 66 sole source procurements totaling approximately \$2.8M late.

#### B. Emergency Procurements Not Reported or Reported Late

The Citadel omitted three emergency procurements totaling approximately \$105k from its quarterly reports required by SC Code Ann. § 11-35-2440 and reported 12 emergency procurements totaling approximately \$1.6M late.

**Recommendation:** We recommend The Citadel develop and implement reporting procedures, including management review and approval, to ensure complete, accurate, and timely reporting of both sole source and emergency procurements as required by SC Code Ann. § 11-35-2440.

# RESULTS OF AUDIT

## College Response

The Citadel concurs with the finding. This is a result from staff turnover. A new process is now in place for all documents to be saved in a central accessible server, so purchases are reported timely moving forward. The change is effective December 2, 2022.

## IV. Construction

We tested construction, and architectural/engineer and related professional service contracts for compliance with the Procurement Code and the PI Manual. Our testing of construction did not identify any compliance issues.

## V. P-Cards

The Citadel had 128 P-Cards in use during the audit period and spent approximately \$10.1M in 33,090 transactions. Based on the volume of usage, there is increased risk that misuse, or abuse of P-Cards will not be prevented or detected without adequate management oversight.

### Program Administration

We reviewed The Citadel's' P-Card Policy and Procedures for compliance with the State P-Card Policy and identified one incident of non-compliance. One cardholder acted as the liaison of their own card in violation of State P-Card Policy V(A), Program Compliance, and Section 3 of The Citadel's internal P-Card Manual.

**Recommendation:** We recommend The Citadel revise its internal P-Card policies and procedures to provide for adequate separation of cardholder, supervisor, and liaison duties. In small departments, this could be accomplished by having the supervisor perform the Liaison review or have a liaison from another department provide oversight.

## College Response

The Citadel concurs with the finding. Due to the department set-up, the cardholder is the liaison that reconciles the transactions. The immediate supervisor reviews the transactions and moving forward an additional reviewer/approver will be added to cardholder's monthly transactions. The change is effective in January.

## RESULTS OF AUDIT

### Transaction Testing

We performed tests of P-Card transactions to ensure compliance with State and agency P-Card policies and procedures. Transaction testing identified areas of non-compliance, which were not identified by the PCAs or supervisor/approvers during the monthly review and reconciliation of cardholder statements.

One cardholder purchased professional services which is a prohibited purchase per State P-Card Policy Section IV.(E) (9) Professional Services.

**Recommendation:** We recommend The Citadel 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.

### College Response

The Citadel authorized the transaction and removed the MCC block after discussion with the State's Controller General concerning authorization as a form of payment. The Citadel concurs that the transaction is on the blocked list and failed to obtain the authorization in writing. The training will be provided to the employee to ensure the correct process and documentation is in place. The completion date is January 13, 2023.

### VI. Unauthorized or Illegal Procurements

We tested Unauthorized or Illegal Procurements to determine compliance with the Procurement Code and Regulations. Our testing of reported unauthorized or illegal procurements did not identify any compliance issues.

### VII. Surplus Property

We tested asset disposals to determine compliance with the Procurement Code and State policies and procedures. Our testing of asset disposals did not identify any compliance issues.

### VIII. MBE Reports

We requested copies of the agency's annual MBE utilization plans and quarterly progress reports to assess compliance with the Procurement Code. The Citadel failed to file four annual utilization plans in a timely manner as required by SC Code Ann. § 11-35-5240 (2).

## RESULTS OF AUDIT

**Recommendation:** We recommend The Citadel develop and implement procedures, including management review and approval, to require and assign responsibility for submitting annual MBE utilization plans and quarterly progress reports to the Office of Small and Minority Business Assistance in a timely manner as required.

### College Response

The Citadel concurs with finding. The documents were submitted late as a result from reduced staffing and lack of time to ensure completion before the deadlines. The college representative responsible for these reports is no longer employed in a procurement role at the institution. The college has set procedures for completion of these reports and will implement review and approval by the Director of Purchasing to assure the timeliness of the submittal of these reports. The effective date is December 2, 2022.

### IX. Delays In Access to Procurement Records

We experienced delays in response to requests for documentation or explanation during the audit. as required by Regulation 19-445.2005(B) requires the Citadel to maintain Procurement records sufficient to satisfy the requirements of external audit. The Citadel's inability to timely provide records calls into question the sufficiency of its filing system for procurement records. While the Citadel experienced significant turnover in key procurement staff in recent years, and the current Procurement Director assumed that position in August of 2021, they should have been able to quickly find documents were the filing system a robust one.

After review of the audit findings with the College, at the conclusion of fieldwork, we were provided substantial additional documentation in July and August of 2022, that had been previously requested during the audit, which started in January 2022:

Nineteen Sole Source Written Determinations provided in July.

Twelve Notice of Intent to Award a Sole Source provided in July.

One Authorized Sole Source Written Determination provided in August.

Board Resolution Authorizing P-Card STL greater than \$2,500 provided in August.

One signed P-Card bank statement provided in September.

**Recommendation:** We recommend that The Citadel develop and implement procedures that establish a consistent methodology for organizing and locating required documentation of procurement activity as required by the Procurement Code.

## RESULTS OF AUDIT

Additionally, we recommend that The Citadel include in these procedures' requirements for the maintenance of documentation sufficient to demonstrate compliance with the Procurement Code and to satisfy the requirements of an external audit.

### College Response

The Citadel agrees that due to documents needing to be pulled over a seven-year period which resulted in having to scan many documents to create the pdf to submit via electronic platform. Now, all documents are saved in pdf format and filed electronically for easier access by department staff. The effective date is December 2, 2022.

## CERTIFICATION RECOMMENDATIONS

We found The Citadel's system of internal controls over its procurement process was not adequate to ensure compliance with the Procurement Code as described in the audit report and made recommendations for improvement. With the implementation of the recommended corrective actions, The Citadel's procurement process will be adequate to ensure compliance with the Procurement Code.

We recommend that by February 28, 2023 the Citadel submit a corrective action plan regarding organization and filing of procurement workpaper files to the Division of Procurement Services for submittal to the five member Authority.

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

### PROCUREMENT AREAS

Supplies and Services<sup>6</sup>

Information Technology<sup>7</sup>

Construction Contract Award

Construction Contract Change Order

Architect/Engineer Contract Amendment

### RECOMMENDED CERTIFICATION LIMITS

\*\$500,000 per commitment

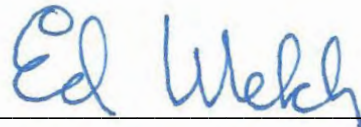
\*\$500,000 per commitment

\$500,000 per commitment

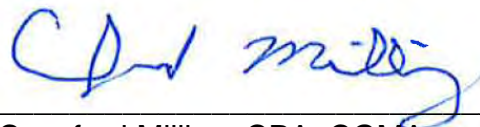
\$150,000 per change order

\$25,000 per amendment

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



Ed Welch, CPA  
Audit Manager,  
Audit & Certification



Crawford Milling, CPA, CGMA  
Director, Audit & Certification

<sup>6</sup> Supplies & Services includes non-IT consulting services.

<sup>7</sup> Information Technology includes consultant assistance for any aspect of information technology.

**The Citadel Military College of South Carolina**  
**Audit Period 10/1/2018 - 9/30/21**  
**Detail Support For Findings**

<b>Date</b>	<b>PO #</b>	<b>Description</b>	<b>\$ Amount</b>
<b><u>Finding II (C) Inappropriate Use of Exemptions Based on Source of Funds</u></b>			
12/19/18	P0030905	Equipment - other	71,091
2/26/19	P0031548	Other contractual services	33,947
9/17/19	P0030684	Investigation	457,480
1/9/20	P0034023	Equipment - other	99,619
11/18/20	P2100261	Equipment - other	18,148
	<b>Total</b>		<u>680,285</u>
	<b>Count</b>		<u><u>5</u></u>

**Finding III (A) Sole Source Procurements Not Reported**

7/28/15	P0020602	Billboard advertising for the SCCC	9,000
7/28/15	P0020602-1	Billboard advertising for the SCCC0	1,762
7/28/15	P0020601	Yearly coverage for ad-words advertising	25,200
9/14/15	P0020961	Practice sessions	7,000
10/19/15	P0021268	Restoration of Guns	12,050
10/30/15	P0021362	Metabolic Measurement System	25,018
11/3/15	P0021414	Reenergize NMR	17,000
7/28/15	P0020602	Billboard advertising for the SCCC	9,000
2/21/18	P0028570	Smart Approach Contract Renewal	12,500
11/4/15	P0021419	Basic hydraulics Bench and Flow over weirs	19,312
11/16/15	P0021516	Smart Approach Contract Renewal Year 2	12,000
12/18/15	P0021820	ADV Advertising	10,700
12/18/15	P0021821	Engineering Billboard	14,000
4/4/16	P0022616	Moral Courage Seminar Training	79,200
4/6/16	P0022619	Names purchased for recruiting	58,399
4/21/16	P0022772	Air displacement plethysmography	44,401
4/21/16	P0022774	Online Alcohol program	12,000
4/22/16	P0022789	4 year subscription to Learning Achievement Tools	78,735
4/26/16	P0022813	Stem CHE Yr3 Grant Evaluator	12,000
7/1/16	P0023308	IBM Statistics Base Campus Edition license subscription	12,144
8/12/16	P0023687	EEG System	61,108
8/18/16	P0023732	Digital Advertising	34,600
8/19/18	P0023741	Digital Ad agreement 8/16-6/17	66,000
8/16/16	P0023828	Digital Ad August through December 2016	50,228
9/15/16	P0023935	Maintenance and repairs	60,000
9/19/16	P0023939	Fire Alarm System	49,534
8/31/18	P0030351	SCCC Billboard ads	10,200
3/29/18	P0028983	LCR Tester	5,955
10/20/16	P0024197	Transportation for football team	15,210

**The Citadel Military College of South Carolina**  
**Audit Period 10/1/2018 - 9/30/21**  
**Detail Support For Findings**

<b>Date</b>	<b>PO #</b>	<b>Description</b>	<b>\$ Amount</b>
10/26/16	P0024264	Advertising	37,000
12/12/16	P0024683	Internet and telephone surveys	34,800
7/25/19	P0032823	Annual Subscription 500,000 names for recruitment	228,780
2/7/17	P0025193	inspector 500 handheld Raman spectrometer/R&D	25,300
5/4/17	P0026153	Composite Process Control software	169,108
5/23/17	P0026363	recruiting statistics	24,150
4/7/20	P0034638	eSignature Enterprise Pro Edition	30,413
6/5/17	P0026451	Smart Approach Contract Renewal	12,500
4/20/20	P0034697	Coward HVAC	37,787
7/5/17	P0026625	Search engine advertising	20,000
7/17/17	P0026716	Billboard advertising	24,000
7/26/17	P0026827	Names purchased for recruiting	228,780
8/10/17	P0026968	software renewal	7,544
8/28/17	P0027135	Advertising in Charlotte airport	28,500
10/19/17	P0027579	Smart Media Digital Liveboards	59,349
11/29/17	P0028035	Maintenance and repairs	60,000
11/29/17	P0028037	Names purchased for recruiting	25,000
12/7/17	P0028073	Newsletter	15,000
1/16/18	P0028254	Digital advertising	12,968
6/30/20	P0034995	SPSS Statistics Base Campus Edition	25,476
8/25/20	P2100427	Consultant	33,465
	<b>Total</b>		<u>1,964,174</u>
	<b>Count</b>		<u><u>50</u></u>



**The Citadel Military College of South Carolina**  
**Audit Period 10/1/2018 - 9/30/21**  
**Detail Support For Findings**

Date	PO #	Description	\$ Amount
<b>Finding III (A) Sole Source Procurements Reported Late</b>			
7/20/15	P0020536	Fire Alarm Parts	3,840
7/27/15	Credit Card	Subscription	8,659
2/9/16	P0022119	Consulting Fees	30,000
2/19/16	P0022215	Chiller for Beach House	31,877
3/2/16	P0022340	Fire Alarm System	132,566
5/11/16	P0023017	Treadmill	13,017
5/19/16	P0023091	Equipment	26,085
8/3/16	P0023625	Repair for spectrometer	12,165
10/19/16	P0024180	Economic Impact Analysis	12,000
12/9/16	P0024675	Names for Recruiting	24,150
7/5/17	P0026620	LEAD Plan 2018 Consulting	50,000
7/5/17	P0026621	Software	22,902
8/9/17	P0026948	Email Blast	38,100
8/9/17	P0026960	Online Training	19,000
8/14/17	P0027005	Advertising	25,000
8/14/17	P0027007	IP Licensing	50,000
8/28/17	P0027133	Advertising	34,800
8/29/17	P0027147	Digital Ads	62,000
8/29/17	P0027148	Digital Ads	94,000
7/24/19	P0032802 CO2	Project Consultant Strategic Planning Project	34,000
7/24/19	P0032802 CO3	Consultant Strategic Plan Project	149,940
7/1/20	P0034981	Food Service Equipment	10,000
7/1/20	P0034994	Software	166,319
7/9/20	P2100050	HVAC	54,810
7/9/20	P2100054	Advertising	99,000
7/14/20	P2100069	Software	143,250
7/15/20	P2100040	Advertising	25,000
8/19/20	P2100417	Educational Services	228,780
8/19/20	P2100418	Marketing	24,450
8/26/20	P2100439	Software	25,000
9/2/20	P2100502	Consulting	49,500
9/2/20	P2100586	Media	18,200
9/8/20	P21005598	Software	25,000
9/10/20	P2100608	Software	116,800
9/11/20	P2100628	License for scheduling software (renewal)	18,481
10/8/20	P2100735	Software	4,360
10/8/20	P2100737	Software	9,999

**The Citadel Military College of South Carolina**  
**Audit Period 10/1/2018 - 9/30/21**  
**Detail Support For Findings**

<b>Date</b>	<b>PO #</b>	<b>Description</b>	<b>\$ Amount</b>
10/8/20	P2100740	Consulting	45,000
10/22/20	P2100801	Coaching	19,433
11/4/20	P2100844	Rental of Facilities	12,000
11/10/20	P2100853	Production of advertising materials	16,271
11/13/20	P2100868	Consulting Assistance Clery Act Report.	25,000
11/17/20	P2100879	Advertising campaign in the Washington, DC market.	34,000
11/19/20	P2100888	Marketing	24,450
12/15/20	P2100946	Software	27,240
12/15/20	P2100946	Software	2,452
1/6/21	P2101025	HVAC	45,712
2/10/21	P2101238	Software	5,126
3/3/21	P2101328	Software	7,167
3/4/21	P2101331	Software	80,595
4/9/21	P2101499	Software	11,726
4/13/21	P2101518	Software	5,000
4/15/21	P2101547	Software	5,540
4/16/21	P2101558	HVAC	60,471
4/20/21	P2101584	Paint	24,882
4/21/21	P2101606	Graphic Design	24,500
4/28/21	P2101654	Healthcare	10,750
5/11/21	P2101753	Software	32,242
5/17/21	P2101794	Heating/Boiler	59,957
6/14/21	P2101960	Software	69,013
6/14/21	P2101962	Software	22,127
6/15/21	P2101984	Campus Connection	21,000
6/15/21	P2200015	Software	26,202
6/21/21	P2101991	Fire Safety	106,570
6/22/21	P211999	Fire Safety	106,570
6/30/21	P2102012	Healthcare	10,750
		<b>Total</b>	<u>2,834,794</u>
		<b>Count</b>	<u>66</u>

**Finding III (B) Emergency Procurements Not Reported**

10/26/16	P0024266	Repair Doors	12,108
1/1/17	P0026087	Repair Steam Leak	31,813
9/9/20	P2100604	Charter Flight to Tampa Football Team	61,350
		<b>Total</b>	<u>105,271</u>
		<b>Count</b>	<u>3</u>

**The Citadel Military College of South Carolina**  
**Audit Period 10/1/2018 - 9/30/21**  
**Detail Support For Findings**

<b>Date</b>	<b>PO #</b>	<b>Description</b>	<b>\$ Amount</b>
<b><u>Finding III (B) Emergency Procurements Reported Late</u></b>			
7/8/15	P0020432	Bat Removal	1,846
7/8/15	P0020463	Serving Stations and Installation	343,990
8/5/15	P0020658	Repair Parts	7,260
9/28/15	P0021078	Emergency Cleanup	2,812
10/6/15	P0021169	Emergency Cleanup	3,950
10/6/15	P0021170	Emergency Cleanup	15,929
10/20/15	P0021278	Installation of Duct	60,000
3/25/16	P0022548	Byrd Hall Cleanup	431,833
9/10/19	P0033103 CO1	Emergency Lighting Inverter	3,636
10/14/20	P2100759	Covid	650,000
10/26/20	P2100810	Medical	33,431
3/4/21	P2100885	Materials	12,314
		<b>Total</b>	<b><u>1,567,001</u></b>
		<b>Count</b>	<b><u><u>12</u></u></b>

Certification Comparison  
SFAA Meeting  
January 31, 2023

Agency			PROCUREMENT AREA/ COMMODITY CLASS												
AGENCY	CERTIFICATION DATE	CERT NO. Active	Supplies and Services	Supplies	All other Supplies and Services	Services	Consultant Services	Information Technology	Construction Contract Award	Construction Contract Change Order	Architect/ Engineer Contract Amendment	Drugs, Biological for Human use; Contraceptives, Biochemicals and Biochemical Research	Food Products	Major Fire Fighting Equipment	School Bus Supplies & Maintenance
ADJUTANT GENERAL, OFFICE OF THE	8/21/2018	486 Y	100,000						100,000						
ARTS COMMISSION	9/8/2021	514 Y	100,000					100,000							
COMMERCE, DEPT. OF	5/14/2019	493 Y	100,000					100,000							
CORRECTIONS, SC DEPT. OF	8/21/2018	487 Y	1,000,000				100,000	100,000	100,000	100,000	50,000		1,500,000		
EDUCATION, SC DEPT. OF	10/15/2019	498 Y	150,000					100,000							400,000
FORESTRY COMMISSION	10/17/2017	481 Y	200,000				75,000	100,000						1,000,000	
	1/9/2020	507 Y							100,000						
	1/31/2023 tbd	Recommended	200,000					100,000	100,000					1,000,000	
HEALTH & ENVIRONMENTAL CONTROL, DEPT. OF	6/27/2018	484 Y			2,000,000		250,000	225,000				12,000,000			
	2/11/2020	508 Y							100,000						
JUVENILE JUSTICE, DEPT. OF	12/17/2020	510 Y	500,000						100,000	25,000	5,000				
LABOR, LICENSING & REGULATION, DEPT. OF	8/21/2018	488 Y	100,000				100,000								
MOTOR VEHICLES, DEPT. OF	5/12/2020	509 Y	350,000					150,000							
NATURAL RESOURCES, DEPT. OF	5/1/2018	483 Y	300,000												
	9/9/2019	496 Y							100,000						
	1/31/2023 tbd	Recommended	300,000						250,000	50,000					
PARKS, RECREATION & TOURISM, DEPT. OF	5/31/2022	515 Y	250,000						250,000	250,000	50,000				
PUBLIC SAFETY, DEPT. OF	8/30/2022	517 Y	500,000					100,000		25,000	5,000				
STATE LAW ENFORCEMENT DIVISION (SLED)	8/30/2022	519 Y	250,000					100,000							
TRANSPORTATION, DEPT. OF	12/10/2019	503 Y		1,000,000		500,000		100,000	500,000	100,000	25,000				
VOCATIONAL REHABILITATION	10/15/2019	501 Y	250,000					100,000	250,000	100,000	25,000				

**Certification Comparison**  
**SFAA Meeting**  
**January 31, 2023**

Technical Colleges				PROCUREMENT AREA/ COMMODITY CLASS					
AGENCY	CERTIFICATION			Supplies and Services	Consultant Services	Information Technology	Construction Contract Award	Construction	Architect/
	DATE	CERT NO.	Active					Contract Change	Engineer Contract
								Order	Amendment
FLORENCE-DARLINGTON TECH	5/2/2017	477	Y	150,000	100,000	100,000		25,000	5,000
	12/17/2019	505	Y				100,000		
	1/31/2023	tbd	Recommended	50,000		50,000	50,000	25,000	5,000
GREENVILLE TECHNICAL COLLEGE	12/10/2019	504	Y	250,000		150,000	100,000	50,000	25,000
HORRY-GEORGETOWN TECH	5/14/2019	494	Y	250,000		150,000	150,000	25,000	10,000
MIDLANDS TECHNICAL COLLEGE	8/30/2022	518	Y	350,000		150,000	100,000	50,000	10,000
SPARTANBURG COMMUNITY COLLEGE	10/15/2019	500	Y	225,000		225,000	250,000	50,000	10,000
TRI-COUNTY TECHNICAL COLLEGE	12/17/2019	506	Y				100,000		
TRIDENT TECHNICAL COLLEGE	5/14/2019	495	Y	750,000		350,000	100,000	100,000	50,000

**Certification Comparison**  
**SFAA Meeting**  
**January 31, 2023**

Colleges & Universities				PROCUREMENT AREA/ COMMODITY CLASS						
AGENCY	CERTIFICATION			Supplies and Services	Consultant Services	Information Technology	Revenue Generating Contracts	Construction Contract Award	Construction Contract Change Order	Architect/ Engineer Contract Amendment
	DATE	CERT NO.	Active							
CITADEL, THE	5/2/2017	476	Y	500,000	500,000	500,000		500,000	150,000	25,000
	1/31/2023	tbd	Recommended	500,000		500,000		500,000	150,000	25,000
CLEMSON UNIVERSITY	10/23/2018	489	Y	3,000,000	3,000,000	3,000,000	15,000,000	4,000,000	500,000	100,000
COASTAL CAROLINA UNIVERSITY	12/10/2019	502	Y	400,000		150,000	1,500,000	300,000	200,000	75,000
COLLEGE OF CHARLESTON	5/14/2019	492	Y	500,000		200,000		100,000	100,000	15,000
FRANCIS MARION UNIVERSITY	6/28/2022	516	Y	325,000		200,000		50,000	25,000	25,000
LANDER UNIVERSITY	6/27/2018	485	Y	200,000	200,000	150,000		200,000	75,000	50,000
MEDICAL UNIVERSITY OF SOUTH CAROLINA	6/29/2021	512	Y	2,000,000		2,000,000		1,000,000	500,000	100,000
SOUTH CAROLINA, UNIVERSITY OF	10/23/2018	490	Y	3,000,000	3,000,000	3,000,000	15,000,000	4,000,000	500,000	100,000
WINTHROP UNIVERSITY	10/23/2018	491	Y	250,000	250,000	250,000		200,000	50,000	25,000

**SECTION 11-35-1230.** Auditing and fiscal reporting.

(1) The Division of Procurement Services, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.

(2) In procurement audits of governmental bodies thereafter, the auditors from the Division of Procurement Services shall review the adequacy of the governmental body's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the board. The Division of Procurement Services shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations, the board may revoke certification as provided in Section 11-35-1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body.

**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.



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AGENCY: Division of Procurement Services

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SUBJECT: Procurement Exemption for the South Carolina Revenue and Fiscal Affairs Office's (RFA) acquisition of professional economist services.

Section 11-35-710 authorizes the State Fiscal Accountability Authority (the "Authority") to "exempt specific supplies, services, information technology, or construction from the purchasing procedures" of the South Carolina Consolidated Procurement Code. RFA request that the Authority grant it an exemption for the acquisition of the services of professional economists per this provision.

In 2014, the General Assembly established RFA and charged it with responsibility for providing diverse sets of fiscal and statistical analyses, reports, and other services to the Governor, General Assembly, state and local government entities, the private sector, and the citizens of the state. RFA is considering augmenting its economic analysis and forecasting capabilities by contracting with firms or individuals for professional economic analytical services. The ability to respond promptly with professional analysis is a paramount concern when advising policy makers on the potential impact of a matter affecting the state's revenue and fiscal situation. Having access to other professional economists with expertise in a particular subject area or skill set will enhance RFA's ability to provide statutorily required economic analysis and revenue forecasting. When a need arises, RFA must have the ability to acquire the services of the best economic consultant with the necessary expertise from a limited pool of professionals and to do so quickly. RFA believes an exemption for professional economists similar to other exemptions for professional services will serve its need to make nimble, timely decisions in obtaining these specialized services.

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AUTHORITY ACTION REQUESTED:

Under authority of SC Consolidated Procurement Code Section 11-35-710, exempt the South Carolina Revenue and Fiscal Affairs Office's acquisition of the services of professional economists from purchasing procedures of the Consolidated Procurement Code.

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ATTACHMENTS:

Agenda item worksheet; Sections 11-35-710; Request from the South Carolina Revenue and Fiscal Affairs Office; List of Professional Services exemptions previously granted by the Budget and Control Board or Authority

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

**Meeting Scheduled for: 1/31/2023**

**Regular Agenda**

**1. Submitted by:**

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

  
John St. C. White, Materials Management Officer

**2. Subject: Other-Specify**

Procurement Exemption for the South Carolina Revenue and Fiscal Affairs Office's (RFA) acquisition of professional economist services.

**3. Summary and Background Information:**

Section 11-35-710 authorizes the State Fiscal Accountability Authority (the "Authority") to "exempt specific supplies, services, information technology, or construction from the purchasing procedures" of the South Carolina Consolidated Procurement Code. RFA request that the Authority grant it an exemption for the acquisition of the services of professional economists per this provision.

In 2014, the General Assembly established RFA and charged it with responsibility for providing diverse sets of fiscal and statistical analyses, reports, and other services to the Governor, General Assembly, state and local government entities, the private sector, and the citizens of the state. RFA is considering augmenting its economic analysis and forecasting capabilities by contracting with firms or individuals for professional economic analytical services. The ability to respond promptly with professional analysis is a paramount concern when advising policy makers on the potential impact of a matter affecting the state's revenue and fiscal situation. Having access to other professional economists with expertise in a particular subject area or skill set will enhance RFA's ability to provide statutorily required economic analysis and revenue forecasting. When a need arises, RFA must have the ability to acquire the services of the best economic consultant with the necessary expertise from a limited pool of professionals and to do so quickly. RFA believes an exemption for professional economists similar to other exemptions for professional services will serve its need to make nimble, timely decisions in obtaining these specialized services.

**4. What is the Authority asked to do?** Under authority of SC Consolidated Procurement Code Section 11-35-710, exempt the RFA's acquisition of the services of professional economists from purchasing procedures of the Consolidated Procurement Code.

**5. What is recommendation of the submitting agency involved?** The Chief Procurement Officer recommends the Authority exempt the RFA's acquisition of the services of professional economists from purchasing procedures of the Consolidated Procurement Code.

**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: \_\_\_\_\_
- 

**8. List of Supporting Documents:**

A - Sections 11-35-710

B – Request from the South Carolina Revenue and Fiscal Affairs Office

C – List of Professional Services exemptions previously granted by the Budget and Control Board or Authority

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

**SECTION 11-35-710. Exemptions.**

(A) The board, upon the recommendation of the chief procurement officer, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this chapter and for just cause by unanimous written decision limit or may withdraw exemptions provided for in this section. The following exemptions are granted from this chapter:

(1) the construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance and repair; and other emergency-type parts or equipment utilized by the Department of Transportation or the Department of Public Safety;

(2) the purchase of raw materials by the South Carolina Department of Corrections, Division of Prison Industries;

(3) South Carolina State Ports Authority;

(4) Division of Public Railways of the Department of Commerce;

(5) South Carolina Public Service Authority;

(6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations, and from the operation of canteens and bookstores, except as the funds are used for the procurement of construction, architect-engineer, construction-management, and land surveying services;

(7) livestock, feed, and veterinary supplies;

(8) articles for commercial sale by all governmental bodies;

(9) fresh fruits, vegetables, meats, fish, milk, and eggs;

(10) South Carolina Arts Commission and South Carolina Museum Commission for the purchase of one-of-a-kind items such as paintings, antiques, sculpture, and similar objects. Before a governmental body procures the objects, the head of the purchasing agency shall prepare a written determination specifying the need for the objects and the benefits to the State. The South Carolina Arts Commission shall review the determination and forward a recommendation to the board for approval;

(11) published books, periodicals, and technical pamphlets;

(12) South Carolina Research Authority;

(13) the purchase of supplies, services, or information technology by state offices, departments, institutions, agencies, boards, and commissions or the political subdivisions of this State from the South Carolina Department of Corrections, Division of Prison Industries;

(14) Medical University Hospital Authority, if the Medical University Hospital Authority has promulgated a procurement process in accordance with its enabling provision;

(15) if approved in writing by the State Engineer in advance, and if some aspect of the overall transaction is otherwise approved by the board in advance of the acquisition, an acquisition of construction from an eleemosynary corporation or foundation, or a wholly owned business thereof, established solely for the governmental body's benefit, but only if the eleemosynary corporation or foundation acquires the construction on behalf of or for the use of the governmental body and does so pursuant to this code, as required by Section 11-35-40(4).

(B) The State Fiscal Accountability Authority shall maintain and post publicly a running list of all currently effective actions taken by the board pursuant to subsection (A).



**SOUTH CAROLINA  
REVENUE AND FISCAL AFFAIRS OFFICE**

EDWARD B. GRIMBALL, Chairman  
C. CURTIS HUTTO  
G. MICHAEL MIKOTA, Ph.D.

FRANK A. RAINWATER  
Executive Director

December 8, 2022

Mr. Delbert H. Singleton, Jr.  
State Fiscal Accountability Authority  
Suite 600, Wade Hampton Building  
1200 Senate Street  
Columbia, S.C. 29201

Dear Mr. Singleton:

Revenue and Fiscal Affairs (RFA) respectfully requests an exemption to the S.C. Consolidated Procurement Code pursuant to S.C. Code of Laws §11-35-710 for economic consulting services.

RFA is considering augmenting its economic analysis and forecasting capabilities by contracting with firms or individuals for professional economic analytical services. Having access to other professional economists with expertise in a particular subject area or with a particular skill set enhances our ability to provide statutorily required economic analysis and revenue forecasting.

The nature of these contracts would depend on the needs or issues at the time. Procuring these services would be more efficient and productive with a procurement exemption and would still be done without compromising the integrity of competition in the marketplace. The degree, timing, frequency, and duration of the need for these services is not always known sufficiently in advance to allow for a regular procurement process. This need can be impacted by different factors ranging from global economic conditions to internal workload and staffing. The ability to respond timely is a paramount concern when advising policy makers on the potential impact of a matter affecting the state's revenue and fiscal situation, and the flexibility provided by an exemption would be a valuable tool.

Even with an exemption, care must and would still be taken to find the appropriate and best economic consultant, as the service need is dependent upon the particular expertise or capabilities of the consultants as well as our confidence in their ability to provide beneficial analysis for our state in a timely matter. The pool of economic professionals

is limited, and the expertise in specific subsets of economic analysis becomes even more limited. As such, this exemption would better serve our need to make nimble, timely decisions in obtaining these specialized services. As always, our office remains committed to ensuring that services are obtained appropriately and effectively. In deciding to request this exemption, we believe that it is consistent with the many other similar professional services benefitting from an exemption such as academic consultants, actuaries, appraisers, auditors, investment counselors, and brokerage services.

Given these factors, we believe that having an exemption is appropriate and would allow us to provide analysis or respond to situations efficiently and effectively without compromising the integrity of the competitive process.

We are happy to discuss this matter further with you or provide any additional information that may be needed to help you and the authority in the decision-making process.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank A. Rainwater". The signature is fluid and cursive, with a large, stylized "F" and "R".

Frank A. Rainwater  
Executive Director

cc: Mr. John White, State Fiscal Accountability Authority

Exhibit C

NAME	DATE	EXEMPTION TEXT	NOTES
Professional Services - Academic Consultants for CHE	1990.08.14	"The Board exempted Commission on Higher Education procurement of consultants for evaluations of academic programs from the requirements of the Procurement Code, provided the Commission follows procedures approved by the Division of General Services."	Original approved procedures included in exhibit to Board minutes.
Professional Services - Actuaries	1982.09.14	"The Board exempted actuaries from the requirements of the Consolidated Procurement Code." <sup>1</sup>	Reference "audit" exemption granted on July 13, 1982, when Board exempted "certified public accountants and public accountants engaged to perform financial and/or compliance audits, subject to approval by the State Auditor's Office, <i>with actuarial audits and other accounting services to be procured under the terms of the Consolidated Procurement Code.</i> " (emphasis added)
Professional Services - Appraisers	1985.03.12	"The Board exempted appraisers from the purchasing procedures and reporting requirements of the Procurement Code in accord with Code Section 11-35-710, on the recommendation of the Division of General Services."	
Professional Services - Artists	1982.12.17	Professional artists utilized by the South Carolina Arts Commission. <sup>1</sup>	
Professional Services - Attorneys (1)	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (a) attorneys, subject to approval by the Attorney General's Office." <sup>1,3</sup>	[1] See § 1-7-160 ("A department or agency of state government may not hire a classified or temporary attorney as an employee except upon the written approval of the Attorney General . . .") and § 1-7-170 ("A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General . . ."). Historically, these provisions appear each year in the annual appropriations act, which supersedes other laws. <i>E.g.</i> , 2008 S.C. Act No. 310, Part IB, § 45. [2] See generally § 11-35-1260 and R. 19-445.2025(D).
Professional Services - Attorneys (2)	1999.02.09	"[A]mended the July 13, 1982, Consolidated Procurement Code exemption for legal services pursuant to Section 11-35-710 of the Code to exempt attorneys approved by the [Budget and Control] Board." <sup>1,3</sup>	Intended to expand exemption to include attorneys approved by either the Attorney General or the Budget & Control Board. See Exhibits to agenda item. Statutory requirements of Sections 1-7-160 & -170 still apply.
Professional Services - Auditors	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (b) certified public accountants and public accountants engaged to perform financial and/or compliance audits, subject to approval by the State Auditor's Office, with actuarial audits and other accounting services to be procured under the terms of the Consolidated Procurement Code." <sup>1,3</sup>	See generally § 11-35-1250 and R. 19-445.2025(E).
Professional Services - Brokerage	2002.02.14	"Pursuant to S.C. Code Ann. Section 11-35-710, the Board may exempt governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code upon the recommendation of the Office of General Services. The Board exempted the purchase of services relating to investment counselors on July 13, 1982, and the Investment Panel and OGC recommended that the exemption be clarified to include investment management and advisory services and expanded to include brokerage services. . . . The Board approved the recommendation to exempt brokerage services and investment management and advisory services from the requirements of the Consolidated Procurement Code as recommended by the Retirement Systems Investment Panel and the Office of General Services." (emphasis added)	



NAME	DATE	EXEMPTION TEXT	NOTES
Professional Services - Clergy	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (k) clergy." <sup>1, 4</sup>	
Professional Services - Court Reporters	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (l) court reporters." <sup>1, 4</sup>	
Professional Services - Dentists	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (f) dentists." <sup>1, 3</sup>	
Professional Services - Doctors	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (d) medical doctors." <sup>1, 3</sup>	
Professional Services - Expert Witness	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (m) expert witness services." <sup>1, 4</sup>	
Professional Services - Hospital & Med Clinic	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (c) hospital and medical clinic services." <sup>1, 3</sup>	
Professional Services - Investment Counselors	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (j) investment counselors." <sup>1, 3</sup>	On February 14, 2002, the Board also exempted both brokerage services and investment management and advisory services.
Professional Services - LPNs	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (h) licensed practical nurses." <sup>1, 3</sup>	
Professional Services - Occupational Therapists	1983.05.10	"The Budget and Control Board exempted occupational therapists from the purchasing procedures of the Consolidated Procurement Code, as recommended by the Division of General Services." <sup>3</sup>	Recommendation of General Services appears in the agenda item, which indicates that the conditions for purchasing professional services (as stated in the Board's minutes of July 13, 1982) apply equally to this exemption. See footnote 3.
Professional Services - Optometrists	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (e) optometrists." <sup>1, 3</sup>	
Professional Services - Osteopaths	1983.01.11	"The Board exempted from the purchasing procedures and reporting requirements of the Consolidated Procurement Code . . . the purchase of the services of doctors of osteopathy. The Board took this action upon the recommendation of the Division of General Services." <sup>1, 3</sup>	Recommendation of General Services appears in the agenda item, which indicates that the conditions for purchasing professional services (as stated in the Board's minutes of July 13, 1982) apply equally to this exemption. See footnote 3.
Professional Services - Physical Therapists	1983.03.22	"The Board exempted physical therapists, physical therapy assistants . . . from the requirement that these services be purchased through the respective Chief Procurement Officers area of responsibility." <sup>1, 3</sup>	Board minutes incorporate language almost identical to conditions imposed on professional services exemptions found in Board minutes of July 13, 1982. See footnote 3.
Professional Services - Psychiatrists	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (i) psychiatrists." <sup>1, 3</sup>	
Professional Services - RNs	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (g) registered nurses." <sup>1, 3</sup>	



NAME	DATE	EXEMPTION TEXT	NOTES
Professional Services - Speech Pathologists	1983.03.22	"The Board exempted speech pathologists . . . from the requirement that these services be purchased through the respective Chief Procurement Officers area of responsibility." 1,3	Board minutes incorporate language almost identical to conditions imposed on professional services exemptions found in Board minutes of July 13, 1982. See footnote 3.
Professional Services - Veterinary Services	1983.09.13	"The Board approved the reference exemptions in accord with the Procurement Code Section 11-35-710, upon the recommendation of the Division of General Services." General Services recommended "that the following be exempted from the requirements of the Procurement Code in accordance with Code Section 11-35-710: (b) veterinary services customarily obtained on a fee basis rather than by competitive solicitation, on the condition that the individual or firm involved must be licensed to perform veterinary services, that the individual, in fact, is providing those services licensed, and that the contractual relationship between the individual or firm and governmental body cannot be an employee/employer relationship which would be governed by State Personnel rules and regulations."	
Public Service Authority (Santee Cooper)	1981.07.30 2006.06.13	"The following exemptions are granted from this chapter: (5) South Carolina Public Service Authority . . ."	Quoted from § 11-35-710(A)(5)
Research Authority (2)	1983.09.21 2005.06.07 2006.06.13	"The following exemptions are granted from this chapter: (12) South Carolina Research Authority . . ."	Quoted from § 11-35-710(A)(12)
Research University - Economic Development Bond Act exemption	2004.03.17	"All procurements of infrastructure, as defined in Section 11-41-30 and owned by a research university, as defined in Section 11-51-30(5), shall be exempt from Title 11, Chapter 35, except that such research university must work in conjunction with the Budget and Control Board's Chief Procurement Officer to establish alternative procurement procedures. The research university shall submit its alternative procurement procedures to the State Budget and Control Board for approval. Such procurement process shall include provisions for audit and recertification."	[1] Quoted from § 11-41-180 [2] On May 4, 2004, the Board approved procurement procedures pursuant to § 11-41-180 for use by Clemson University. The approved procedure contains the following statement regarding its applicability: "This code, and the accompanying regulations, are authorized by Section 11-41-180 and shall apply to every procurement of infrastructure, as defined in Section 11-41-30, by Clemson University that relates specifically to an economic development project approved pursuant to Section 11-41-80." Section 40 [3] By its own terms, the approved procedure expires unless reauthorized: "The code and regulations shall be resubmitted to the Board for recertification during the first quarter of the fifth year following initial approval. The code and regulations expire at the end of the second quarter of the fifth year following initial approval unless reapproved by the Board." Section 12.10
Research University - SC Research University Infrastructure Act exemption	2004.03.17	"The research universities while engaging in projects related to this act shall be exempt from the state procurement process, except such research universities must work in conjunction with the Budget and Control Board's Chief Procurement Officer to establish alternate procurement procedures, and must submit a procurement process to the State Commission on Higher Education to be forwarded to the State Budget and Control Board for approval. These processes shall include provisions for audit and recertification."	[1] Quoted from Section 11-51-190. [2] On November 1, 2005, the Board approved procurement procedures pursuant to Section 11-51-190 for use by all three research universities. The approved procedures contain the following statement regarding their applicability: "This code and the accompanying regulations are authorized by Section 11-51-190 and may be used by the research universities only for procurements specifically related only to a Research Infrastructure Project (as defined in Section 11-51-30) that has been approved by the Budget and Control Board as a Research Infrastructure Project for purposes of this code. A project may be approved only if a research university has defined the project with sufficient specificity to effectively limit the

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AGENCY: Division of Procurement Services

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SUBJECT: Psychiatric Residential Treatment Facility for juveniles - Approval of Project Delivery Method and Contract Duration

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The Department of Mental Health (DMH) is in the planning stages for a Psychiatric Residential Treatment Facility for juveniles. The facility will be located adjacent to the G. Werber Bryan Psychiatric Hospital, between Beckman Road and Faison Drive. DMH estimates that the total potential value of this project is \$90 million (\$20 million for design and construction and \$70 million for operation and maintenance services over seven years).

DMH intends to solicit contractual offers that include design, build (construction), and long-term operations and maintenance. Due to the nature of the proposed project, DMH seeks approval to use the design-build-operate-maintain (DBOM) project delivery method. Under the procurement code, this project delivery methods require SFAA approval before DMH may solicit proposals. DMH's justification for their request appears in the attached Written Determination.

Approval of the project delivery method must be accompanied by identification of the source selection method to be used. The competitive process will be conducted using the Competitive Sealed Proposal source selection method.

DMH's intended approach involves a contract for design, construction, and operation and maintenance which will exceed seven years in duration. Any contract governed by the procurement code having a maximum potential duration exceeding seven years must be approved by SFAA before DMH may solicit proposals. Accordingly, DMH is also requesting approval for a contract duration of seven years after substantial completion of construction to allow for a meaningful period of operation and maintenance services.

The project delivery methods are defined in Section 11-35-2910. Approval of the project delivery method is governed by Section 11-35-3010 and Regulation 19-445.2145B. The source selection method must be specified pursuant to Section 11-35-3015(6). Approval of the contract duration request is governed by 11-35-2030(5) and Regulation 19-445.2135. Copies of these laws are attached.

The Authority's actions herein are limited to the approvals required by the Consolidated Procurement Code and Regulations as set forth above

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AGENCY: Division of Procurement Services

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SUBJECT: Psychiatric Residential Treatment Facility for juveniles - Approval of Project Delivery Method and Contract Duration

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AUTHORITY ACTION REQUESTED:

Approve the Department of Mental Health 's use of design-build-operate-maintain as the project delivery method for the proposed Juvenile Psychiatric Residential Treatment Facility project. For the same project, approve the Department of Mental Health to solicit proposals for a contract with a duration of seven years after substantial completion of construction.

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ATTACHMENTS:

Agenda item worksheet; DMH's Written Determination of Appropriate Project Delivery Method for the Juvenile Psychiatric Residential Treatment Facility project, dated January 6, 2023; Applicable statutes and regulations.

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
AGENDA ITEM WORKSHEET**

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**Meeting Scheduled for: 1/31/2023**

**Regular Agenda**

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**1. Submitted by:**

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

Management Officer

  
John St. C. White, Materials

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**2. Subject: Other-Specify**

Psychiatric Residential Treatment Facility for juveniles - Approval of Project Delivery Method and Contract Duration.

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**3. Summary and Background Information:**

The Department of Mental Health (DMH) is in the planning stages for a Psychiatric Residential Treatment Facility for juveniles. The facility will be located adjacent to the G. Werber Bryan Psychiatric Hospital, between Beckman Road and Faison Drive. DMH estimates that the total potential value of this project is \$90 million (\$20 million for design and construction and \$70 million for operation and maintenance services over seven years).

DMH intends to solicit contractual offers that include design, build (construction), and long-term operations and maintenance. Due to the nature of the proposed project, DMH seeks approval to use the design-build-operate-maintain (DBOM) project delivery method. Under the procurement code, this project delivery methods require SFAA approval before DMH may solicit proposals. DMH's justification for their request appears in the attached Written Determination.

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The project delivery methods are defined in Section 11-35-2910. Approval of the project delivery method is governed by Section 11-35-3010 and Regulation 19-445.2145B. The source selection method must be specified pursuant to Section 11-35-3015(6). Approval of the contract duration request is governed by 11-35-2030(5) and Regulation 19-445.2135. Copies of these laws are attached.

The Authority's actions herein are limited to the approvals required by the Consolidated Procurement Code and Regulations as set forth above

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

For the proposed Juvenile Psychiatric Residential Treatment Facility project, approve DMH's use of design-build-operate-maintain as the project delivery method. For the same project, approve DMH to solicit proposals for a contract with a duration of seven years after substantial completion of construction.

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

The State Engineer recommends approval of the request.

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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 – DMH's Written Determination of Appropriate Project Delivery Method for the Juvenile Psychiatric Residential Treatment Facility project, dated January 6, 2023.

B – Applicable statutes and regulations.

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



*State of South Carolina*  
*Department of Mental Health*

**MENTAL HEALTH COMMISSION:**

L. Gregory Pearce, Jr., Chair  
Elliott E. Levy, MD, Vice Chair  
Alison Y. Evans, PsyD  
Carl E. Jones, Ph.D.  
Bobby H. Mann, Jr.  
Crystal A. Smith Maxwell, MD

2414 Bull Street • P.O. Box 485  
Columbia, SC 29202  
Information: (803) 898-8581

**Robert Bank, MD**  
Acting State Director

January 6, 2023

Mr. John St. C. White, Materials Management Officer and State Engineer  
State Fiscal Accountability Authority  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201

Re: Written Determination of Appropriate Project Delivery Method for Psychiatric Residential Treatment Facility  
State Project: J12-9830

Dear Mr. White:

The purpose of this letter is to seek approval of the requested delivery method to construct a new 32 bed Psychiatric Treatment Facility to serve youth in State care or custody and to select a contract operator to operate and maintain the facility once completed.

**Project Introduction:**

State law forbids the commitment of a juvenile to a DJJ institution who is determined to have a serious mental illness (*S.C. Code Ann.* Section 63-19-1450). Since the mid-1990's, the Department of Mental Health (DMH) and DJJ have had procedures for implementing this law through identifying and timely transferring a committed juvenile with a serious mental illness to an appropriate residential facility identified by DMH for mental health treatment.

The residential programs currently available for juveniles in need of mental health treatment in South Carolina are private facilities. However, in addition to needing mental health treatment, some juveniles with a serious mental illness have a history of assaultive or destructive behavior. Consequently, many private facilities have not been willing to accept some DJJ committed juveniles when referred by DMH or subsequently discharge the juvenile if they engage in offending behavior. In some cases, this has resulted in juveniles with a serious mental illness remaining within a DJJ institution while DMH searches for an appropriate residential provider willing to accept them for admission. Periodically, finding a willing

provider has necessitated sending the juvenile to an out-of-state facility, always at a higher cost to the State.

A commonly needed residential program for juveniles with a serious mental illness is a Psychiatric Residential Treatment Facility (PRTF). A PRTF is one type of licensed health care facility and is defined in *S.C. Code Ann.* Section 44-7-130:

(16) "**Residential treatment facility for children and adolescents**" means a facility operated for the assessment, diagnosis, treatment, and care of two or more "children and adolescents in need of mental health treatment" which provides:

- (a) a special education program with a minimum program defined by the South Carolina Department of Education;
- (b) recreational facilities with an organized youth development program; and
- (c) residential treatment for a child or adolescent in need of mental health treatment.

.....  
(18) "**Children, adolescents, and young adults in need of mental health treatment**" in a residential treatment facility means a child, adolescent, or young adult under age twenty-one who manifests a substantial disorder of cognitive or emotional process, which lessens or impairs to a marked degree that child's, adolescent's, or young adult's capacity either to develop or to exercise age-appropriate or age-adequate behavior. The behavior includes, but is not limited to, marked disorders of mood or thought processes, severe difficulties with self-control and judgment including behavior dangerous to self or others, and serious disturbances in the ability to care for and relate to others.

Juveniles with a serious mental illness who are transferred from a DJJ institution for treatment are almost always Medicaid beneficiaries. Therefore, the Department of Health and Human Services (DHHS) has an interest in ensuring these juveniles receive needed medical services, including mental health services, in a timely manner. Additionally, the Department of Children's Advocacy (DCA), and the State Child Advocate were established to ensure that children receive adequate care from the services and programs of State agencies, including DJJ and DMH. The four agencies reached consensus that to ensure the timely transfer for treatment of all juveniles with a serious mental illness, and to ensure that they remain in treatment for as long as medically necessary, even despite occasional disruptive behavior, a State operated PRTF was needed. In its FY 23 budget request, DJJ sought and received twenty million dollars (\$20,000,000) to create a PRTF for committed juveniles who have a serious mental illness.

Thereafter DJJ, DMH, DHHS and DCA entered a Memorandum of Understanding (MOU) setting out their mutual agreement that "the most efficient development method .... is to procure a third party to design and build the PRTF." The MOU further provided that DJJ transfer the \$20 million it received to DHHS to oversee the funding of the project, and that DMH will "manage the Request for Proposals

("RFP") process and subsequent construction of the Project which SCDMH will own and operate." DMH has identified a site for the facility on its Northeast Columbia campus, near its G. Werber Bryan Psychiatric Hospital. The MOU is included as an attachment to the letter.

#### **Contract duration**

DMH proposes a contract duration of up to seven (7) years for the operational phase of the Solicitation, which would begin upon substantial completion of construction and occupancy approval. DMH desires an operational contract with an initial term of 5 years and two optional one year extensions. As a result, the combined duration of design, construction, and operation and maintenance will exceed 7 years, DMH is therefore also seeking approval of the State Fiscal Accountability Authority for a term of up to ten years.

#### **Expected annual operating costs**

Based on staffing models for an up-to 32 bed PRTF and considering the costs which the DMH and other State agencies have had to periodically incur to secure admissions to private PRTFs for some individual juveniles with histories of aggressive behaviors, DMH is estimating operational costs of up to \$10 million annually.

#### **Description of the selected project delivery method:**

As provided by the SC Code of Laws §11-35-3010, DMH may select the method of project delivery used for a state construction project that is most advantageous to the State and that results in the most timely, economical, and successful completion of the construction project. After careful review and evaluation of available delivery methods, DMH has determined that the design-build-operate-maintain delivery method detailed in §11-35-3015 would be advantageous to the State, DMH, and its partner State agencies. Expediting the creation of a State owned and operated PRTF will benefit juvenile justice involved youth with a serious mental illness in need of admission and treatment to a PRTF.

#### **Description of the source selection method:**

As required by *S.C. Code Ann.* Section 11-35-3015, the design-build-operate-maintain delivery method must be procured by competitive sealed proposals, as provided in Section 11-35-1530.

#### **Overview of the Selection process:**

DMH intends to issue a Request for Proposals describing the project, which will include outlining both the required size and features of the facility, which will have between 24 and 32 beds, as well as the characteristics of the expected patient population. As the PRTF is a type of licensed health care facility, there are extensive DHEC regulations providing for certain space requirements and many of the health and safety features which the building must include. The regulations also contain numerous



programmatic, policy and staffing standards which a licensee/operator must provide. See *South Carolina Reg.* 61-103, “**Residential Treatment Facilities for Children and Adolescents**”.

- a. The Request for Proposals with a project description/scope of work will be advertised through SCBO.
- b. The RFP will require detailed information on the Offeror’s project approach and management plan, pre-construction and construction services, ability to meet the project schedule and available business resources. The RFP will state the relative importance of the factors to be considered.
- c. The RFP shall require the following information to be submitted:
  - Relevant experience for the design, construction, operation, and maintenance of health care facilities, including PRTFs, if any.
  - Financial profile of the Offeror’s company including strength and stability.
  - References for past performance and litigation history.
  - Management profile and resumes of company officers and management of the proposed development team.
- d. Evaluation Criteria will be developed and described in the RFP. Clinical and program staff from DMH, DJJ and DHHS are familiar and experienced in what is needed in a successful treatment program for youth with serious emotional disturbances.
- e. Given the specific challenges of housing a juvenile justice involved population of primarily adolescent males, the RFP will require the Offerors to describe the safety and security features which their design will include that will help to minimize the risk of elopements and which will complement the behavior management features of its treatment program. It will also provide that the Offeror highlight those design elements and building materials it will include that will help to prevent deliberate damage to the facility by its occupants and minimize needed repairs. The selection process will consider design elements including building materials in the Offeror’s proposals which may exceed or enhance those required by the applicable building codes and DHEC regulations.
- f. For the same reasons, the Offerors will be required to describe their intended treatment approach primarily focused on adolescent male juveniles with a serious mental illness from DJJ. A focus of the panel’s evaluation will be the contractor’s description of its training for staff in implementing a specialized behavioral program, utilizing evidence-based practices of treatment. The Offerors will also be required to describe how they will ensure that their staff receive ongoing training and consultation to implement and sustain an evidence-based treatment program, with the oversight and support of a management team.
- g. Offerors will be ranked from most qualified to least qualified. The rankings will be documented in writing.
- h. The selection committee is anticipated to be:

Mr. John St. C. White

January 6, 2023

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Voting -

Brandon Gaffney, Assistant Deputy Director, DoAS, DMH

Peter Creighton, Director, PPS, DMH

Kimberly Rudd, M.D., Medical Director, DIS, DMH

Mary Jane Hicks, Ph.D., Director, WSHPI, DMH

A representative of DHHS

A representative of DJJ

A representative of DCA

Non-voting Technical Advisors-

*TBD*

- i. Proposals will be scored, and the Offerors will be ranked from most advantageous to least advantageous to the State considering only the evaluation factors.
- j. Negotiations will be conducted with the highest scoring Offeror, and if successful, an intent to award statement will be issued.

**Description of any additional procurement procedures:**

Procurement procedures will be conducted as described above with §11-35-3024 guiding the RFP process.

**Description of the types of Performance Security selected:**

Forms of security as described in §11-35-3030 (2)(a), Regulation 19-445.2145(C)(2), and an Operations Period Surety Bond as described in §11-35-3037 and Regulation 19-445.2145 (M) will be required.

**Facts and considerations leading to this selection method:**

- a. Facility –  
While a PRTF is a recognized type of health care facility, meaning that the facility will feature many elements common to existing PRTFs, as noted the PRTF will need to include design elements and building materials that will help to prevent deliberate damage to the facility by its occupants and minimize needed repairs.
- b. Location of Facility –  
The location designated for the facility is adjacent to the G. Werber Bryan Psychiatric Hospital, between Beckman Road and Faison Drive.
- c. Time Deadlines –  
A preliminary project schedule is as follows:

- |                                     |                             |
|-------------------------------------|-----------------------------|
| • Phase I approval by SFAA          | September, 2022             |
| • RFP selection/negotiation process | March, 2023 – October, 2023 |
| • Award RFP                         | November, 2023              |
| • Design Review and Approvals       | June, 2024                  |
| • Construction                      | June, 2024 – November, 2025 |

### **Advantages and Disadvantages of Available Project Delivery Methods**

a. Design-Bid-Build

- Advantage

The advantage of utilizing the design-bid-build method for construction is DMH's familiarity and experience with this method. Most DMH construction projects have utilized this method and have been successful projects. This method provides a single point of responsibility for construction which allows a traditional contractor-owner relationship to manage the construction process.

- Disadvantage

The disadvantages of using this delivery method are that it will burden DMH with doing a separate RFP for an operator of the facility. An additional disadvantage is that prospective operators will have not been involved in the design of the facility they will be expected to operate. As already mentioned, the operator will be providing treatment for a very challenging resident population, many if not most of whom will have already been refused admission by one or more private PRTFs.

b. Design-Build-Operate-Maintain (DBOM)

- Advantage

The advantage of utilizing a design-build-operate-maintain delivery method is the involvement of the eventual operator in the design of the facility. If the operator is responsible for design, operation and maintenance, the facility is more likely to complement the operator's treatment program, in terms of providing a space configuration that supports successful behavior management of the residents. Additionally, in the design and selection of materials, emphasis is more likely to be placed on durability in the design. An additional advantage is not having to go through multiple selection processes for the design, the construction and the eventual operation and maintenance of the facility.

- Disadvantage

The disadvantage to using this method is that it may exclude Offerors who would be qualified to operate a successful treatment program, but have no desire or experience in design and construction of a health care facility.

### **Project Delivery Methods Used on Similar Projects**

- DMH has utilized design-bid-build on multiple large health care facility projects including both new construction and renovations to existing facilities. Using this method, results have largely been successful. Because of the rapid escalation in building costs since 2015, there have been several projects where bids exceeded initial project funding. And there have been situations when deficiencies in the contractor's work necessitated corrections following substantial completion.
- DMH utilized the design-build-finance-operate-maintain project method for the solicitation for the Sexually Violent Predator Treatment Program, though ultimately the State determined it more advantageous to finance the construction itself. In effect, the solicitation wound up being a DBOM.

### **Decision Making and Administrative Services**

- DMH will have owner representation through internal staffing resources. As noted, as a licensed health care facility, during design and construction the PRTF will also be reviewed by qualified health licensing staff from DHEC.
- Other decision-making DMH leadership includes finance, legal, licensed legal representation, project managers, certified procurement personnel and health and life safety professionals including a fire marshal and campus police force.

### **Case for Support and Accountability**

DMH has a history of good stewardship and accountability of public funds by providing projects of the highest possible quality, delivered in a timely manner while responsibly managing fiscal resources. The design-build method for construction is well organized and effective because it has a single purpose. The design-build-operate maintain also utilizes the Department's extensive construction expertise while utilizing the agency's extensive experience with operating health care facilities, including multiple DMH health care facilities operated by a private contractor. Allowing DMH to proceed with a single solicitation will harness both of these areas of experience and expertise, as well as allow the Department to involve the future operator of the facility in the design and construction of the facility.

In summary, DMH requests your approval to be authorized to conduct the RFP for a State operated PRTF for a juvenile justice involved population of primarily adolescent males with serious mental illnesses as a Design Build Operate and Maintain procurement.

Thank you for your consideration of this written determination. Please contact me at 803-898-8319 if you have any questions.

Mr. John St. C. White

January 6, 2023

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Sincerely,

A handwritten signature in black ink, appearing to read "Robert Bank" followed by a stylized flourish.

Robert Bank, M.D.

Acting State Director

cc: Robert Kerr, State Director, Department of Health and Human Services  
Eden Hendrick, J.D., State Director, Department of Juvenile Justice  
Amanda Whittle, J.D., State Child Advocate

**Attachment: Memorandum of Understanding**

**MEMORANDUM OF UNDERSTANDING**  
**AMONG**  
**SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH**  
**AND**  
**SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE**  
**AND**  
**SOUTH CAROLINA DEPARTMENT OF CHILDREN'S ADVOCACY**

**FOR THE PROVISION OF CERTAIN FUNDING FOR THE DESIGN AND  
CONSTRUCTION OF A PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY**

THIS MEMORANDUM OF UNDERSTANDING (MOU) entered into as of the 1<sup>st</sup> day of July, 2022, ("Effective Date") among the South Carolina Department of Health and Human Services, Post Office Box 8206, Columbia, South Carolina, 29202-8206, hereinafter referred to as "SCDHHS"; the South Carolina Department of Mental Health, 2414 Bull Street, Columbia, South Carolina 29202, hereinafter referred to as "SCDMH"; and the South Carolina Department of Juvenile Justice, 4900 Broad River Road, Columbia, South Carolina 29212, hereinafter referred to as "SCDJJ"; South Carolina Department of Children's Advocacy, 1205 Pendleton Street, Suite 471, Columbia, South Carolina 29202, hereinafter referred to as "SCDCA".

The parties agree as follows:

**A. PURPOSE OF AGREEMENT**

The parties seek to provide appropriate facilities and treatment services for justice-involved youth requiring mental health treatment ("Youth"). This endeavor will be multi-pronged. This MOU describes the funding arrangement to develop an appropriate facility for Youth in need of treatment at a Psychiatric Residential Treatment Facility ("PRTF"). The parties agree that the most efficient development method for such a facility is to procure a third party to design and build the PRTF, which shall have no less than twenty (20) beds and be located at 220 Faison Drive, Columbia, South Carolina 29203 ("Project"). SCDJJ shall be allocated Twenty Million Dollars (\$20,000,000) by the South Carolina General Assembly ("Funding") for the Project. SCDJJ shall transfer the Funding to SCDHHS to oversee the funding of the Project, and SCDMH shall manage the Request for Proposals ("RFP") process and subsequent construction of the Project, which SCDMH will own and operate.

**B. SCOPE OF WORK**

1. SCDJJ shall receive the Funding to complete the Project through the 2022-2023 Appropriation Act. Within thirty (30) days of receiving such Funding, SCDJJ shall provide the total amount of those funds to SCDHHS by intergovernmental transfer (IGT). Once the Funding is received by SCDHHS, SCDJJ shall have no further funding obligations under this MOU.
2. The parties shall utilize their experience treating and serving the target Youth population to draft a mutually agreed upon RFP to be posted within six (6) months.
3. SCDMH shall manage the solicitation process for the Project. SCDHHS and SCDJJ shall each select one (1) individual who will serve as a member of the Evaluation Panel of the RFP. In addition, the State Child Advocate will serve as a member of the Evaluation Panel of the RFP.
4. The parties have agreed upon certain dates in a proposed timeline for the Project and the milestones to be included in the RFP. (Appendix A – Proposed Timeline and RFP Milestones). Other dates in Appendix A shall be finalized within sixty (60) days of the execution of this MOU resulting in an amendment to update Appendix A. Upon award of the contract to perform the Project, SCDMH shall notify SCDHHS of the selected contractor and provide an amendment to this MOU which details any negotiated changes to the timeline and milestones outlined in Appendix A.
5. SCDMH shall oversee the Project to ensure that all milestones are met timely and completely. SCDMH shall have overall responsibility for the completion and success of the Project.
6. At any time during the design phase of the Project, SCDHHS may request information and SCDMH shall submit to SCDHHS the proposed design of the PRTF. SCDHHS reserves the right to make any comments or suggestions related to the adequacy of the design.
7. SCDHHS shall manage the Funding for the Project and shall be responsible for its distribution to SCDMH in the manner provided:
  - a. Should the Project cost exceed the Funding, SCDHHS shall distribute the Funding in compliance with the construction draw schedule established by the contract resulting from the RFP and in accordance with Subsections 8 and 9 below, until such Funding is exhausted. After Funding has been exhausted, SCDMH shall submit to SCDHHS the remaining outstanding draws in accordance with the schedule established by the contract resulting from the RFP and in accordance with Subsections 8 and 9 below, and SCDHHS shall be responsible for

contributing half of the amount of each draw of the Project not covered by the Funding up to a maximum contribution of Five Million Dollars (\$5,000,000) in non-recurring funds ("SCDHHS' Contribution"). SCDMH shall be responsible for providing the other half of the amount of each draw of the Project not covered by the Funding, as well as all costs of the Project beyond Thirty Million Dollars (\$30,000,000) ("SCDMH's Contribution").

- b. Should the Project cost be less than the Funding, SCDHHS shall distribute as much of the Funding as necessary to complete the contract in compliance with the construction draw schedule established by the contract resulting from the RFP and in accordance with Subsections 8 and 9 below. Any excess Funding shall be retained by SCDHHS in support of the purposes in the 2022-23 Appropriation Act.
8. In order to receive a draw from the Funding or SCDHHS' Contribution, SCDMH shall certify in writing to the Chief of Staff with SCDHHS that the milestone for which payment is sought has been completed in accordance with the provisions of the contract and the conditions for the draw have been satisfied. SCDMH shall incorporate the following certification statement in each of its requests:

I do solemnly swear (or affirm) that I have examined the information related to this request and confirm that the contractor has performed in accordance with the contract and is duly owed the amount requested. That the aforesaid information is true and correct to the best of my knowledge and belief; and, that no other request for reimbursement from other federal and/or state funds has been made nor has any other reimbursement been received, applied for, nor will they be applied for, for the services herein described. That SCDMH has on file the proper documentation to support this request, and that the costs represented are true costs incurred during the period of this request.

This statement must be signed and dated by Paul Morris, Deputy Director for Administration on behalf of SCDMH.

9. Upon receipt of such certification, SCDHHS shall provide the appropriate funds to SCDMH within fifteen (15) business days.
10. Upon licensure of the PRTF, SCDMH shall be prepared to staff and operate the facility.
11. SCDHHS shall have the right to audit SCDMH and the Project to verify the expenditure of Funding and SCDHHS' Contribution in accordance with this MOU.



**C. TIME OF PERFORMANCE**

This MOU shall be in effect from the Effective Date of this MOU through completion of the Project.

**D. AMENDMENT**

No amendment or modification of this MOU shall be valid unless it is in writing and signed by all parties hereto.

**E. COUNTERPARTS**

This MOU may be executed in three or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. The parties agree that this MOU may be delivered by electronic mail with a copied signature having the same force and effect of a wet ink signature.

**F. INCORPORATION OF SCHEDULES/APPENDICES**


All schedules/appendices referred to in this MOU are attached hereto, are expressly made a part hereof, and are incorporated as if fully set forth herein.

IN WITNESS WHEREOF, SCDHHS, SCDMH, SCDJJ, and SCDCA by their authorized agents, in consideration of the mutual promises, covenants, and conditions exchanged between them, have executed this MOU to be effective upon the Effective Date as set forth herein.


SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
"SCDHHS"

BY:   
Robert M. Kerr  
Director


SOUTH CAROLINA DEPARTMENT OF  
MENTAL HEALTH  
"SCDMH"

BY:   
Kenneth Rogers, MD  
Director

SOUTH CAROLINA DEPARTMENT OF  
JUVENILE JUSTICE  
"SCDJJ"

BY:   
Eden Hendrick  
Director

SOUTH CAROLINA DEPARTMENT OF  
CHILDREN'S ADVOCACY  
"SCDCA"

BY:   
Amanda Whittle  
Director/State Child Advocate

APPROVED AS TO FORM  
SC Department of Juvenile Justice  
A202754321A Office of General Counsel  
Date: 8/2/22 GSK

**APPENDIX A**  
**Proposed Timeline and RFP Milestones**

**Timeline:**

RFP draft completed  
Architectural Approval  
JBRC approval  
SFAA approval  
Post RFP  
Award RFP  
Complete design  
Complete building  
PRTF to open

**August 23, 2022**

Within XX of SFAA approval  
Within XX of RFP posting  
Within XX of RFP award  
Within XX of completion of building design  
Within XX of building completion

**Sample RFP Milestones:**

Completion of PRTF design  
Permits and foundation  
Rough framing  
Dry In  
Rough In  
Trim Out  
Substantial Completion  
Certificate of Occupancy  
DHEC licensure  
Retainage

## **Exhibit B**

### **SECTION 11-35-2910.** Definitions of terms used in this article.

\*\*\*

(7) "Design-build" means a project delivery method in which the governmental body enters into a single contract for design and construction of an infrastructure facility.

(8) "Design-build-finance-operate-maintain" means a project delivery method in which the governmental body enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. Money appropriated by the State is not used to pay for a part of the services provided by the contractor during the contract period.

(9) "Design-build-operate-maintain" means a project delivery method in which the governmental body enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the money required to pay for the services provided by the contractor during the contract period are either appropriated by the State before the award of the contract or secured by the State through fare, toll, or user charges.

### **SECTION 11-35-3010.** Choice of project delivery method.

(1) Selection of Method. The project delivery method used for a state construction project must be that method which is most advantageous to the State and results in the most timely, economical, and successful completion of the construction project. The governmental body shall select, in accordance with regulations of the board, the appropriate project delivery method for a particular project and shall state in writing the facts and considerations leading to the selection of that particular method.

(2) State Engineer's Office Review. The governmental body shall submit its written report stating the facts and considerations leading to the selection of the particular project delivery method to the State Engineer's Office for its review.

(3) Approval or Disagreement by State Engineer's Office. The State Engineer's Office has ten days to review the data submitted by the governmental body to determine its position with respect to the particular project delivery method recommended for approval by the governmental body, and to notify the governmental body of its decision in writing. If the State Engineer's Office disagrees with the project delivery method selected, it may contest it by submitting the matter to the board for decision. Written notification by the State Engineer's Office to the governmental body of its intention to contest the project delivery method selected must include its reasons. The board shall hear the contest at its next regularly scheduled meeting after notification of the governmental body. If the board rules in support of the State Engineer's Office position, the governmental body shall receive written notification of the decision. If the board rules in support of the governmental body, the governmental body must be notified in writing and by that writing be authorized to use that project delivery method as previously recommended by the governmental body on the particular construction project.

(4) In addition to the requirement of subsection (1), use of the project delivery methods authorized by Section 11-35-3005(1)(e), (1)(f), and (2) must be approved by the board if the total potential value of the overall transaction exceeds twenty-five million dollars.

### **SECTION 11-35-3015.** Source selection methods assigned to project delivery methods.

(1) Scope. This section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 11-35-3005 (Project delivery methods authorized), except as provided in Sections 11-35-1550 (Small Purchases), 11-35-1560 (Sole Source Procurement), 11-35-1570 (Emergency Procurements), 11-35-3230 (Exception for small architect-engineer, and land surveying services contract), 11-35-3310 (Indefinite quantity contracts for architectural-engineering, and land surveying services), and 11-35-3320 (Indefinite quantity contracts for construction).

\*\*\*

(6) Design build operate maintain. Contracts for design build operate maintain must be procured by competitive sealed proposals, as provided in Section 11 35 1530 (Competitive Sealed Proposals) or competitive negotiation, as provided in Section 11 35 1535 (Competitive Negotiations).

19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.

\*\*\*

**B. Choice of Project Delivery Method.**

(1) This Subsection contains provisions applicable to the selection of the appropriate project delivery method for constructing infrastructure facilities, that is, the method of configuring and administering construction projects which is most advantageous to the State and will result in the most timely, economical, and otherwise successful completion of the infrastructure facility. The governmental body shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the State's needs. Before choosing the project delivery method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the State.

**(2) Selecting An Appropriate Project Delivery Method.**

In selecting an appropriate project delivery method for each of the State's Infrastructure Facilities, the governmental body should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all authorized project delivery methods, the comparative advantages and disadvantages of each, and how these methods may be appropriately configured and applied to fulfill State requirements. Additional factors to consider include:

- (a) the extent to which the governmental body's design requirements for the Infrastructure Facility are known, stable, and established in writing;
- (b) the extent to which qualified and experienced State personnel are available to the governmental body to provide the decision-making and administrative services required by the project delivery method selected;
- (c) the extent to which decision-making and administrative services may be appropriately assigned to designers, builders, construction-managers at-risk, design-builders, DBO producers, DBFO producers, peer reviewers, or operators, as appropriate to the project delivery method;
- (d) the extent to which outside consultants, including construction manager agent, may be able to assist the governmental body with decision-making and administrative contributions required by the project delivery method;
- (e) the governmental body's projected cash flow for the Infrastructure Facility to be acquired (both sources and uses of the funds necessary to support design, construction, operations, maintenance, repairs, and demolition over the facility life cycle);
- (f) the type of infrastructure facility or service to be acquired - for example, public buildings, schools, water distribution, wastewater collection, highway, bridge, or specialty structure, together with possible sources of funding for the infrastructure facility - for example, state or federal grants, state or federal loans, local tax appropriations, special purpose bonds, general obligation bonds, user fees, or tolls;
- (g) the required delivery date of the infrastructure facility to be constructed;
- (h) the location of the infrastructure facility to be constructed;

- (i) the size, scope, complexity, and technological difficulty of the infrastructure facility to be constructed;
  - (j) the State's current and projected sources and uses of public funds that are currently generally available (and will be available in the future) to support operation, maintenance, repair, rehabilitation, replacement, and demolition of existing and planned infrastructure facilities;
  - (k) and, any other factors or considerations specified in the Manual for Planning of Execution of State Permanent Improvements, Part 11, or as otherwise requested by the State Engineer.
- (3) Except for guaranteed energy, water, or wastewater savings contracts (Section 48-52-670), design-bid-build (acquired using competitive sealed bidding) is hereby designated as an appropriate project delivery method for any infrastructure facility and may be used by any governmental body without further project specific justification.
- (4) Governmental Body Determination.

The head of the governmental body shall make a written determination that must be reviewed by the State Engineer. The determination shall describe the project delivery method (Section 11-35-3005), source selection method (Section 11-35-3015 and 11-35-1510), any additional procurement procedures (11-35-3023 and 11-35-3024(2)(c)), and types of performance security (Sections 11-35-3030 and 11-35-3037) selected and set forth the facts and considerations leading to those selections. This determination shall demonstrate either reliance on paragraph (3) above, or that the considerations identified in paragraphs (1) and (2) above, as well as the requirements and financing of the project, were all considered in making the selection. Any determination to use a project delivery method other than design-bid-build must explain why the use of design-bid-build is not practical or advantageous to the State. Any determination to use any of the additional procedures allowed by Section 11-35-3024(2)(c) must explain why the use of such procedures are in the best interests of the State. Any request to use the prequalification process in a design-bid-build procurement must be in writing and must set forth facts sufficient to support a finding that pre-qualification is appropriate and that the construction involved is unique in nature, over ten million dollars in value, or involves special circumstances.

#### **SECTION 11-35-2030. Multiterm contracts.**

(1) Specified Period. Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for any a period of more than one year unless approved in a manner prescribed by regulation of the board. The term of the contract and conditions of renewal or extension must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds for them.

(2) Determination Prior to Use. Before the utilization of a multiterm contract, it must be determined in writing by the appropriate governmental body that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) such a contract serves the interest of the State by encouraging effective competition or otherwise promoting economies in state procurement.

(3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

(4) Maximum Duration. The maximum potential duration for a contract is five years. A maximum potential duration of up to seven years may be approved by the appropriate chief procurement officer.

(5) Authority Approval. Every type of contract with a maximum potential duration exceeding seven years must be approved by the board. For competitive procurements, approval of the maximum potential duration must be granted before solicitation.

19-445.2135. Conditions for Use of Multi-term Contracts.

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G. Maximum Contract Periods

Every contract with a total potential duration in excess of five years must be approved as required by Section 11-35-2030(4) or Section 11-35-2030(5). No solicitation shall be issued for a contract with a total potential duration in excess of five years, nor shall any contract with a total potential duration in excess of five years be awarded pursuant to Section 11-35-1560, until such approval is granted.

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AGENCY: South Carolina Department of Mental Health

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SUBJECT: Legal - Approval of settlement of *Chicora Life Center LLC vs. Charleston Dorchester Mental Health Center, an outpatient facility of the South Carolina Department of Mental Health, and John and Jane Does 1-100*, 2019CP1000798, Charleston County, South Carolina, Court of Common Pleas.

This is a lease dispute. In 2015, the Defendant, a SCDMH outpatient facility (DMH), entered a five-year lease for about 9800 square feet at the old Charleston navy hospital with Plaintiff Chicora Life Center (CLC), a company formed to own and manage the old hospital. As part of the contract CLC was to make certain improvements prior to DMH taking possession. DMH contends the improvements were never properly made, and DMH never took possession of the property, sending a letter of termination of the lease in 2016. CLC contended this was improper, and in 2019 filed suit for breach of contract and breach of the duty of good faith, claiming damages of ~\$1.7M. DMH answered, and discovery was conducted. Despite CLC naming John and Jane Does in the caption, no other parties were ever added to the case.

The case was mediated in November 2022 and a settlement amount of \$215,000 was agreed to, payable from DMH to CLC. DMH's legal expense to go to trial was estimated in the \$20,000 - \$25,000 range. The rationale for the settlement is to avoid those trial costs, avoid the cost of a possible if not likely appeal from the loser at trial, and mitigate the risk of an adverse judgment. While DMH thinks it improbable that Plaintiff would obtain a verdict close to the \$1.7M in damages it seeks, such an award, which as a breach of contract case is not covered by tort liability insurance, would seriously impact DMH's ability to fulfill its mission to the citizens of the state. Thus, DMH seeks to mitigate the risk and avoid the ongoing litigation expenses.

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AUTHORITY ACTION REQUESTED

Pursuant to Section 11-1-45, approve the proposed settlement of \$215,000 payable from the Department of Mental Health to Chicora Life Center, LLC.

---

ATTACHMENTS

1. DMH General Counsel Beth Hutto Memorandum dated 01-03-2023
2. Settlement Statement (Mediation Settlement Agreement) dated 11-15-2022
3. DMH Lease Termination Letter dated 04-16-2016
4. CLC Amended Complaint (2019CP1000798) dated 02-19-2019
5. DMH Real Estate Lease
6. DMH Answer dated 04-12-2019

**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH**  
Columbia, South Carolina

**M E M O R A N D U M**

TO: Keith C. McCook, General Counsel, State Fiscal Accountability Authority

FROM: Beth Hutto, General Counsel, SC Department of Mental Health

DATE: January 3, 2023

SUBJECT: Litigation Approval Request- 2019CP1000798 (Chicora v. SCDMH)

Pursuant to S.C. Code Ann §11-1-45, the South Carolina Department of Mental Health respectfully request written approval from the State Fiscal Accountability Authority to settle the above-captioned litigation between Chicora Life Center, LLC (Chicora) and The South Carolina Department of Mental Health (SCDMH) for \$215,000.

SCDMH submits this Memorandum to provide a timeline of the litigation, identification of the funding needs, and the basis for SCDMH's recommendation for settlement.

***Timeline***

- November 10, 2015- SCDMH's Charleston Dorchester Mental Health Center (CDMHC) enters into a lease contract with Chicora Life Center, LC to rent space at the former Charleston Naval Hospital site to operate an outpatient mental health clinic. The revitalized Naval Hospital was to serve as a hub for private and public healthcare providers in the North Charleston area.
- April 14, 2016- SCDMH terminates the lease with Chicora following foreclosure of the project/ property and withdrawal of the project's largest tenant, the County of Charleston.
- February 19, 2019- Chicora files an Amended Complaint against SCDMH via the Charleston-Dorchester Mental Health Center. This Amended Complaint alleged Breach of Contract as well as Breach of Duty of Good Faith and Fair Dealing. The Amended Complaint includes a prayer for relief in the amount of \$1,692,519.19, as well as attorneys' fees and costs. An initial version of the Summons and Complaint was filed on February 15, 2019, but was never served on SCDMH or CDMHC.



- April 12, 2019- SCDMH, through counsel Drew H. Butler of Richardson Plowden & Robinson, P.A., files an Answer to Chicora's amended complaint. This answer broadly refutes the allegations of the Amended Complaint.
- Discovery and negotiations broadly occurred in the years following the filing of the Answer. Most notably, Chicora owner and manager Jeremy Blackburn is deposed on March 12, 2020.
- November 15, 2022- Mediation is conducted. Both parties commit to settling the matter for a total of \$215,000.

### ***Identification of Funding Needs***

The entirety of the \$215,000 requested for approval would be paid out of SCDMH reserve funds.

While the Charleston Dorchester Mental Health Center is the named defendant in the Amended Complaint, CDMHC is an outpatient clinic of the broader SC Department of Mental Health.

This settlement would not utilize any funds from future fiscal years, and there would be no continuing fiscal commitment as a result of this settlement.

### ***Basis for Recommendation***

Any Breach of Lease or Breach of Duty of Good Faith verdict rendered against SCDMH would not be covered by any insurance policy, making SCDMH the sole payor for any associated costs.

SCDMH estimates that the legal fees for going to trial, as opposed to settling this matter, would range between \$20k and \$25k depending on the length of the trial. This would not include any possible Plaintiff legal fees or costs that SCDMH could be ordered to pay if a verdict is rendered against SCDMH.

A verdict anywhere near the \$1.7 million total requested in the Amended Complaint, while improbable, would be catastrophic for SCDMH and seriously strain its mission to provide quality mental health services to citizens statewide. It is the opinion of SCDMH that the \$215,000 settlement total represents a good-faith balance of the likelihood of prevailing if this matter went to trial with the real-world consequences if the Plaintiff prevailed at trial.

Sincerely,



Elizabeth B. Hutto, General Counsel

---

**§ 11-1-45. Settlement of certain litigation, dispute, or claim by state agencies; approval of Fiscal Accountability Authority required; exemptions.**

(A) No state agency or instrumentality of the State, excluding the General Assembly, Senate, House of Representatives, local political subdivisions, special purpose districts, and special taxing districts, shall enter into a settlement of any litigation, dispute, or claim over one hundred thousand dollars requiring the expenditure of monies appropriated or provided for in a general or supplemental appropriations act, or from any other source of public funds without prior written approval from the State Fiscal Accountability Authority.

(B) The intent of this provision is to prevent state agencies or instrumentalities of the State, other than local political subdivisions, special purpose districts, and special taxing districts, from entering into settlements that can bind and commit the State to unreasonable funding requirements from current or future revenues of the State. In keeping with this intent, the State Fiscal Accountability Authority may exempt in its discretion any entity or specific litigation matter from this provision.

**HISTORY: 1994 Act No. 497, Part II, § 24.**

**Code Commissioner's Note**

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, § 5(D)(1), effective July 1, 2015.

November 15, 2022

Chicora Life Center, LC v. The Charleston Dorchester Mental Health Center, and outpatient facility of the South Carolina Department of Mental Health; and John and Jane Does 1-100  
Case No.: 2019-CP-10-0798

#### SETTLEMENT STATEMENT

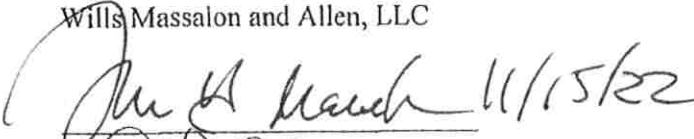
The parties have agreed to settle all claims made or which could have been made each against the other for the payment by Defendants of the sum of Two Hundred and Fifteen Thousand and 00/100 (\$215,000.00) Dollars in return for a mutual full, final and complete Release of all claims each party (and all related individuals and entities) may have had against the other. Said payment to be made to Wills Massalon and Allen, LLC as attorneys for the Plaintiff within thirty (30) days of the party's execution of the settlement documents. Counsel for the Defendants will prepare final settlement documents. The parties will work cooperatively in drafting all final documents. Once the settlement documents are executed, and the settlement monies are paid the Parties agree to enter a Stipulation/Order of Dismissal with Prejudice. The parties agree to split all costs and fees of the mediation.

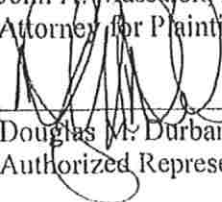
Agreed this 15th day of November 2022.

[Two Signature Pages Attached]

WE SO AGREE:


Wills Massalon and Allen, LLC


  
John A. Massalon, Esq.  
Attorney for Plaintiff

  
Douglas M. Durbano, Esq.  
Authorized Representative of Plaintiff

WE SO AGREE:

Richardson Plowden & Robinson, PA

  
\_\_\_\_\_  
Drew H. Butler, Esq.  
Attorney for Defendants

  
\_\_\_\_\_  
Logan Y. Royals, Esq.  
Authorized Representative of Defendants



## *State of South Carolina* *Department of Mental Health*

### MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair  
Joan Moore, Vice Chair  
Beverly Cardwell  
Jane B. Jones  
Everard Rutledge, PhD  
J. Buxton Terry  
Sharon L. Wilson

### STATE DIRECTOR

John H. Magill

Charleston Dorchester

Mental Health Center

2100 Charlie Hall Boulevard

Charleston, SC 29414

Information: (843) 852-4100

Deborah Shogry Blalock, MEd, LPCS, Executive Director

April 14, 2016

Douglas M. Durbano  
Manager Chicora Life Center, L. C  
3600 Rivers Avenue  
N. Charleston SC 29405

Dear Mr.Durbano:

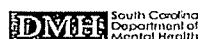
I have reviewed our lease and the events, facts, and circumstances with the South Carolina Department of Mental Health (SCDMH) General Counsel, copied below. This letter is to provide formal notice of Chicora Life Center's continuing default, our demand for reimbursement for our costs, and our termination of the lease. The documents referenced in the following are attached.

Last November, Charleston Dorchester Mental Health Center (CDMHC) and Chicora Life Center (Chicora) entered into a lease contingent upon several conditions and events, including timely completion of all required improvements to the premises in order for CDMHC to take possession and operate a mental health outpatient treatment facility. Even before the formal lease, this important community complex was delayed for almost a year.

Since last November, Chicora has failed to meet the Lease requirements permitting occupancy and operation. As a result, CDMHC has incurred significant expenses due to Chicora's failure to perform. CDMHC has acted in good faith and expended large sums of money in reliance of Chicora's timely performance of its obligations. As detailed below and in the attached documents, Chicora has repeatedly assured CDMHC that the required renovations would be complete and premises ready for occupancy and operation, beginning December 2015.

### MISSION STATEMENT

To support the recovery of people with mental illnesses.



See the attached chronology of significant events since November of 2015, and Chicora's continued default under the Lease, to the detriment of CDMHC including the significant expenses detailed in the attached which were directly caused by Chicora's continued default.

During the time period of 11/10/15 through 02/11/16, CDMHC staff visited the premises being renovated as detailed in the attached. Each time it was evident that many of the renovations were not completed, were incorrectly installed or otherwise did not meet the Lease requirements.

Those failures included:

1. Placement of data and power in the leased space
2. Rooms that had no power
3. Missing doors
4. Bathrooms with no lights
5. Ceiling tiles missing or damaged
6. Sinks in wrong places.
7. Shoddy workmanship
8. Doors on backwards
9. Door installed where it should not have been
10. General Safety/Security (i.e. doors, construction activity, construction materials, etc.)

In early December the premises were not ready for CDMHC occupancy or operation as required.

On December 17, 2015, at your request, CDMHC created a punch list and both parties performed a "walk through" of the facility. CDMHC Maintenance Supervisor Lee Moulton also tried to work with your project manager to address many items. You did not dispute the punch list items and assured CDMHC that the items would be completed and the premises ready for CDMHC occupancy and operation by the end of 2015.

The premises were not ready by the end of 2015. Then we were assured that the renovations would be completed by mid-January. The premises were not ready by mid-January. We were then assured that the renovations would be completed by the end of January. The premises were not ready for CDMHC occupancy and operation by the end of January.

On February 3, 2016 CDMHC Administrator Robert Letteney emailed you (attached) asking for a status on the Lease renovations and detailed facility readiness for CDMHC occupancy and operation, including the necessary security and safety for our patients, employees and visitors since the renovations and premises were still under construction.

CDMHC staff have since visited the premises on multiple occasions as recent as February 11, 2016, with many of the items still not corrected. As of the date of this notice, to our knowledge, the required renovations have not been completed as required by the Lease.

To date CDMHC has incurred costs in the sum of \$215,761.83 which include procurement of furniture and essential electronic and other equipment needed for CDMHC operations on the premises. This figure does not include the many hours of additional CDMHC staff time due to Chicora's lease default.

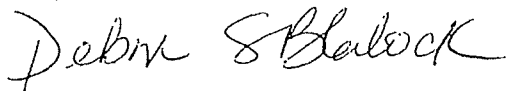
On March 8, 2016, we were notified of the withdrawal of Charleston County, the largest tenant in this community project. At that time, Robert Letteney spoke to Jeremy Blackburn, Representative Chicora Life Center L.C., and asked if Chicora and this project would remain viable with the loss of your major tenant. Mr. Blackburn said that the project would remain viable and that we should have no concerns.

On March 25, 2016, the Post and Courier reported that UC Funds of Boston, Mass, foreclosed on this project/property, claiming more than \$15 million in unpaid debt.

Based on Chicora's continued Lease default, and its certain financial inability to perform as required in the Lease, we are terminating the lease effective immediately and demanding reimbursement for costs.

I expect a written reply (with copy to our General Counsel identified below) by April 22, 2016.

Sincerely,

A handwritten signature in black ink that reads "Debra S Blalock". The signature is written in a cursive, flowing style.

Deborah S. Blalock, M.Ed, L.P.C.S  
CDMHC Executive Director

cc: Alan Powell, JD, SCDMH Office of General Council  
Geoffrey Mason, SCDMH Deputy Director of Community Services  
Dr. Kendra Stewart, Chairwoman of CDMHC Board of Directors



STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) IN THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2019-CP-10-0798

Chicora Life Center, LC,  
 )  
 )  
Plaintiff, )  
 )

v. )

The Charleston Dorchester Mental Health )  
Center, an outpatient facility of the South )  
Carolina Department of Mental Health; and )  
JOHN and JANE DOES 1-100, )  
 )

Defendants. )  
 )

AMENDED COMPLAINT  
(non-jury)

FILED  
2019 FEB 19 PM 4:40  
JULIE J. ARMSTRONG  
CLERK OF COURT

**Comes now** Chicora Life Center, LC by and through counsel, and hereby claims against  
Charleston Dorchester Mental Health Center, as follows:

**PARTIES**

1. Plaintiff Chicora Life Center, LC ("CLC"), is a single member limited liability company domesticated in Utah in May, 2016 and has its principal office located in Layton, Utah.
2. CLC was organized for the purpose of owning and managing a commercial real estate building located at 3600 Rivers Avenue, North Charleston, South Carolina (the "Property").
3. Upon information and belief, Charleston Dorchester Mental Health Center ("Mental Health Center") is an outpatient facility of the South Carolina Department of Mental Health, an agency of the State of South Carolina.
4. Mental Health Center entered into a commercial lease with CLC for occupancy of certain space located at the Property.
5. Upon information and belief, John and Jane Does 1-100 are persons yet unknown who may be liable to Plaintiff in this action, and Plaintiff reserves the right to amend its pleadings

to name such persons when their identity or identities become known.

### **JURISDICTION AND VENUE**

6. This is a civil action for breach of contract, and related claims.

7. This Court has personal jurisdiction over the parties and jurisdiction over the subject matter of this action.

8. Venue is proper in the Charleston County Court of Common Pleas.

### **FACTUAL BACKGROUND**

9. On the Property owned by CLC there is a multistory commercial building.

10. On or around November 10, 2015, CLC executed a commercial lease with Mental Health Center (the "Lease"), a copy of which is attached hereto as Exhibit A.

11. The initial term of the Lease was for five years with a Commencement Date of December 1, 2015.

12. Mental Health Center requested CLC to complete certain tenant improvements ("TI"). If CLC did not complete the TIs by the Commencement Date, Mental Health Center's exclusive remedies were to either (1) move the Commencement Date to a date not later than 90 days following the original Commencement Date (February 29, 2016) or (2) take possession of the premises and abate rent until tenant improvements are completed. If the Commencement Date was moved and TIs still not completed by the revised commencement date, Mental Health Center could then terminate the lease.

13. Upon information and belief, Mental Health Center did not provide formal notice of its intent to extend the Commencement Date nor provide a revised commencement date. Instead, it entered into protracted discussions and negotiations with CLC regarding the completeness of the TIs.

14. Mental Health Center never took possession of the leased premises.

15. Upon information and belief, Mental Health Center repudiated the Lease because another tenant repudiated their lease with CLC.

16. Mental Health Center's duties under the Lease were not contingent upon CLC's maintenance of any other tenant(s) or an anchor tenant.

17. CLC completed the tenant improvements such that it received a temporary certificate of occupancy on December 22, 2015, attached as Exhibit B, indicating that it was "Ok to move office furniture in."

18. On January 21, 2016, the City of North Charleston issued a final Certificate of Occupancy for Mental Health Center's leased space, attached as Exhibit C.

19. Mental Health Center's portion of the building under the Lease was 9,807 rentable square feet of the Property.

20. The Lease called for base rent of \$12.00 per rentable square foot. In addition to the base rent, Mental Health Center agreed to pay operating expenses at \$6.50 per rentable square foot based on the reduced rentable square footage of 6,793 rentable square feet. The total monthly rent for the first year was \$13,486.54.

21. On April 14, 2016, Mental Health Center sent CLC a letter purporting to terminate the lease. (See attached Exhibit D).

22. CLC's costs for Mental Health Center's TIs total \$821,173.00.

23. Mental Health Center has not paid any portion of the Monthly Rental or costs of TIs.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

24. Plaintiff hereby incorporates by reference the allegations set forth above as if fully

stated herein.

25. Under the Lease, Mental Health Center agreed to commence payment of the Monthly Rental upon Term Commencement.

26. Term Commencement occurred on December 22, 2015 when a temporary certificate of occupancy was obtained for the Leased Premises.

27. CLC has completed the Tenant Improvements and provided a detailed accounting for the costs.

28. Mental Health Center has not taken occupancy of the Leased Premises.

29. Despite notice and demand, Mental Health Center has failed and refused to pay to CLC any amounts owing for the Monthly Rental.

30. The actions of Mental Health Center complained of above constitute a breach of contract.

31. Plaintiff has suffered damages as a result of Mental Health Center's breach of contract in an amount to be proven at the trial of this matter.

32. Plaintiff is therefore entitled to damages for Mental Health Center's breach of contract, in an amount to be determined at trial, but including past due and ongoing Monthly Rental, the entire cost of Tenant Improvements, and interest and attorneys' fees.

**SECOND CAUSE OF ACTION**  
**(Breach of Duty of Good Faith and Fair Dealing)**

33. Plaintiff hereby incorporates by reference the allegations set forth above as if fully set forth herein.

34. Mental Health Center owes Plaintiff a duty of good faith and fair dealing, inherent in every contractual relationship, in connection with the Lease.

35. Mental Health Center has breached its duties, which acts were inconsistent with the

common purpose of the parties and Plaintiff's justified expectations.

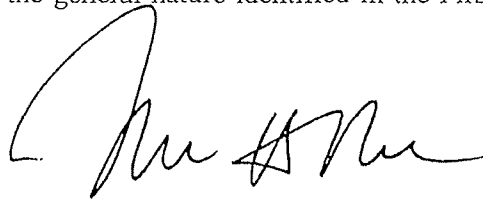
36. Plaintiff is therefore entitled to damages in an amount to be proven at trial and/or after an opportunity to review the relevant records.

**PRAYER FOR RELIEF**

Now Therefore, Plaintiff requests judgment as follows:

1. On the First Cause of Action, asserting breach of contract, for general, compensatory, and consequential damages resulting from Mental Health Center's breach of contract and of the general nature identified in the First Cause of Action in an amount to be determined by the finder of fact of at least \$1,692,519. Plaintiff reserves the right to adjust this amount as the case and discovery progresses. Plaintiff further prays for prejudgment interest, post-judgment interest and attorneys' fees and costs.

2. On the Second Cause of Action, asserting breach of the duty of good faith and fair dealing, for general, compensatory, and consequential damages resulting from Mental Health Center's breach of said duty, of the general nature identified in the First and Second Causes of Action.



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John A. Massalon  
WILLS MASSALON & ALLEN LLC  
Post Office Box 859  
Charleston, South Carolina 29402  
(843) 727-1144  
[jmassalon@wmalawfirm.net](mailto:jmassalon@wmalawfirm.net)

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

February 19, 2019

# SCDMH REAL ESTATE LEASE (LONG FORM)

THIS LEASE AGREEMENT ("Lease"), which incorporates the attached SCDMH "Covenants and Conditions", is made as of this 1st day of August, 2015, between: Chicora Life Center, LC ("Lessor") having an address at: C/O Durbano Properties, LC, 476 West Heritage Park Boulevard, # 200, Layton, U.T., 84041, and Charleston Dorchester Mental Health Center, ("Lessee") an outpatient facility of the South Carolina Department of Mental Health (SCDMH), an agency of the State of South Carolina having an address at: 2100 Charlie Hall Blvd, Charleston, S.C., 29414.

## ARTICLE 1 - DEMISE OF PREMISES

1.1. Lessor hereby leases and lets to Lessee and Lessee hereby takes and hires from Lessor, upon and subject to the terms, covenants and provisions hereof, premises (the "Demised Premises") consisting of 9,807 rentable (8,140 usable) square feet on the first floor(s) of the building (the "Building") located at: 3600 Rivers Avenue, North Charleston, S.C., 29406, Charleston County, South Carolina (the "Land"), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

## ARTICLE 2 - TERM

2.1. The term of this Lease shall be five years (5) years (the "Initial Term") beginning on December 1, 2015, (the "Commencement Date") and, unless terminated or extended, shall end on November 30, 2020, (the "Termination Date"). Provided there is no continuing event of default hereunder by Lessee, Lessee shall have the right to extend the term of this lease for up to zero (0) consecutive periods of zero (0) years each (the "Extended Term") upon the same terms and conditions contained herein, except the amount of Basic Rent, by giving written notice to Lessor of Lessee's intent to extend the then existing term at least six (6) months prior to the expiration of the then existing term.

## ARTICLE 3 - BASIC RENT

3.1. Lessee shall pay rent (the "Basic Rent") to Lessor during the first year of the Initial Term at the rate of \$18.50 per rentable square foot, in the annual aggregate amount of \$ See Exhibit A to Addendum, incorporated into this Agreement, payable in equal monthly installments of \$ See Exhibit A to Addendum, incorporated into this Agreement, in advance on or before the tenth (10th) day of each consecutive calendar month of the Initial Term. Basic Rent for the Initial Term and for the Extended Term shall be in the amounts set forth as follows:

	PERIOD: FROM - TO	ANNUAL RENT	MONTHLY RENT	RENT PER SF
<b>INITIAL TERM</b>				
YEAR 1	12/01/2015-11/30/2016	\$ See attached Exhibit A to Addendum incorporated into this Agreement	\$	\$
YEAR 2	12/01/2016-11/30/2017	\$	\$	\$
YEAR 3	12/01/2017-11/30/2018	\$	\$	\$
YEAR 4	12/01/2018-11/30/2019	\$	\$	\$
YEAR 5	12/01/2019-11/30/2020	\$	\$	\$
<b>EXTENDED TERM</b>				
YEAR				
YEAR				

3.2. Rentable square footage shall be determined in accordance with BOMA standards.

3.3. All payments to be made by Lessee pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease as applicable.

3.4. Unless notified otherwise in writing, all payments shall be mailed to Lessor at: Chicora Life Center, LC, C/O Durbano Properties, LC, 476 West Heritage Park Boulevard, # 200, Layton, U.T., 84041.

## ARTICLE 4 - USE

4.1. Lessee shall have the right to use the Demised Premises for: behavioral health services.

4.2. If during the Initial Term or any Extended Term the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or uneconomical for Lessee to operate in the Demised Premises in accordance with subparagraph 4.1, then Lessee, at its option, may terminate this Lease, whereupon the Basic Rent and Additional Rent and all other charges payable hereunder by Lessee shall be apportioned as of such date of termination.

## ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Lessee shall have the absolute right to assign this Lease or sublet the Demised Premises to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Lessor, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease.

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5.2. Any act required to be performed by Lessee pursuant to the terms of this Lease may be performed by any assignee or sublessee of Lessee and the performance of such act shall be deemed to be performance by Lessee.

#### ARTICLE 6 - SERVICES

6.1. The services provided by the Lessor to Lessee as part of basic rent and additional rent, if any, shall include, but are not limited to, water and sewer, lighting, heating, ventilating, air conditioning, electricity, elevator service, janitorial service, security service, grounds maintenance and any other service necessary to maintain and operate all building and site improvements. Services provided by the Lessor shall include all service charges, labor, materials and supplies.

6.2. Services provided by the Lessor shall include all service charges, labor, materials and supplies. Lessee shall have the option but not the obligation to separately meter all utilities servicing the Demised Premises and to make direct payment for such utility services to the suppliers thereof. If such option is exercised, Lessee shall notify the Lessor in writing and basic rent shall be adjusted to exclude those services separately metered.

#### ARTICLE 7 - LESSOR'S REPRESENTATIONS AND WARRANTIES

7.1. Lessor represents and warrants to Lessee that:

(a) Lessor is the owner of the Land and Building in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Demised Premises as contemplated by this Lease; that Lessor has full right, power and authority to execute and deliver this Lease and to grant to Lessee the exclusive use and possession of the Demised Premises;

(b) The use of the Demised Premises contemplated by this Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Lessor's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Land, the Building nor the Demised Premises, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of Lessor's knowledge, no such proceedings are contemplated by any lawful authority;

(d) To the best of Lessor's knowledge and belief, there is available to the Building and the Demised Premises adequate public water, gravity fed storm and sanitary sewers, electricity and telephone service for Lessee's intended use of the Demised Premises as described in this Lease;

(e) Lessor will not discontinue any service required to be provided by Lessor pursuant to this Lease and, if any such discontinuance is contemplated, Lessor will provide Lessee with written notice at least thirty (30) days prior thereto together with a statement of the appropriate reduction in Basic Rent as compensation for such discontinuance;

(f) Lessor will keep the Land, the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises as a first-class office building;

(g) Lessor will keep the Building and the Demised Premises protected against flood, storm, water leakage through roofs and windows and against other hazards of nature and will repair or protect same from such hazards within a reasonable time after Lessor has notice of damage or the need for repair; and

(h) Lessor will provide peaceful and quiet enjoyment of the Demised Premises to Lessee and will not allow such peaceful and quiet enjoyment to be disrupted or interfered with by any other Lessee in the Building, by Lessor, by anyone claiming under Lessor or by any other person, party or entity.

7.2 Lessor acknowledges that Lessee is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Lessor are substantial and material to Lessee. In the event such representations and warranties shall be breached by Lessor, Lessee, at its sole election, may terminate this Lease in accordance with subparagraph 13.1.(d).

#### ARTICLE 8 - LESSEE'S COVENANTS

8.1. Lessee covenants and agrees that it shall:

(a) Pay Basic Rent when due provided a written invoice is submitted in advance to the Lessee by the Lessor. Should any Basic Rent become more than fifteen (15) days past due, Lessor shall give Lessee notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the Demised Premises in a clean and good condition and return the Demised Premises in a clean and good condition and return the Demised Premises to Lessor at the termination of this Lease in accordance with Article 17 hereof. Lessee shall not be obligated to make any repairs arising out of or in any way caused by: 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Lessor, or 3) the negligence of Lessor, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;

(d) Give Lessor reasonable notice of any accident, damage, destruction or occurrence affecting the Demised Premises; and

(e) Allow Lessor reasonable access to the Demised Premises for inspections.

#### ARTICLE 9 - ARCHITECTURAL BARRIERS

9.1. Lessor covenants and agrees that the Land, Building and Demised Premises, being open to the public, shall comply with any and all applicable law with respect to architectural barriers or design that would prohibit free and full access to and use of the Land, Building, Demised Premises or any part thereof by the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises do not so comply as of the Commencement Date of this Lease, Lessor shall, at Lessor's sole cost and expense and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law.

#### ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1 Lessor shall make all renovations to the Demised Premises in accordance with Lessee's plans and specifications annexed and incorporated hereto as Schedule "A" (the "Renovations"). All Renovations shall be performed in a good and workmanlike manner and in accordance with all applicable statutes, codes, rules, regulations and ordinances. Lessee shall have the right to inspect the Demised Premises and the Renovations, from time to time as Lessee shall deem necessary or appropriate, to determine whether the Renovations, as made or being made by Lessor, are in accordance with the plans and specifications. Lessor shall complete the Renovations prior to the Commencement Date of this Lease. In the event the Renovations have not been completed by the Commencement Date, Lessee shall have the option to (a) extend the Commencement Date of this Lease to a date not later than ninety (90) days following the original Commencement Date, or (b) take possession of the Demised Premises, in which event Basic Rent and Additional Rent shall abate until completion of the Renovations by Lessor, such date to constitute the new Commencement Date of this Lease. In the event Lessee elects to extend the Commencement Date pursuant to subparagraph "a" above, and in the further event the Renovations are not completed by the new Commencement Date, Lessee shall have the right to terminate this Lease by written notice to Lessor in which event this Lease shall be rendered null and void. Upon Lessor's completion of Renovations, Lessor shall provide Lessee with written notice thereof and shall obtain a permanent certificate of occupancy for the Demised Premises, if required by applicable law.

10.2. Lessee may, with the prior written consent of Lessor, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demised Premises ("Improvements") at its sole cost and expense. Each such Improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Lessee shall advise Lessor, when requesting consent to install Lessee Improvements, whether Lessee will remove the Improvements at the termination of this Lease. If Lessee elects not to remove the Improvements, the Improvements shall become part of the Demised Premises and subject to this Lease. If the Improvements will be removed by Lessee, Lessee shall restore the Demised Premises to its condition prior to such installation, reasonable wear and tear and damage by fire or other casualty excepted.

10.3. Lessor agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Demised Premises by Lessee shall not become the property of Lessor or a part of the realty no matter how affixed to the Demised Premises and may be removed by Lessee at any time and from time to time during the term of this Lease.

#### ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there be any damage to or destruction of the Building, the Demised Premises or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Building or the Demised Premises or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Lessor will promptly commence and complete Restoration of the Building and the Demised Premises.

11.3. If Restoration cannot be completed within ninety (90) days after the occurrence, then Lessee may terminate this Lease by notice to Lessor given within ten (10) days following the earlier to occur of (a) the date the Restorations should have been completed, or (b) the date on which Lessor advises Lessee that the Restorations cannot be completed within ninety (90) days of the occurrence, whereupon Basic Rent and any other payments by Lessee hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Lessee hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Lessee to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Lessee from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

#### ARTICLE 12 - INSURANCE

12.1. Lessor shall at all times during the Initial Term and Extended Term, if any, of this Lease maintain, with insurers authorized to do business in the State of South Carolina, fire insurance with extended coverage for the Building

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of which the Demised Premises is a part in an amount not less than the actual replacement cost, including the cost of debris removal.

#### ARTICLE 13 - LESSEE CANCELLATION PRIVILEGE

13.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Lessee shall have the right to cancel this Lease or to relinquish any portion of the demised premises upon giving Lessor thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

- (a) If appropriations, revenue, income, grants or other funding are not provided by the General Assembly to the Lessee in an amount sufficient to carry out the purposes and programs of Lessee, including the payment of Basic Rent, Additional Rent and all other payment obligations of Lessee pursuant to this Lease, the sufficiency of such funds to be determined solely by SCDMH; or
- (b) If the Lessee is dissolved and no longer performs the functions and purposes ascribed to it; or
- (c) If at any time during the Initial Term or the Extended Term, if any, the square footage in the Demised Premises is, in the sole opinion of SCDMH, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Lessee; or
- (d) If Lessor shall have breached any covenant, condition, representation or warranty made by Lessor in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by Lessee to Lessor of such breach and request to cure or correct.

13.2. In addition to the cancellation privileges set forth in subparagraph 14.1, Lessee shall also have the right to cancel this Lease or any portion of the Demised Premises at any time after the first six (6) months of the Initial Term by giving 120 days written notice to Lessor of Lessee's intention to vacate all or a portion of the Demised Premises to relocate to a building owned or otherwise controlled by the Lessee, SCDMH or the State of South Carolina.

#### ARTICLE 14 - EXEMPTIONS

14.1. Lessor and Lessee agree that Lessee shall be specifically exempt from the payment, furnishing or providing to Lessor of any of the following:

- (a) Security deposits for any rents or other charges to be paid by Lessee pursuant to this Lease or for any service or item supplied to Lessee by Lessor;
- (b) Liquidated or punitive damages for any cause or reason;
- (c) Lessor's attorneys fees, court costs or costs of collection in connection with any action or inaction by Lessee under this Lease;
- (d) Any form of insurance coverage for Lessor or any person or entity other than Lessee or for any real or personal property of any party other than Lessee including, but not limited to, fire, comprehensive general public liability or contractual liability.
- (e) Any indemnification, hold harmless, release or waiver agreement by Lessee to Lessor or any other person, party or entity; and
- (f) Payment of any late charges or penalties for failure by Lessee to make payment of Basic Rent or any other charges payable to Lessor pursuant to this Lease.

#### ARTICLE 15 - SUBORDINATION AND NON-DISTURBANCE

15.1. Any mortgage which may now or hereafter affect the Land, the Building, the Demised Premises, or any part thereof, and any renewals, modifications, consolidations, replacements or extensions thereof shall provide that so long as there shall be no continuing event of default by Lessee hereunder, the leasehold estate of Lessee created hereby and Lessee's peaceful and quiet possession of the Demised Premises shall be undisturbed by any foreclosure of such mortgage. In the event that any such mortgage affects the Land, the Building or the Demised Premises as of the Commencement Date, Lessor shall furnish Lessee with an executed non-disturbance agreement from any such mortgagee.

#### ARTICLE 16 - MINOR REPAIRS

16.1. If at any time during the Initial Term or Extended Term, if any, Lessee shall find in the Demised Premises items in need of repair or replacement, including, but not limited to, torn or damaged carpet, improper or inadequate lighting, faulty workmanship in construction, inoperative door locks or other similar deficiencies which affect Lessee's use and enjoyment of the Demised Premises, Lessee shall give written notice thereof to Lessor and Lessor shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Lessee within thirty (30) days of the date of Lessee's notice thereof. In the event Lessor shall fail or refuse to repair, replace or cure the deficiency within the time aforesaid and the cost of such repair, replacement or cure is less than \$1,000, Lessee shall have the right, but not the obligation, to undertake such repair, replacement or cure and, in such event, shall have the right to deduct the cost thereof from the next due monthly installment of Basic Rent. In the event Lessee does not undertake such repair,

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replacement or cure, irrespective of the cost thereof, and Lessor shall not have repaired, replaced or cured such deficiency within sixty (60) days of the date of Lessee's notice to Lessor of such deficiency, Lessee may, at its option, terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Lessee shall be apportioned as of such date of termination.

#### ARTICLE 17 - SURRENDER

17.1. Upon the expiration or earlier termination of this Lease, Lessee shall surrender the Demised Premises to Lessor in good order and condition, except for ordinary wear and tear, permitted additions, improvements or alterations made by Lessee and the results of any damage, destruction or Taking. Lessee shall remove from the Demised Premises on or prior to such expiration or earlier termination all of its property situated therein.

#### ARTICLE 18 - NOTICES

18.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to Lessor or Lessee at the addresses appearing at the heading of this Lease.

#### ARTICLE 19 - AMENDMENTS

19.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

#### ARTICLE 20 - HOLDOVER

20.1. In the event Lessee shall remain in the Demised Premises after the Initial Term has expired and Lessee shall have failed to give notice to Lessor of Lessee's intent to extend this Lease in accordance with subparagraph 2.1 hereof, Lessee shall be deemed to be a Lessee from month to month and Lessee shall continue to pay the Basic Rent in effect for the Initial Term until either Lessor or Lessee, by sixty (60) days written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Lessee hereunder shall be apportioned as of such date of termination.

#### ARTICLE 21 - MISCELLANEOUS

21.1. If any provision of the Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

21.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

21.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

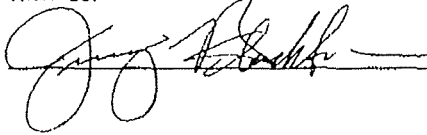
21.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

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


21.6. In the event Lessor is involved in any bankruptcy or insolvency proceedings and Lessor's trustee fails to perform or rejects any of the Lessor's obligations under this Lease, Lessee shall have the option to terminate this Lease.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year first above written.

WITNESS:



LANDLORD:

  
By 11/10/15  
(signature for landlord) (date)

DOUGLAS M. DURBAND - MANAGER  
(printed name and title of signatory)

WITNESS:

McQueen Rhogen 11/06/15

TENANT:

Deborah S. Blalock 11/06/15  
(signature for tenant) (date)

Deborah S. Blalock, MEd, LPCS, Executive Director  
(printed name and title of signatory)

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (DMH) COVENANTS AND CONDITIONS (1 page)

This is made a part of the attached Contract with DMH and/or DMH component. If any Contract term or obligation is in conflict with this document, this document will control. The parties to the Contract will comply with all applicable law. If the Contract involves federal or other grant funds (including any applicable grant subcontractor or sub grantee obligations), the parties will comply with the applicable grant terms and obligations. As may be applicable to the attached Contract, the party contracting with DMH also agrees:

1. To comply with all applicable law including: Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d & 2000e); 45 CFR Part 80; § 504 of the Rehabilitation Act of 1973; 45 CFR Part 84; Age Discrimination Act of 1975; 42 U.S.C. 6101 et seq.; Omnibus Budget Reconciliation Act of 1981; Americans with Disabilities Act; 42 CFR Parts 35 & 36; Federal Drug Free Workplace Act of 1988 & §44-107-10 et seq. S.C. Code; 45 CFR Part 160 et seq. (HIPAA); 42 CFR Part 2 (Alcohol and Drug Confidentiality); and §44-22-100, SC Code (DMH Patient/Client/Person Subject to Commitment Confidentiality).
2. Unless specific Contract/applicable grant terms require otherwise, DMH has ownership, title, copyright or other right to property purchased or developed with Contract funds. The party contracting with DMH will not publish or use reports, data or other material or information related to Contract services for its own purpose or financial benefit without prior DMH written permission.
3. Execution and performance of any Contract provision, or continued payment, will not affect DMH's right to enforce the Contract. No DMH waiver of any Contract breach will be considered as waiver of any succeeding breach, or applicable provision.
4. The Contract is governed by applicable Federal and South Carolina law and any legal action, suit, proceeding or other dispute resolution activity arising from the Contract will be instituted and maintained in the applicable court in South Carolina.
5. No sub-contract or assignment of the Contract, Contract obligations or Contract rights is valid without written DMH consent. Regardless, the party contracting with DMH will be solely responsible for its Contract performance and obligations.
6. DMH and other public agency having audit authority over the Contract or Contract services may audit books, records and other documents of the party contracting with DMH as they pertain to the Contract, independent of and pursuant to, §11-35-2220, S.C. Code. Such documents will be maintained for a period of at least three (3) years from the date of final payment under the Contract.
7. To conform to DMH and other applicable credentialing, privileging and Corporate Compliance requirements, including those issued by the OIG USDHHS. The party contracting with DMH will not employ persons listed on the OIG's Cumulative Sanctions Report or Excluded Parties List System (<http://exclusions.oig.hhs.gov/> <https://www.epls.gov/>) and will adopt DMH policies regarding §6032 of the Deficit Reduction Act of 2005 as stated in DMH S&P No. 1. ([http://www.state.sc.us/dmh/policies/corp\\_comply/6032.pdf](http://www.state.sc.us/dmh/policies/corp_comply/6032.pdf)).
8. If the party contracting with DMH seeks and obtains third party payment including from federal sources such as Medicare or Medicaid, the party contracting with DMH will offset any amounts due from DMH with the receipts or submit the funds to DMH and be solely responsible for the legitimacy of the request for and payment of funds and any recoupments sought by the third party payor. If payments to DMH from the party contracting with DMH are not full compensation for all DMH Contract services, DMH may bill and accept payment for such uncompensated services from any other available payor or source of payment, and any such payment will not reduce any payment due to DMH by the party contracting with DMH.
9. If Contract services involve the review or use of DMH plans, reports, financial information, attorney work product, personal, patient and/or other proprietary or confidential information, the party contracting with DMH will use or disclose such information only as necessary to perform Contract services or otherwise with applicable DMH written permission, or as required or permitted by law.
10. No Contract funds, materials, property, or services will be used for any partisan, political activity, or to further the election or defeat of any candidate for public office or any activity in violation of the "Hatch Act" or other applicable law. No attorney may be engaged through the use of Contract funds. Subject to §15-77-300, SC Code, DMH will not be obligated to pay attorney's fees or the cost of legal action arising from this Contract.
11. No employee of either party to this Contract will be deemed as an employee of the other party. Nothing in the Contract will be interpreted as creating any employment, agency, partnership, joint venture, or any other similar relationship between the parties. Neither party will make any representation or statement to any person or entity inconsistent with the Contract.
12. The following Contract terms or obligations are of no effect if they require (and the Contract will not be interpreted as requiring) that DMH: submit to the jurisdiction of another state's laws and/or courts; indemnify the party contracting with DMH or any other party; or waive any interest, right, immunity or defense that DMH may have in law or in equity.

DMH Covenants and Conditions August 2011

## CONTRACT ADDENDUM

The South Carolina Department of Mental Health, Charleston Dorchester Mental Health Center, hereinafter referred to as "Lessee" and Chicora Life Center, L.C., hereinafter referred to as "Lessor", collectively referred to as "the Parties" agree to revise their Lease dated August 1, 2015, a copy of which is attached, ("the Contract") and agree to make certain changes to the Contract as follows:

The following terms are hereby incorporated as part of the Lease:

Article 3.1 The Basic Rent for the first two years of the Initial Term shall be comprised of (a) \$12.00 per rentable square foot subject to annual adjustment based on the May CPI for all Urban Consumers South Region (with increases pursuant thereto not to exceed 2.5% over the prior year) with such adjustment to occur commencing on December 1, 2017 and each year thereafter, and (b) the Lessee's share of costs and expenses incurred for common area expenses ("CAM"), payable in equal monthly installments. The CAM shall be capped at \$6.50 per rentable square foot through November, 2017. Thereafter, beginning December 1, 2017, the CAM shall be based on the actual direct costs of operation and maintenance upkeep of the Land and Building (but any increases in such costs shall not exceed a maximum of 15% annually over the prior year). CAM is calculated as the rentable square feet of the Demised Premises multiplied by the cost per rentable square foot of all direct costs of operation and maintenance upkeep of the Land and Building required to provide the services identified in Article 6 of the Lease.

Beginning with Lessee's occupancy of the Premises and continuing through November 30, 2016, the Lessee will not pay any share of costs and expenses incurred for common area allocation for 3,014 rentable square feet of the Demised Premises. Through the end of November 30, 2016, Lessee's share of costs and expenses for common area allocation shall be calculated based only upon 6,793 rentable square feet. In summary, for the period prior to November 30, 2016, Lessee's Basic Rent shall consist of \$12.00 per rentable square foot for 9,807 rentable square feet, and a CAM expense of \$6.50 per rentable square foot for 6,793 rentable square feet, as further illustrated in Exhibit A attached hereto.

Under the terms of this Lease agreement, and as part of the Basic Rent, Lessor agrees to provide sufficient parking for Lessee's visitors and staff at no additional cost to the Lessee.

Article 6.1 Services provided by the Lessor to Lessee as part of basic rent shall not include cleaning and janitorial costs attributable to the Demised Premises as Lessee will pay such costs separate from CAM. The Lessor shall also honor and be responsible for the expense of the original, or as close as possible, representation and design presented to the Lessee during lease negotiation. Upon completion of the original rehabilitation of the building and grounds, the Lessee shall be responsible for its share of the CAM payment for monthly upkeep of the Lessor's building and grounds.

Article 13.3 If, prior to the Termination Date, the Lessee exercises its right to cancel this Lease or to relinquish any portion of the demised premises under any provision of this Article 13, except for a cancellation due to insufficient funding under Article 13.1 (a) or due to the fault of the Lessor under Article 13.1(d), the Lessee shall thereafter pay to Landlord a portion of the expenses incurred by Landlord for Renovations to the Demised Premises. The amount paid by Lessee to Landlord in the event of such cancellation or relinquishment shall be calculated as follows: \$9.20 per RSF multiplied by a fraction, the numerator of which is the period of time remaining under the Initial Term, and the denominator of which is five (5) years. By way of

illustration, if Lessee exercised its cancellation right when one year remained prior to the Termination Date, the amount Lessee would pay to Landlord would be \$18,044.88.

Article 21.6 IRAN DIVESTMENT ACT-CERTIFICATION (JAN 2015): (a) The Iran Divestment Act List is a list published by the board pursuant to Section 11-57-310 that identifies person engaged in investment activities in Iran. Currently, the list is available at the following URL: [http://procurement.sc.gov/PS/PS-iran-divestment.phlm\(.\)](http://procurement.sc.gov/PS/PS-iran-divestment.phlm(.)) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you signed, you are not on the then current version of the Iran Divestment Act List (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-1]

Article 21.7 OPEN TRADE (JUNE 2015):

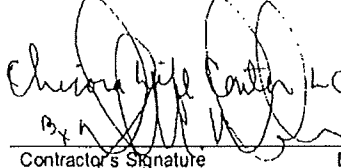
A. OPEN TRADE REPRESENTATION (JUN 2015):

By submitting an Offer, Contractor represents that Contractor is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2a083-1]

B. OPEN TRADE (JUN 2015):

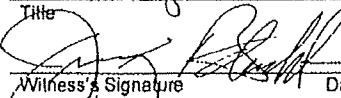
During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

This Addendum, by reference to the Contract, when signed by the Parties (or if applicable, on a specified date stated herein when changes are to go into effect), will form a part of the Contract; and all other Contract terms and conditions will remain in full force and effect.

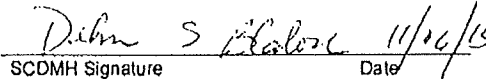
  
Contractor's Signature Date 11/06/15

DOUGLAS M. DURBANO  
Printed Name

Manager  
Title

  
Witness's Signature Date 10 Nov 15

Jereamy Blackburn  
Printed Name

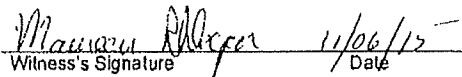
  
SCDMH Signature Date 11/06/15

Deborah S. Blalock, M.Ed., L.P.C.S.

Printed Name

CDMHC Executive Director

Title

  
Witness's Signature Date 11/06/15

Maureen Phlegar  
Printed Name

# EXHIBIT A

							CAM - Capped for 2 years with max 15% increase			
				Rent Max (increase is CPI but capped at 2.5%)	Mthly Max Rent	CAM Sq Footage	Yr 1=6793sq ft	Mthly CAM Max	Mthly Payment Max	
Sq Footage				\$ 12.00			\$ 6.50			
Year 1	12/1/2015	11/30/2016	9807	\$ 117,684.00	\$ 9,807.00	6793	\$ 44,154.50	\$ 3,679.54	\$ 13,486.54	
Year 2	12/1/2016	11/30/2017	9807	\$ 117,684.00	\$ 9,807.00	9807	\$ 63,745.50	\$ 5,312.13	\$ 15,119.13	
Year 3	12/1/2017	11/30/2018	9807	\$ 120,626.10	\$ 10,052.18	9807	\$ 73,307.33	\$ 6,108.94	\$ 16,161.12	
Year 4	12/1/2018	11/30/2019	9807	\$ 123,641.75	\$ 10,303.48	9807	\$ 84,303.42	\$ 7,025.29	\$ 17,328.76	
Year 5	12/1/2019	11/30/2020	9807	\$ 126,732.80	\$ 10,561.07	9807	\$ 96,948.94	\$ 8,079.08	\$ 18,640.14	

# EXHIBIT B

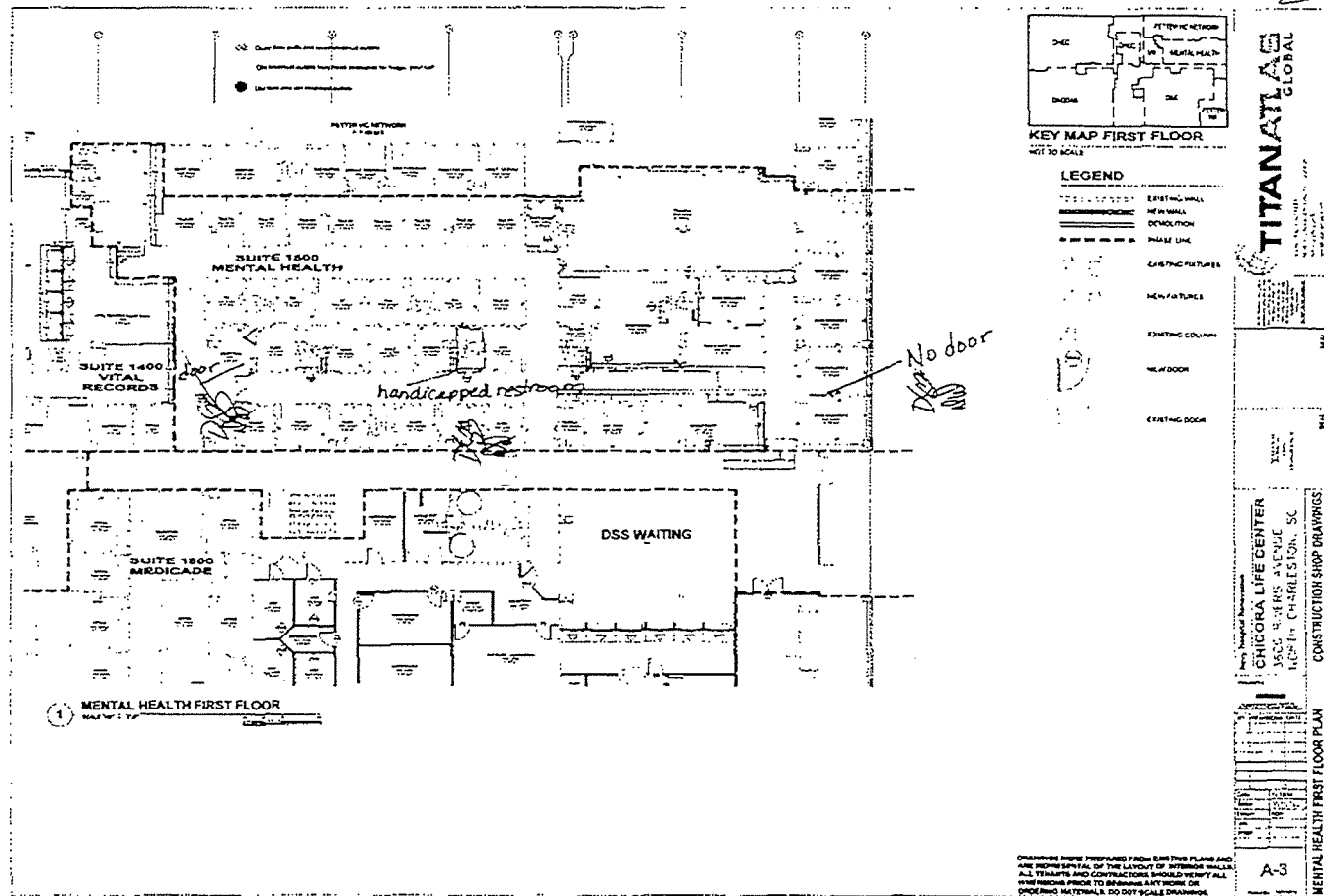


EXHIBIT C

IRAN DIVESTMENT ACT OF 2014  
(S.C. Code ANN §§ 11-57-10, et seq.)

The Iran Divestment Act List is a list published by the South Carolina Budget and Control Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: [http://procurement.sc.gov/PS/PS-iran-divestment.phhtm\(.\)](http://procurement.sc.gov/PS/PS-iran-divestment.phhtm(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you.

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor identified below, and, as of the date of my signature, the vendor identified below is not on the current Iran Divestment Act List. I further certify that I will notify the Procurement Officer immediately if, at any time before award of a contract, the vendor identified below is added to the Iran Divestment Act List.

Vendor Name (Printed) <i>Chirona Life Center Lc</i>	Taxpayer Identification No. <i>46-4703180</i>
By (Authorized Signature) <i>[Signature]</i>	State Vendor No.
Printed Name and Title of Person Signing <i>DOUGLAS M. DURBANO MANAGER</i>	Date Executed <i>11/10/15</i>



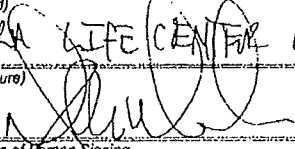
EXHIBIT D

OPEN TRADE REPRESENTATION

(S.C. Code Ann. §§ 11-35-5300)

The following representation, which is required by Section 11-35-5300(A), is a material inducement for the State to award a contract to you.

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor identified below, and, as of the date of my signature, the vendor identified below is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

Vendor Name (Printed) CHICORA LIFE CENTER LC	State Vendor No
By (Authorized Signature) 	Date Executed 11/10/15
Printed Name and Title of Person Signing DOUGLAS M. DURBAND - MANAGER	(Not used)

(Published August 24, 2015)

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Chicora Life Center, LLC, )  
Plaintiff, )

Civil Action No. 2019-CP-10-00798

v. )

**CHARLESTON DORCHESTER MENTAL  
HEALTH CENTER'S ANSWER TO  
PLAINTIFF'S AMENDED COMPLAINT**

The Charleston Dorchester Mental )  
Health Center, an outpatient facility of )  
the South Carolina Department of )  
Mental Health; and JOHN and JANE )  
DOES 1-100, )

(Jury Trial Requested)

Defendants. )

FILED  
2019 APR 12 PM 2:37  
JULIE J. ARISTIDES  
CLERK OF COURT  
BY

Defendant Charleston Dorchester Mental Health Center ("Mental Health Center"), by and through its undersigned counsel, files this Answer to Plaintiff Chicora Life Center, LLC's ("Plaintiff") Amended Complaint and would respectfully show unto the Court:

**FOR A FIRST DEFENSE AS TO ALL CAUSES OF ACTION**

1. Mental Health Center denies each and every allegation of Plaintiff's Amended Complaint not specifically admitted or explained.

2. The documents referenced, cited, or attached as exhibits to Plaintiff's Amended Complaint speak for themselves, and Mental Health Center specifically denies any allegations in the Complaint that are inconsistent with the terms, conditions, provisions, and/or contents therein.

**ANSWERING "PARTIES"**

3. Upon information and belief, Mental Health Center admits the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint.

4. Upon information and belief, Mental Health Center admits the allegations contained in Paragraph 2 of Plaintiff's Amended Complaint. Further answering, the commercial real estate building at 3600 Rivers Avenue, North Charleston, South Carolina (the "Property") is understood to be the following:



5. Mental Health Center admits the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint only to the extent they allege that Mental Health Center is a governmental agency organized and existing under the laws of the State of South Carolina with the goal of providing mental health services to members of the local community.

6. Mental Health Center admits the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint only to the extent they allege that Mental Health Center executed a commercial lease agreement with Plaintiff for the limited use of a small space located on the first floor of a building commonly referred to as the Old Naval Hospital in North Charleston. The Department of Mental Health intended to use the space to provide outpatient mental health services to the local community with the understanding that individuals with physical impairments and mental health challenges would need safe and secure access to a clean space that was appropriate for treating patients. The Department of Mental Health further intended to implement a tele-psych center within the space for local individuals in crisis. The Department's tele-psych center required that the space accommodate their electronic / IT needs in such a manner that the space was free from water intrusion issues that might damage the equipment needed to provide those services. The terms of the commercial lease agreement referenced by the Plaintiff's Amended Complaint speak for themselves, and Mental Health Center denies all allegations in Paragraph 4 of Plaintiff's Amended Complaint that are inconsistent therewith.

7. Paragraph 5 of Plaintiff's Amended Complaint contains no allegations against Mental Health Center to which a response is required. To the extent a response from Mental Health Center is required, Mental Health Center denies the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint.

**ANSWERING "JURISDICTION AND VENUE"**

8. Paragraphs 6, 7, and 8 of Plaintiff's Complaint addresses this Court's jurisdiction to hear and adjudicate the claims raised in Plaintiff's Complaint. Mental

Health Center admits that jurisdiction and venue are proper in this Court, but makes a demand for a jury trial.

**ANSWERING "FACTUAL BACKGROUND"**

9. In response to Paragraph 9 of the Plaintiff's Amended Complaint, Mental Health Center admits only that it executed a commercial lease agreement with Plaintiff for the limited use of a small space located on the first floor of the Old Naval Hospital in North Charleston.

10. Mental Health Center admits the allegations contained in Paragraph 10 of Plaintiff's Amended Complaint only to the extent that they allege that Mental Health Center executed a commercial lease agreement with Plaintiff. The terms of the commercial lease agreement referenced by Plaintiff's Amended Complaint speak for themselves, and Mental Health Center denies all allegations in Paragraph 10 of Plaintiff's Amended Complaint that are inconsistent therewith.

11. In response to Paragraphs 11 and 12 of Plaintiff's Amended Complaint, the terms of the commercial lease agreement speak for themselves, and Mental Health Center denies all allegations in Paragraphs 11 and 12 of Plaintiff's Amended Complaint that are inconsistent therewith. The Department would further admit that it asked Plaintiff to repair the building to ensure that it was appropriate for patients with physical impairments and mental health challenges to be evaluated and treated in a safe and secure environment.

12. Mental Health Center denies the allegations in Paragraph 13 of Plaintiff's Amended Complaint.

13. Mental Health Center denies the allegations in Paragraph 14 of Plaintiff's Amended Complaint. Further answering, Mental Health Center would show that its occupancy of the Property was not feasible or allowable due to the manner in which the Plaintiff failed to properly upfit the space and the building. If Chicora's owners are to be believed, the Plaintiff's Amended Complaint infers that members of the local community with physical and mental challenges should tolerate receiving treatment in a facility with non-ADA compliant access, mold infestation, poor plumbing, unpredictable electric service, open corridors of twisted metal, glass, and construction debris as well as asbestos dust throughout the property as more fully documented below.

14. Mental Health Center denies the allegations in Paragraph 15 of Plaintiff's Amended Complaint.

15. In response to Paragraph 16 of Plaintiff's Amended Complaint, the terms of the commercial lease agreement speak for themselves, and Mental Health Center denies all allegations in Paragraph 16 of Plaintiff's Amended Complaint that are inconsistent therewith.

16. Mental Health Center denies the allegations in Paragraph 17 of Plaintiff's Amended Complaint alleging that the space was appropriate for occupancy and would further show that:

- a. A January 8, 2018 assessment of the Property's existing generator system by a Charleston County, South Carolina electrical engineer recommended the remediation, demolition, and replacement of this generator system:

Executive Summary: The two existing generators and the associated auxiliary systems, including automatic transfer switching equipment, fuel tanks and other associated equipment are not suitable for their operation as reliable emergency, life safety, standby and/or critical electrical energy sources for the 3600 Rivers Avenue Facility. Both of the existing engine-generator sets and regulators are obsolete and their automatic transfer systems have been heavily modified to prevent them from being used for the safe and reliable operation and intended purpose. The costs to restore these machines and their associated auxiliary systems to permanent service exceeds the cost of providing new engine-generators and associated transfer equipment. It is recommended that both of these existing generators, and their associated auxiliary equipment including the day tank and above ground fuel storage tank be remediated/demolished and sold/recycled.

[2018-01-18 – Generator Recommendation, Page 1]

b. A January 23, 2018 assessment of the Property's existing electrical distribution system service by a Charleston County, South Carolina electrical engineer found the existing electrical utility service for the Property to be "not reliable," "not safe for [Charleston County's] qualified maintenance technicians," and "not efficient or cost effective":

Executive Summary: The existing electrical service entrance system for 3600 Rivers Avenue has several key deficiencies and it is not reliable, safe or suitable for its intended use. I recommend replacing the entire existing service with new SCE&G owned pad mounted transformer and new county owned feeder to an existing/repurposed service entrance rated switchgear with 480/277 Volt, 3 phase, 4 wire, 3200 Ampere supply.

[2018-01-23 – Electrical Service Recommendation Letter, Page 1]

c. A February 1, 2018 investigation of the Property's water service by a Charleston County, South Carolina facilities department employee found no water service available to the 2nd floor of the property and extensive issues with the 8th floor plumbing:

1. Water Service: Basic task was to assist S&ME in obtaining water samples at the 1<sup>st</sup>, 2<sup>nd</sup> and 8<sup>th</sup> floor. S&ME was able to get water samples at the 1<sup>st</sup> and 2<sup>nd</sup> floors but not at the 8<sup>th</sup> floor. Further investigation revealed there is no water available above the 2<sup>nd</sup> floor. We traced the water piping to the 8<sup>th</sup> floor and discovered some floors gutted completely with ends of water piping crimped instead of capped. So initially we were reluctant to pressurize the water system with the potential of flooding some floors. Eventually we pressurized the system, having enough staff available for monitoring each floor, before we started the domestic water pumps. But as we continued we realized that the domestic water pumps are not working and require replacement. To continue with troubleshooting the 8<sup>th</sup> floor water issues we need to replace the domestic water pumps. Rivers Plumbing has given the County a cost of \$42,000 to replace the pump assembly.

[2018-02-01 – 3600 Rivers Ave Mech Plumb Infrastructure Evaluation, Page 1]

- d. A February 6, 2018 assessment of the Property found that large portions of the building remain unfinished and in various phases of renovation:

During the initial visit to the building, we observed that the building is in various states of renovation as noted below:

- Ground Floor: Contains most of the building utilities and infrastructure. Some of the interior space has been removed on this floor, leaving the core. Renovated portions of the building leaving only the core is referred to as "gutted" in this report; This floor is partially gutted
- First Floor: Approximately 75% of the ground floor has been renovated for future office, file storage and clinic space. The other 25% has been gutted.
- Second Floor: Approximately 50% of the second floor has been renovated for DAODAS, while the other 50% has been gutted.
- Third Floor: Partially demolished with no new renovation.
- Fourth Floor: Half of this floor has no renovation and the other half is gutted.
- Fifth through Seventh – Partially demolished with no new renovation
- Eighth Floor – 100% of the floor has been renovated to house a residential drug rehabilitation treatment center.
- Ninth and Tenth Floors – Completely Gutted.
- Eleventh Floor – Penthouse which is completely gutted.

[2018-02-06 – Rivers Report Final, Page 4]



e. A February 19, 2018 assessment of the Property found that higher than allowable amounts of asbestos settled dust throughout the Property:

Asbestos settled dust was identified at elevated levels in four areas of Building NH-1. These four areas exhibited levels greater than 5,000 structures per centimeter square (str/cm<sup>2</sup>). The Environmental Protection Agency (EPA) has previously made determinations which recommend remedial actions for asbestos dust levels equal to or greater than 5,000 str/cm<sup>2</sup>. The areas identified included the Southwest quadrant of the first floor, the Northwest

[2018-02-19 – Naval Hospital\_IAQ H2O MOLD\_N CHS, Page 4]

f. The same February 19, 2018 assessment located asbestos containing materials in at least two (2) buildings located on the Property:

Asbestos containing materials are present throughout Buildings NH-1 and H-2 and must be maintained intact to prevent a potential exposure hazard. Asbestos containing materials which may be impacted by renovation or demolition must be properly removed prior to disturbance.

g. To date, the asbestos abatement process has not been completed, and the Property still contains unsafe asbestos levels:



h. The same February 19, 2018 assessment identified numerous areas affected by visible mold:

**Table II: Visible Mold Location, Extent, & Substrate**

General Location	<sup>1</sup> Visible Extent of Mold Intrusion	Substrates
Basement Level - Throughout	Large – Greater than 100 ft <sup>2</sup>	Drywall, Acoustical Ceiling Tiles, Wallpaper
First Floor – Throughout partially renovated quarter (Southeast Quarter)	Large – Greater than 100 ft <sup>2</sup>	Drywall, Acoustical Ceiling Tiles, Wallpaper
Seventh Floor - 7114	Medium – Between 10 ft <sup>2</sup> and 100 ft <sup>2</sup>	Plaster, Wallpaper
Seventh Floor – 7104A	Small – Less than 10 ft <sup>2</sup>	HVAC Vent
Ninth Floor - 9127	Small – Less than 10 ft <sup>2</sup>	HVAC Vent
Tenth Floor – Around stairwells	Medium – Between 10 ft <sup>2</sup> and 100 ft <sup>2</sup>	Plaster, Wallpaper

[2018-02-19 – Naval Hospital\_IAQ H2O MOLD\_N CHS, Page 11]

i. A March 3, 2019 Initial Feasibility Study determined the buildings located on the Property had significant deficiencies, including:

Accessibility:

- There are too few accessible parking spaces for the anticipated occupant
- The building is not accessible from the parking area to the building.
- The guardrails and handrails are not compliant with current safety requirements
- There are insufficient accessible toilet and shower facilities.
- Door hardware does not allow for accessible use.
- No building or room signage has been provided.

Life Safety:

- Emergency power is not provided to the building.
- Emergency and egress lighting is inadequate.
- Fire alarm system does not have voice / mass notification capabilities.
- There is no fire command center.
- Many fire rated walls are unlabeled and have lost their integrity.
- Smoke evacuation system is not present on 3<sup>rd</sup> floor or above.
- Stair pressurization is missing.

- h. The 2-way communication system in stairs is inadequate.
- i. Fire service elevator is not provided.
- j. Fire rated elevator lobbies are missing on un-occupied floors.
- k. The existing building structural seismic system is inadequate to meet the current building code requirements
- l. Suspended ceiling systems are not braced seismically.
- m. HVAC systems are not tested and balanced.
- n. Flex ducts exceed the code permitted maximum distances.
- o. Hot water is not available in the building.
- p. Running water is not provided above the second floor.
- q. A secondary means of providing fire protection water to the building needs to be provided.

Miscellaneous:

- a. The building is filthy and needs a thorough cleaning.
- b. The public spaces are unwelcoming and need better finishes to attract more tenants to the building

VALIDATION CODE: 2018-03-19-0001

[2018-03-19 Initial Feasibility Report, Pages 5-6]

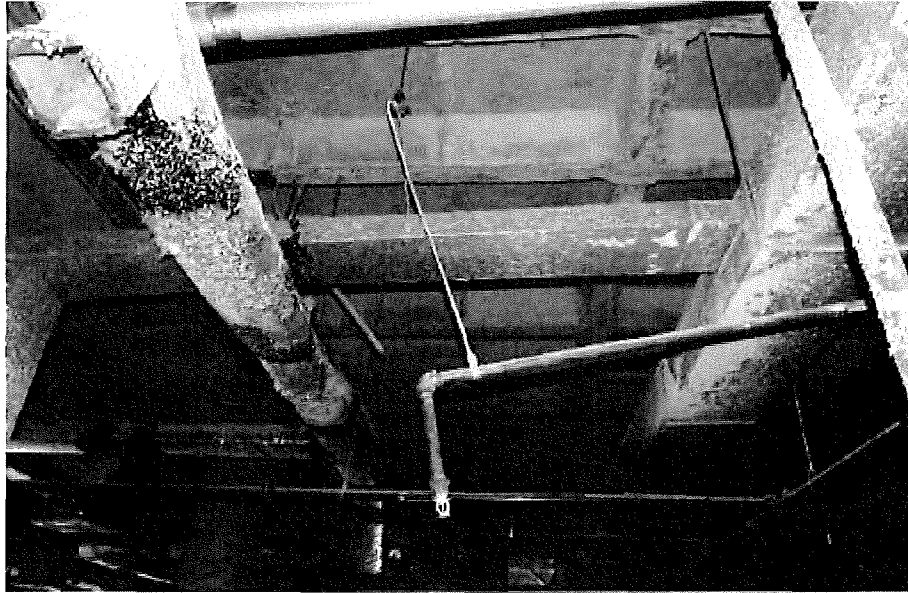
j. An April 5, 2018 Building Assessment showed numerous deficiencies in the building's sprinkler systems:

Painted sprinklers were noticed throughout the facility. Replace all painted sprinklers. An example of a painted sprinkler located in the basement is shown below;



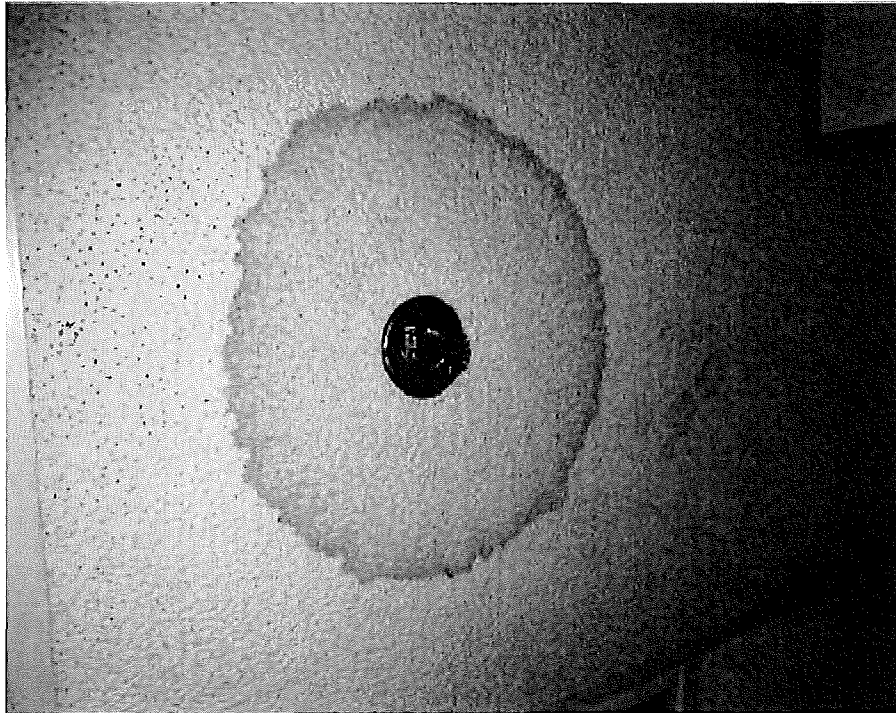
[2018-04-05 – Rivers Phase II Assessment, Page 9]

There were noticeable damaged sprinkler components. Replace all damaged sprinklers and hangers in the facility. An example of the oxidized pipe and a hanger broken after demolition on the 10<sup>th</sup> floor is shown below:



[2018-04-05 – Rivers Phase II Assessment, Page 9]

There are two locations in the basement where the sprinkler system is suspected to be leaking. The tiles around the sprinkler head indicated water damage. Jensen Hughes recommends investigating the cause of the leak. If the sprinkler piping is leaking the associated pipe and fittings should be repaired or replaced. The picture below shows an example of a suspected leak.



[2018-04-05 – Rivers Phase II Assessment, Page 11]

k. An April 20, 2018 operational assessment of the civil utilities and site infrastructure at the Property determined that, *inter alia*, the following repairs and remediations were required in order for the building to be operable:

RECOMMENDATIONS: Coordinate with Charleston Water Systems to have a leak detection program executed to find the leaks and make repairs. Run a leak detection inside the building to ensure all existing fixtures are properly secured. We also recommend the BFP's be re-tested and the settings on the low-pressure zone be recalibrated to proper manufacturer's recommended settings. Reopen the north meter service at Spruill Avenue: verify that all system valves are fully open and a loop section is not closed, since based on recent fire pump operations tests conducted by the County's consultant, the existing system cannot meet the fire pump demands with only one 6-inch metered source: verify the BFP's through a certified tester that they are operating within proper parameters. The BFP's were originally installed in 1973. Replacing them with newer modern devices could help reduce system pressure loss.

RECOMMENDATION: The sanitary sewer pump station needs to be fully rehabilitated or replaced with all new pumps, motors, controls and accessories to restore it to a fully functioning automatic system; and also connected to the emergency back-up generator power supply. At a minimum, it should be able to accommodate the storm water inflow rates listed above. The designer of the pumps should verify the conditions and contributory rates in order to determine the final pump capacity, but it is safe to assume it will be in the 350-375 gpm range for each

pump. The cut channel should be filled with concrete to seal off the cross-connection. The top cover must be replaced. We recommend a structural slab with access covers mounted in the top. As the slab is located in an interior mechanical room, it is not expected to be traffic rated. The designer should determine the final thickness needed. This would place all vents and openings into the wetwell above the existing floor level.

RECOMMENDATION: The stormwater pump station needs to be fully rehabilitated or replaced with all new pumps, motors, controls and accessories to restore it to a fully automated system; and also connected to the emergency back-up generator power supply. The required rate of flow for a single pump should be equal to the 5-year storm, 786 gpm, at a minimum, and the combined rate of flow for both pumps should be able to handle the 100-year storm rate of 1106 gpm. This would be comparable to the original design parameters; however, the designer should verify the contributing conditions and the final required capacity rates of the pump station. The top cover must be replaced. We recommend a structural slab, with access covers mounted in the top. As the slab is located in an interior mechanical room, it is not expected to be traffic rated.

17. Mental Health Center denies the allegations in Paragraph 18 of Plaintiff's Amended Complaint alleging that the space was appropriate for patients based on the information noted above. The Department of Mental Health could not provide safe and secure treatment to members of the local community in a facility with non-ADA compliant access, mold infestation, poor plumbing, unpredictable electric service, open corridors of twisted metal, glass, and construction debris as well as asbestos dust throughout the property. It is specifically denied that that Chicora's members complied with their provisions of the lease agreement that required a useable space.

18. In response to Paragraphs 19 and 20 of Plaintiff's Amended Complaint, the terms of the commercial lease agreement speak for themselves, and Mental Health

Center denies all allegations in Paragraphs 19 and 20 of Plaintiff's Amended Complaint that are inconsistent therewith.

19. In response to Paragraph 21 of the Plaintiff's Amended Complaint, Mental Health Center admits the allegations only to the extent they are consistent with the terms, conditions, provisions, and/or contents of the referenced Exhibit to Plaintiff's Amended Complaint.

20. Mental Health Center denies the allegations in Paragraphs 22 and 23 of Plaintiff's Amended Complaint seeking damages for lost rent and tenant improvements against the Department of Mental Health and would aver that Chicora's lawsuit attempts to recover funds for a building, that was purchased from them for \$33 million dollars, against a local mental health facility that provides service to individuals with physical and mental health challenges. Every dollar sought by Chicora's owners to off-set "lost rent" for a building that they do not own or to pay for "tenant improvements" that Chicora did not complete, takes away from the services that the Department can provide to the local community at large.

**ANSWERING "FIRST CAUSE OF ACTION"**  
**(BREACH OF CONTRACT)**

21. In response to Paragraph 24 of Plaintiff's Amended Complaint, Mental Health Center repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through and including 23 of Plaintiff's Amended Complaint.

22. In response to Paragraph 25 of Plaintiff's Amended Complaint, the terms of the commercial lease agreement speak for themselves, and Mental Health Center denies all allegations in Paragraph 25 of Plaintiff's Amended Complaint that are inconsistent therewith

23. Mental Health Center denies the allegations in Paragraph 26 of Plaintiff's Amended Complaint.

24. Mental Health Center denies the allegations in Paragraph 27 of Plaintiff's Amended Complaint and would further show that the examples provided in response to the allegations in Paragraph 17 of the Plaintiff's Amended Complaint are not exhaustive of Plaintiff's failure to complete the Tenant Improvements.

25. Mental Health Center denies the allegations in Paragraph 28 of Plaintiff's Amended Complaint. Further answering, Mental Health Center would show that occupancy of the Leased Premises was not feasible or allowable.

26. Mental Health Center denies the allegations in Paragraph 29 of Plaintiff's Amended Complaint.

27. Mental Health Center denies the allegations in Paragraph 30 of Plaintiff's Amended Complaint.

28. Mental Health Center denies the allegations in Paragraph 31 of Plaintiff's Amended Complaint.

29. Mental Health Center denies the allegations in Paragraph 32 of Plaintiff's Amended Complaint.

**ANSWERING "SECOND CAUSE OF ACTION"**  
**(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

30. In response to Paragraph 33 of Plaintiff's Amended Complaint, Mental Health Center repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through and including 32 of Plaintiff's Amended Complaint.

31. Mental Health Center denies the allegations in Paragraph 34 of Plaintiff's Amended Complaint.



32. Mental Health Center denies the allegations in Paragraph 35 of Plaintiff's Amended Complaint.

33. Mental Health Center denies the allegations in Paragraph 36 of Plaintiff's Amended Complaint.

34. Mental Health Center denies Plaintiff's Prayer for Relief.

**FOR A SECOND DEFENSE**

35. Mental Health Center asserts that Plaintiff's Amended Complaint, in whole or in part, fails to state a claim upon which relief may be granted against Mental Health Center and should, therefore, be dismissed.

**FOR A THIRD DEFENSE**

36. Plaintiff's Amended Complaint fails to name both necessary and indispensable parties in whose absence complete relief cannot be accorded among those already parties. Therefore, this action must be dismissed, or alternatively, should be stayed pending other appropriate relief by the Court.

**FOR A FOURTH DEFENSE**

37. Mental Health Center asserts that an award of damages, if any, is subject to and limited by the applicable provisions of S.C. Code Ann. § 15-38-10, *et seq.*

**FOR A FIFTH DEFENSE**

38. Some or all damages allegedly sustained by Plaintiff (the existence of which is denied) were a direct or proximate result of the acts or omissions of another party or parties over whom Mental Health Center had no control or duty to control. Mental Health Center pleads the acts of another party or parties as a complete defense to all claims.

**FOR A SIXTH DEFENSE**

39. With regard to some or all causes of action appearing in the Amended Complaint, the Plaintiff's claims are barred by the doctrines of waiver and estoppel.

**FOR A SEVENTH DEFENSE**

40. Some or all damages allegedly sustained by Plaintiff (the existence of which is denied) were a proximate result of one or more independent, efficient, intervening causes which Mental Health Center pleads as a bar to this action.

**FOR AN EIGHTH DEFENSE**

41. No acts or omissions on the part of Mental Health Center were the proximate cause or cause in fact of some or all damages allegedly suffered by Plaintiff (the existence of which is denied); therefore, Plaintiff's action is barred in whole or in part.

**FOR A NINTH DEFENSE**

42. To the extent a contract and/or other duties are found to exist between Mental Health Center and Plaintiff, Mental Health Center's performance of such duties was rendered impossible in a manner that excused performance.

**FOR A TENTH DEFENSE**

43. With regard to some or all causes of action alleged in the Amended Complaint, Plaintiff's claims are barred by the doctrine of substantial performance.

**FOR A ELEVENTH DEFENSE**

44. Some or all damages allegedly sustained by Plaintiff (the existence of which is denied) were a proximate result of one or more independent, efficient, intervening causes which pleads as a bar to this action.

**FOR A TWELFTH DEFENSE**

45. With regard to some or all causes of action alleged in the Amended Complaint, Plaintiff's claims are barred by the doctrine of acquiescence.

**FOR A THIRTEENTH DEFENSE**

46. To the extent a contract and/or other duties are found to exist between Mental Health Center and Plaintiff, Mental Health Center's performance of such duties was discharged under the doctrine of frustration of purpose.

**FOR A FOURTEENTH DEFENSE**

47. With regard to some or all causes of action alleged in the Amended Complaint, the Plaintiff's claims for attorneys' fees are barred.

**FOR A FIFTEENTH DEFENSE**

48. Plaintiff will be subject to an election of remedies should it prevail on some or all causes of action.

49. Additionally, any award of damages should be barred or limited to the extent that the relief demanded by Plaintiff is improper, inappropriate, exceeds the scope of permissible damages and remedies, and/or otherwise is not available under the laws upon which its claims rest.

**FOR A SIXTEENTH DEFENSE**

50. Mental Health Center would show that any actions taken relating in any way to Plaintiff were taken in good faith, in a reasonable manner, and that such actions were authorized by law and contract, reasonable in time and manner; therefore, Plaintiff is precluded from recovery against Mental Health Center.

**FOR A SEVENTEENTH DEFENSE**

51. Some or all of Plaintiff's claims are barred by the doctrine of justification. To the extent Plaintiff's allegations in any way prove true, which is denied, Mental Health Center's actions constituted the exercise of legal rights available to Mental Health Center under common law, as Mental Health Center acted with a legitimate business purpose.

**FOR AN EIGHTEENTH DEFENSE**

52. Plaintiff's claim for damages is speculative and disallowed under law.

53. Plaintiff's allegations regarding causation are speculative and disallowed under law.

**FOR A NINETEENTH DEFENSE**

54. With regard to some or all causes of action alleged in the Complaint, Plaintiff's claims are barred, in whole or in part, because of the failure to plead them with sufficient particularity and/or specificity, as required under Rule 9, SCRCP.

**FOR A TWENTIETH DEFENSE**

55. Plaintiff's claims are barred, in whole or in part, by Plaintiff's comparative and/or contributory negligence, gross negligence and/or assumption of risk.

**FOR A TWENTY-FIRST DEFENSE**

56. Plaintiff should have taken action to minimize or eliminate its damages, if any, and therefore, Plaintiff is precluded from any recovery or, in the alternative, any recover must be reduced by the operation of the Doctrines of Avoidable Consequences and Mitigation of Damages.

**FOR A TWENTY-SECOND DEFENSE**

57. Mental Health Center reserves the right to allege other affirmative defenses which may arise during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendant Charleston Dorchester Mental Health Center prays that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By:

  
Drew Hamilton Butler (SC Bar No. 70363)  
R. Wilder Harte (SC Bar No. 101228)  
Richardson Plowden & Robinson, P.A.  
235 MaGrath Darby Blvd., Suite 100  
Mt. Pleasant, SC 29464  
[dbutler@richardsonplowden.com](mailto:dbutler@richardsonplowden.com)  
[wharte@richardsonplowden.com](mailto:wharte@richardsonplowden.com)

**ATTORNEYS FOR DEFENDANT  
CHARLESTON DORCHESTER MENTAL  
HEALTH CENTER**

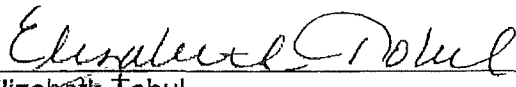
April 12, 2019

CERTIFICATE OF SERVICE

I, Elizabeth Tobul, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Defendants do hereby certify that I have served **The Charleston Dorchester Mental Health Center's Answer to the Amended Complaint** in the above-referenced captioned case, by causing a copy of the same to be served by:

☐ US Mail, ☐ Email, ☐ Facsimile, or ☒ Hand-delivery to all counsel of record.

April 12, 2019

  
Elizabeth Tobul  
Paralegal

FILED  
2019 APR 12 PM 2:38  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

## CHICORA LIFE CENTER, LC

[Update this Business](#)**Entity Number:** 9801676-0160**Company Type:** LLC - Domestic**Address:** 476 W HERITAGE PARK BLVD #105 LAYTON, UT 84041**State of Origin:****Registered Agent:** DOUGLAS M DURBANO**Registered Agent Address:**

476 W HERITAGE PARK BLVD #105

[View Management Team](#)

LAYTON, UT 84041

**Status:** Active[Purchase Certificate of Existence](#)**Status:** Active  as of 01/17/2014**Renew By:** 01/31/2023**Status Description:** Current

The "Current" status represents that a renewal has been filed, within the most recent renewal period, with the Division of Corporations and Commercial Code.

**Employment Verification:** Not Registered with Verify Utah[History](#)[View Filed Documents](#)**Registration Date:** 01/17/2014**Last Renewed:** 02/08/2022[Additional Information](#)**NAICS Code:** 9999 **NAICS Title:** 9999-Nonclassifiable Establishment[<< Back to Search Results](#)**Business Name:**

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AGENCY: Clemson University

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SUBJECT: Not Exceeding \$106,000,000 of General Obligation State Institution Bonds  
(Issued on Behalf of Clemson University) of the State of South Carolina

The Authority is asked to adopt a resolution making provision for the issuance and sale of not exceeding \$106,000,000 of General Obligation State Institution Bonds (Issued on Behalf of Clemson University) of the State of South Carolina.

The proceeds of the bonds will defray the cost to construct, improve, and furnish the Advanced Materials Innovation Complex project, consisting of new interdisciplinary research laboratory, classroom, faculty, and administrative facilities and related improvements and infrastructure, on the campus of the University, which are expected to support, without limitation, the chemistry, materials science and engineering, and chemical and biomolecular engineering programs and related programs on the campus of the University.

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AUTHORITY ACTION REQUESTED:

Adopt a resolution making provision for the issuance and sale of not exceeding \$106,000,000 of General Obligation State Institution Bonds (Issued on Behalf of Clemson University) of the State of South Carolina.

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ATTACHMENTS:

Pope 12/15/2022 letter with attachments; NDIF; SFAA Resolution





# OFFICE OF STATE TREASURER

## New Debt Information Form (NDIF) - Initial Form

SFAA Approval Date: 01/31/23

Final Version Date: 00/00/00

### 1. AGENCY/ISSUER & FINANCING INFORMATION

Agency #: H12 Issuer: State of South Carolina Series: 2023  
 Borrower (if not Issuer): Clemson University  
 Bond Caption: General Obligation State Institution Bonds (Issued on Behalf of Clemson University)  
 Bond Resolution Amount: \$ 106,000,000 Est. Production/Par Amt: \$ 92,890,000

(\* Used to calculate initial COI percentages; STO bond issues must use Par Amt \*)

#### Submitted By:

ENTITY: Clemson University  
 BY: Rick Petillo  
 ITS: Chief Financial Officer  
 Tel: 864-656-2591  
 Email: rpetill@clemson.edu

Final Production/Par Amt: \$ -

#### 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: Office of State Treasurer

### 2. FINANCING (NEW PORTION)

Project #: Project Name: Advanced Materials Innovation Complex  
 Project Address/Location: Main Campus, Clemson University Amount: \$ 130,000,000  
 Project Type: Construct Additional Facilities County: Pickens  
 Projected Avg Interest Rate: 3.60% (All-In TIC) Final Maturity: 4/1/2043 (Preliminary)

### 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)
		\$ -			\$ -	
		-			-	
		-			-	
Total		\$ -	*****	*****	\$ -	

### 4. FINANCING WORKING GROUP

Financial Advisor: PRAG Disclosure Counsel: Howell Linkous  
 Bond Counsel: Pope Flynn, LLC Issuer's Counsel: SC Attorney General  
 Underwriter: TBD - Competitive Sale Trustee: N/A  
 Paying Agent: US Bank Other: N/A

### 5. FINANCING/PROJECT DESCRIPTION

(Briefly, explain the financing/project, the anticipated costs, & the basis for these cost estimates. Use an attachment if needed)

The bonds will provide proceeds necessary to construct, improve, and furnish the Advanced Materials Innovation Complex project, and to pay the costs of issuance thereof. Costs of issuance of the bonds are calculated at the anticipated par amount of \$92.9 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 the underwriter's discount, will not be known until the pricing of the bonds and will vary with market conditions. Costs of issuance as listed in Section 8 and Section 9 assume a stand-alone issuance. The Office of State Treasurer may issue the bonds as part of a larger transaction to reduce costs if appropriate.

### 6. FINANCING/PROJECT APPROVAL DATES

Financing Approvals	Notes:
Issuer/Borrower Approval: 10/21/22	Adopted
JBRC Approval: 01/25/23	Proposed
SFAA Approval: 01/31/23	Proposed

Project Approvals - Phase II (State Entities Only)	Notes:
Issuer/Borrower Approval: 10/21/22	Adopted
JBRC Approval: 01/25/23	Proposed
SFAA Approval: 01/31/23	Proposed

### 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  
☐ ☒

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?

☐ ☒

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
\$ 1,294,737	6/30/2023	Costs of issuance and project costs (incl. reimbursement)
2,900,000	6/30/2024	Project costs
12,535,109	6/30/2024	Project costs
16,600,000	6/30/2025	Project costs
64,370,154	6/30/2025	Project costs
32,300,000		Project costs (partial year through December 2025)
<b>\$ 130,000,000</b>		

## 8. ESTIMATED/ACTUAL PROJECT SOURCES AND USES

Sources	Est. Project Budget (Sources)	Est. Project Budget (Uses)	Uses
(1) Bond Proceeds: (a) Par	\$ 92,890,000	\$ 130,000,000	Project Fund
(b) Premium/Accr. Int.	12,857,802	-	Capitalized Interest Fund
(2) Issuer/Borrower Contr.	25,000,000	-	Debt Service Reserve Fund
(3) Debt Service Fund Trans.	-	-	Redemption Price/Escrow Deposit
(4) Debt Service Reserve Fund Contribution	-	747,802	Cost of Issuance (Incl. UW Disc.)
(5) Other (Specify)		-	Accrued Interest
Type -	-	-	Other
Type -	-	-	Other
(6) SCHFDA MFHRB Sources		-	Other
(a) LIHTC	-	-	Other
(a) State Housing TC	-	-	Other
(c) Owner's Equity/Other	-	-	Other
<b>Total Project Sources</b>	<b>\$ 130,747,802</b>	<b>\$ 130,747,802</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	PRAG			\$ 55,000	\$ -	\$ 55,000
Bond Counsel	Pope Flynn, LLC			46,445	-	46,445
Disclosure Counsel	Howell Linkous & Nettles			27,867	-	27,867
Issuer's Counsel				-	-	-
Underwriter's Counsel				-	-	-
Transaction Counsel				-	-	-
Legal Expenses				-	-	-
				-	-	-
Rating Agency - S&P				58,500	-	58,500
Rating Agency - Moody's				26,500	-	26,500
Rating Agency - Fitch				46,000	-	46,000
Underwriter's Compensation	TBD - Competitive			464,450	-	464,450
Registrar / Paying Agent	U.S. Bank National Assoc.			10,000	-	10,000
Escrow Agent				-	-	-
Accountant				-	-	-
Verification Agent				-	-	-
Printing	ImageMaster			3,000	-	3,000
Publishing	IPREO			1,500	-	1,500
Advertising	Bond Buyer			1,500	-	1,500
Contingency				7,040	-	7,040
Issuer's Fee	SC JEDA / SC SHFDA			-	-	-
				<b>\$ 747,802</b>	<b>\$ -</b>	<b>\$ 747,802</b>

Est. / Actual COI Fees (% of Transaction):

Financial Advisor: % of Transaction

Bond Counsel: % of Transaction

Total Legal Costs: % of Transaction

Rating Agencies: % of Transaction

0.06%	#DIV/0!
0.05%	#DIV/0!
0.08%	#DIV/0!
0.14%	#DIV/0!

UW Comp: % of Transaction

Other COI: % of Transaction

Total COI: % of Transaction

0.50%	#DIV/0!
0.02%	#DIV/0!
<b>0.81%</b>	<b>#DIV/0!</b>



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

December 15, 2022

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 \$106,000,000 of General Obligation State Institution Bonds (Issued on Behalf of Clemson University) of the State of South Carolina

Dear Delbert:

On behalf of Clemson 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 January 31, 2023, we respectfully enclose the following for consideration by the Authority:

1. An executed Bond Transmittal Form;
2. A resolution adopted by the Board of Trustees of Clemson University on October 21, 2022, making application to the Authority in connection with the Bonds;
3. A proposed form of opinion of Bond Counsel; and
4. A proposed form of Bond 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 request 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,

A handwritten signature in blue ink, appearing to read "G. Pope, Jr.", is written over the typed name.

Gary T. Pope, Jr.

c: Robert Macdonald, Director, Debt Management Division, Office of State Treasurer  
Rick Petillo, Chief Financial Officer, Clemson University

Enclosures

## BOND TRANSMITTAL FORM

**TO:** Delbert H. Singleton, Jr., Authority Secretary  
State Fiscal Accountability Authority  
600 Wade Hampton Building (29201)  
P.O. Box 12444  
Columbia, SC 29211

**DATE:** 12/15/2022

**Submitted for SFAA Meeting on:**  
1/31/2023

**FROM:** Pope Flynn, LLC  
1411 Gervais Street, Suite 300  
P.O. Box 11509  
Columbia, SC 29211

**RE:** N/E \$106,000,000 of State of South Carolina General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series 2023

**Project Name:** Advanced Materials Innovation Complex Construction.

**Documents enclosed (executed original and two copies of each):**

*(ALL documents required for state law approval; A and C only for ceiling allocation only; must check K or L)*

- A. ☐ Petition
- B. ☒ Resolution or Ordinance
- C. ☒ Inducement Resolution or comparable preliminary approval
- D. ☐ Department of Health and Environmental Control Certificate *if required*
- E. ☒ State Fiscal Accountability Authority Resolution ~~and Public Notice~~ (original)  
*Plus 3 copies for certification and return to bond counsel*
- F. ☒ Draft bond counsel opinion letter
- G. ☐ Signed SFAA Reliance letter
- H. ☐ DHEC Certificate of Need (C.O.N.)
- I. ☐ Debt Questionnaire
- J. ☐ Processing Fee

**Amount:** \$Click or tap here to enter text.    **Check No:** Click or tap here to enter text.

**Payor:** Click or tap here to enter text.

- K. ☒ No Private Participant will be known at the time the Authority considers this agenda item.
- L. ☐ This agenda item is accompanied by the applicable Private Party Disclosure form for each private participant

Bond Counsel: Gary T. Pope, Jr.  
Typed Name of Bond Counsel

By:   
Signature

STATE OF SOUTH CAROLINA  
CLEMSON UNIVERSITY

A RESOLUTION

REQUESTING THE ISSUANCE OF NOT EXCEEDING ONE  
HUNDRED SIX MILLION DOLLARS (\$106,000,000) AGGREGATE  
PRINCIPAL AMOUNT OF GENERAL OBLIGATION STATE  
INSTITUTION BONDS ON BEHALF OF CLEMSON UNIVERSITY  
PURSUANT TO CHAPTER 107, TITLE 59, CODE OF LAWS OF  
SOUTH CAROLINA 1976, AS AMENDED

October 21, 2022

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## A RESOLUTION

REQUESTING THE ISSUANCE OF NOT EXCEEDING ONE HUNDRED SIX MILLION DOLLARS (\$106,000,000) AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION STATE INSTITUTION BONDS ON BEHALF OF CLEMSON UNIVERSITY PURSUANT TO CHAPTER 107, TITLE 59, CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF CLEMSON UNIVERSITY IN A MEETING DULY ASSEMBLED:

SECTION 1. Findings of Fact. As an incident to the adoption of this Resolution, the Board of Trustees of Clemson University (the "Board of Trustees"), the governing body of Clemson University (the "University") hereby finds and determines as follows:

(a) This Resolution is adopted by the Board of Trustees pursuant to Title 59, Chapter 107, Code of Laws of South Carolina 1976, as amended (the "Enabling Act").

(b) Pursuant to Section 59-107-40 of the Enabling Act, the Board of Trustees is authorized to make application to the South Carolina State Fiscal Accountability Authority (the "State Authority") for the issuance of General Obligation State Institution Bonds ("State Institution Bonds"), the proceeds of which may be used: (i) to construct, reconstruct, maintain, improve, furnish, and refurnish the buildings of and other permanent improvements to the University; (ii) to defray the costs of acquiring or improving land needed as sites for such improvements or for the campus of the University; and (iii) to reimburse the University for expenses incurred in anticipation of the issuance of such bonds.

(c) The Board of Trustees has determined that a current need exists to construct, improve, and furnish the Advanced Materials Innovation Complex project, consisting of new interdisciplinary research laboratory, classroom, faculty, and administrative facilities and related improvements and infrastructure, on the campus of the University, which are expected to support, without limitation, the chemistry, materials science and engineering, and chemical and biomolecular engineering programs and related programs on the campus of the University (the "Project").

(d) The University estimates that the total cost of the Project will be approximately \$130,000,000. In order to fund a portion of the projected costs of the Project, and taking into account other available resources, the Board of Trustees now desires to make application to the State Authority to issue not exceeding One Hundred Six Million Dollars (\$106,000,000) aggregate principal amount of General Obligation State Institution Bonds (Issued on Behalf of Clemson University) of the State of South Carolina (the "Bonds") pursuant to the Enabling Act, on the basis that a definite and immediate need exists for constructing, improving, and furnishing the Project, and therefore for issuing such Bonds. The proceeds of the Bonds shall be applied to defray a portion of the costs of the Project, to reimburse the University for expenses incurred in anticipation of the issuance of the Bonds, and to pay the costs of issuance of the Bonds.

(e) Accordingly, this Resolution is adopted pursuant to Section 59-107-40 of the Enabling Act, in order to make formal application to the State Authority for the issuance of the Bonds, the proceeds of which will be used for the purposes set forth in paragraph (d) of this Section 1.

SECTION 2. Application for Issuance of State Institution Bonds. The Board of Trustees hereby makes formal application to the State Authority for funds through the issuance of the Bonds pursuant to the provisions of the Enabling Act, in order that the proceeds thereof may be used for the purposes set forth in paragraph (d) of Section 1 hereof.

SECTION 3. Tuition Fees Received in Previous Fiscal Year. Based on tuition fees as defined in the Enabling Act and as described in Section 4 below, for fiscal year July 1, 2021 through June 30, 2022, tuition fees available to pay debt service on State Institution Bonds amounted to the sum of \$54,118,535.

SECTION 4. Current Schedule of Tuition Fees. The schedule of tuition fees, as defined in the Enabling Act and as now in effect at the University, is as set forth as Exhibit A to this Resolution, which schedule is hereby reaffirmed and approved.

SECTION 5. Maturity Schedule for Bonds. The suggested maturity schedule for the Bonds requested to be issued pursuant to this Resolution is set forth as Exhibit B to this Resolution. Said Exhibit B assumes that the principal amount of the Bonds will be \$106,000,000.

SECTION 6. Debt Service on Outstanding State Institution Bonds. A statement showing all State Institution Bonds heretofore issued on behalf of the University now outstanding and not defeased, together with the annual interest and principal payments to become due thereon, is set forth as Exhibit C to this Resolution.

SECTION 7. Debt Service on Outstanding Bonds Including Bonds Authorized Hereby. A table showing debt service on all State Institution Bonds to be outstanding for the University following the issuance of the Bonds (at an assumed principal amount of the Bonds of \$106,000,000 and at prevailing rates of interest) is set forth as Exhibit D to this Resolution. Upon the issuance of the Bonds, the maximum annual debt service on all State Institution Bonds secured by tuition fees of the University may not be greater than 90% of the tuition fees received by the University for the preceding fiscal year.

A calculation establishing the right of the University to seek the issuance of Bonds to the extent set forth in this Resolution is set forth as Exhibit E to this Resolution.

SECTION 8. Request for Issuance of Bonds and Bond Anticipation Notes.

(a) The State Authority is requested to make the findings required by the Enabling Act and to request the Governor and the State Treasurer to provide for the issuance of the Bonds by the State of South Carolina (the "State"). If the State Treasurer should determine that all or a portion of the proceeds needed to defray the costs of the Project should be funded by the issuance of bond anticipation notes (the "Notes") pursuant to Chapter 17, Title 11 of the Code of Laws of South Carolina 1976, as amended (the "BAN Act") rather than the Bonds and that the issuance of the Notes would be in the best interest of the State under prevailing market conditions or, in light of the subsequent borrowings necessary to finance the completion of the Project, would be more efficient than issuing Bonds at this time, the Governor and the State Treasurer are further requested to effect the issuance of Notes pursuant to the BAN Act. If Notes are issued and if, upon maturity thereof, the State Treasurer should determine that further issuance of Notes rather than the Bonds would be in the best interest of the State under prevailing market conditions, the Governor and the State Treasurer are requested to continue the issuance of Notes, in a principal amount not to exceed \$106,000,000 until the Governor and the State Treasurer determine to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

(b) The Board of Trustees hereby covenants and agrees that the University will, and hereby directs the President and the Executive Secretary to the Board of Trustees of the University to deposit and designate or cause to be deposited and designated sufficient tuition fees during each fiscal year to satisfy



the requirement that debt service on all State Institution Bonds issued on behalf of the University (including the Bonds herein requested) shall not exceed 90% of such tuition fees so deposited and designated. The President and the Executive Secretary are hereby authorized and directed to certify the amount so deposited and designated to the State Authority. In the event this application is submitted to the State Authority, or the Bonds herein requested are delivered, in a fiscal year subsequent to the fiscal year in which this Resolution is adopted, the request herein made is expressly conditioned on such certification being made and showing that debt service on all State Institution Bonds issued on behalf of the University (including the Bonds herein requested) does not exceed 90% of such tuition fees so deposited and designated.

SECTION 9. Covenant to Impose Tuition Fees Sufficient to Pay Bonds. The Board of Trustees hereby covenants and agrees that the schedule of tuition fees now in effect at the University will be revised from time to time and whenever necessary in order to provide the annual principal and interest requirements of all State Institution Bonds now or hereafter to be outstanding, which have been or will be issued on behalf of the University.

SECTION 10. Tax Covenants. To the extent that the State Authority provides for the issuance of Bonds on a federally tax-exempt basis, the University will covenant as follows:

(a) Federal Guarantee Prohibition. The University shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (the “Regulations”).

(b) Private Business Limitation. The University shall ensure that (i) not in excess of 10% of the amount actually or constructively received from the sale of the Bonds, together with the investment earnings thereon (“Net Proceeds”), is used directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public but not use by the federal government of the United States of America or any agency or instrumentality thereof (“Private Business Use”), if, in addition, the payment of more than ten percent of the principal or ten percent of the interest due on the Bonds during the term thereof is, under the terms thereof or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the State, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (a) in excess of five percent of the Net Proceeds are used for a Private Business Use, and (b) an amount in excess of five percent of the principal or five percent of the interest due on the Bonds during the term thereof is, under the terms thereof or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the State, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said five percent of Net Proceeds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of a portion of the facilities financed with the proceeds of the Bonds and shall not exceed the proceeds used for the governmental use of the portion of the undertaking to which such Private Business Use is related.

(c) Private Loan Limitation. The University shall ensure that not in excess of the lesser of (i) \$5,000,000 or (ii) 5% of the Net Proceeds will be used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

(d) No Arbitrage. The University represents that it does not expect any portion of the proceeds of the Bonds to be used directly or indirectly to acquire higher yielding investments, or to replace funds which were used directly or indirectly to acquire higher yielding investments for other than a “temporary

period” as defined in the Code and the Regulations. The University further covenants that it will not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments. In making the foregoing representation and covenant, the University understands and intends that words or phrases contained herein have meanings provided therefor under Section 148 of the Code and under the Regulations.

SECTION 11. Executive Secretary to Present Resolution to State Authority. The Executive Secretary to the Board of Trustees is hereby directed to present a certified copy of this Resolution, together with the Exhibits and any certification required by Section 8 to this Resolution, to the State Authority as evidence of the Board of Trustees’ formal request for the issuance of the Bonds on behalf of the University, and as evidence that all conditions precedent to the issuance of such Bonds have been met prior to the issuance of the Bonds. The date of application for purposes of the Enabling Act shall be such date as this Resolution and any certificate required by Section 8 hereof is submitted to the State Authority.

SECTION 12. Execution of Closing Documents and Certificates. The Chairman of and the Executive Secretary to the Board of Trustees, and all other officers of the University, are fully authorized and empowered to take such further action and to execute and deliver such closing documents as may be necessary and proper in order to complete the borrowing herein authorized and the action of such officers or any one or more of them in executing and delivering any of such documents in such form as he or they shall approve, is hereby fully authorized. In particular, such officers of the University are authorized to abide by covenants made by or on behalf of the State Authority in connection herewith relating to Sections 9 and 10 hereof or relating to Rule 15c2-12 of the United States Securities and Exchange Commission or relating to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended.

SECTION 13. Reimbursement Declaration. The University hereby declares its intention to reimburse itself for a portion of the costs of the Project with the proceeds of the Bonds or the Notes, as the case may be, requested to be issued herein. To that end, the Board of Trustees determines and declares as follows:

(a) no funds from any sources other than the Bonds or the Notes, as the case may be, are, or are reasonably expected to be, reserved, allocated on a long-term basis or otherwise set aside by the University pursuant to the budget or financial policies of the University for the financing of the portion of the costs of constructing, reconstructing, improving, furnishing or refurnishing of the Project to be funded with the Bonds or the Notes, as the case may be;

(b) the University reasonably expects that all or a portion of the expenditures incurred for the Project and the issuance of the Bonds or the Notes, as the case may be, will be paid prior to the issuance of the Bonds or the Notes, as the case may be;

(c) the University intends and reasonably expects to reimburse itself for all such expenditures paid by it with respect to the Project prior to the issuance of the Bonds or the Notes, as the case may be, from the proceeds of the Bonds or the Notes, as the case may be, and such intention is consistent with the budgetary and financial circumstances of the University;

(d) all of the costs to be paid or reimbursed from the proceeds of the Bonds or the Notes, as the case may be, will be for costs incurred in connection with the issuance of the Bonds or the Notes, as the case may be, or will, at the time of payment thereof, be properly chargeable to the capital account of the Project (or would be so chargeable with a proper election) under general federal income tax principles; and

(e) this Resolution shall constitute a declaration of official intent under United States Department of the Treasury Regulation Section 1.150-2.

SECTION 14. Law and Place of Enforcement of this Resolution. This Resolution shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Resolution shall be instituted in a court of competent jurisdiction in the State.

SECTION 15. Effect of Section Headings. The heading or titles of the several Sections hereof are solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Resolution.

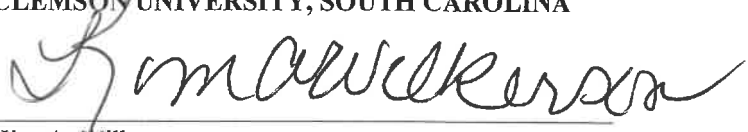
SECTION 16. Repeal of Inconsistent Resolutions. All resolutions of the Board of Trustees, and any part of any resolution, inconsistent with this Resolution are hereby repealed to the extent of such inconsistency.

SECTION 17. Effectiveness of this Resolution. This Resolution shall become effective upon its adoption.

DONE IN MEETING DULY ASSEMBLED this 21st day of October 2022.

CLEMSON UNIVERSITY, SOUTH CAROLINA

(SEAL)



Kim A. Wilkerson  
Chair of the Board of Trustees

Attest:



Henry C. "Hank" Morrow  
Executive Secretary to the Board of Trustees

EXHIBIT A

CLEMSON UNIVERSITY  
SCHEDULE OF TUITION FEES IN EFFECT FOR PURPOSES OF  
TITLE 59, CHAPTER 107 OF THE CODE OF LAWS OF  
SOUTH CAROLINA 1976, AS AMENDED

	<u>In-State</u>	<u>Out-of-State</u>
Undergraduate		
Full-Time <sup>1</sup>	\$ 860	\$ 2,323
Matriculation <sup>1</sup>	5	5
 Part-Time <sup>2</sup>	 77	 204
Matriculation <sup>1</sup>	5	5
 Graduate		
Full-Time <sup>1</sup>	860	2,085
Matriculation <sup>1</sup>	5	5
 Part-Time <sup>2</sup>	 77	 184
Matriculation <sup>1</sup>	5	5
 Graduate Assistant <sup>1</sup>	 10	 10
Matriculation <sup>1</sup>	5	5

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<sup>1</sup> Per Semester.

<sup>2</sup> Per Credit Hour.

For the fiscal year ended June 30, 2022, the amount of receipts designated as tuition for state institution bonds purposes was not less than the sum of \$54,118,535. The tuition and fees generated for the 2022 summer term are not included.

The maximum principal and interest debt service payment prior to the issuance contemplated herein is \$26,576,063, which occurs in the fiscal year ending June 30, 2027.

The maximum principal and interest debt service payment after the issuance contemplated herein is anticipated to be \$34,191,101\*, which is anticipated to occur in the fiscal year ending June 30, 2024.

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\* Preliminary, subject to change.

EXHIBIT B

CLEMSON UNIVERSITY  
PRO-FORMA DEBT SERVICE REQUIREMENTS OF  
NOT EXCEEDING \$106,000,000 STATE OF SOUTH CAROLINA  
GENERAL OBLIGATION STATE INSTITUTION BONDS,  
COMPUTED AT PREVAILING RATES OF INTEREST

Fiscal Year Ending	New Issue Debt Service*		Total Debt Service
	Principal	Interest	
June 30, 2023	\$ 1,855,000	\$ 1,527,274	\$ 3,382,274
June 30, 2024	4,225,000	3,392,588	7,617,588
June 30, 2025	4,325,000	3,291,611	7,616,611
June 30, 2026	4,425,000	3,188,243	7,613,243
June 30, 2027	4,535,000	3,079,831	7,614,831
June 30, 2028	4,645,000	2,968,723	7,613,723
June 30, 2029	4,765,000	2,851,669	7,616,669
June 30, 2030	4,885,000	2,729,685	7,614,685
June 30, 2031	5,015,000	2,601,210	7,616,210
June 30, 2032	5,150,000	2,464,300	7,614,300
June 30, 2033	5,295,000	2,320,100	7,615,100
June 30, 2034	5,460,000	2,156,485	7,616,485
June 30, 2035	5,640,000	1,975,213	7,615,213
June 30, 2036	5,835,000	1,777,813	7,612,813
June 30, 2037	6,050,000	1,567,169	7,617,169
June 30, 2038	6,270,000	1,342,714	7,612,714
June 30, 2039	6,510,000	1,103,827	7,613,827
June 30, 2040	6,765,000	850,588	7,615,588
June 30, 2041	7,035,000	582,694	7,617,694
June 30, 2042	7,315,000	299,184	7,614,184
Total	<u>\$ 106,000,000</u>	<u>\$ 42,070,917</u>	<u>\$ 148,070,917</u>

\* Preliminary, subject to change.

EXHIBIT C

DEBT SERVICE REQUIREMENTS  
ON ALL STATE INSTITUTION BONDS  
ISSUED BY THE STATE OF SOUTH CAROLINA  
ON BEHALF OF CLEMSON UNIVERSITY

Fiscal Year Ending	Existing Debt Service		Total Debt Service
	Principal	Interest	
June 30, 2023	\$ 15,695,000	\$ 6,701,231	\$ 22,396,231
June 30, 2024	15,260,000	11,313,513	26,573,513
June 30, 2025	16,020,000	10,550,513	26,570,513
June 30, 2026	16,820,000	9,749,513	26,569,513
June 30, 2027	17,650,000	8,926,063	26,576,063
June 30, 2028	18,420,000	8,148,213	26,568,213
June 30, 2029	19,215,000	7,353,413	26,568,413
June 30, 2030	19,485,000	6,780,325	26,265,325
June 30, 2031	19,835,000	5,925,625	25,760,625
June 30, 2032	15,660,000	5,148,269	20,808,269
June 30, 2033	16,080,000	4,580,794	20,660,794
June 30, 2034	16,525,000	3,991,481	20,516,481
June 30, 2035	14,600,000	3,379,069	17,979,069
June 30, 2036	14,995,000	2,829,700	17,824,700
June 30, 2037	11,750,000	2,258,450	14,008,450
June 30, 2038	7,070,000	1,787,250	8,857,250
June 30, 2039	7,405,000	1,450,450	8,855,450
June 30, 2040	7,350,000	1,097,400	8,447,400
June 30, 2041	7,215,000	739,500	7,954,500
June 30, 2042	7,575,000	378,750	7,953,750
Total	<u>\$ 284,625,000</u>	<u>\$ 103,089,519</u>	<u>\$ 387,714,519</u>

EXHIBIT D

SCHEDULE SHOWING PRO-FORMA TOTAL DEBT SERVICE REQUIREMENTS OF  
ALL GENERAL OBLIGATION STATE INSTITUTION BONDS  
ISSUED BY THE STATE OF SOUTH CAROLINA  
ON BEHALF OF CLEMSON UNIVERSITY  
INCLUDING THE PROPOSED ISSUE OF  
\$106,000,000 OF GENERAL OBLIGATION STATE INSTITUTION BONDS  
COMPUTED AT PREVAILING RATES OF INTEREST

Fiscal Year Ending	Combined Debt Service*		Total Debt Service
	Principal	Interest	
June 30, 2023	\$ 17,550,000	\$ 8,228,505	\$ 25,778,505
June 30, 2024	19,485,000	14,706,101	34,191,101
June 30, 2025	20,345,000	13,842,123	34,187,123
June 30, 2026	21,245,000	12,937,756	34,182,756
June 30, 2027	22,185,000	12,005,893	34,190,893
June 30, 2028	23,065,000	11,116,936	34,181,936
June 30, 2029	23,980,000	10,205,082	34,185,082
June 30, 2030	24,370,000	9,510,010	33,880,010
June 30, 2031	24,850,000	8,526,835	33,376,835
June 30, 2032	20,810,000	7,612,569	28,422,569
June 30, 2033	21,375,000	6,900,894	28,275,894
June 30, 2034	21,985,000	6,147,966	28,132,966
June 30, 2035	20,240,000	5,354,281	25,594,281
June 30, 2036	20,830,000	4,607,513	25,437,513
June 30, 2037	17,800,000	3,825,619	21,625,619
June 30, 2038	13,340,000	3,129,964	16,469,964
June 30, 2039	13,915,000	2,554,277	16,469,277
June 30, 2040	14,115,000	1,947,988	16,062,988
June 30, 2041	14,250,000	1,322,194	15,572,194
June 30, 2042	14,890,000	677,934	15,567,934
Total	<u>\$ 390,625,000</u>	<u>\$ 145,160,436</u>	<u>\$ 535,785,436</u>

\* Preliminary, subject to change.

EXHIBIT E

CLEMSON UNIVERSITY  
PROOF SHOWING COMPLIANCE WITH  
TITLE 59, CHAPTER 107 OF THE CODE OF  
LAWS OF SOUTH CAROLINA 1976, AS AMENDED

Aggregate of tuition fees received by the University during preceding fiscal year ended June 30, 2022	\$ 54,118,535
Multiplied by	90%
Produces	\$ 48,706,682
Maximum annual debt service on all State Institution Bonds of the University (including the proposed issue of not exceeding \$106,000,000 of General Obligation State Institution Bonds issued on behalf of the University)	<u>\$ 34,191,101 *</u>
Margin	\$ 14,515,581

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\* Preliminary, subject to change.



A RESOLUTION

TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING ONE HUNDRED SIX MILLION DOLLARS (\$106,000,000) PRINCIPAL AMOUNT OF GENERAL OBLIGATION STATE INSTITUTION BONDS (ISSUED ON BEHALF OF CLEMSON UNIVERSITY), OF THE STATE OF SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO.

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BOND RESOLUTION

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Adopted January 31, 2023

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## A RESOLUTION

TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING ONE HUNDRED SIX MILLION DOLLARS (\$106,000,000) PRINCIPAL AMOUNT OF GENERAL OBLIGATION STATE INSTITUTION BONDS (ISSUED ON BEHALF OF CLEMSON UNIVERSITY), OF THE STATE OF SOUTH CAROLINA; TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS SHALL BE EXPENDED; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO.

## ARTICLE I

### FINDINGS OF FACT

As an incident to the adoption of this resolution (this “Resolution”) and the issuance of the bonds provided for herein, the South Carolina State Fiscal Accountability Authority (the “Authority”) finds that the facts set forth in this Article exist, and that the statements made with respect thereto are true and correct. Capitalized terms used and not otherwise defined herein have the meanings given to such terms in Article II of this Resolution.

#### Section 1.01    General Findings of Authorization.

(a)     The Authority is authorized by Title 59, Chapter 107 of the Code of Laws of South Carolina 1976, as amended (the “Enabling Act”) to make provision for the issuance of General Obligation State Institution Bonds (“State Institution Bonds”) on behalf of state institutions (the “Institutions”) of the State of South Carolina (the “State”), including Clemson University (the “University”), the proceeds of which may be used for any one or more of the following purposes:

- (1)     to construct, reconstruct, maintain, improve, furnish and refurnish the buildings and other permanent improvements for the Institutions,
- (2)     to defray the costs of acquiring or improving land needed as sites for such improvements or for the campus of any of the Institutions,
- (3)     to reimburse the Institutions for expenses incurred in anticipation of the issuance of State Institution Bonds, or
- (4)     to refund State Institution Bonds heretofore issued for the Institutions and which shall on such occasion be outstanding.

(b)     Pursuant to the provisions of a resolution adopted by the Board of Trustees of the University (the “Board of Trustees”) on October 21, 2022 (the “Board Resolution”), the Board of Trustees has requested the Authority to authorize the Governor and the State Treasurer (each as defined herein) to issue General Obligation State Institution Bonds pursuant to the Enabling Act in the aggregate principal amount of not exceeding \$106,000,000 to provide funds: (i) to construct, improve, and furnish the Advanced Materials Innovation Complex project, consisting of new interdisciplinary research laboratory, classroom, faculty and administrative facilities, on the campus of the University, which are expected to support, without limitation, the chemistry, materials science and engineering, and chemical and biomolecular engineering programs and related programs on the campus of the University; (ii) to reimburse the University for expenses incurred in anticipation of the issuance of such State Institution Bonds ((i) and (ii), collectively, the “Project”); and (iii) to pay for expenses related to the issuance of such State Institution Bonds. Moreover, the Board Resolution constituted the application to the Authority required by Section 59-107-40 of the Enabling Act and the provisions thereof contained all information necessary for the Authority to approve the application and authorize the issuance of such State Institution Bonds.

(c) The Authority has reviewed the Board Resolution and has determined to cause the issuance of not exceeding One Hundred Six Million Dollars (\$106,000,000) aggregate principal amount General Obligation State Institution Bonds (Issued on Behalf of Clemson University), of the State of South Carolina (the "Bonds"), or one or more BANs (as defined herein) in anticipation thereof, for the purposes described in paragraph (b) above.

#### Section 1.02 Findings Required by the Enabling Act.

The Authority makes the following findings pursuant to Section 59-107-50 of the Enabling Act in connection with the application of the University for issuance of General Obligation State Institution Bonds in the amount of not exceeding \$106,000,000, which sum will be used to pay all or a portion of the costs of the Project and to pay the costs of issuance of the Bonds.

- (a) That a definite and immediate need for the Project exists;
- (b) There are presently outstanding \$284,625,000 aggregate principal amount State Institution Bonds secured by the Tuition Fees (as hereinafter defined) of the University as set forth in Exhibit A attached hereto;
- (c) A satisfactory and proper schedule of Tuition Fees as set forth in Exhibit B attached hereto is in effect at the University;
- (d) A pro forma debt service table setting forth annual principal and interest requirements of the Bonds based on prevailing rates of interest per annum is set forth on Exhibit C attached hereto. Exhibit D attached hereto sets forth the aggregate debt service requirements of the outstanding State Institution Bonds issued on behalf of the University and the Bonds at prevailing rates of interest. Exhibit E attached hereto shows the sums received by the University as Tuition Fees for the Fiscal Year (as hereinafter defined) ended June 30, 2022, and establishes that, based on prevailing rates of interest per annum on the Bonds, the maximum annual debt service on the outstanding State Institution Bonds issued on behalf of the University and the Bonds will not be greater than 90% of the Tuition Fees received by the University for the Fiscal Year ended June 30, 2022;
- (e) The University has agreed that the schedule of the Tuition Fees for the University shall be revised from time to time and whenever necessary to provide not less than the sum needed to pay the annual principal and interest requirements on the Bonds and on all outstanding State Institution Bonds issued on behalf of the University; and
- (f) The Authority has made the findings required of it by Section 59-107-50 of the Enabling Act, and has accepted the Board Resolution as the application required by Section 59-107-40 of the Enabling Act.

#### Section 1.03 Determination of Compliance with Debt Limitation.

Section 59-107-90 of the Enabling Act and Section 11-27-30(4) of the South Carolina Code, each provide that the debt limitation applicable to State Institution Bonds is that sum resulting from the provisions of subparagraph (b) of paragraph 6 of Section 13 of Article X of the South Carolina Constitution, which provides that the maximum annual debt service on State Institution Bonds issued for an Institution may not be greater than 90% of the sum of the Tuition Fees received by such Institution for the preceding Fiscal Year. The table set forth in Exhibit E attached hereto demonstrates that the maximum annual debt service on all State Institution Bonds issued on behalf of the University following the issuance of the Bonds will not exceed the proviso contained in the preceding sentence with respect to outstanding State Institution Bonds and the Bonds with interest calculated thereon at prevailing rates of interest. Further, the Authority

finds that the total aggregate principal amount of State Institution Bonds issued on behalf of the University to be outstanding, following the issuance of the Bonds at prevailing rates of interest authorized by the provisions of this Resolution, will not exceed \$390,625,000.\*

Section 1.04    Determination of Amount of Bonds Herein Authorized.

The Authority finds that it is necessary to issue the Bonds in the aggregate principal amount of not exceeding \$106,000,000 or one or more BANs in anticipation thereof, in order to provide funds which will be used to pay all or a portion of the costs of the Project, to pay the principal of and interest on the BANs, if any, and to pay the costs of issuance of such BANs or the Bonds.

[End of Article I]

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\* Preliminary, subject to change.

## ARTICLE II

### DEFINITIONS AND CONSTRUCTION

#### Section 2.01    Definitions.

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

“Authority” means the South Carolina State Fiscal Accountability Authority.

“Authorized Investments” means and includes any securities that are at the time legal for investment of the State’s funds.

“Authorized Officer” means the Governor, the Secretary of State and the State Treasurer, a deputy or Assistant State Treasurer, and any other officer or employee of the State designated from time to time by the State Treasurer as an Authorized Officer, and when used with reference to any act or document also means any other person authorized by resolution of the Authority to perform such act or sign such document.

“BAN” or “BANs” means any of the bond anticipation notes issued hereunder and pursuant to the BAN Act.

“BAN Act” means Title 11, Chapter 17 of the Code of Laws of South Carolina 1976, as amended.

“Bond” or “Bonds” means any of the General Obligation State Institution Bonds (Issued on Behalf of Clemson University), authorized by this Resolution, and also means, if the context so requires, any BAN or BANs issued in anticipation of the issuance of such Bonds.

“Bondholder” or “Holder” or “Holders of Bonds” or “Owner” or similar term means, when used with respect to a Bond or Bonds or BANs, any person who shall be registered as the owner of any Bond or BAN Outstanding.

“Bond Payment Date” means each date determined by the State Treasurer on which interest on any of the Bonds shall be payable or on which both the Principal Installment and interest shall be payable on any of the Bonds.

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

“Continuing Disclosure Undertaking” means that undertaking which is to be executed by the State Treasurer in form substantially similar to that appearing as Exhibit H hereto, and delivered at or prior to the closing of the Bonds as required by United States Securities and Exchange Commission Rule 15c2-12, as amended, and as such undertaking may be from time to time amended in accordance with the terms thereof.

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

“Dated Date” means such date as the State Treasurer shall determine to be the date of issue of the Bonds or BANs.

“Enabling Act” means Title 59, Chapter 107 of the Code of Laws of South Carolina 1976, as amended.



“Escrow Agent” means the Paying Agent or such entity or entities, as the case may be, designated by the State Treasurer to serve as escrow agent or escrow agents pursuant to one or more escrow deposit agreements.

“Fiduciary” means the Paying Agent, the Registrar, and any Escrow Agent and their successors and assigns.

“Fiscal Year” means the period of twelve (12) calendar months, beginning July 1 of each year and ending on June 30 of the next year.

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

“Governor” means the Governor of the State.

“Outstanding” means, when used in this Resolution with respect to Bonds or BANs, as of any date, all Bonds or BANs theretofore authenticated and delivered pursuant to this Resolution except Bonds or BANs (or portions thereof):

- (1) cancelled or delivered to the Registrar for cancellation on or before such date;
- (2) deemed to have been paid in accordance with the provisions of Section 7.01 hereof; and
- (3) in lieu of or in exchange for which another Bond or BAN shall have been authenticated and delivered pursuant to Article III of this Resolution.

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

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

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

“Private Business Use” means “private business use” as that term is defined in Section 141 of the Code, any successor provision and any regulations promulgated thereunder.

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

“Redemption Price” when used with respect to a Bond or portion thereof to be redeemed, means the principal amount of such Bond or such portion thereof plus the applicable premium, if any, payable upon redemption thereof pursuant to this Resolution.

“Registrar” means any bank, trust company, or national banking association which is authorized to maintain an accurate list of those who from time to time shall be the Holders of the Bonds or BANs and shall effect the exchange and transfer of the Bonds or BANs in accordance with the provisions of this Resolution and having the duties, responsibilities, and rights provided for in this Resolution and its

successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to this Resolution. The institution named as Registrar may also act as Paying Agent.

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

“Secretary of State” means the Secretary of State of the State of South Carolina.

“Series” or “Series of Bonds” means a series of Bonds issued pursuant to the authorizations of the Enabling Act and this Resolution.

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

“State” means the State of South Carolina.

“State Request” means a written request of the State signed by an Authorized Officer.

“State Treasurer” means the Treasurer of the State of South Carolina.

“Taxable Series” means a Series of Bonds so designated by the State Treasurer, the interest upon which is not excludable from income for federal income tax purposes.

“Tuition Fees” means those fees charged by the University for tuition, matriculation and registration. The term does not include sums charged for enrolling in courses or classes offered for any summer school term or any special seminar, nor shall the term relate to or include fees levied or charged for purposes other than for the purposes of the Enabling Act.

#### Section 2.02 Construction.

In this Resolution, unless the context otherwise requires:

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

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

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

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

[End of Article II]

ARTICLE III  
ISSUANCE OF BONDS

Section 3.01     Request to Governor and State Treasurer.

The Governor and the State Treasurer are hereby requested to effect the issuance of not to exceed \$106,000,000 principal amount of General Obligation State Institution Bonds in accordance with the provisions of this Resolution.

Section 3.02     Ordering the Issuance of Bonds; Principal Amount.

Pursuant to the provisions of the Enabling Act, and for the purpose of obtaining funds to pay all or a portion of the costs of the Project and to pay certain costs of issuance of the Bonds described in Section 1.02 hereof, there shall be issued not exceeding One Hundred Six Million Dollars (\$106,000,000) aggregate principal amount of general obligation bonds of the State, designated "General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series 2023." Notwithstanding the foregoing, however, the State Treasurer may, in his discretion, modify the Series designation of the Bonds herein authorized as appropriate and, in such event, all references to the Bonds herein shall be deemed to reference such modified Series designation. The Bonds may be issued as a single Series or in two or more separate Series or may be issued in combination with other issues of State general obligation bonds, as determined by the State Treasurer. The final principal amount of the Bonds shall be determined by the State Treasurer.

Section 3.03     Maturity Schedule of Bonds.

The Bonds shall mature in each of the Fiscal Years and in the Principal Installments determined by the State Treasurer, provided that the aggregate principal amount of Bonds issued hereunder does not exceed \$106,000,000. The Bonds shall bear interest at rates determined in the manner prescribed by Section 3.16 hereof. The State Treasurer is hereby authorized to adjust the maturity schedule as to the principal amount maturing in a particular year and as to the dates on which the principal is to be repaid in order to: (i) limit net Bond proceeds; (ii) maintain compliance with constitutional and statutory debt limitations; (iii) maintain level annual debt service within each Fiscal Year; and (iv) achieve a more favorable interest rate at the sale of the Bonds.

Section 3.04     Provision for Payment of Interest on the Bonds.

The Bonds shall be authenticated on such dates as they shall, in each case, be delivered. The Bonds shall bear interest from the Bond Payment Date to which interest has been paid next preceding the authentication date thereof, unless the authentication date thereof is a Bond Payment Date, in which case, from such authentication date, or if authenticated prior to the first Bond Payment Date for the Bonds, then from the Dated Date. The interest to be paid on any Bond Payment Date shall be paid to the Person in whose name such Bond is registered at the close of business on the Record Date next preceding such Bond Payment Date.

Section 3.05     Medium of Payment; Form and Denomination of Bonds; Place of Payment of Principal.

(a)     The Bonds shall be payable as to Principal Installment, Redemption Price and interest at the rates per annum determined in the manner prescribed by Section 3.16 hereof (on the basis of a 360-day year of twelve 30-day months) in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b)     The Bonds shall be issued in the form of fully registered Bonds. The Bonds shall be issued in the denomination of \$1,000 or any whole multiple thereof, not exceeding the principal amount of the

Bonds maturing in such year. The Bonds shall be numbered from R-1 upwards in such fashion as to maintain a proper record thereof.

(c) The Principal Installment or Redemption Price of all Bonds shall be payable at the Corporate Trust Office of the Paying Agent and payment of the interest on each Bond shall be made by the Paying Agent to the Person appearing on each Record Date on the registration books of the State, which books shall be held by the Registrar as provided in Section 3.09 hereof, as the registered Owner thereof, by check or draft mailed to such registered Owner at his address as it appears on such registration books in sufficient time to reach such registered Owner on the Bond Payment Date. Payment of the Principal Installment or Redemption Price of all Bonds shall be made upon the presentation and surrender for cancellation of such Bonds as the same shall become due and payable.

Section 3.06 Agreement to Maintain Registrar and Paying Agent.

As long as any of the Bonds remain Outstanding, there shall be a Registrar and a Paying Agent, each of which shall be a financial institution maintaining Corporate Trust Offices where (i) the Bonds may be presented for registration of transfers and exchanges, (ii) notices and demands to or upon the State in respect of the Bonds may be served, and (iii) the Bonds may be presented for payment, exchange and transfer. The State Treasurer is hereby authorized to determine the institution which shall initially exercise the functions of Registrar and Paying Agent. In the event that Bonds are issued in two or more Series, references in this Resolution to the Registrar and Paying Agent shall mean the Registrar and Paying Agent for a given Series.

Section 3.07 Execution and Authentication.

(a) The Bonds shall be executed in the name and on behalf of the State by the manual or facsimile signatures of the Governor and of the State Treasurer, attested by the manual or facsimile signature of the Secretary of State with the Great Seal of the State (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon. Bonds bearing the manual or facsimile signature of any Person who shall have held such office at the time such Bonds were so executed shall bind the State notwithstanding the fact that he may have ceased to be such officer prior to the authentication and delivery of such Bonds or was not such officer at the date of the authentication and delivery of the Bonds.

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

Section 3.08 Exchange of Bonds.

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

Section 3.09 Transferability and Registry.

All Bonds shall at all times, when the same are Outstanding, be payable, both as to Principal

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

#### Section 3.10     Transfer of Bonds.

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

#### Section 3.11     Regulations with Respect to Exchanges and Transfers.

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

#### Section 3.12     Mutilated, Destroyed, Lost and Stolen Bonds.

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

(b) Upon the issuance of any new Bond under this Section 3.12, the State may require the payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees or other fees, of the State or the Registrar connected therewith.

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

#### Section 3.13 Holder as Owner of Bond.

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

#### Section 3.14 Cancellation of Bonds.

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

#### Section 3.15 Payments Due on Saturdays, Sundays and Holidays.

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

#### Section 3.16 Conditions Relating to Naming of Interest Rates.

The Bonds shall bear such rate or rates of interest as shall at the sale of such Bonds reflect the lowest interest cost to the State at a price of not less than par, but:

- (1) all Bonds of the same maturity shall bear the same rate of interest;
- (2) no rate of interest named shall be more than five (5.00) percentage points;
- (3) a zero (0.0) percentage point rate of interest is not permitted;
- (4) each interest rate named shall be a multiple of 1/8th or 1/20th of one (1) percentage point; and
- (5) any premium offered must be paid in cash as a part of the purchase price;

provided, however, that the State Treasurer may determine, in his discretion and upon advice received, to waive, modify, amend, or vary the conditions described above (whether prior to the offer for sale of the Bonds,

or subsequent to such offer but prior to the award of the Bonds), in order to (i) limit net Bond proceeds, (ii) maintain compliance with constitutional and statutory debt limitations, (iii) maintain level annual debt service within each Fiscal Year, (iv) achieve a more favorable interest rate at the sale of the Bonds and (v) establish a maximum interest rate or maximum interest rates as necessary to maintain compliance with the provisions of the Enabling Act. In addition to the foregoing, the State Treasurer may establish additional terms and conditions for the sale of the Bonds, not inconsistent herewith, prior to the publication of the Notice of Sale (as defined herein).

#### Section 3.17 Tax Exemption in South Carolina.

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

#### Section 3.18 Pledge of Full Faith, Credit and Taxing Power.

For the payment of the Principal Installment and interest on the Bonds as the same respectively mature, the full faith, credit and taxing power of the State are hereby irrevocably pledged and in addition thereto, but subject to the provisions of the Enabling Act, all Tuition Fees received by the University are also pledged. In accordance with the provisions of Section 11-29-30 of the South Carolina Code, and in order to provide for the punctual payment of the Principal Installments and interest on the Bonds herein authorized, the State Treasurer is directed to set aside from the Tuition Fees received in each Fiscal Year in which the interest on and Principal Installment of the Bonds are due or will become due so much of the revenues derived from such Tuition Fees as may be necessary in order to pay the interest on and the Principal Installment of all Bonds falling due in such Fiscal Year and the State Treasurer shall thereafter apply such moneys to the punctual payment of such principal and interest as the same respectively fall due. In the event that the revenues derived from the Tuition Fees so pledged prove insufficient to meet the payments of the interest on and the Principal Installment of such Bonds in such Fiscal Year, then the State Treasurer is authorized and directed to set aside from the general tax revenues of the State received in such Fiscal Year so much of such general tax revenues as become needed for such purpose and to apply the same to the punctual payment of the interest on and the Principal Installment of such Bonds due or to become due in such Fiscal Year.

In accordance with the provisions of Article X, Section 13, Paragraph 4 of the South Carolina Constitution if any time any payment of Principal Installment of or interest on the Bonds shall not be paid as and when the same become due and payable, the State Comptroller General shall forthwith levy and the State Treasurer shall collect an *ad valorem* tax without limit as to rate or amount upon all taxable property within the State sufficient to meet the payment of the Principal Installments and interest on the Bonds then due.

#### Section 3.19 Tuition Fee Deposits.

As provided in Section 59-107-180 of the Enabling Act, the State Treasurer shall establish a special fund into which all Tuition Fees shall be deposited and applied to the payment of principal, interest and premium, if any, on the Bonds. The State Treasurer further shall establish for the Bonds a “special debt service and reserve fund” within this special fund as prescribed by Section 59-107-180 of the Enabling Act. Such special fund and the “special debt service and reserve fund” therein shall be maintained at all times as provided in said Section 59-107-180 of the Enabling Act.

#### Section 3.20 Bonds Issued in Book-Entry Only Form.

(a) Unless otherwise determined by the State Treasurer, the Bonds will initially be issued under a book-entry only system in fully registered form, registered in the name of Cede & Co. as the registered owner and securities depository nominee of The Depository Trust Company, New York, New York (“DTC”), which will act as initial securities depository for the Bonds. So long as the Bonds are being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bonds will be effected pursuant to rules and procedures established by such securities depository. DTC and any successor securities depositories are hereinafter referred to as the “Securities Depository.” Cede & Co. and successor securities depository nominees are hereinafter referred to as the “Securities Depository Nominee.”

(b) So long as a book-entry system is in effect for the Bonds, the Securities Depository Nominee will be recognized as the Holder of the Bonds for the purposes of (i) paying the Principal Installment or Redemption Price of and interest on such Bonds, (ii) if Bonds are to be redeemed in part, selecting the portions of such Bonds to be redeemed, (iii) giving any notice permitted or required to be given to Bondholders under this Resolution, (iv) registering the transfer of Bonds, and (v) requesting any consent or other action to be taken by the Holders of such Bonds, and for all other purposes whatsoever, and the State shall not be affected by any notice to the contrary.

(c) The State shall not have any responsibility or obligation to any participant, any beneficial owner or any other person claiming a beneficial ownership in any Bonds which are registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as Holder of such Bonds.

(d) The State shall pay the Principal Installment, Redemption Price and interest on Bonds issued under a book-entry system only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the Principal Installment and interest on such Bonds.

(e) In the event that the State determines that it is in the interest of the State to discontinue the book-entry system of transfer for the Bonds, or that the interests of the beneficial owners of the Bonds may be adversely affected if the book-entry system is continued, then the State shall notify the Securities Depository of such determination. In such event, the Registrar and Paying Agent shall authenticate, register and deliver physical certificates for the Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bonds discontinues providing its services, the State shall either engage the services of another Securities Depository or arrange with a Registrar and Paying Agent for the delivery of physical certificates in the manner described in subsection (e) above.

(g) In connection with any notice or other communication to be provided to the Holders of Bonds by the State or by the Registrar and Paying Agent with respect to any consent or other action to be taken by the Holders of Bonds, the State or the Registrar and Paying Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

(h) At the closing of the Bonds and the delivery of the same to the purchaser thereof through the facilities of DTC, the Paying Agent and Registrar may maintain custody of Bond certificates on behalf of DTC in accordance with DTC’s “FAST” closing procedures.

(i) For as long as the Bonds are being held under a book-entry system of a securities depository, the State shall remit to the Paying Agent and Registrar by 1:00 p.m. New York time on each Bond Payment Date funds for all principal and interest payments due thereupon, or at such earlier time as



required by the Paying Agent and Registrar to guarantee that DTC or successor Securities Depository will receive payment in same-day funds by 2:30 p.m. New York time on such Bond Payment Date. In addition, automated payment details receipt shall be provided by the Paying Agent by 12:00 noon New York time of each Bond Payment Date for interest payments and by 2:30 p.m. New York time for redemption and corporate action payments.

### Section 3.21 Form of Bonds.

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

### Section 3.22 Borrowing in Anticipation of Issuance of Bonds.

Pursuant to the BAN Act, there may be issued from time to time at the discretion of the Governor and the State Treasurer BANs in aggregate principal amount not exceeding \$106,000,000 in anticipation of the issuance of Bonds. If BANs are issued and if, upon the maturity thereof the Governor and the State Treasurer should determine that it would be in the best interest of the State to renew or refund the BANs, they are authorized to renew or refund the BANs from time to time until the Governor and the State Treasurer determine to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

(a) The BANs shall be dated and bear interest from the Dated Date thereof, payable upon the stated maturity thereof and shall mature on such dates as determined by the State Treasurer, provided that no BAN shall mature on a date which is later than one year following the issuance thereof. Interest on the BANs shall be calculated on the basis of a 360-day year of twelve 30-day months. The BANs shall be payable, both as to principal and interest, in legal tender upon maturity, at the principal office of the Paying Agent. The BANs may be issued in denominations of \$1,000 and integral multiples thereof. The BANs shall be executed in the name and on behalf of the State by the manual or facsimile signature of the Governor and the State Treasurer with the Great Seal of the State (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon and attested by the Secretary of State. BANs bearing the manual or facsimile signature of any Person who shall have been such an Authorized Officer at the time such BANs were so executed shall bind the State notwithstanding the fact that he may have ceased to be such Authorized Officer prior to the authentication and delivery of such BANs or was not such Authorized Officer at the date of the authentication and delivery of the BANs.

(b) The State Treasurer shall serve, or shall appoint a financial institution maintaining corporate trust offices to serve, as Registrar and Paying Agent for the BANs.

(c) The Authority hereby authorizes the State Treasurer to cause to be prepared and to “deem final” within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission a preliminary official statement relating to the BANs and to cause to be prepared and to approve a final official statement following the sale of the BANs. The Authority hereby authorizes the use of said preliminary official statement and final official statement and the information contained therein in connection with the public offering and sale of the BANs. If the BANs are offered and sold to a financial institution to be held for its own account, the State Treasurer will not be required to (i) prepare a preliminary official statement or final official statement if such purchaser executes and delivers an investment letter in form and content acceptable to the State Treasurer, or (ii) undertake any obligation to deliver a Continuing Disclosure Undertaking.

(d) The BANs may be sold at public or private sale. Bids therefor shall be received until such time and date to be selected by the State Treasurer. Notice of sale of the BANs shall be given in a manner determined by the State Treasurer. Upon receipt of bids for the BANs, the Governor and the State Treasurer shall, and they are hereby authorized to, award the BANs to the bidder offering the lowest interest cost therefor, the method of calculation of which shall be set forth in the notice of sale and

determined at the State Treasurer's discretion, without further action on the part of the Authority if the Governor and the State Treasurer shall determine that it is in the interest of the State to make such award.

(e) The BANs shall be issued in such form and with such terms and conditions, not inconsistent with this Resolution, as shall be determined by the State Treasurer. No BAN shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless there shall be endorsed on such BAN a certificate of authentication duly executed by the manual signature of the Registrar and such certificate of authentication upon any BAN executed on behalf of the State shall be conclusive evidence that the BAN so authenticated has been duly issued hereunder and that the Holder thereof is entitled to the benefit of the terms and provisions of the Resolution.

(f) The BANs shall be issued in fully registered form either (i) under a book-entry only system, registered in the name of Cede & Co. as the registered owner and securities depository nominee of DTC, or (ii) in physical form registered the name of the Holder, as specified by the Governor and the State Treasurer, who may permit the purchaser to make such determination. Conditions as to ownership, exchange, transfer, replacement and payment of BANs shall be as provided for Bonds herein, except as expressly provided in this Resolution to the contrary. The BANs may, at the discretion of the State Treasurer, be subject to redemption prior to their stated maturity, on such terms and conditions as the State Treasurer may prescribe, except that the maximum premium to be paid for prior redemption shall not exceed one half of one per centum (1/2%).

(g) For the payment of the principal of and interest on the BANs as the same shall fall due, the full faith, credit, and taxing power of the State shall be pledged. In addition thereto, so much of the principal proceeds of the Bonds when issued shall and is hereby directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the State covenants and irrevocably pledges to effect the issuance of the Bonds or, in the alternative, to refund or renew Outstanding BANs in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

(h) Proceeds from the sale of the BANs shall be applied in the manner as provided by Section 6.01 herein for Bonds.

(i) Both the principal of and interest on the BANs shall be exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except estate or other transfer taxes, and certain fees or franchise taxes.

(j) The form of the BAN shall be approved by the State Treasurer.

(k) Without limiting the generality or specifics of any other provision in this Resolution, the term "Bonds" as used in Articles VII, VIII, IX and X shall include BANs.

[End of Article III]

## ARTICLE IV

### REDEMPTION OR PURCHASE OF BONDS

#### Section 4.01 Authorization of Redemption.

The Bonds may be subject to redemption, in whole or in part, at any time in any order of maturity to be determined by the State Treasurer, upon such dates and at such Redemption Prices as shall be determined by the State Treasurer.

#### Section 4.02 State's Election to Redeem.

In the event that the State shall elect to redeem Bonds, it shall give notice by State Request to the Registrar and Paying Agent of each optional redemption, which notice may be conditional in the discretion of the State Treasurer. Each State Request shall specify the date fixed for redemption and the Bonds which are to be redeemed. Such notice shall be given at least 60 days prior to the date fixed for redemption or such lesser number of days as shall be acceptable to the Registrar.

#### Section 4.03 Notice of Redemption.

(a) When any Bonds are to be redeemed, the Registrar shall give notice of the redemption of the Bonds in the name of the State specifying: (i) the Bonds, the particular Series thereof, and maturities to be redeemed; (ii) the redemption date; (iii) the Redemption Price; (iv) the numbers and other distinguishing marks of the Bonds to be redeemed unless all of the Bonds Outstanding are to be redeemed; (v) the place or places where amounts due upon such redemption will be payable; (vi) whether the redemption of the Bonds is conditioned upon any event; and (vii) in the case of Bonds to be redeemed in part only, the respective portions of the principal thereof to be redeemed. Such notice shall further state that on such date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, together with interest accrued to the redemption date, and that, from and after such date, interest thereon shall cease to accrue; provided, however, that in the event of any conditional provision in the notice, the Bonds will not become due and payable as provided in this section unless such condition has been satisfied as of the redemption date. The Registrar shall mail by registered mail a copy of such notice, postage prepaid, not less than 30 days before the redemption date to the registered Holders of all the Bonds or portions of the Bonds which are to be redeemed at their addresses which appear upon the registration books, but failure to so mail any such notice to any of such Holders shall not affect the validity of the proceedings for the redemption of the Bonds held by Holders to whom written notice has been mailed. The obligation of the Registrar to give the notice required by this Section shall not be conditioned upon the prior payment to the Paying Agent of money or the delivery to the Paying Agent of Authorized Investments or Government Obligations sufficient to pay the Redemption Price of the Bonds to which such notice relates or the interest thereon to the redemption date.

(b) Notice of redemption having been given as provided in subsection (a) hereof, the Bonds or portions thereof so to be redeemed shall, on the date fixed for redemption, become due and payable at the Redemption Price specified therein plus accrued interest to the redemption date, and upon presentation and surrender thereof at the place specified in such notice, such Bonds or portions thereof shall be paid at the Redemption Price, plus accrued interest to the redemption date; provided, however, that in the event of any conditional provision in the notice, the Bonds will not become due and payable as provided in this section until such condition has been satisfied as of the redemption date. On and after the redemption date (unless the State shall default in the payment of the Redemption Price and accrued interest, or any conditional provision in the notice shall not have been satisfied as of the redemption date), such Bonds shall cease to bear interest, and such Bonds shall no longer be considered as Outstanding hereunder. If money sufficient to pay the Redemption Price and accrued interest has not been made available by the State to the Paying

Agent on the redemption date, such Bonds shall continue to bear interest until paid at the same rate as they would have borne, had they not been called for redemption, until the same shall have been paid.

Section 4.04     Selection by Registrar of Bonds to be Redeemed.

(a)     If less than all of the Bonds of like maturity are to be redeemed, the particular Bonds or portions of the Bonds to be redeemed shall be selected, not less than 45 days prior to the date fixed for redemption, by the Registrar by lot or in such other manner as the Registrar may deem to be appropriate, provided, however, that for so long as the Bonds are held in book-entry only form, the selection of Bonds to be redeemed hereunder shall be in accordance with the rules of the Securities Depository.

(b)     In making such selection, the Registrar shall treat each Bond to be redeemed as representing that number of Bonds of the lowest authorized denomination as is obtained by dividing the principal amount of such Bond by such denomination. If any Bond is to be redeemed in part, the portion to be so redeemed shall be in a principal amount of an authorized denomination.

(c)     The Registrar shall promptly notify the State in writing of the Bonds so selected for redemption.

Section 4.05     Deposit of Redemption Price.

On or before any date fixed for redemption of any Bonds, cash and/or a principal amount of non-callable Government Obligations maturing or redeemable at the option of the Holder thereof not later than the date fixed for redemption which, together with income to be earned on such Government Obligations prior to such date fixed for redemption, will be sufficient to provide cash to pay the Redemption Price of and accrued interest on all Bonds or portions thereof which are to be redeemed on such date, shall be deposited with the Paying Agent unless such amount shall have been previously deposited with the Paying Agent. Provided, however, that in the event of a conditional redemption such condition is not met, this Section 4.05 is inapplicable.

Section 4.06     Partial Redemption of Bonds.

In the event part but not all of a Bond Outstanding shall be selected for redemption, upon presentation and surrender of such Bond by the Holder thereof or his attorney duly authorized in writing (with, if the State or the Registrar so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the State and the Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing) to the Registrar, the State shall execute and the Registrar shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds of any authorized denomination of like tenor. Bonds so presented and surrendered shall be cancelled in accordance with Section 3.14 hereof.

Section 4.07     Purchases of Bonds Outstanding.

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

[End of Article IV]

## ARTICLE V

### SALE OF BONDS

#### Section 5.01     Determination of Time to Receive Bids; Form of Notice of Sale.

(a) The Bonds shall be sold at public sale on such terms as may be prescribed by the State Treasurer. Bids shall be received until such time and date to be selected by the State Treasurer. The form of the notice of sale shall be substantially similar to that set forth in Exhibit G attached hereto (the “Notice of Sale”) and made a part hereof. The Notice of Sale, or, at the election of the State Treasurer, a summary thereof, shall be published in a financial paper published in the City of New York, New York, which regularly publishes notices of sale of state or municipal bonds, which Notice of Sale shall each appear at least once and not less than seven (7) days before the date set for said sale. The Notice of Sale may be combined with a notice of sale for other general obligation bonds of the State being offered for sale at the same time, if any.

(b) The Bonds authorized hereby, if so determined by the State Treasurer, may be issued in the form of a single instrument, subject to the following terms and conditions: (i) the Dated Date of the Bond shall be the date determined by the State Treasurer, and the Bond shall bear interest from such date; (ii) the references to “Bonds” throughout the Resolution shall be understood to refer to the single instrument authorized by this Section 5.01(b); (iii) the State Treasurer may require that the Bond bear a single, fixed rate of interest; (iv) the form of the Bonds as set forth in Exhibit F hereto and the Notice of Sale as set forth in Exhibit G hereto shall be appropriately modified; (v) the State Treasurer may determine that the State will not undertake any obligation to deliver a Continuing Disclosure Undertaking as provided in Exhibit H hereto; (vi) the State Treasurer may determine that the Bond shall not be issued in book-entry-only form, and, in lieu thereof, shall be registered directly in the name of the Holder as directed by the purchaser thereof; and (vii) the State Treasurer may determine that an official statement shall not be prepared in connection with the sale of the Bond.

#### Section 5.02     Award of Bonds.

Upon receipt of bids for the Bonds, the Governor and the State Treasurer shall, and they are hereby authorized to, award the Bonds to the bidder offering the lowest interest cost therefor, the method of calculation of which shall be set forth in the Notice of Sale and determined at the State Treasurer’s discretion, without further action on the part of the Authority if the Governor and the State Treasurer shall determine that it is in the interest of the State to make such award. The State shall have the right to reject all proposals and to re-advertise the Bonds for sale. Any proposal not conforming to the Notice of Sale may be rejected, but the State shall have the right to waive technicalities.

#### Section 5.03     Official Statement.

The Authority hereby authorizes the State Treasurer to prepare or cause to be prepared and to “deem final,” within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission, a preliminary official statement relating to the Bonds and to prepare or cause to be prepared and to approve a final official statement following the sale of the Bonds. The Authority hereby authorizes the use of said preliminary official statement and final official statement and the information contained therein in connection with the public offering and sale of the Bonds.

Section 5.04    Combined Sales.

If the State Treasurer deems it prudent, the Bonds may be sold in combination with other series of general obligation bonds of the State, the issuance of which shall have been properly authorized and the form and details for which may be provided for in the same preliminary official statement and same final official statement as that for the Bonds.

[End of Article V]

## ARTICLE VI

### DISPOSITION OF PROCEEDS OF SALE OF BONDS

#### Section 6.01 Disposition of Bond Proceeds Including Temporary Investments.

- (a) The proceeds derived from the sale of the Bonds shall be applied and disposed of as follows:
- (1) accrued interest, if any, shall be applied to the payment of the first installment of interest to become due on the Bonds;
  - (2) the premium, if any, shall be applied as determined by the State Treasurer;
  - (3) the remaining proceeds of the Bonds shall be segregated by the State Treasurer for the account of the University and shall be applied to pay all or a portion of the costs of the Project or to repay the BANs, as applicable; and
  - (4) any remaining proceeds may be used for the payment of the costs of issuing the Bonds.

(b) Pending the use of Bond proceeds as provided in Sections 6.01(a) of this Section, the same shall be invested and reinvested by the State Treasurer in Authorized Investments. The investment earnings therefrom may be used either for any lawful purpose of the State, including for the purposes described in Section 6.01(a) above, or, if so required by the Code, to make any necessary rebate to the United States Government.

(c) Neither the purchaser of the Bonds nor any registered Holder of the Bonds shall be liable for the proper application of the proceeds of the Bonds or the BANs.

[End of Article VI]

## ARTICLE VII

### DEFEASANCE OF BONDS

#### Section 7.01 Discharge of Resolution; Where and How Bonds Are Deemed to Have Been Paid and Defeased.

If all of the Bonds issued pursuant to this Resolution, and all interest thereon shall have been paid and discharged, then the obligations of the State under this Resolution and all other rights granted herein shall cease and determine. The Bonds shall be deemed to have been paid and discharged within the meaning of this Article under each of the following circumstances, viz.:

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

(b) The Paying Agent or Escrow Agent shall hold in an irrevocable trust moneys which shall be sufficient, or Government Obligations, the principal of and interest on which when due will provide moneys, which together with moneys, if any, deposited with said Escrow Agent at the same time, shall be sufficient to pay when due the principal of and interest on the Bonds; or

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

(d) Subject to the provisions of Section 59-107-200 of the Enabling Act, if applicable, if the State shall elect to provide for the payment of the Bonds prior to their stated maturities and shall have deposited with the Escrow Agent in an irrevocable trust moneys which shall be sufficient, or Government Obligations, the principal of and interest on which when due will provide moneys, which together with moneys, if any, deposited with said Escrow Agent at the same time, shall be sufficient to pay when due the Principal Installment or Redemption Price to become due on their maturity dates or redemption dates, as the case may be, on the Bonds on and prior to their maturity dates or redemption dates, and interest due on the Bonds on or prior to their maturity or redemption dates, as the case may be. In the event that the State shall elect to redeem Bonds prior to their stated maturities, the State shall proceed in the manner prescribed by Article IV hereof, subject to the provisions of Section 3.20 in the event that at the time of such election the Bonds Outstanding are issued in book-entry only form.

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



Section 7.02    Notice of Defeasance.

Upon the defeasance of the Bonds, all notices required by the South Carolina Code and the Continuing Disclosure Undertaking shall be given.

[End of Article VII]

## ARTICLE VIII

### CONCERNING THE FIDUCIARIES

#### Section 8.01    Fiduciaries; Appointment and Acceptance of Duties.

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

#### Section 8.02    Responsibilities of Fiduciaries.

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

#### Section 8.03    Evidence on Which Fiduciaries May Act.

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

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

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

#### Section 8.04 Compensation.

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

#### Section 8.05 Certain Permitted Acts.

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

#### Section 8.06 Resignation of Any Fiduciary.

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

#### Section 8.07 Removal of Fiduciary.

Any Fiduciary may be removed at any time by an instrument or concurrent instruments in writing, filed with the State and such Fiduciary and, as the case may be, signed by an Authorized Officer or the Bondholders representing a majority in principal amount of the Bonds then Outstanding or their attorneys in fact duly authorized, excluding any Bonds held by or for the account of the State.

#### Section 8.08 Appointment of Successor Fiduciaries.

(a) In case any Fiduciary hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the State Treasurer. Every such Fiduciary appointed pursuant to the provisions of this Section shall be a trust company or bank organized under the laws of the United States of America or any state thereof and which is in good standing, within or outside the State, having a stockholders' equity of not less than \$75,000,000 if there be such an institution willing, qualified and able to accept the trust upon reasonable and customary terms.

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

Section 8.09     Transfer of Rights and Property to Successor.

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

Section 8.10     Merger or Consolidation.

Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it may be party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act; provided, however, such company shall be a bank or trust company organized under the laws of any state of the United States of America or a national banking association, and shall be authorized by law to perform all the duties imposed upon it by this Resolution; and further provided, however, that such company otherwise meets the qualifications for successor Fiduciaries set forth in Section 8.08 herein.

Section 8.11     Adoption of Authentication.

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

[End of Article VIII]

## ARTICLE IX

### FEDERAL TAX CONSIDERATIONS

#### Section 9.01 Compliance with the Code.

The State will comply with all requirements of the Code in order to preserve the tax-exempt status of interest on the Bonds, including without limitation, (i) the requirement to file Form 8038-G, *Information Return for Tax-Exempt Government Obligations*, with the Internal Revenue Service, and (ii) the requirement to rebate certain arbitrage earnings to the United States Government pursuant to Section 148(f) of the Code. In this connection, the State covenants to execute any and all agreements, certificates and other documentation as it may be advised by bond counsel will enable it to comply with this Article IX, and such agreements, certificates and other documentation may be executed by an Authorized Officer.

#### Section 9.02 Tax Representations and Covenants.

The State hereby represents and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest on the Bonds to become includable in the gross income of the Holders thereof for federal income tax purposes pursuant to the provisions of the Code and the United States Treasury Regulations (the “Regulations”). Without limiting the generality of the foregoing, the State represents and covenants that:

(a) All property financed or refinanced with the proceeds of the Bonds will be owned by the State or a political subdivision thereof so long as the Bonds are Outstanding in accordance with the rules governing the ownership of property for federal income tax purposes.

(b) The State shall not use, and will not permit any party to use, the proceeds of the Bonds in any manner that would result in (i) five percent (5%) or more of such proceeds being considered as having been used in a Private Business Use; or (ii) an amount greater than the lesser of five percent (5%) of such proceeds or \$5,000,000 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 State is not a party to, and will not enter into or permit any other party to enter into, any contract with any person involving the management of any facility financed or refinanced with the proceeds of the Bonds or by notes paid by the Bonds that does not conform to the guidelines set forth in Revenue Procedure 2017-13, or a successor revenue procedure, Code provision or Regulations.

(d) The State will not sell, or permit any other party to sell, any property financed or refinanced with the Bonds to any person unless it obtains an opinion of nationally recognized bond counsel that such sale will not affect the tax-exempt status of the Bonds.

(e) The Bonds will not be “federally guaranteed” within the meaning of Section 149(b) of the Code. The State shall not enter into, or permit any other party to enter into, any leases or sales or service contract with any federal government agency with respect to any facility financed or refinanced with the proceeds of the Bonds and will not enter into any such leases or contracts unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax-exempt status of the Bonds.

Section 9.03     Arbitrage Bonds.

The State hereby covenants and agrees with the Holders of the Bonds that no use of the proceeds of the Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Bonds, would have caused the Bonds to be “arbitrage bonds,” as defined in the Code, and to that end the State hereby shall:

(a)        comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any Regulations so long as the Bonds are Outstanding;

(b)        establish such funds, make such calculations and pay such amounts, in the manner and at the times required in order to comply with the requirements of the Code and Regulations relating to required rebate of certain amounts to the United States Government;

(c)        make such reports of such information at the time and places required by the Code and Regulations; and

(d)        take such other action as may be required to assure that the tax-exempt status of the Bonds will not be impaired.

Section 9.04     Taxable Series and Taxable BANS; Inapplicability of this Article.

The State Treasurer is hereby authorized to designate a Series of Bonds as a Taxable Series. The provisions of the preceding Sections of this Article IX shall not apply to Bonds of a Taxable Series.

[End of Article IX]

## ARTICLE X

### MISCELLANEOUS

#### Section 10.01 Failure to Present Bonds.

Any money held by the Paying Agent in trust for the payment and discharge of any of the Bonds, or the interest thereon, which remains unclaimed for such period of time, after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, that the Holder thereof shall no longer be able to enforce the payment thereof, the Paying Agent shall at the written request of the State pay such money to the State as its absolute property and free from trust, and the Paying Agent shall thereupon be released and discharged with respect thereto and the Bondholders shall look only to the State for the payment of such Bonds; provided, however, the Paying Agent shall forward to the State all moneys which remain unclaimed during a period five (5) years from a Bond Payment Date; and further provided, however, that before being required to make any such payment to the State, the Paying Agent, at the expense of the State, may conduct such investigations as may in the opinion of the Paying Agent be necessary to locate the Holders of those who are entitled to take such funds.

#### Section 10.02 Severability of Invalid Provisions.

If any one or more of the covenants or agreements provided in this Resolution 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 Resolution.

#### Section 10.03 Resolution to Constitute Contract.

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

#### Section 10.04 Execution of Closing Documents and Certificates.

The Governor, the State Treasurer, the Secretary of State and any other officers or employees of the State are fully authorized and empowered to take such further action and to execute and deliver such closing documents and certificates as may be necessary and proper in order to complete the issuance of the Bonds herein authorized and the action of such officers or any one or more of them in executing and delivering any of such documents, in such form as he or they shall approve, is hereby fully authorized.

#### Section 10.05 Filing of Copies of Resolution.

Copies of this Resolution shall be filed in the offices of the Authority, the office of the Secretary of State (as a part of the Transcript of Proceedings filed for each Series of Bonds), and with the offices of each Paying Agent and Registrar for each Series of Bonds.

#### Section 10.06 Benefits of Resolution Limited to the State and Holders of the Bonds.

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

#### Section 10.07 No Personal Liability.

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

#### Section 10.08 Continuing Disclosure.

(a) In accordance with Section 11-1-85 of the South Carolina Code, the Authority hereby covenants to file with a central repository for availability in the secondary bond market when requested: (i) an annual independent audit, within thirty days of the State's receipt of the audit; and (ii) event specific information, within thirty days of an event adversely affecting more than five percent of the State's revenue or tax base. The only remedy for failure by the State to comply with the covenant in this Section 10.08 shall be an action for specific performance of this covenant. The Authority specifically reserves the right to amend this covenant to reflect any change in said Section 11-1-85 without the consent of any Bondholder.

(b) In addition, the State hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Failure of the State to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; provided, however, any Bondholder may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the State to comply with its obligations under this Section 10.08(b). The Continuing Disclosure Undertaking shall be executed by the State Treasurer prior to the delivery of the Bonds and shall be substantially in such form as is set forth in Exhibit H hereto, together with such modifications and amendments thereto as shall be deemed necessary by the State Treasurer upon advice of counsel. Additionally, the form of the Continuing Disclosure Undertaking shall be amended and modified as necessary to comply with any rules or regulations promulgated by the United



States Securities and Exchange Commission. The execution of the Continuing Disclosure Undertaking shall constitute conclusive evidence of the approval by the State Treasurer of any and all modifications and amendments thereto.

Section 10.09 Law and Place of Enforcement of the Resolution.

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

Section 10.10 Effect of Article and Section Headings and Table of Contents.

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

Section 10.11 Repeal of Inconsistent Resolutions.

All resolutions of the Authority, and any part of any resolution, inconsistent with this Resolution are hereby repealed to the extent of such inconsistency.

Section 10.12 Effectiveness of this Resolution.

This Resolution shall become effective upon its adoption.

[End of Article X]

EXHIBIT A

DEBT SERVICE REQUIREMENTS  
ON ALL STATE INSTITUTION BONDS  
ISSUED BY THE STATE OF SOUTH CAROLINA  
ON BEHALF OF CLEMSON UNIVERSITY

Fiscal Year Ending	Existing Debt Service		Total Debt Service
	Principal	Interest	
June 30, 2023	\$ 15,695,000	\$ 6,049,131	\$ 21,744,131
June 30, 2024	15,260,000	11,313,513	26,573,513
June 30, 2025	16,020,000	10,550,513	26,570,513
June 30, 2026	16,820,000	9,749,513	26,569,513
June 30, 2027	17,650,000	8,926,063	26,576,063
June 30, 2028	18,420,000	8,148,213	26,568,213
June 30, 2029	19,215,000	7,353,413	26,568,413
June 30, 2030	19,485,000	6,780,325	26,265,325
June 30, 2031	19,835,000	5,925,625	25,760,625
June 30, 2032	15,660,000	5,148,269	20,808,269
June 30, 2033	16,080,000	4,580,794	20,660,794
June 30, 2034	16,525,000	3,991,481	20,516,481
June 30, 2035	14,600,000	3,379,069	17,979,069
June 30, 2036	14,995,000	2,829,700	17,824,700
June 30, 2037	11,750,000	2,258,450	14,008,450
June 30, 2038	7,070,000	1,787,250	8,857,250
June 30, 2039	7,405,000	1,450,450	8,855,450
June 30, 2040	7,350,000	1,097,400	8,447,400
June 30, 2041	7,215,000	739,500	7,954,500
June 30, 2042	7,575,000	378,750	7,953,750
Total	<u>\$ 284,625,000</u>	<u>\$ 102,437,419</u>	<u>\$ 387,062,419</u>

CLEMSON UNIVERSITY  
SCHEDULE OF TUITION FEES IN EFFECT FOR PURPOSES OF  
SECTIONS 59-107-10 ET SEQ., CODE OF LAWS OF  
SOUTH CAROLINA 1976, AS AMENDED

	<u>In-State</u>	<u>Out-of-State</u>
Undergraduate		
Full-Time <sup>1</sup>	\$ 860	\$ 2,323
Matriculation <sup>1</sup>	5	5
Part-Time <sup>2</sup>	77	204
Matriculation <sup>1</sup>	5	5
Graduate		
Full-Time <sup>1</sup>	860	2,085
Matriculation <sup>1</sup>	5	5
Part-Time <sup>2</sup>	77	184
Matriculation <sup>1</sup>	5	5
Graduate Assistant <sup>1</sup>	10	10
Matriculation <sup>1</sup>	5	5

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<sup>1</sup> Per Semester.

<sup>2</sup> Per Credit Hour.

For the fiscal year ended June 30, 2022, the amount of receipts designated as tuition for state institution bonds purposes was not less than the sum of \$54,118,535. The tuition and fees generated for the 2022 summer term are not included.

The maximum principal and interest debt service payment prior to the issuance contemplated herein is \$26,576,063, which occurs in the fiscal year ending June 30, 2027.

The maximum principal and interest debt service payment after the issuance contemplated herein is anticipated to be \$34,266,453\*, which is anticipated to occur in the fiscal year ending June 30, 2027.

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\* Preliminary, subject to change.

EXHIBIT C

CLEMSON UNIVERSITY  
PRO-FORMA DEBT SERVICE REQUIREMENTS OF  
NOT EXCEEDING \$106,000,000 STATE OF SOUTH CAROLINA  
GENERAL OBLIGATION STATE INSTITUTION BONDS,  
COMPUTED AT PREVAILING RATES OF INTEREST

Fiscal Year Ending	New Issue Debt Service*		Total Debt Service
	Principal	Interest	
June 30, 2023	\$ 720,000	\$ 583,566	\$ 1,303,566
June 30, 2024	4,265,000	3,426,789	7,691,789
June 30, 2025	4,365,000	3,322,297	7,687,297
June 30, 2026	4,475,000	3,213,608	7,688,608
June 30, 2027	4,590,000	3,100,391	7,690,391
June 30, 2028	4,705,000	2,982,428	7,687,428
June 30, 2029	4,830,000	2,860,568	7,690,568
June 30, 2030	4,955,000	2,734,505	7,689,505
June 30, 2031	5,085,000	2,603,198	7,688,198
June 30, 2032	5,225,000	2,466,920	7,691,920
June 30, 2033	5,365,000	2,325,322	7,690,322
June 30, 2034	5,520,000	2,167,591	7,687,591
June 30, 2035	5,695,000	1,992,055	7,687,055
June 30, 2036	5,890,000	1,797,856	7,687,856
June 30, 2037	6,100,000	1,586,994	7,686,994
June 30, 2038	6,330,000	1,360,074	7,690,074
June 30, 2039	6,570,000	1,117,635	7,687,635
June 30, 2040	6,830,000	860,748	7,690,748
June 30, 2041	7,100,000	589,597	7,689,597
June 30, 2042	7,385,000	302,047	7,687,047
Total	<u>\$ 106,000,000</u>	<u>\$ 41,394,183</u>	<u>\$ 147,394,183</u>

\* Preliminary, subject to change.

EXHIBIT D

SCHEDULE SHOWING PRO-FORMA TOTAL PRINCIPAL AND INTEREST REQUIREMENTS OF  
ALL GENERAL OBLIGATION STATE INSTITUTION BONDS  
ISSUED BY THE STATE OF SOUTH CAROLINA  
ON BEHALF OF CLEMSON UNIVERSITY  
INCLUDING THE PROPOSED ISSUE OF  
ONE HUNDRED SIX MILLION DOLLARS (\$106,000,000)  
OF GENERAL OBLIGATION STATE INSTITUTION BONDS,  
AT PREVAILING RATES OF INTEREST

Fiscal Year Ending	Combined Debt Service*		Total Debt Service
	Principal	Interest	
June 30, 2023	\$ 16,415,000	\$ 6,632,697	\$ 23,047,697
June 30, 2024	19,525,000	14,740,302	34,265,302
June 30, 2025	20,385,000	13,872,809	34,257,809
June 30, 2026	21,295,000	12,963,121	34,258,121
June 30, 2027	22,240,000	12,026,453	34,266,453
June 30, 2028	23,125,000	11,130,640	34,255,640
June 30, 2029	24,045,000	10,213,981	34,258,981
June 30, 2030	24,440,000	9,514,830	33,954,830
June 30, 2031	24,920,000	8,528,823	33,448,823
June 30, 2032	20,885,000	7,615,188	28,500,188
June 30, 2033	21,445,000	6,906,116	28,351,116
June 30, 2034	22,045,000	6,159,072	28,204,072
June 30, 2035	20,295,000	5,371,124	25,666,124
June 30, 2036	20,885,000	4,627,556	25,512,556
June 30, 2037	17,850,000	3,845,444	21,695,444
June 30, 2038	13,400,000	3,147,324	16,547,324
June 30, 2039	13,975,000	2,568,085	16,543,085
June 30, 2040	14,180,000	1,958,148	16,138,148
June 30, 2041	14,315,000	1,329,097	15,644,097
June 30, 2042	14,960,000	680,797	15,640,797
Total	<u>\$ 390,625,000</u>	<u>\$ 143,831,602</u>	<u>\$ 534,456,602</u>

\* Preliminary, subject to change.

EXHIBIT E

CLEMSON UNIVERSITY  
PROOF SHOWING COMPLIANCE WITH  
TITLE 59, CHAPTER 107, CODE OF LAWS OF  
SOUTH CAROLINA 1976, AS AMENDED

Aggregate of tuition fees received by the University during preceding fiscal year ended June 30, 2022	\$ 54,118,535
Multiplied by	90%
Produces	\$ 48,706,682
Maximum annual debt service on all State Institution Bonds of the University (including the proposed issue of not exceeding One Hundred Six Million Dollars (\$106,000,000) General Obligation State Institution Bonds issued on behalf of the University)	\$ 34,266,453*
Margin	\$ 14,440,229

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\* Preliminary, subject to change.

(FORM OF BOND)  
(FACE OF BOND)UNITED STATES OF AMERICA  
GENERAL OBLIGATION STATE INSTITUTION BOND  
(ISSUED ON BEHALF OF CLEMSON UNIVERSITY), SERIES 20\_\_  
OF THE STATE OF SOUTH CAROLINA

No. R-1

<u>Rate of Interest</u>	<u>Maturity Date</u>	<u>Dated Date</u>	<u>CUSIP</u>
	____ 1, 20__	____ 1, 20__	

Registered Holder: CEDE & CO.Principal Amount: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

THE STATE OF SOUTH CAROLINA (the "State") acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Holder named above, or registered assigns, the Principal Amount stated above, on the Maturity Date set forth above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender of this Bond at the Corporate Trust Office of \_\_\_\_\_, in the City of \_\_\_\_\_, State of \_\_\_\_\_ (the "Paying Agent"), and to pay interest on such Principal Amount at the Rate of Interest set forth above (calculated on the basis of a 360-day year consisting of twelve 30-day months), until the obligation of the State with respect to the payment of such Principal Amount shall be discharged.

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

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

Interest on the Bonds is payable on \_\_\_\_ 1 and \_\_\_\_ 1 of each year (the "Bond Payment Dates") beginning \_\_\_\_ 1, 20\_\_. The interest payable on any Bond Payment Date for any Bond shall be paid to the

person in whose name the Bond is registered at the close of business on the 15<sup>th</sup> day next preceding such Bond Payment Date.

Each Bond shall bear interest from \_\_\_\_\_, 20\_\_, if no interest has yet been paid; otherwise from the last Bond Payment Date to which interest has been paid and which Bond Payment Date is on or prior to the authentication date thereof.

Interest hereon will be payable by check or draft mailed at the times provided herein from the office of the Paying Agent to the person in whose name this Bond is registered at the address shown on the registration books. The principal of and interest on this Bond are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of an issue of Bonds in the aggregate principal amount of \_\_\_\_\_ million dollars (\$\_\_\_\_\_,000) of like tenor, except as to registered owner, numbering, rate of interest, redemption provisions, and date of maturity, issued pursuant to and in accordance with the Constitution and statutes of the State of South Carolina, including, particularly the provisions of Chapter 107, Title 59 of the Code of Laws of South Carolina 1976, as amended, as supplemented by Sections 11-27-30 and 11-29-30 of the Code of Laws of South Carolina 1976, as amended, and a resolution (the "Resolution") duly adopted by the South Carolina State Fiscal Accountability Authority on \_\_\_\_\_, 20\_\_.

[Insert Redemption Provisions]

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Resolution. Certified copies of the Resolution are on file in the office of the Registrar, in the office of the Paying Agent and in the office of the Secretary of State of South Carolina.

For the payment of the principal of and interest on this Bond as the same respectively matures, the full faith, credit and taxing power of the State are hereby irrevocably pledged and in addition thereto, but subject to the provisions of the Enabling Act, all Tuition Fees received by the University are also pledged.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State 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.

This Bond is issuable only as a fully registered Bond without coupons in denominations of \$1,000 and any whole multiple of \$1,000. This Bond is transferable, as provided in the Resolution, only upon the registration books kept for that purpose at the Corporate Trust Office of the Registrar by the Registered Holder in person or by his duly authorized attorney, upon (i) surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or his duly authorized attorney; and (ii) payment of the charges, if any, prescribed in the Resolution. Thereupon a new fully registered Bond or Bonds of like series designation, maturity and interest rate, and in a like aggregate principal amount will be issued to the transferee in exchange therefor as provided in the Resolution. The State, the Paying Agent and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

The State shall not be obligated to issue, exchange or transfer this Bond during the 15 days next preceding any Bond Payment Date. For every exchange or transfer of the Bonds, the State, the Paying Agent, or the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.



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

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

IN WITNESS WHEREOF, the State of South Carolina has caused this Bond to be signed in its name by the manual or facsimile signatures of the Governor of South Carolina and the State Treasurer of South Carolina, the Great Seal of the State of South Carolina to be reproduced hereon and the same to be attested by the manual or facsimile signature of the Secretary of State of South Carolina.

THE STATE OF SOUTH CAROLINA

SEAL

\_\_\_\_\_  
Henry D. McMaster  
Governor

\_\_\_\_\_  
Curtis M. Loftis, Jr.  
State Treasurer

Attest:

\_\_\_\_\_  
Mark Hammond  
Secretary of State

#### CERTIFICATE OF AUTHENTICATION

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

[REGISTRAR], as Registrar

By: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_, 20\_\_

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(please print or type name and address of Transferee and Social Security or other identifying number of Transferee)

the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_,  
attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution  
in the premises.

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.

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 OFFICIAL NOTICE OF SALE)

## OFFICIAL NOTICE OF SALE

\$ \_\_\_\_\_ \*

STATE OF SOUTH CAROLINA  
GENERAL OBLIGATION STATE INSTITUTION BONDS  
(ISSUED ON BEHALF OF CLEMSON UNIVERSITY)  
SERIES \_\_\_\_\_

(BOOK-ENTRY-ONLY)

ELECTRONIC BIDS for the purchase of the \$ \_\_\_\_\_ \* General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series \_\_\_\_\_ of the State of South Carolina (the "Bonds"), will be received by the Governor of the State of South Carolina (the "Governor") and the State Treasurer of the State of South Carolina (the "State Treasurer"), in the Office of the State Treasurer, Room 121, in the Wade Hampton Office Building, Capitol Complex, Columbia, South Carolina, 29201, until \_\_\_\_\_ a.m. (Eastern Time) on \_\_\_\_\_, \_\_\_\_\_, or on such other date and time as may be established by the Governor and the State Treasurer and communicated by Thomson Municipal Market Monitor ("TM3") not later than 48 hours prior to the time the bids are to be received.

*PARITY® Only.* All bids must be submitted through BiDCOMP/Parity Electronic Bid Submission System ("PARITY®"). No electronic bids from any other providers of electronic bidding services will be accepted. Information about the electronic bidding services of PARITY® may be obtained from IPREO, Municipal Services, telephone (212) 404-8102, or parity@ipreo.com.

*Authorization and Security.* The Bonds are issued pursuant to (i) Article X, Section 13(6)(b) of the South Carolina Constitution, and (ii) Title 59, Chapter 107 of the South Carolina Code, as supplemented by Sections 11-27-30 and 11-29-30 of the South Carolina Code, and constitute general obligations of the State. On \_\_\_\_\_, 20\_\_\_\_, the South Carolina State Fiscal Accountability Authority adopted a resolution providing for the issuance of the Bonds.

*Description of the Bonds.* The Bonds will initially be subject to a system of book-entry registration maintained by The Depository Trust Company, New York, New York ("DTC"). Principal of the Bonds when due will be paid upon presentation and surrender of such Bonds at the Corporate Trust Office of the Paying Agent. The Bonds will be dated as of the date of delivery thereof ("Dated Date") expected to be on or about \_\_\_\_\_, 20\_\_\_\_, and bear interest at a rate or rates to be named by the successful bidder (the "Purchaser"). Interest on the Bonds will be payable on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year commencing \_\_\_\_\_ 1, 20\_\_\_\_. Interest on the Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months. Both principal of and interest on the Bonds will be paid in any coin or currency of the United States of America, which, at the time of payment, is legal tender for the payment of public and private debts. The Bonds will be issued in denominations of \$1,000 or any multiple thereof. The Bonds will mature on \_\_\_\_\_ 1 in the years and principal amounts as follows:

_____ 1	Principal Amount*	_____ 1	Principal Amount*
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\* Subject to adjustment as set forth herein.

*Optional Redemption.* The Bonds maturing on or prior to \_\_\_\_, 20\_\_, are not subject to optional redemption prior to their maturity date. The Bonds maturing after \_\_\_\_, 20\_\_ are subject to redemption, in whole or in part, at any time in any order of maturity to be determined by the State, on and after \_\_\_\_, 20\_\_, at the redemption price of par plus accrued interest to the date fixed for redemption.

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

*Adjustments to Principal Amounts of the Bonds.* As promptly as reasonably possible after the bids are received, the State will notify the bidder to which the Bonds will be awarded, if and when such award is made, and such bidder, upon such notice, shall advise the State of the initial public offering prices of each maturity of the Bonds (the "Initial Reoffering Prices"). The Initial Reoffering Prices of the Bonds will be used to calculate the final maturity schedules and the final aggregate principal amounts of the Bonds (the "Final Amounts") to achieve the State's debt service objectives. The Purchaser may not withdraw its bid or change the interest rates bid or the Initial Reoffering Prices as a result of any changes made to the revised amounts.

The dollar amount bid by the Purchaser will be adjusted to reflect any adjustments in the aggregate principal amount of the Bonds. Such adjusted bid price will reflect changes in the dollar amount of the underwriter's discount and original issue discount or premium, if any, but will not change the selling compensation per \$1,000 of par amount of the Bonds from the selling compensation that would have been received based on the purchase price for the Bonds of the winning bid and the Initial Reoffering Prices. The interest rate specified by the Purchaser for each maturity of the Bonds at the Initial Reoffering Prices for such maturity will not change.

The Final Amounts and the adjusted purchase price will be communicated to the Purchaser as soon as possible, but no later than 5:00 p.m. (Eastern Time) on the day of the sale.

*Electronic Bidding Procedures.* Bids to purchase Bonds (all or none) must be submitted electronically via PARITY®. Bids will be communicated electronically to the State at \_\_\_\_ a.m. (Eastern Time) on \_\_\_\_, \_\_\_\_\_. Prior to that time, a prospective bidder may (1) submit the proposed terms of its bid via PARITY®, (2) modify the proposed terms of its bid, in which event the proposed terms as last modified will (unless the bid is withdrawn as described herein) constitute its bid for the Bonds or (3) withdraw its proposed bid. Once the bids are communicated electronically via PARITY® to the State, each bid will constitute an irrevocable and unconditional offer to purchase the Bonds on the terms therein provided. For purposes of the electronic bidding process, the time as maintained on PARITY® shall constitute the official time. The State will not accept bids by any means other than electronically via PARITY®.

*Disclaimer.* Each prospective bidder shall be solely responsible to submit its bid via PARITY® as described above. Each prospective bidder shall be solely responsible to make necessary arrangements to access PARITY® for the purpose of submitting its bid in a timely manner and in compliance with the requirements of this Official Notice of Sale. Neither the State nor PARITY® shall have any duty or obligation to provide or assure access to PARITY® to any prospective bidder, and neither the State nor PARITY® shall be responsible for proper operation of, or have any liability for any delays or interruptions of, or any damages caused by, PARITY®. The State is using PARITY® as a communication mechanism, and not as the State's agent, to conduct the electronic bidding for the Bonds. The State is not bound by any advice and determination of PARITY® to the effect that any particular bid complies with the terms of this Official Notice of Sale and in particular the "CONDITIONS OF SALE" hereinafter set forth. All costs and expenses incurred by prospective bidders in connection with their submission of bids via PARITY® are the sole responsibility of the bidders; and the State is not responsible, directly or indirectly, for any of such costs or expenses. If a prospective bidder encounters any difficulty in submitting, modifying, or withdrawing a bid for the Bonds, the bidder should telephone PARITY® at (212) 404-8102 and notify the State's Financial Advisor, Public Resources Advisory Group, Inc., via email at dforman@pragadvisors.com and mconley@pragadvisors.com. To the extent any instructions or directions set forth in PARITY® conflict with this Official Notice of Sale, the terms of this Official Notice of Sale shall control. For further information about PARITY®, potential bidders may contact PARITY® at (212) 404-8102.

#### CONDITIONS OF SALE

Bidders are invited to name the rate or rates of interest which the Bonds are to bear, and unless all bids are rejected, they will be awarded to the bidder offering to purchase all of the Bonds at the lowest interest cost (as defined below) to the State at a price of not less than the par amount of the Bonds. Bidders may name any number of rates of interest, in any variations selected by the bidder except that:

- (1) All Bonds of the same maturity must bear the same rate of interest;
- (2) No rate of interest named shall be more than six (6.0) percentage points;
- (3) A zero (0.0) percentage point rate of interest is not permitted;
- (4) Each interest rate named must be a multiple of 1/8th or 1/20th of one (1) percentage point;
- (5) Any premium offered must be paid in cash as a part of the purchase price; and

All bids must be for no less than 100 percent of the par value of the Bonds.

[Term bonds are not permitted.]

By submitting a bid, each bidder represents that the bidder's proposal is genuine, and not a sham or collusive, and is not made in the interest of or on behalf of any person not therein named, the bidder has not directly or indirectly induced or solicited any other bidder to submit a sham bid or any other person, firm or corporation to refrain from bidding, and the bidder has not in any manner sought by collusion to secure for it an advantage over any other bidder. By submitting a bid for the Bonds, each bidder also represents and warrants to the State that (i) it has an established industry reputation for underwriting new issuances of municipal bonds; and (ii) such bidder's bid for the purchase of the Bonds (if a bid is submitted in connection with the sale) is submitted for and on behalf of such bidder by an officer or agent who is duly authorized to bind the bidder to a legal, valid and enforceable contract for the purchase of the Bonds.

*Good Faith Deposit.* No good faith deposit will be required.

*Basis of Award.* If at least three bids are received and the competitive sale requirements under provision of Treasury Regulation Section 1.148-1(f)(3)(i) (defining “competitive sale” for purposes of establishing the issue price of the Bonds) are met, the Bonds will be awarded to the bidder offering to purchase all of the Bonds at the lowest interest cost to the State. The lowest interest cost shall be determined in accordance with the true interest cost (TIC) method by doubling the semiannual interest rate, compounded semiannually, necessary to discount the debt service payments from the payment dates to the date of the Bonds and to the amount bid, not including interest accrued to the date of delivery (expected to be on or about \_\_\_\_\_, \_\_\_\_\_), if any.

*Issue Price Determination.* The State expects and intends that the bid for the Bonds will satisfy the federal tax requirements for a qualified competitive sale of bonds, including, among other things, receipt of bids for the Bonds from at least three underwriters, who have established industry reputations for underwriting new issuances of municipal bonds (a “Qualified Competitive Bid”). The State will advise the successful bidder as promptly as possible after the bids are opened whether the bid constitutes a Qualified Competitive Bid, or, in the alternative, a bid that fails to satisfy such requirements (a “Nonqualified Competitive Bid”).

If the bid is a Qualified Competitive Bid, as promptly as possible after the bids are opened, the State will notify the successful bidder, and such bidder, upon such notice, shall advise the State, of the reasonably expected Initial Offering Price, as applicable, of each maturity of each series of the Bonds. In addition, the winning bidder shall be required to provide to the State information to establish the initial expected offering prices for each maturity of each series of the Bonds for federal income tax purposes by completing a certificate acceptable to Bond Counsel to the State, on or before the date of issuance of the Bonds, substantially in the form set forth in Exhibit A to the Official Notice of Sale, with appropriate completions, amendments and attachments.

If the bid is a Nonqualified Competitive Bid, as promptly as possible after the bids are opened, the State will notify the successful bidder, and such bidder, upon such notice, shall advise the State of the initial sale price or Initial Offering Price, as applicable, of each maturity of each series of the Bonds. In addition, the winning bidder shall be required to provide to the State information and assurances to establish the initial sale price or the initial offering price to the public, as applicable, for each maturity of each series of the Bonds for federal income tax purposes by completing a certification acceptable to Bond Counsel in substantially the form set forth in Exhibit B attached to this Supplement to the Official Notice of Sale, with appropriate completions, omissions and attachments. **It is noted that procedures for a Nonqualified Competitive Bid may require the winning bidder and, if applicable, other underwriters of the Bonds, to hold the initial offering prices for certain maturities of a series of the Bonds for up to five business days after the sale date, as further specified in the form of such certification.**

*Undertakings of the Successful Bidder.* The successful bidder (hereafter, the “Purchaser”) agrees to provide certificates, including, but not limited to, an issue price certificate in the form attached hereto either as Exhibit A or as Exhibit B, as applicable.

*Acceptance or Rejection of Bids.* Bids will be accepted or rejected promptly after receipt and not later than by 2:00 p.m. (Eastern Time) on the day of the sale. In the event of tie lowest interest cost bids, the State shall select the Purchaser(s).

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

*Right to Change this Official Notice of Sale and to Postpone Offering.* The State reserves the right to make changes to this Official Notice of Sale and also reserves the right to postpone, from time to time, the date and time established for the receipt of bids. Any such postponement will be announced via TM3. If any

date and time fixed for the receipt of bids and the sale of the Bonds is postponed, an alternative sale date and time will be announced via TM3 at least 48 hours prior to such alternative sale date. On any such alternative sale date and time, any bidder may submit an electronic bid for the purchase of the Bonds in conformity in all respects with the provisions of this Official Notice of Sale, except for the date and time of sale and except for any changes announced over TM3 at the time the sale date and time are announced.

*Delivery of the Bonds.* The Bonds will be delivered through the facilities of DTC on or about \_\_\_\_\_, against payment of the purchase price therefor in federal funds.

*Documents to be Delivered at Closing.* The State will furnish, without cost to the Purchaser, the Bonds and the opinions as to their validity by Pope Flynn, LLC, Bond Counsel. The State will also furnish opinions of The Honorable Alan Wilson, Attorney General of the State of South Carolina as to the absence of litigation restraining or enjoining the issuance and delivery of the Bonds.

*Tax Opinion.* The opinion of Bond Counsel will state that (a) interest on the Bonds is excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and is not an item of tax preference for purposes of the federal alternative minimum tax; and (b) the Bonds and the interest thereon are exempt from all State, county, municipal, school district and all other taxes or assessments imposed within the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes. The opinion will further state that the Code establishes certain requirements which must be met subsequent to the issuance and delivery of the Bonds in order that interest on the Bonds remains excluded from gross income for federal income tax purposes. Noncompliance may cause interest on the Bonds to be included in gross income retroactive to the date of issuance of the Bonds, regardless of the date on which such noncompliance occurs or is ascertained. The State has covenanted to comply with the requirements of the Code in the resolutions pursuant to which the Bonds are issued and, in rendering its opinion, Bond Counsel will assume compliance with such covenants.

*CUSIP Numbers.* It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto shall constitute cause for a failure or refusal by the Purchaser to accept delivery of and pay for the Bonds. The State's Financial Advisor will timely apply for CUSIP numbers with respect to the Bonds as required by MSRB Rule G-34. All expenses in relation to the printing of the CUSIP identification numbers on the Bonds shall be paid by the State. However, the CUSIP Global Services charge for the assignment of such numbers shall be the responsibility of and shall be paid by the Purchaser.

*Official Statement.* A Preliminary Official Statement dated on or about \_\_\_\_\_, 20\_\_, with respect to the Bonds has been prepared by the State, and such Preliminary Official Statement is deemed final by the State for purposes of Rule 15c2-12 of the United States Securities and Exchange Commission (the "Rule"). The only information omitted from the Preliminary Official Statement are those items permitted to be omitted under the Rule. The Preliminary Official Statement will be made available at <http://www.MuniOS.com>. The State designates the Purchaser as its agent for purposes of distributing copies of the final Official Statement. The Purchaser agrees to (1) accept such designation, and (2) assure proper dissemination of the final Official Statement. The State will prepare and provide to the Purchaser, within seven business days after the sale date, a mutually agreed upon number of printed copies of the final Official Statement. The final Official Statement shall be in substantially the same form as the Preliminary Official Statement, subject to any additions, deletions or revisions that the State believes are necessary.

*Continuing Disclosure.* In order to assist the Purchaser in complying with the Rule, the State will undertake, in accordance with the authorizing resolutions pursuant to which the Bonds are issued and a Continuing Disclosure Undertaking, to provide annual reports and notices of certain events. A description of

this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the final Official Statement.

*Additional Information.* Prospective purchasers may obtain, in advance of the sale, copies of the Preliminary Official Statement relating to the Bonds from (i) the MuniOS website, <http://www.MuniOS.com>; (ii) Robert Macdonald, Director Debt Management Division, Office of State Treasurer, 122 Wade Hampton Office Building, Columbia, South Carolina 29201 (telephone: (803) 734-2677; email: [robert.macdonald@sto.sc.gov](mailto:robert.macdonald@sto.sc.gov)); or (iii) Samuel W. Howell IV, Disclosure Counsel, Howell Linkous & Nettles, LLC, The Lining House, 106 Broad Street, Charleston, South Carolina, 29401 (telephone: (843) 266-3801; email: [samhowell@bond-law.com](mailto:samhowell@bond-law.com)).

Henry D. McMaster, Governor of South Carolina

Curtis M. Loftis, Jr., State Treasurer of South Carolina

Dated \_\_\_\_\_, 20\_\_



FORM OF ISSUE PRICE CERTIFICATE FOR  
QUALIFIED COMPETITIVE BID

ISSUE PRICE CERTIFICATE

\$ \_\_\_\_\_ \*

STATE OF SOUTH CAROLINA  
GENERAL OBLIGATION STATE INSTITUTION BONDS  
(ISSUED ON BEHALF OF CLEMSON UNIVERSITY),  
SERIES 20 \_\_\_\_

The undersigned, a duly authorized officer of \_\_\_\_\_, as the purchaser (the "Purchaser") of the above-captioned obligations (the "Bonds") issued by the State of South Carolina (the "State"), represents and certifies, to establish the "issue price" of the Bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and certain other matters, that:

1. Reasonably Expected Initial Offering Price.

(a) As of the Sale Date, the reasonably expected initial offering prices of the Bonds to the Public by the Purchaser are the prices listed in Schedule A (the "Expected Offering Prices"). The Expected Offering Prices are the prices for the Maturities of the Bonds used by the Purchaser in formulating its bid to purchase the Bonds. Attached as Schedule B is a true and correct copy of the bid provided by the Purchaser to purchase the Bonds.

(b) The Purchaser was not given the opportunity to review other bids prior to submitting its bid.

(c) The bid submitted by the Purchaser constituted a firm offer to purchase the Bonds.

(d) The Purchaser has an established industry reputation for underwriting new issuances of municipal bonds.

2. Defined Terms.

(a) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(b) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50% common ownership, directly or indirectly.

(c) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_, \_\_\_\_.

(d) *Underwriter* as used herein means (i) any person that agrees pursuant to a written contract with the State (or with the lead Underwriter to form a syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly

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\* Subject to adjustment as set forth herein.

with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser's interpretation of any laws, including specifically Sections 103 and 148 of the Code and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the State with respect to certain of the representations set forth in the Tax and Arbitrage Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Pope Flynn, LLC, as bond counsel to the State, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the State from time to time relating to the Bonds.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[Purchaser]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule A

Expected Offering Prices

Schedule B

Copy of Winning Bid

FORM OF ISSUE PRICE CERTIFICATE FOR  
NONQUALIFIED COMPETITIVE BID

ISSUE PRICE CERTIFICATE

\$ \_\_\_\_\_<sup>\*</sup>  
STATE OF SOUTH CAROLINA  
GENERAL OBLIGATION STATE INSTITUTION BONDS  
(ISSUED ON BEHALF OF CLEMSON UNIVERSITY),  
SERIES 20 \_\_\_\_

The undersigned, a duly authorized officer of \_\_\_\_\_, as the purchaser (the "Purchaser") of the above-captioned obligations (the "Bonds") issued by the State of South Carolina (the "State"), represents and certifies, to establish the "issue price" of the Bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and certain other matters, that:

1. ***Sale of the General Rule Maturities.*** As of the date of this Certificate, for each Maturity of the General Rule Maturities, the first price at which 10% of such Maturity was sold by the Purchaser to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities.***

(a) The Purchaser offered the Hold-the-Offering Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the "Initial Offering Prices") on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this Certificate as Schedule B.

(b) As set forth in the Official Notice of Sale and bid award, the Purchaser has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the "hold-the-offering-price rule"), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to the foregoing, no Underwriter has offered or sold any Maturity of the Hold-the-Offering Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Defined Terms.***

(a) *General Rule Maturities* means those Maturities of each series of the Bonds shown in Schedule A hereto as the "General Rule Maturities."

(b) *Hold-the-Offering-Price Maturities* means those Maturities of each series of the Bonds listed in Schedule A hereto as the "*Hold-the-Offering-Price Maturities*."

(c) *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Purchaser has sold at least 10% of such Hold-the-Offering-Price

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<sup>\*</sup> Subject to adjustment as set forth herein.

Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d) *Issuer* means the State of South Carolina.

(e) *Maturity* means Bonds of a series with the same credit and payment terms. Bonds of a series with different maturity dates, or Bonds of a series with the same maturity date but different stated interest rates, are treated as separate Maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to the Purchaser. The term “related party” for purposes of this Certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_, \_\_\_\_\_, 20\_\_.

(h) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser’s interpretation of any laws, including specifically Sections 103 and 148 of the Code and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the State with respect to certain of the representations set forth in the Tax and Arbitrage Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Pope Flynn, LLC, as bond counsel to the State, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the State from time to time relating to the Bonds.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2022.

[Purchaser]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule A

Expected Initial Offering Prices of the Bonds

Schedule B

Copy of Winning Bid



FORM OF CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (this “Disclosure Undertaking”) is executed and delivered this \_\_\_\_ day of \_\_\_\_, 20\_\_, by the State of South Carolina (the “State”) in connection with the issuance of the State’s \$\_\_\_\_\_ General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series 20\_\_ (the “Bonds”).

The Bonds are being issued pursuant to a resolution adopted on \_\_\_\_, 20\_\_ (the “Resolution”), by the State Fiscal Accountability Authority authorizing the issuance of the Bonds. The State covenants and agrees as follows:

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

Section 2. Definitions. In addition to the definitions set forth in the 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 State pursuant to, and as described in, Sections 3 and 4 of this Disclosure Undertaking.

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

“Dissemination Agent” means any person designated in writing by the State and which has filed with the State 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 \_\_\_\_, 20\_\_, prepared in connection with the Bonds.

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

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

“State” means the State of South Carolina.

Section 3. Provision of Annual Reports. (a) The State shall, not later than seven (7) months after the end of the State’s fiscal year (which shall be January 31 of each year, so long as the State’s fiscal year ends on June 30), commencing with the report for the fiscal year ended June 30, 20\_\_, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Undertaking. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Undertaking; provided, however, that the audited financial statements of the State for the fiscal year ended June 30, 20\_\_, and for each subsequent fiscal year may be submitted separately from the remainder of the Annual Report, and later than the date required for the filing of the Annual Report if they are not available by that date. If the State’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 State; (v) the name and date of the document; and (vi) contact information for the Dissemination Agent or the State’s submitter.

(c) If the State is unable to provide to the MSRB an Annual Report by the date required in subsection (a) above, the State 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 State 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 State 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 audited Comprehensive Annual Financial Report of the State for the fiscal year ended on the previous June 30, prepared in accordance with accounting principles generally accepted in the United States of America applicable to government entities from time to time by the Governmental Accounting Standards Board. If the State’s audited financial statements are not available by the time the Annual Report is required to be provided to the MSRB pursuant to Section 3(a) hereof, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the Official Statement, and

the audited financial statements shall be provided to the MSRB in the same manner as the Annual Report when they become available;

(b) Revenue by sources in the preceding fiscal year for all governmental fund types, as indicated in Note 1 of the Audited Financial Statements contained as Appendix A in the Official Statement;

(c) Computation of the legal debt margin for General Obligation Bonds as set forth in the Official Statement under the heading “DEBT OF THE STATE OF SOUTH CAROLINA;”

(d) Total outstanding general obligation bonds and annual debt service as set forth in the Official Statement under the headings “OUTSTANDING DEBT OF THE STATE” and “TABLES RELATING TO THE BONDS AND THEIR EFFECT ON THE DEBT OF THE STATE;” and

(e) Total general obligation bonds per capita as set forth in the Official Statement under the heading “TABLES RELATING TO THE BONDS AND THEIR EFFECT ON THE DEBT OF THE STATE-Relationship of Population and Personal Income to General Obligations of the State.”

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 State, which have been made available to the public on EMMA. The State shall clearly identify each such other document so included by reference.

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

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

- (xii) bankruptcy, insolvency, receivership or similar event of any obligated person, which event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person;
- (xiii) the consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (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 Bonds by name and CUSIP number or shall be accompanied by such identifying information as described from time to time by the MSRB.

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

Section 8. Dissemination Agent. The State 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 State pursuant to this Disclosure Undertaking.

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

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

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

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

In the event of any amendment or waiver of a provision of this Disclosure Undertaking, the State 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 State. 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 State 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 State 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 State 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 State to comply with any provision of this Disclosure Undertaking, any holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking *mandamus* or specific performance by court order, to cause the State 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 State 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 State, the Dissemination Agent, the Participating Underwriters and holders and Beneficial Owners from time to time

of the Bonds, and shall create no rights in any other person or entity. This Disclosure Undertaking is not intended to create any monetary rights on behalf of any person.

THE STATE OF SOUTH CAROLINA

Date: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
State Treasurer

EXHIBIT A

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

Issuer: The State of South Carolina

Obligations: \$\_\_\_\_\_ General Obligation State Institution Bonds (Issued on Behalf of  
Clemson University), Series 20\_\_

Date of Issuance: \_\_\_\_\_, 20\_\_

CUSIP: \_\_\_\_\_

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required by the Resolution adopted on \_\_\_\_\_, 20\_\_. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

THE STATE OF SOUTH CAROLINA

By: \_\_\_\_\_  
State Treasurer

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

[Date of Delivery]

South Carolina State Fiscal Accountability Authority  
Columbia, South Carolina

Re: \$\_\_\_\_\_ General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series 20\_\_, of the State of South Carolina

Ladies and Gentlemen:

We have acted as bond counsel to the State of South Carolina (the “State”) in connection with the issuance of \$\_\_\_\_\_ General Obligation State Institution Bonds (Issued on Behalf of Clemson University), Series 20\_\_, of the State of South Carolina (the “Bonds”), dated [Date of Delivery]. In such capacity, we have examined such laws and such certified proceedings and other documents as we have deemed necessary to render this opinion.

The Bonds are issued pursuant to (i) Article X, Section 13(6)(b) of the South Carolina Constitution, (ii) Title 59, Chapter 107 of the South Carolina Code, as supplemented by Section 11-27-30 of the South Carolina Code and Section 11-29-30 of the South Carolina Code (the “Enabling Act”), and (iii) a resolution adopted on January 31, 2023, by the South Carolina State Fiscal Accountability Authority, for the purpose of raising funds for purposes authorized by the Enabling Act, and to pay the costs of issuance of the Bonds.

As to questions of fact material to our opinion, we have relied upon the Transcript of Proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation. We have not been engaged or undertaken to review the accuracy, completeness, or sufficiency of any information provided by the State or others relating to the Bonds, and we express no opinion relating thereto.

Based upon the foregoing, we are of the opinion, as of the date hereof and under existing law, that:

1. The Bonds are valid and legally binding general obligations of the State.
2. The full faith, credit, and taxing power of the State and, in addition, the revenues derived from Tuition Fees received by Clemson University are pledged to the payment of the principal of and interest on the Bonds as they become due and payable. Provision has been made for the allocation, on an annual basis, of sufficient tax revenues to provide for the punctual payment of the principal of and interest on the Bonds.
3. Under existing law, assuming continuing compliance with certain covenants made by Clemson University to satisfy pertinent requirements of the Internal Revenue Code of 1986, as amended (the “Code”), and the applicable regulations promulgated thereunder, and the accuracy



of certain representations of the Clemson University, interest on the Bonds (i) is excluded from gross income for federal income tax purposes and (ii) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals under the Code. Such income is, however, taken into account in determining the annual adjusted financial statement income of certain applicable corporations (as defined in Section 59(k) of the Code) for the purpose of determining the application of the 15-percent alternative minimum tax imposed on the adjusted financial statement income of such corporations for tax years beginning after December 31, 2022.

4. The Bonds and the interest thereon are exempt from all State of South Carolina, county, school district, municipal 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 for inheritance, estate or transfer taxes, but the interest thereon may be includable for certain franchise fees or taxes.

It is to be understood that the rights of the holders of the Bonds and the enforceability thereof may be subject to judicial discretion, the valid exercise of the sovereign police powers of the State and of the constitutional powers of the United States of America, and to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore and hereafter enacted to the extent constitutionally applicable.

We express no opinion regarding the accuracy, adequacy, or completeness of the Preliminary Official Statement dated \_\_\_\_\_, 20\_\_, or the Official Statement dated \_\_\_\_\_, 20\_\_, relating to the Bonds.

We have examined a specimen Bond of this issue and, in our opinion, it is in due form of law.

This opinion is given as of the date hereof and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

Very truly yours,

Pope Flynn, LLC

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AGENCY: Executive Director

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SUBJECT: Qualified Public Educational Facilities (2022 Volume Cap Carryforward)

Internal Revenue Code Section 26 U.S.C. Section 142(k) for qualified public educational facilities and Section 142(a)(13) were added by Section 422(a) and (b) of P.L. 107-16 in 2001. Section 142(k) provides a separate and independent volume cap for qualified public educational facilities to be used for the issuance of bonds for public educational facilities. These bonds are not subject to the general volume limitation under Code Section 146 but are subject to a separate volume limitation set forth in Code Section 142(k). No regulations for this provision have been promulgated.

The volume cap for qualified public educational facilities is governed by Section 142(k)5. That Section provides, in part, the following:

**(B) Allocation rules.**

....  
**(ii) Rules for carryforward of unused limitation.** A State may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of Section 146(f), except that the only purpose for which the carryforward may be elected is the issuance of exempt facility bonds described in subsection (a)(13).

The volume cap for calendar year 2022 is \$51,907,050 and has been unused. The Authority is asked to elect to carryforward the entire volume cap for 2022 to be used for the issuance of bonds for qualified public educational facilities as described in Section 142(a)(13) and authorize the filing of a carryforward election with the Internal Revenue Service in connection with such allocation. Pursuant to Section 142(k)(5)(B)(ii) the carryforward will be valid for the next three calendar years.

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**AUTHORITY ACTION REQUESTED:**

Approve the carryforward of the unused volume cap allocation for qualified public educational facilities for calendar year 2022 to be used for the issuance of such bonds and authorize the filing of a carryforward election with the Internal Revenue Service in connection with such allocation to be valid for the next three calendar years.

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**ATTACHMENTS:**

Internal Revenue Code 26 U.S.C. Section 142; Certification of 2022 State Ceiling for Qualified Public Educational Facilities Bonds

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



OFFICE OF THE EXECUTIVE DIRECTOR

GRANT GILLESPIE  
EXECUTIVE DIRECTOR  
(803) 734-8018  
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HARVEY S. PEELER, JR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

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

January 6, 2022

**CERTIFICATION OF  
2022 STATE CEILING ON ISSUANCE OF PRIVATE ACTIVITY BONDS  
ESTABLISHED IN TAX REFORM ACT OF 1986, AS AMENDED  
(REVISED)**


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In accord with Section 1-11-500 of the Code of Laws of South Carolina, 1976, as amended, which is part of a plan for allocating the State Ceiling on the issuance of tax-exempt private activity bonds established in the Tax Reform Act of 1986, as amended, I have determined that the most recent census estimate of the resident population of the State of South Carolina published by the Bureau of the Census before the beginning of 2022 is 5,190,705.

That population estimate is included in Census Bureau release CB21-208 dated December 21, 2021.

For calendar year 2022, the amount used under IRS Code § 142(k) to calculate the State ceiling for the volume cap for private activity bonds is \$10 per capita for qualifying public educational facility bonds multiplied by the State's population.

On that basis, I have calculated, and I certify the 2022 state ceiling on the issuance of private activity bonds for the State of South Carolina, as established in the Tax Reform Act of 1986, as amended, to be \$51,907,050.

  
Delbert H. Singleton, Jr.  
Secretary to the Authority

## **§142. Exempt facility bond**

### **(a) General rule**

For purposes of this part, the term "exempt facility bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide-

- (1) airports,
- (2) docks and wharves,
- (3) mass commuting facilities,
- (4) facilities for the furnishing of water,
- (5) sewage facilities,
- (6) solid waste disposal facilities,
- (7) qualified residential rental projects,
- (8) facilities for the local furnishing of electric energy or gas,
- (9) local district heating or cooling facilities,
- (10) qualified hazardous waste facilities,
- (11) high-speed intercity rail facilities,
- (12) environmental enhancements of hydroelectric generating facilities,
- (13) qualified public educational facilities,
- (14) qualified green building and sustainable design projects,
- (15) qualified highway or surface freight transfer facilities,
- (16) qualified broadband projects, or
- (17) qualified carbon dioxide capture facilities.

### **(b) Special exempt facility bond rules**

For purposes of subsection (a)-

#### **(1) Certain facilities must be governmentally owned**

##### **(A) In general**

A facility shall be treated as described in paragraph (1), (2), (3), or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

##### **(B) Safe harbor for leases and management contracts**

For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if-

- (i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,
- (ii) the lease term (as defined in section 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and
- (iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised).

Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

#### **(2) Limitation on office space**

An office shall not be treated as described in a paragraph of subsection (a) unless-

(A) the office is located on the premises of a facility described in such a paragraph, and

(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

**(c) Airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities**

For purposes of subsection (a)-

**(1) Storage and training facilities**

Storage or training facilities directly related to a facility described in paragraph (1), (2), (3) or (11) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

**(2) Exception for certain private facilities**

Property shall not be treated as described in paragraph (1), (2), (3) or (11) of subsection (a) if such property is described in any of the following subparagraphs and is to be used for any private business use (as defined in section 141(b)(6)).

(A) Any lodging facility.

(B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.

(C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.

(D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.

(E) Any industrial park or manufacturing facility.

**(d) Qualified residential rental project**

For purposes of this section-

**(1) In general**

The term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

**(A) 20-50 test**

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

**(B) 40-60 test**

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

**(2) Definitions and special rules**

For purposes of this subsection-

**(A) Qualified project period**

The term "qualified project period" means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of-

(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

**(B) Income of individuals; area median gross income**

**(i) In general**

The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Subsections (g) and (h) of section 7872 shall not apply in determining the income of individuals under this subparagraph.

**(ii) Special rule relating to basic housing allowances**

For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as a basic pay allowance for housing shall be disregarded with respect to any qualified building.

**(iii) Qualified building**

For purposes of clause (ii), the term "qualified building" means any building located-

(I) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(II) in any county adjacent to a county described in subclause (I).

**(iv) Qualified military installation**

For purposes of clause (iii), the term "qualified military installation" means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

**(C) Students**

Rules similar to the rules of section 42(i)(3)(D) shall apply for purposes of this subsection.

**(D) Single-room occupancy units**

A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).

**(E) Hold harmless for reductions in area median gross income**

**(i) In general**

Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

**(ii) Special rule for certain census changes**

In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of-

(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

**(iii) HUD hold harmless policy**

The term "HUD hold harmless policy" means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

**(iv) HUD hold harmless impacted project**

The term "HUD hold harmless impacted project" means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.

**(3) Current income determinations**

For purposes of this subsection-

**(A) In general**

The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.

**(B) Continuing resident's income may increase above the applicable limit**

If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination,

any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

**(C) Exception for projects with respect to which affordable housing credit is allowed**

In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting "building (within the meaning of section 42)" for "project".

**(4) Special rule in case of deep rent skewing**

**(A) In general**

In the case of any project described in subparagraph (B), the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting-

- (i) "170 percent" for "140 percent", and
- (ii) "any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit".

**(B) Deep rent skewed project**

A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

- (i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.
- (ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.
- (iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed  $\frac{1}{2}$  of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

**(C) Definitions applicable to subparagraph (B)**

For purposes of subparagraph (B)-

**(i) Low-income unit**

The term "low-income unit" means any unit which is required to be occupied by individuals who meet the applicable income limit.

**(ii) Gross rent**

The term "gross rent" includes-

- (I) any payment under section 8 of the United States Housing Act of 1937, and
- (II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

**(5) Applicable income limit**

For purposes of paragraphs (3) and (4), the term "applicable income limit" means-

- (A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or
- (B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

**(6) Special rule for certain high cost housing area**

In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting "25 percent" for "40 percent".

**(7) Certification to Secretary**

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652(j).

**(e) Facilities for the furnishing of water**

For purposes of subsection (a)(4), the term "facilities for the furnishing of water" means any facility for the furnishing of water if-

- (1) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and
- (2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

**(f) Local furnishing of electric energy or gas**

For purposes of subsection (a)(8)-

**(1) In general**

The local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of-

- (A) a city and 1 contiguous county, or
- (B) 2 contiguous counties.

**(2) Treatment of certain electric energy transmitted outside local area**

**(A) In general**

A facility shall not be treated as failing to meet the local furnishing requirement of subsection (a)(8) by reason of electricity transmitted pursuant to an order of the Federal Energy Regulatory Commission under section 211 or 213 of the Federal Power Act (as in effect on the date of the enactment of this paragraph) if the portion of the cost of the facility financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph).

**(B) Special rule for existing facilities**

In the case of a facility financed with bonds issued before the date of an order referred to in subparagraph (A) which would (but for this subparagraph) cease to be tax-exempt by reason of subparagraph (A), such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if, to the extent necessary to comply with subparagraph (A)-

- (i) an escrow to pay principal of, premium (if any), and interest on the bonds is established within a reasonable period after the date such order becomes final, and
- (ii) bonds are redeemed not later than the earliest date on which such bonds may be redeemed.

**(3) Termination of future financing**

For purposes of this section, no bond may be issued as part of an issue described in subsection (a)(8) with respect to a facility for the local furnishing of electric energy or gas on or after the date of the enactment of this paragraph unless-

**(A) the facility will-**

- (i) be used by a person who is engaged in the local furnishing of that energy source on January 1, 1997, and
- (ii) be used to provide service within the area served by such person on January 1, 1997 (or within a county or city any portion of which is within such area), or

(B) the facility will be used by a successor in interest to such person for the same use and within the same service area as described in subparagraph (A).

**(4) Election to terminate tax-exempt bond financing by certain furnishers**

**(A) In general**

In the case of a facility financed with bonds issued before the date of the enactment of this paragraph which would cease to be tax-exempt by reason of the failure to meet the local furnishing requirement of subsection (a)(8) as a result of a service area expansion, such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if the person engaged in such local furnishing by such facility makes an election described in subparagraph (B).

**(B) Election**

An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person (or its predecessor in interest) agrees that-

- (i) such election is made with respect to all facilities for the local furnishing of electric energy or gas, or both, by such person,
- (ii) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to all such facilities of such person,
- (iii) any expansion of the service area-
  - (I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8), and
  - (II) is not treated as a nonqualifying use under the rules of paragraph (2), and

(iv) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of-

- (I) the earliest date on which such bonds may be redeemed, or
- (II) the date of the election.

**(C) Related persons**

For purposes of this paragraph, the term "person" includes a group of related persons (within the meaning of section 144(a)(3)) which includes such person.

**(g) Local district heating or cooling facility**



**(1) In general**

For purposes of subsection (a)(9), the term "local district heating or cooling facility" means property used as an integral part of a local district heating or cooling system.

**(2) Local district heating or cooling system**

**(A) In general**

For purposes of paragraph (1), the term "local district heating or cooling system" means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for-

- (i) residential, commercial, or industrial heating or cooling, or
- (ii) process steam.

**(B) Local system**

For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

**(h) Qualified hazardous waste facilities**

For purposes of subsection (a)(10), the term "qualified hazardous waste facility" means any facility for the disposal of hazardous waste by incineration or entombment but only if-

- (1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and
- (2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than-
  - (A) the owner or operator of such facility, and
  - (B) any related person (within the meaning of section 144(a)(3)) to such owner or operator.

**(i) High-speed intercity rail facilities**

**(1) In general**

For purposes of subsection (a)(11), the term "high-speed intercity rail facilities" means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B)) using vehicles that are reasonably expected to be capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

**(2) Election by nongovernmental owners**

A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim-

- (A) any deduction under section 167 or 168, and
- (B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

**(3) Use of proceeds**

A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue.

**(j) Environmental enhancements of hydroelectric generating facilities**

**(1) In general**

For purposes of subsection (a)(12), the term "environmental enhancements of hydroelectric generating facilities" means property-

- (A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and
- (B) which-
  - (i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or
  - (ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

**(2) Use of proceeds**

A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i).

**(k) Qualified public educational facilities**

**(1) In general**

For purposes of subsection (a)(13), the term "qualified public educational facility" means any school facility which is-

- (A) part of a public elementary school or a public secondary school, and
- (B) owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local educational agency described in paragraph (2).

**(2) Public-private partnership agreement described**

A public-private partnership agreement is described in this paragraph if it is an agreement-

- (A) under which the corporation agrees-
  - (i) to do 1 or more of the following: construct, rehabilitate, refurbish, or equip a school facility, and
  - (ii) at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and

(B) the term of which does not exceed the term of the issue to be used to provide the school facility.

**(3) School facility**

For purposes of this subsection, the term "school facility" means-

- (A) any school building,
- (B) any functionally related and subordinate facility and land with respect to such building, including any stadium or other facility primarily used for school events, and
- (C) any property, to which section 168 applies (or would apply but for section 179), for use in a facility described in subparagraph (A) or (B).

**(4) Public schools**

For purposes of this subsection, the terms "elementary school" and "secondary school" have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as in effect on the date of the enactment of this subsection.

**(5) Annual aggregate face amount of tax-exempt financing**

**(A) In general**

An issue shall not be treated as an issue described in subsection (a)(13) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds an amount equal to the greater of-

- (i) \$10 multiplied by the State population, or
- (ii) \$5,000,000.

**(B) Allocation rules**

**(i) In general**

Except as otherwise provided in this subparagraph, the State may allocate the amount described in subparagraph (A) for any calendar year in such manner as the State determines appropriate.

**(ii) Rules for carryforward of unused limitation**

A State may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146(f), except that the only purpose for which the carryforward may be elected is the issuance of exempt facility bonds described in subsection (a)(13).

**(I) Qualified green building and sustainable design projects**

**(1) In general**

For purposes of subsection (a)(14), the term "qualified green building and sustainable design project" means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

**(2) Designations**

**(A) In general**

Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

**(B) Minimum conservation and technology innovation objectives**

The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall-

- (i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,
- (ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,
- (iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and
- (iv) use at least 25 megawatts of fuel cell energy generation.

### **(3) Limited designations**

A project may not be designated under this subsection unless-

(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

### **(4) Application**

#### **(A) In general**

A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

#### **(i) Green building and sustainable design**

At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

#### **(ii) Brownfield redevelopment**

The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

#### **(iii) State and local support**

The project receives specific State or local government resources which will support the project in an amount equal to at least \$5,000,000. For purposes of the preceding sentence, the term "resources" includes tax abatement benefits and contributions in kind.

#### **(iv) Size**

The project includes at least one of the following:

(I) At least 1,000,000 square feet of building.

(II) At least 20 acres.

#### **(v) Use of tax benefit**

The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

(II) Compliance with certification standards cited under clause (i).

(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

#### **(vi) Prohibited facilities**

An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

#### **(vii) Employment**

The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

**(B) Project description**

Each application described in subparagraph (A) shall contain for each project a description of-

- (i) the amount of electric consumption reduced as compared to conventional construction,
- (ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,
- (iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and
- (iv) the amount, in megawatts, of the project's fuel cell energy generation.

**(5) Certification of use of tax benefit**

No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

**(6) Definitions**

For purposes of this subsection-

**(A) Rural State**

The term "rural State" means any State which has-

- (i) a population of less than 4,500,000 according to the 2000 census,
- (ii) a population density of less than 150 people per square mile according to the 2000 census, and
- (iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

**(B) Local government**

The term "local government" has the meaning given such term by section 1393(a)(5).

**(C) Net benefit of tax-exempt financing**

The term "net benefit of tax-exempt financing" means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

**(7) Aggregate face amount of tax-exempt financing**

**(A) In general**

An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

**(B) Limitation on amount of bonds**

The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding \$2,000,000,000.

**(8) Termination**

Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2012.

**(9) Treatment of current refunding bonds**

Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2012, if-

- (A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,
- (B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and
- (C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

**(m) Qualified highway or surface freight transfer facilities**

**(1) In general**

For purposes of subsection (a)(15), the term "qualified highway or surface freight transfer facilities" means-

(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),

(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or

(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United

States Code (as so in effect).

**(2) National limitation on amount of tax-exempt financing for facilities**

**(A) National limitation**

The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed \$30,000,000,000.

**(B) Enforcement of national limitation**

An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under subparagraph (C).

**(C) Allocation by Secretary of Transportation**

The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.

**(3) Expenditure of proceeds**

An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified highway or surface freight transfer facilities within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

**(4) Exception for current refunding bonds**

Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(15) if-

- (A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,
- (B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and
- (C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

**(n) Qualified broadband project**

**(1) In general**

For purposes of subsection (a)(16), the term "qualified broadband project" means any project which-

- (A) is designed to provide broadband service solely to 1 or more census block groups in which more than 50 percent of residential households do not have access to fixed, terrestrial broadband service which delivers at least 25 megabits per second downstream and at least 3 megabits service upstream, and
- (B) results in internet access to residential locations, commercial locations, or a combination of residential and commercial locations at speeds not less than 100 megabits per second for downloads and 20 megabits for second for uploads, but only if at least 90 percent of the locations provided such access under the project are locations where, before the project, a broadband service provider-
  - (i) did not provide service, or
  - (ii) did not provide service meeting the minimum speed requirements described in subparagraph (A).

**(2) Notice to broadband providers**

A project shall not be treated as a qualified broadband project unless, before the issue date of any issue the proceeds of which are to be used to fund the project, the issuer-

- (A) notifies each broadband service provider providing broadband service in the area within which broadband services are to be provided under the project of the project and its intended scope,
- (B) includes in such notice a request for information from each such provider with respect to the provider's ability to deploy, manage, and maintain a broadband network capable of providing gigabit capable Internet access to residential or commercial locations, and
- (C) allows each such provider at least 90 days to respond to such notice and request.

**(o) Qualified carbon dioxide capture facility**

**(1) In general**

For purposes of subsection (a)(17), the term "qualified carbon dioxide capture facility" means-

- (A) the eligible components of an industrial carbon dioxide facility, and
- (B) a direct air capture facility (as defined in section 45Q(e)(3)).

**(2) Definitions**

For purposes of this subsection:

**(A) Eligible component**

**(i) In general**

The term "eligible component" means any equipment which is installed in an industrial carbon dioxide facility that satisfies the requirements under paragraph (3) and which is-

(I) used for the purpose of capture, treatment and purification, compression, transportation, or on-site storage of carbon dioxide produced by the industrial carbon dioxide facility, or

(II) integral or functionally related and subordinate to a process which converts a solid or liquid product from coal, petroleum residue, biomass, or other materials which are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon dioxide and hydrogen for direct use or subsequent chemical or physical conversion.

**(ii) Definitions**

For purposes of this subparagraph-

**(I) Biomass**

**(aa) In general**

The term "biomass" means any-

(AA) agricultural or plant waste,

(BB) byproduct of wood or paper mill operations, including lignin in spent pulping liquors, and

(CC) other products of forestry maintenance.

**(bb) Exclusion**

The term "biomass" does not include paper which is commonly recycled.

**(II) Coal**

The term "coal" means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

**(B) Industrial carbon dioxide facility**

**(i) In general**

Except as provided in clause (ii), the term "industrial carbon dioxide facility" means a facility that emits carbon dioxide (including from any fugitive emissions source) that is created as a result of any of the following processes:

(I) Fuel combustion.

(II) Gasification.

(III) Bioindustrial.

(IV) Fermentation.

(V) Any manufacturing industry relating to-

(aa) chemicals,

(bb) fertilizers,

(cc) glass,

(dd) steel,

(ee) petroleum residues,

(ff) forest products,

(gg) agriculture, including feedlots and dairy operations, and

(hh) transportation grade liquid fuels.

**(ii) Exceptions**

For purposes of clause (i), an industrial carbon dioxide facility shall not include-

(I) any geological gas facility, or

(II) any air separation unit that-

(aa) does not qualify as gasification equipment, or

(bb) is not a necessary component of an oxy-fuel combustion process.

**(iii) Definitions**

For purposes of this subparagraph-

**(I) Petroleum residue**

The term "petroleum residue" means the carbonized product of high-boiling hydrocarbon fractions obtained in petroleum processing.

**(II) Geological gas facility**

The term "geological gas facility" means a facility that-

(aa) produces a raw product consisting of gas or mixed gas and liquid from a geological formation,

(bb) transports or removes impurities from such product, or

(cc) separates such product into its constituent parts.

### **(3) Special rule for facilities with less than 65 percent capture and storage percentage**

#### **(A) In general**

Subject to subparagraph (B), the eligible components of an industrial carbon dioxide facility satisfies the requirements of this paragraph if such eligible components are designed to have a capture and storage percentage (as determined under subparagraph (C)) that is equal to or greater than 65 percent.

#### **(B) Exception**

In the case of an industrial carbon dioxide facility designed with a capture and storage percentage that is less than 65 percent, the percentage of the cost of the eligible components installed in such facility that may be financed with tax-exempt bonds may not be greater than the designed capture and storage percentage.

#### **(C) Capture and storage percentage**

##### **(i) In general**

Subject to clause (ii), the capture and storage percentage shall be an amount, expressed as a percentage, equal to the quotient of-

- (I) the total metric tons of carbon dioxide designed to be annually captured, transported, and injected into-
  - (aa) a facility for geologic storage, or
  - (bb) an enhanced oil or gas recovery well followed by geologic storage, divided by

(II) the total metric tons of carbon dioxide which would otherwise be released into the atmosphere each year as industrial emission of greenhouse gas if the eligible components were not installed in the industrial carbon dioxide facility.

##### **(ii) Limited application of eligible components**

In the case of eligible components that are designed to capture carbon dioxide solely from specific sources of emissions or portions thereof within an industrial carbon dioxide facility, the capture and storage percentage under this subparagraph shall be determined based only on such specific sources of emissions or portions thereof.

### **(4) Regulations**

The Secretary shall issue such regulations or other guidance as are necessary to carry out the provisions of this subsection, including methods for determining costs attributable to an eligible component for purposes of paragraph (3)(A).

(Added Pub. L. 99-514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2606 ; amended Pub. L. 100-647, title I, §1013(a)(1), (39), title VI, §6180(a)-(b)(2), Nov. 10, 1988, 102 Stat. 3537 , 3544, 3727, 3728; Pub. L. 101-239, title VII, §§7108(e)(3), (n)(1), 7816(s)(1), Dec. 19, 1989, 103 Stat. 2313 , 2318, 2423; Pub. L. 102-486, title XIX, §§1919(a), 1921(a), (b)(1), (2), Oct. 24, 1992, 106 Stat. 3025 , 3027, 3028; Pub. L. 104-188, title I, §§1608(a), 1704(j)(7), Aug. 20, 1996, 110 Stat. 1840 , 1882; Pub. L. 105-206, title VI, §6023(5), July 22, 1998, 112 Stat. 825 ; Pub. L. 107-16, title IV, §422(a), (b), June 7, 2001, 115 Stat. 65 ; Pub. L. 108-357, title VII, §701(a), (b), Oct. 22, 2004, 118 Stat. 1536 ; Pub. L. 109-59, title XI, §11143(a), (b), Aug. 10, 2005, 119 Stat. 1963 ; Pub. L. 109-222, title II, §209(b)(2), May 17, 2006, 120 Stat. 352 ; Pub. L. 110-289, div. C, title I, §§3005(a), 3008(a)-(c), 3009(a), 3010(a), July 30, 2008, 122 Stat. 2885-2888 ; Pub. L. 110-343, div. B, title III, §307(a), (b), Oct. 3, 2008, 122 Stat. 3849 ; Pub. L. 111-5, div. B, title I, §1504(a), Feb. 17, 2009, 123 Stat. 355 ; Pub. L. 115-141, div. U, title IV, §401(a)(47), Mar. 23, 2018, 132 Stat. 1186 ; Pub. L. 117-58, div. H, title IV, §§80401(a), (b), 80402(a), (b), 80403(a), Nov. 15, 2021, 135 Stat. 1330 , 1331, 1335; Pub. L. 117-169, title I, §13104(a)(2)(B), Aug. 16, 2022, 136 Stat. 1925 .)

### **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Section 8 of the United States Housing Act of 1937, referred to in subsec. (d)(2)(A)(iii), (B)(i), (4)(C)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

Sections 211 and 213 of the Federal Power Act, referred to in subsec. (f)(2)(A), are classified to sections 824j and 824l, respectively, of Title 16, Conservation.

The date of the enactment of this paragraph, referred to in subsec. (f)(2)(A), is the date of enactment of Pub. L. 102-486, which was approved Oct. 24, 1992.

The date of the enactment of this paragraph, referred to in subsec. (f)(3), (4)(A), (B)(ii), is the date of enactment of Pub. L. 104-188, which was approved Aug. 20, 1996.

The Solid Waste Disposal Act, referred to in subsec. (h)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997 , as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795 . Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.



The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (h)(1), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

Section 14101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (k)(4), is section 14101 of Pub. L. 89-10, which was classified to section 8801 of Title 20, Education, prior to repeal by Pub. L. 107-110, title X, §1011(5)(C), Jan. 8, 2002, 115 Stat. 1986.

The date of the enactment of this subsection, referred to in subsec. (k)(4), means the date of enactment of Pub. L. 107-16, which was approved June 7, 2001.

The enactment of this subsection, referred to in subsec. (l)(3)(A), probably means the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

The date of the enactment of this subsection, referred to in subsec. (m)(1)(A), is the date of enactment of Pub. L. 109-59, which was approved Aug. 10, 2005.

## **PRIOR PROVISIONS**

A prior section 142, act Aug. 16, 1954, ch. 736, 68A Stat. 40, enumerated individuals not eligible for standard deduction, prior to repeal by Pub. L. 95-30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

## **AMENDMENTS**

**2022-Subsec. (o)(1)(B).** Pub. L. 117-169 substituted "section 45Q(e)(3)" for "45Q(e)(1)".

**2021-Subsec. (a)(16).** Pub. L. 117-58, §80401(a), added par. (16).

**Subsec. (a)(17).** Pub. L. 117-58, §80402(a), added par. (17).

**Subsec. (m)(2)(A).** Pub. L. 117-58, §80403(a), substituted "\$30,000,000,000" for "\$15,000,000,000".

**Subsec. (n).** Pub. L. 117-58, §80401(b), added subsec. (n).

**Subsec. (o).** Pub. L. 117-58, §80402(b), added subsec. (o).

**2018-Subsec. (d)(2)(C).** Pub. L. 115-141 inserted "section" before "42(i)(3)(D)".

**2009-Subsec. (i)(1).** Pub. L. 111-5 substituted "be capable of attaining a maximum speed in excess of" for "operate at speeds in excess of".

**2008-Subsec. (d)(2)(B).** Pub. L. 110-289, §3005(a), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) to (iv).

**Subsec. (d)(2)(C).** Pub. L. 110-289, §3008(b), added subpar. (C).

**Subsec. (d)(2)(D).** Pub. L. 110-289, §3008(c), added subpar. (D).

**Subsec. (d)(2)(E).** Pub. L. 110-289, §3009(a), added subpar. (E).

**Subsec. (d)(3)(A).** Pub. L. 110-289, §3010(a), inserted at end "The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit."

**Subsec. (d)(3)(C).** Pub. L. 110-289, §3008(a), added subpar. (C).

**Subsec. (l)(8).** Pub. L. 110-343, §307(a), substituted "September 30, 2012" for "September 30, 2009".

**Subsec. (l)(9).** Pub. L. 110-343, §307(b), substituted "October 1, 2012" for "October 1, 2009".

**2006-Subsec. (d)(2)(B).** Pub. L. 109-222 substituted "Subsections (g) and (h) of section 7872" for "Section 7872(g)".

**2005-Subsec. (a)(15).** Pub. L. 109-59, §11143(a), added par. (15).

**Subsec. (m).** Pub. L. 109-59, §11143(b), added subsec. (m).

**2004-Subsec. (a)(14).** Pub. L. 108-357, §701(a), added par. (14).

**Subsec. (l).** Pub. L. 108-357, §701(b), added subsec. (l).

**2001-Subsec. (a)(13).** Pub. L. 107-16, §422(a), added par. (13).

**Subsec. (k).** Pub. L. 107-16, §422(b), added subsec. (k).

**1998-Subsec. (f)(3)(A)(ii).** Pub. L. 105-206 struck out comma after "1997".

**1996-Subsec. (b)(1)(A).** Pub. L. 104-188, §1704(j)(7), provided that section 1921(b)(2) of Pub. L. 102-486 shall be applied as if a comma appeared after "(2)" in the material proposed to be stricken. See 1992 Amendment note below.

**Subsec. (f)(3), (4).** Pub. L. 104-188, §1608(a), added pars. (3) and (4).

**1992-Subsec. (a)(12).** Pub. L. 102-486, §1921(a), added par. (12).

**Subsec. (b)(1)(A).** Pub. L. 102-486, §1921(b)(2), which directed the substitution of "(2), (3), or (12)" for "(2) or (3)", was executed by making the substitution for "(2), or (3)". See 1996 Amendment note above.

**Subsec. (f).** Pub. L. 102-486, §1919(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of subsection (a)(8), the local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of-

"(1) a city and 1 contiguous county, or

"(2) 2 contiguous counties."

**Subsec. (j).** Pub. L. 102-486, §1921(b)(1), added subsec. (j).



1989-Subsec. (d)(2)(B). Pub. L. 101-239, §7108(e)(3), inserted at end "Section 7872(g) shall not apply in determining the income of individuals under this subparagraph."

Subsec. (d)(4)(B)(iii). Pub. L. 101-239, §7108(n)(1), substituted "exceed ½" for "exceed 1/3".

Subsec. (i)(1). Pub. L. 101-239, §7816(s)(1), inserted heading "In general".

1988-Subsec. (a)(11). Pub. L. 100-647, §6180(a), added par. (11).

Subsec. (b)(1)(B)(ii). Pub. L. 100-647, §1013(a)(39), inserted "section" before "168(i)(3)".

Subsec. (c). Pub. L. 100-647, §6180(b)(2), substituted "mass commuting facilities and high-speed intercity rail facilities" for "and mass commuting facilities" in heading and substituted "paragraph (1), (2), (3) or (11) of subsection (a)" for "paragraph (1), (2), or (3) of subsection (a)" in par. (1) and in introductory text of par. (2).

Subsec. (d)(4)(B)(iii). Pub. L. 100-647, §1013(a)(1), substituted "average gross rent" for "average rent".

Subsec. (i). Pub. L. 100-647, §6180(b)(1), added subsec. (i).

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF 2022 AMENDMENT**

Amendment by Pub. L. 117-169 applicable to facilities or equipment the construction of which begins after Aug. 16, 2022, see section 13104(i)(2) of Pub. L. 117-169, set out in a note under section 45Q of this title.

#### **EFFECTIVE DATE OF 2021 AMENDMENT**

Pub. L. 117-58, div. H, title IV, §80401(d), Nov. 15, 2021, 135 Stat. 1331, provided that: "The amendments made by this section [amending this section and section 146 of this title] shall apply to obligations issued in calendar years beginning after the date of the enactment of this Act [Nov. 15, 2021]."

Amendment by section 80402(a), (b) of Pub. L. 117-58 applicable to obligations issued after Dec. 31, 2021, see section 80402(f) of Pub. L. 117-58, set out as a note under section 45Q of this title.

Pub. L. 117-58, div. H, title IV, §80403(b), Nov. 15, 2021, 135 Stat. 1335, provided that: "The amendment made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 15, 2021]."

#### **EFFECTIVE DATE OF 2009 AMENDMENT**

Pub. L. 111-5, div. B, title I, §1504(b), Feb. 17, 2009, 123 Stat. 355, provided that: "The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009]."

#### **EFFECTIVE DATE OF 2008 AMENDMENT**

Pub. L. 110-289, div. C, title I, §3005(b), July 30, 2008, 122 Stat. 2885, as amended by Pub. L. 112-240, title III, §303(a), Jan. 2, 2013, 126 Stat. 2329; Pub. L. 113-295, div. A, title I, §113(a), Dec. 19, 2014, 128 Stat. 4014; Pub. L. 114-113, div. Q, title I, §132(a), Dec. 18, 2015, 129 Stat. 3055, provided that: "The amendments made by this section [amending this section] shall apply to-

"(1) determinations made after the date of the enactment of this Act [July 30, 2008], in the case of any qualified building (as defined in section 142(d)(2)(B)(iii) of the Internal Revenue Code of 1986)-

"(A) with respect to which housing credit dollar amounts have been allocated on or before the date of the enactment of this Act [July 30, 2008], or

"(B) with respect to buildings placed in service before such date of enactment, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued before such date of enactment, and

"(2) determinations made after the date of enactment of this Act [July 30, 2008], in the case of qualified buildings (as so defined)-

"(A) with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008], or

"(B) with respect to which buildings placed in service after the date of enactment of this Act [July 30, 2008], to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date of enactment."

[ Pub. L. 114-113, div. Q, title I, §132(b), Dec. 18, 2015, 129 Stat. 3055, provided that: "The amendments made by this section [amending section 3005(b) of Pub. L. 110-289, set out above] shall take effect as if included in the enactment of section 3005 of the Housing Assistance Tax Act of 2008 [div. C of Pub. L. 110-289]."]

[ Pub. L. 113–295, div. A, title I, §113(b), Dec. 19, 2014, 128 Stat. 4014 , provided that: "The amendment made by this section [amending section 3005(b) of Pub. L. 110–289, set out above] shall take effect as if included in the enactment of section 3005 of the Housing Assistance Tax Act of 2008 [div. C of Pub. L. 110–289]."]

[ Pub. L. 112–240, title III, §303(b), Jan. 2, 2013, 126 Stat. 2329 , provided that: "The amendment made by this section [amending section 3005(b) of Pub. L. 110–289, set out above] shall take effect as if included in the enactment of section 3005 of the Housing Assistance Tax Act of 2008 [div. C of Pub. L. 110–289]."]

Pub. L. 110–289, div. C, title I, §3008(d), July 30, 2008, 122 Stat. 2887 , provided that: "The amendments made by this section [amending this section] shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act [July 30, 2008], with respect to bonds issued before, on, or after such date."

Pub. L. 110–289, div. C, title I, §3009(b), July 30, 2008, 122 Stat. 2888 , provided that: "The amendment made by this section [amending this section] shall apply to determinations of area median gross income for calendar years after 2008."

Pub. L. 110–289, div. C, title I, §3010(b), July 30, 2008, 122 Stat. 2888 , provided that: "The amendment made by this section [amending this section] shall apply to years ending after the date of the enactment of this Act [July 30, 2008]."

#### **EFFECTIVE DATE OF 2006 AMENDMENT**

Pub. L. 109–222, title II, §209(c), May 17, 2006, 120 Stat. 352 , provided that: "The amendment made by this section [amending this section and section 7872 of this title] shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date."

#### **EFFECTIVE DATE OF 2005 AMENDMENT**

Pub. L. 109–59, title XI, §11143(d), Aug. 10, 2005, 119 Stat. 1965 , provided that: "The amendments made by this section [amending this section and section 146 of this title] apply to bonds issued after the date of the enactment of this Act [Aug. 10, 2005]."

#### **EFFECTIVE DATE OF 2004 AMENDMENT**

Pub. L. 108–357, title VII, §701(e), Oct. 22, 2004, 118 Stat. 1540 , provided that: "The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after December 31, 2004."

#### **EFFECTIVE DATE OF 2001 AMENDMENT**

Pub. L. 107–16, title IV, §422(f), June 7, 2001, 115 Stat. 66 , provided that: "The amendments made by this section [amending this section and sections 146 and 147 of this title] shall apply to bonds issued after December 31, 2001."

#### **EFFECTIVE DATE OF 1992 AMENDMENT**

Pub. L. 102–486, title XIX, §1919(b), Oct. 24, 1992, 106 Stat. 3026 , provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued before, on, or after the date of the enactment of this Act [Oct. 24, 1992]."

Pub. L. 102–486, title XIX, §1921(c), Oct. 24, 1992, 106 Stat. 3028 , provided that: "The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [Oct. 24, 1992]."

#### **EFFECTIVE DATE OF 1989 AMENDMENT**

Amendment by section 7108(e)(3), (n)(1) of Pub. L. 101–239 applicable, except as otherwise provided, to determinations under section 42 of this title with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989, see section 7108(r) of Pub. L. 101–239, set out as a note under section 42 of this title.

Amendment by section 7816(s) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by section 1013(a)(1), (39) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VI, §6180(c), Nov. 10, 1988, 102 Stat. 3728 , provided that: "The amendments made by this section [amending sections 142, 146, and 147 of this title] shall apply to bonds issued after the date of enactment of this Act [Nov. 10, 1988]."

### **ACCOUNTABILITY**

Pub. L. 108-357, title VII, §701(d), Oct. 22, 2004, 118 Stat. 1539 , as amended by Pub. L. 110-343, div. B, title III, §307(c), Oct. 3, 2008, 122 Stat. 3849 , provided that: "Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance of the last issue with respect to such project, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury."

### **NO INFERENCE WITH RESPECT TO OUTSTANDING BONDS FROM USE OF TERM "PERSON"**

Pub. L. 104-188, title I, §1608(b), Aug. 20, 1996, 110 Stat. 1841 , provided that: "The use of the term 'person' in section 142(f)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall not be construed to affect the tax-exempt status of interest on any bonds issued before the date of the enactment of this Act [Aug. 20, 1996]."

### **TAX-EXEMPT BONDS FOR SALE OF ALASKA POWER ADMINISTRATION FACILITY**

Pub. L. 104-188, title I, §1804, Aug. 20, 1996, 110 Stat. 1893 , provided that: "Sections 142(f)(3) (as added by section 1608) and 147(d) of the Internal Revenue Code of 1986 shall not apply in determining whether any private activity bond issued after the date of the enactment of this Act [Aug. 20, 1996] and used to finance the acquisition of the Snettisham hydroelectric project from the Alaska Power Administration is a qualified bond for purposes of such Code."

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AGENCY: State Fiscal Accountability Authority, Executive Director

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SUBJECT: South Carolina State Ceiling Allocation Plan – 2023 Administrative Updates

The Authority adopted the 2023 South Carolina State Ceiling Allocation Plan on August 30, 2022. Section C requires that the Authority Secretary administratively update the annual State Ceiling Allocation Plan by the second Monday in January. On January 9, 2023, the Authority Secretary published an “Administratively Updated 2023 South Carolina State Ceiling Allocation Plan”. This revision updates (1) Section D to reflect the total state ceiling as certified by the Authority Secretary pursuant to Section 1-11-500; (2) Section D to recalculate the limits on authorized requests using the total state ceiling for the Plan Year; (3) Section E to reflect the now current amounts identified in that section; (4) Section E to add the amount of any carryforward designated in the prior calendar year pursuant to Section 1-11-250(G), and (5) Section G to recalculate the dollar amounts based on the actual certified amount of state ceiling for the Plan year.

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AUTHORITY ACTION REQUESTED:

Receive as information the administratively updated 2023 State Ceiling Allocation Plan.

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ATTACHMENTS:

1. Administratively updated 2023 South Carolina State Ceiling Allocation Plan

# 2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C

## SECTION A. CONVENTIONS, DEFINITIONS AND EXHIBITS

*Authorized Request* includes any request submitted pursuant to §1-11-530(A) or (b) and any request for Issuance Approval as defined below using prior year carryforward.

*Issuance approval* means approval by the State Authority for the issuance by State Housing of private activity bonds for a multi-family housing project, as required by Section 31-13-90.

*Plan Year* refers to the year to which this plan applies, which is noted in the header on each page.

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*Commerce* means the South Carolina Department of Commerce.

*Committee* means the Joint Bond Review Committee.

*Secretary* means the Secretary of the State Fiscal Accountability Authority.

*State Authority* means the State Fiscal Accountability Authority.

*State Housing* means the State Housing Finance Development Authority.

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Exhibit	Subject
A	Competitive Criteria for Industrial and Economic Development Projects, and Projects Proposed for Other Qualified Purposes
B	Competitive Criteria for Multi-family Housing Projects
C	Evaluation and Ranking Report Format for Multi-family Housing Projects

## SECTION B. AUTHORITY AND ADOPTION

The State Authority approved this plan at its meeting of August 30, 2022. Unless the State Authority provides otherwise herein, the Plan is effective upon adoption.

The Committee favorably reviewed this plan at its meeting of August 23, 2022.

Section 1-11-520(A) requires the annual publication of a State Ceiling Allocation Plan no later than September thirtieth of the year preceding the Plan Year. The State Authority intends to adopt each year's plan at its last regularly scheduled meeting prior to September thirtieth.

## SECTION C. PLAN UPDATES AND AMENDMENTS; PLAN PUBLICATION

### Administrative Updates

The Plan may be updated administratively as provided herein. An administrative update authorized by this plan is deemed not to constitute an amendment to the Plan.

# **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

By the second Monday in January, the Secretary shall publish an administrative update of the plan that (a) updates Section D to state the actual certified amount of state ceiling for the Plan Year, (b) updates Section D to recalculate the limits on authorized requests using the total state ceiling for the Plan Year, (c) updates Section E to state the then-current amounts identified in that Section (d) adds to Section E the amount of any carryforward designated in the prior calendar year pursuant to Section 1-11-520(G), and (e) using the Category Percentages previously approved, recalculates the dollar amounts in Section G based on the actual certified amount of state ceiling for the Plan year.

At the State Authority's first regularly scheduled meeting for the Plan Year, the Secretary will submit a summary of the updates to the State Authority as an informational agenda item.

## **Plan Amendments**

The Plan may be amended as allowed by Title 1, Chapter 11. Section 1-11-520 expressly contemplates amendments to the annual allocation plan upon a finding of exceptional and compelling circumstances by the State Authority. Amendments are subject to review and comment by the Committee. See Section H.

## **Publication of the Plan**

Section 1-11-520(A) requires the State Authority to publish the plan. Once approved, the Secretary is directed to publish the approved plan, as well as any amendment or update, by posting it to the State Authority's website. The initial plan and every update or amendment shall remain on the State Authority's website until the end of the Plan Year.

All updates or amendments shall be sequentially numbered. With each update or amendment, the header shall be revised to include the number and date of the update or amendment, as applicable.

## **SECTION D. DETERMINATION OF STATE CEILING AND LIMITS ON STATE CEILING FOR AUTHORIZED REQUESTS**

The total state ceiling on the issuance of private activity bonds for the year preceding this Plan Year is \$633,916,080, as certified by the Secretary pursuant to Section 1-11-500.

The amount of state ceiling that may be allocated to an authorized request may not exceed 10% of the total state ceiling (\$63,391,608) in the case of an industrial or economic development project, or 5% (\$31,695,804) for any other authorized request.

The total state ceiling for the Plan Year will not be known until the January following the plan's adoption; accordingly, for purposes of the plan's publication, the State Authority will use the state ceiling for the year in which the plan is published. As reflected above, the limits on authorized requests are calculated against the total state ceiling for the year preceding this Plan Year. As reflected in Section E below, the plan will also use an estimate of the carryforward the Secretary anticipates will be unused and available for the Plan Year. These and other tentative amounts will be updated pursuant to Section C.

# 2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C

## SECTION E. DETERMINATION OF AMOUNTS SUBJECT TO THIS ALLOCATION PLAN

As provided in Item 7 of Section P, a multi-family housing project using carryforward allocated to State Housing in prior years must appear on the list of projects evaluated and ranked by State Housing at the time State Housing requests issuance approval. Accordingly, and in addition to the amount determined pursuant to Section 1-11-500, certain amounts available from carryforward from prior years and other adjustments are subject to the provisions of this Allocation Plan, as follows:

Amount determined pursuant to Section 1-11-500	\$633,916,080
Less amounts previously allocated	(0)
Plus amounts expired, relinquished, revoked, or otherwise not utilized for issuance	0
Plus amounts carried forward from prior calendar years that remain unused:	
Allocated to Multi-Family Housing (2020; expires 2023)	\$296,753,232
Allocated to Multi-Family Housing (2021; expires 2024)	2,839,401
Allocated to Multi-Family Housing (2022; expires 2025)	<u>\$200,977,550</u>
Total	\$1,134,486,263*

## SECTION F. ALLOCATION PERIODS

Pursuant to Section 1-11-520(B), the State Authority hereby provides for two (2) allocation periods and hereby designates February 1 and August 1 as allocation dates, on which 50% of the state ceiling assigned to each category is made available for subsequent allocation to authorized requests.

Authorized requests for an allocation of state ceiling, as well as requests for issuance approval for projects using carryforward from prior years will be made only at the meeting of the State Authority immediately following each allocation date.

## SECTION G. CATEGORIES OF PERMITTED PURPOSES; PERCENTAGE ASSIGNMENTS TO CATEGORIES

In accordance with Section 1-11-520(A), the State Authority adopts the following categories of permitted purposes and assigns percentages of the current-year state ceiling to those categories.

Categories of Permitted Purposes <sup>1</sup>	Category Percentage	Category Amount	Amount Available for Allocation on or after	Amount Available for Allocation on or after August 1 of the Plan Year

\* The State Authority allocated and designated as carryforward \$570,977,550 of the 2022 state ceiling to State Housing on December 31, 2022. Of that amount, State Housing elected to apply \$200,977,550 to its multi-family housing program and \$370,000,000 to its single-family program.

<sup>1</sup> Generally, see IRS Publication 4078 (Rev. 9-2019) for a complete list of permitted purposes prescribed by the IRC.

## 2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C

			February 1 of the Plan Year	
Industrial and Economic Development <sup>2</sup>	40%	\$253,566,432	\$126,783,216	\$126,783,216
Multi-Family Housing <sup>3</sup>	0%	\$0.00	\$0.00	\$0.00
Single-Family Housing <sup>4</sup>	20%	\$126,783,216	\$63,391,608	\$63,391,608
Other Qualified Purposes <sup>5</sup>	40%	\$253,566,432	\$126,783,216	\$126,783,216
Totals	100%	\$633,916,080	\$ 316,958,040	\$ 316,958,040

The above amounts are subject to revisions pursuant to the update required by Section C.

As noted in Section E, there is carryforward available for Multi-Family Housing that will expire during the plan year unless otherwise utilized. Accordingly, no assignment of state ceiling is contemplated for Multi-Family Housing until the available carryforward is exhausted.

If an authorized request submitted to the Secretary cannot be approved pursuant to the then-current plan even with a reassignment pursuant to Section 1-11-520(C), the Secretary is authorized not to place the request on the State Authority's agenda. In such an event, Secretary will notify the State Authority's members as soon as practicable prior to the scheduled meeting date.

### SECTION H. PLAN AMENDMENTS

Any change to the amount of state ceiling allocated to a category that cannot be accomplished by a reassignment pursuant to Section 1-11-520(C) can only be effected by an amendment to the annual allocation plan in accordance with Section 1-11-520(B) following review and comment by the Joint Bond Review Committee.

### SECTION I. EVALUATION AND RANKING BY STATE HOUSING AND COMMERCE

Pursuant to Section 1-11-520(E), the State Authority hereby directs that State Housing perform the periodic evaluation and ranking of all multi-family housing projects involving either an authorized request for state ceiling or a request for issuance approval of bonds using carryforward. In performing this evaluation and ranking, State Housing will use the competitive criteria adopted in this plan and provide a report as described in Exhibit C.

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<sup>2</sup> Facilities for the furnishing of water; sewage facilities; privately owned solid waste disposal facilities; facilities for the local furnishing of electric energy or gas; local district heating or cooling; qualified hazardous waste facilities; qualified enterprise zone facilities; qualified small issue bonds.

<sup>3</sup> Qualified residential rental projects.

<sup>4</sup> Qualified mortgage bonds.

<sup>5</sup> Mass commuting facilities; privately owned high-speed intercity rail facilities; qualified redevelopment bond; and qualified student loan bonds.



# **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

Pursuant to Section 1-11-520(E), the State Authority hereby directs that the South Carolina Department of Commerce perform the periodic evaluation and ranking of any non-housing project involving an authorized request for state ceiling. In performing this evaluation and ranking, Commerce will use the competitive criteria adopted in this plan and provide a report as described herein.

## **SECTION J. SUBMISSION FOR 2023 RANKING**

No request for an allocation of state ceiling will be considered by the State Authority until the project associated with the request has been evaluated and ranked by either State Housing or Commerce, as applicable.

No request for issuance approval for a multi-family housing project using carryforward allocated to State Housing in prior years will be considered by the State Authority until the project has been evaluated and ranked by State Housing. Reference Section E.

Timely submissions are essential for applicants seeking an allocation of state ceiling or approval to issue multi-family housing bonds. Any delay can undermine the ability of the State Authority to timely adopt any plan amendment necessary to modify the category assignments. Reference Section H.

### Industrial and Economic Development

Any Industrial or Economic Development project making an authorized request during an allocation period must submit all necessary information to Commerce by any due date established by Commerce for the applicable allocation period. Once the State Authority adopts a schedule for its regular meetings in the Plan Year, Commerce should announce all applicable due dates for each allocation period.

Not later than the published bond due date for the applicable State Authority meeting, Commerce must provide the State Authority with its allocation recommendations and its evaluation and ranking for any non-housing project seeking an allocation of state ceiling, provided the request was timely received by Commerce.

As noted in Item 6 of Section P below, Commerce must provide the State Authority with written confirmation of the Coordinating Council's allocation recommendations no later than the published bond due date for the applicable State Authority meeting.

### Multi-Family Housing

All multi-family housing projects making an authorized request during an allocation period must submit all necessary information to State Housing by the due date established by State Housing for the applicable allocation period. Once the State Authority adopts a schedule for its regular meetings in the Plan Year, State Housing should announce all applicable due dates for each allocation period.

Not later than the published bond due date for the applicable State Authority meeting, State Housing must provide the State Authority with a report of its evaluation and ranking of all

## **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

projects requesting an allocation of state ceiling and all projects requesting issuance approval for a multi-family housing project using carryforward allocated to State Housing in prior years. State Housing's report must also include its evaluation and ranking of all pending state tax credit applications. The report must include all the information identified in **Exhibit C**.

As noted in Item 7 of Section P below, State Housing must provide the State Authority with written confirmation of its Board's allocation recommendations for State Housing projects no later than the published bond due date for the applicable State Authority meeting.

### **SECTION K. REQUIRED REPORTS**

No later than September 30<sup>th</sup> each year, the State Authority must adopt a plan for the next calendar year. In order to develop that plan, the State Authority needs reliable information before it begins drafting. To gather that information, the State Authority requests the following reports be submitted by August 1<sup>st</sup> of each year.

The State Authority acknowledges that specific project details may not be known in all cases for the coming plan year; accordingly, specificity is expected to the extent known, accompanied by reasonable estimates of anticipated requests.

These reports will also inform any decisions to reassign state ceiling pursuant to section 1-11-520(C), to reallocate by amending the plan pursuant to section 1-11-520(B), or to reserve current-year state ceiling for year-end designation as carryforward.

#### Industrial and Economic Development Bonds

Commerce and the South Carolina Jobs Economic Development Authority (JEDA), in consultation with the South Carolina Coordinating Council for Economic Development (Coordinating Council), must provide a coordinated report for proposed industrial and economic development projects to the State Authority identifying all known requests for state ceiling for the year following the plan year. The response must include the project name,<sup>6</sup> amount of the state ceiling request, year of allocation, and tentative recommendation of Commerce in accordance with the competitive criteria described below.

With its report, Commerce must submit proposed deadlines for the year following the plan year by which those seeking state ceiling for Industrial and Economic Development projects or projects proposed for other qualified purposes must submit their proposals to Commerce in order for Commerce to provide the State Authority with its final ranking and recommendations no later than the bond submission deadline for the meetings at which state ceiling allocation requests will be considered for the applicable allocation period.

Commerce may also submit a request for the State Authority to assign up to 40 percent of state ceiling for Industrial and Economic Development, less any allocation requested for known projects, to accommodate future but presently unidentifiable requests; provided, however, that once known, each such request shall identify the project, amount of the allocation request,

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<sup>6</sup> Or other identifying information in the event the name of the project is not yet public.

## **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

year of allocation, and include a recommendation of Commerce in accordance with the competitive criteria.

JEDA and any other issuer must provide the Secretary with a year-end account of any unused state ceiling from the prior year no later than January 2nd each year.

### **Multi-Family and Single-Family Housing Bonds**

State Housing must provide a report for proposed single-family and multi-family housing projects to the State Authority identifying all pending and expected authorized requests for the year following the plan year. The response must include the project name, amount of the state ceiling request, amount of state tax credit (if any), and year of allocation.

The report must also include recommendations for the amount of carryforward from prior years needed for State Housing to continue each of its programs in the year following the plan year.

With its report, Housing must submit proposed deadlines for the year following the plan year by which those seeking state ceiling for multi-family housing projects must submit their proposals to Housing in order for Housing to provide the State Authority with its final ranking and recommendation no later than the bond submission deadline for the meetings at which state ceiling allocation requests will be considered for the applicable allocation period.

State Housing must provide the Secretary with a year-end account of any unused remaining carryforward from prior years no later than January 2<sup>nd</sup> each year.

### **SECTION L. COMPETITIVE CRITERIA - GENERALLY**

Section 1-11-520(E) requires that the allocation plan establish competitive criteria for allocation of state ceiling to authorized requests, and further provides that competitive criteria may be unique to each category but must be uniform within each category and established to achieve highest value and greatest public benefit.

For purposes of this Allocation Plan, determinations of highest value and greatest public benefit will be made on the basis of the relationship of the state resources requested to the measurable benefit of the proposed project.

### **SECTION M. COMPETITIVE CRITERIA FOR INDUSTRIAL AND ECONOMIC DEVELOPMENT ALLOCATION AND ALLOCATION TO OTHER PERMITTED PURPOSES**

Commerce must provide each year to the State Authority for inclusion in the annual State Ceiling Allocation Plan its recommendations for determining highest value and greatest public benefit for allocation of state ceiling to industrial and economic development projects, and projects proposed for other qualified purposes.

## **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

Determinations of highest value and greatest public benefit must include at a minimum and without limitation such measures as the number of new permanent jobs<sup>7</sup> that will be created by the project; the capital investment of the project sponsor independent of state incentives and resources; and a cost benefit analysis generally reflecting a positive financial benefit to the state. The Coordinating Council must submit its proposed recommendations for the year following the plan year to the State Authority no later than August 1 of the plan year.

Commerce will use these measures to evaluate any ceiling allocation requests for Industrial and Economic Development projects and projects proposed for other qualified purposes, and such evaluations shall be presented to the Coordinating Council for approval at a public meeting.

For projects seeking either local or state discretionary incentives such as fee in lieu of tax arrangements, county industrial development bonds, job development credits and/or state grant funding, a definitive agreement with the Coordinating Council and/or the local government, as applicable, must have been finalized prior to consideration by the State Authority. Such agreements with the Coordinating Council may include a preliminary revitalization, grant performance or other incentive agreement provided that it contains minimum new permanent job and investment commitments by the entity seeking an allocation.

For projects that are not seeking local or state discretionary incentives, such information as is requested and determined by Commerce to be sufficient for Commerce to evaluate the feasibility and competitiveness of the proposal must be submitted to Commerce prior to consideration by the State Authority.

If multiple projects will be submitted for consideration by the State Authority within a single allocation period, Commerce must rank those projects from highest to lowest value and public benefit as determined by provisions of this section.

In addition to the foregoing, Commerce must provide a definitive recommendation for the amount of state ceiling proposed to be allocated to the project, following an affirmative vote of the Coordinating Council in a public meeting.

For the current year, the competitive criteria for Industrial and Economic Development projects recommended by Commerce are adopted by the State Authority, attached as **Exhibit A**, and incorporated into this Plan by reference.

### **SECTION N. COMPETITIVE CRITERIA FOR MULTI-FAMILY HOUSING ALLOCATION**

State Housing must provide each year to the State Authority for inclusion in the State Ceiling Allocation Plan its recommendations for determining highest value and greatest public benefit for allocation of state ceiling to multi-family housing projects.

Determinations of highest value and greatest public benefit must reflect the relationship of the state resources proposed for the project to the affordable housing benefits the project will achieve. Total state resources must include without limitation the amount of state ceiling, any

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<sup>7</sup> Generally, maintenance of existing jobs will not meet this criterion.

## **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

applicable state tax credits, and any other state resources and incentives as are germane and applicable to the project. Affordable housing benefits must include without limitation such facility characteristics as the heated residential square footage, number of bedrooms, and number of tenants the project is designed to serve. A determination of highest value must include a comparison of the state resources to the project's total cost.

State Housing may coordinate these determinations with the applicable Qualified Allocation Plan and any other threshold requirements, policies, or procedures as are consistent with this section.

If multiple multi-family project submissions (for ceiling allocation and/or issuance approval for use of carryforward) will be considered by the State Authority within a single allocation period, State Housing must rank those projects from highest to lowest value and public benefit, as determined by the provisions of this section.

These criteria will be applied uniformly to all multi-family housing projects whether seeking current year ceiling allocation or issuance approval using carryforward. State Housing must submit its proposed recommendations for the coming year to the State Authority no later than August 1 of the plan year.

In addition to the foregoing, State Housing must provide a definitive recommendation for the amount of state ceiling proposed to be allocated to any State Housing project, following an affirmative vote of its governing board in a public meeting.

For the current year, the competitive criteria for Multi-family Housing projects recommended by State Housing are adopted by the State Authority, attached as **Exhibit B**, and incorporated into this Plan by reference.

### **SECTION O. COMPETITIVE CRITERIA FOR SINGLE-FAMILY HOUSING ALLOCATION**

Multiple competing requests during a single allocation period are not expected for submissions in this category. Accordingly, the State Authority has determined that the highest value and greatest public benefit are most appropriately determined at the programmatic level, rather than by allocations to specific requests.

### **SECTION P. SUBMISSION REQUIREMENTS FOR AUTHORIZED REQUESTS**

All submissions for allocation of state ceiling must be complete at the time of submission. The Secretary is authorized not to place any incomplete submission on the agenda. The request must be in accordance with the statutory provisions of Section 1-11-530. In addition to the foregoing, all requests for allocation of state ceiling must meet all of the following requirements, as applicable:

1. If the applicable private activity bonds require approval of the State Authority, the request for allocation of state ceiling must include a contemporaneous request for approval to issue the associated bonds. A request for an allocation of state ceiling associated with a

## **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

contemporaneous request for issuance approval is not complete unless it includes all items required by the State Authority for the issuance approval request.

2. If the applicable private activity bonds require the approval of an entity other than the State Authority, the issuer, or a state constitutional officer, a certified statement from the other approving entity must be submitted with the allocation request. For example, an issuance of bonds by the Jobs-Economic Development Authority must be approved by the Coordinating Council (§ 41-43-110(A)).

3. If a request for allocation of state ceiling regards private activity bonds for a multi-family housing project, either (i) the petition making the request must be accompanied by both a preliminary determination of the project's eligibility for the South Carolina housing tax credit (§12-6-3795(B)(5)(d)) and all comments provided by a county and city pursuant to Section 12-6-3795(C)(3)); or (ii) the petition making the request must include an irrevocable waiver of any claim for a state tax credit pursuant to Section 12-6-3795, accompanied by proof that the petition has been filed with State Housing. Even if a project includes an irrevocable waiver of any claim for a state tax credit, the request must undergo a feasibility and underwriting review by State Housing; accordingly, the request must be accompanied by a Certificate of Allocating Agency (42(m) Letter).

4. If a request for issuance approval regards private activity bonds for a multi-family housing project, and is using carryforward allocated to State Housing in prior years, either the (i) the petition making the request must be accompanied by both a preliminary determination of the project's eligibility for the South Carolina housing tax credit (§12-6-3795(B)(5)(d)) and all comments provided by a county and city pursuant to Section 12-6-3795(C)(3)); or (ii) the petition making the request must include an irrevocable waiver of any claim for a state tax credit pursuant to Section 12-6-3795, accompanied by proof that the petition has been filed with State Housing. Even if a project includes an irrevocable waiver of any claim for a state tax credit, the request must undergo a feasibility and underwriting review by State Housing; accordingly, the request must be accompanied by a Certificate of Allocating Agency (42(m) Letter).

5. The petition submitted for each authorized request must include an acknowledgement that any amount of allocation subsequently requested will constitute a new authorized request and a representation that "the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project." Reference Section 1-11-530(C).

6. In the case of a proposed industrial or economic development project using state ceiling from either the Industrial and Economic Development or Other Qualified Purposes categories, the project must appear on the list of projects ranked by the Coordinating Council for Economic Development and must have received a definitive recommendation from the Coordinating Council for the amount of state ceiling proposed to be allocated to the project.

## **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

7. In the case of a proposed project using state ceiling from the Multi-family Housing category or prior year carryforward previously allocated to State Housing for multi-family housing projects, the project must appear on the list of projects ranked by State Housing and must have received a definitive recommendation from State Housing for the amount of state ceiling proposed to be allocated to the project.

8. A request to take any of the following actions must be accompanied by a letter signed by the chief executive officer of the applicant providing a thorough explanation of the compelling circumstances leading to the request and a justification for why those circumstances were not successfully avoided: A request (a) to reinstate or extend the validity of previously allocated state ceiling, (b) to allocate state ceiling to a project if previously allocated state ceiling was allowed to expire, or (c) to allocate additional state ceiling to a project. In addition, a request to allocate additional state ceiling to a project must be accompanied by supporting financial analysis demonstrating the further amount necessary to accomplish financial feasibility of the project. A responsible officer of the applicant is expected to attend the applicable State Authority meeting.

9. A request (a) to approve single-project allocations for carry-forward election, or (b) to approve carryforward elections prior to the fourth quarter of the calendar year to which the state ceiling applies must be accompanied by a letter signed by the chief executive officer of the applicant that provides a compelling justification for such action and a thorough explanation of why it is in the best interest of the state to approve the request. As noted below, such requests are considered extraordinary and will receive a heightened level of review. A responsible officer of the applicant is expected to attend the applicable State Authority meeting.

10. In the case of an industrial or economic development project, an authorized request seeking more than ten percent of the total state ceiling for the Plan Year must be accompanied by a thorough and compelling statement of facts justifying such an extraordinary allocation of state ceiling to a single project. The petition must be accompanied by a statement of position by the Coordinating Council regarding the relative size of the request.

11. In the case of a project for any purpose other than for industrial or economic development, an authorized request seeking more than five percent of the total state ceiling for the Plan Year must be accompanied by a thorough and compelling statement of facts justifying such an extraordinary allocation of state ceiling to a single project.

12. If any part of the submission is subject to review, comment or other action of the Joint Bond Review Committee, the item must be submitted to the committee prior to consideration of the submission by the State Authority.

If a request does not meet each and every published requirement by the submission deadline for the applicable State Authority meeting, the State Authority's Secretary is authorized not to place the item on the State Authority's agenda.

# **2023 South Carolina State Ceiling Allocation Plan – As Administratively Updated January 9, 2023, by Authority Secretary Pursuant to Section C**

The State Authority reserves its discretion to amend and supplement these procedures as circumstances dictate.

The State Authority and its members reserve the right to require additional information for any particular item.

## **SECTION Q. EXTENSIONS AND CARRYFORWARDS**

Section 1-11-530(C) provides that each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project. In addition to the foregoing, the State Authority must be reasonably assured that any allocation of state resources will be utilized prior to expiration. Accordingly, the State Authority will undertake a heightened level of review and exercise conservative discretion in addressing any request to (1) reinstate or extend the validity of previously allocated state ceiling, (2) allocate state ceiling to a project if previously allocated state ceiling was allowed to expire, (3) allocate additional state ceiling to a project, (4) approve single-project allocations for carry-forward election, (5) or approve carryforward elections prior to the fourth quarter of the calendar year to which the state ceiling applies.

## **SECTION R. BACKGROUND**

On August 30, 2022, the State Fiscal Accountability Authority adopted the inaugural South Carolina State Ceiling Allocation Plan pursuant to Act 202 of 2022. Section A of the 2022 State Ceiling Allocation Plan provided the background and purpose of the plan. The background and purpose of the inaugural plan and Act 202 of 2022 has not changed and need not be repeated on an annual basis. However, the Background and Purpose as written in the 2022 State Ceiling Allocation Plan remains relevant and is incorporated by reference for the 2023 South Carolina State Ceiling Allocation Plan.





**Henry McMaster**  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

**Harry M. Lightsey III**  
Secretary

August 3, 2022

Mr. Grant Gillespie  
Executive Director  
State Fiscal Accountability Authority  
1200 Senate Street  
Columbia, SC 29201

Dear Mr. Gillespie:

Please find attached the final version of the competitive scoring criteria required by Act 202 and included as an attachment to the 2022 State Ceiling Allocation Plan.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Manning", with a long, sweeping horizontal line extending to the right.

Karen Blair Manning  
Chief Legal Counsel

KBM

Attachment

Cc: Harry M. Lightsey III  
A. Daniel Young

## **SUMMARY OF PROCEDURES FOR EVALUATING REQUESTS FOR STATE CEILING ALLOCATIONS**

The following briefly summarizes the procedures applicable to the methodology employed by the South Carolina Department of Commerce (the “Department”) in evaluating industrial and economic development projects that are requesting an allocation of the state private activity bond limit by the State Fiscal Accountability Authority (SFAA).

### **Background**

The Department was designated by the South Carolina General Assembly to assist SFAA in determining the allocation of the state private activity bond limit for industrial and economic development projects. As required by Act 202 of 2022 and the South Carolina State Ceiling Allocation Plan, Commerce has established competitive criteria to evaluate industrial and economic development projects. These criteria are designed to achieve highest value and greatest public benefit.

### **Review Procedures and Scoring**

During the review process, Department staff will evaluate the following factors for each industrial and economic development project requesting allocation of the state ceiling and will give scores weighted in the ranges set forth on the attached Scoring Criteria for Bond Applicants and as discussed below.

1. **Tier ranking of the county in which the project will be located as determined by the South Carolina Department of Revenue for the year in which allocation is sought.**  
Projects in the most rural counties will be given the higher scores to encourage development in those counties. The rural counties are most in need of industrial development to sustain and improve those counties.
2. **Number of existing jobs to be maintained at the project.**  
The larger the current employment, the higher the score because larger companies have the greatest impact on the economy of the local region and the state as a whole.
3. **Number of net new jobs to be created at the project.**  
The more jobs being created, the greater the impact on the economy of the local region and the state as a whole by providing more employment for residents and resulting in increased income to the state.
4. **Average salary of the new jobs to be created at the project.**  
Jobs with higher wages will increase income to the state, and jobs with wages above the per capita income of the county have a greater impact on the economic well-being of that county.
5. **Existing investment of the entity.**  
The greater the existing investment the more property taxes that will be received to benefit the economy of the local region and the state as a whole.
6. **New investment to be made at the project.**  
Similarly, the greater the new investment, the more property taxes that will be received and will benefit the county and local school districts.
7. **Financing available to support the project.**  
This category is the most subjective, but a vital consideration. A project’s ability to support the project financially is essential to the success.

8. **Cost Benefit**

The South Carolina Coordinating Council for Economic Development (the “Coordinating Council”) will perform a cost benefit analysis on each project. Absent extenuating circumstances, a project that does not have a positive financial benefit to the state will not be recommended for state ceiling allocation; provided, however, projects locating in Tier 3 and 4 counties will not be excluded from consideration because of a negative return on investment resulting from the estimated value of job tax credits. While the cost benefit analysis assumes all job tax credits earned and accrued are used, as a practical matter, companies rarely have sufficient income tax liability to use the maximum value of the credits. This is particularly true in the most rural counties because of the extremely high value of the job tax credits under state law.

After consideration of each factor and allocation of appropriate scores, the Department will then calculate the final score using the following formula:

$$((\text{County Designation} \times (\text{New Jobs} + \text{New Investment})) + \text{Existing jobs} + \text{Existing Investment} + \text{Average Salary} + \text{Financing} + \text{Cost Benefit})$$

<b>Scoring Criteria for Bond Applicants</b>				
<b><u>County Designation</u></b>				
Tier 4				3
Tier 3				2
Tier 2				1
Tier 1				1
<b><u>Type of Project</u></b>				
Public Infrastructure				4
Manufacturing				2
Other Business				0
<b><u>Existing Jobs</u></b>				
> 500				2
100-500				1
0-100				0
<b><u>New Jobs</u></b>				
>300				5
150-300				4
50-149				3
25-49				2
>25				1
<b><u>Existing Investment</u></b>				
>\$300,000,000				3
\$100,000,000- \$300,000,000				2
\$70,000,000-\$100,000,000				1
<\$70,000,000				0
<b><u>New Investment</u></b>				
>\$20,000,000				4
\$10,000,000-\$20,000,000				3
\$5,000,000-\$10,000,000				2
<\$5,000,000				1
<b><u>Avg. Salary</u></b>				
>150% of per capita income				2
100% of per capita income				1
>100%				0
<b><u>Financing</u></b>				
Financing in place				5
Financing not sufficient to sustain project				0
<b><u>Cost Benefit</u></b>				
Positive State Benefit > \$10 million				4
Estimate positive state benefit < \$9.9 Million				2
Negative				-30



**South Carolina State Housing Finance and Development Authority**

**300-C Outlet Pointe Blvd., Columbia, South Carolina 29210**

**Telephone: 803.896.9001 TTY: 803.896.8831**

**SCHousing.com**

**C. Todd Latiff**  
**Chairman**

**Bonita H. Shropshire**  
**Executive Director**

*Writer's Direct Numbers*

*(803) 896-8771*

*E-mail: [Tracey.Easton@schousing.com](mailto:Tracey.Easton@schousing.com)*

August 2, 2022

Delbert H. Singleton, Jr., Esquire  
Secretary  
State Fiscal Accountability Authority  
1200 Senate Street  
Wade Hampton Building, Suite 600  
Columbia, South Carolina 29201

***Re: 2022 Proposed State Ceiling Criteria***

Dear Delbert:

I enclose SC Housing's 2022 Proposed State Ceiling Criteria and a sample ranking spreadsheet.

I would greatly appreciate if this matter could be placed before the State Fiscal Accountability Authority for consideration in conjunction with the State Ceiling Allocation Plan.

Thank you for your assistance.

Very truly yours,

A handwritten signature in blue ink that reads "Tracey C. Easton". The signature is fluid and cursive.

Tracey C. Easton  
General Counsel



## South Carolina State Housing Finance and Development Authority

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SCHousing.com

C. Todd Latiff  
Chairman

Bonita H. Shropshire  
Executive Director

*This proposed criteria for State Ceiling allocations is presented solely for consideration by the Joint Bond Review Committee and State Fiscal Accountability Authority and is not intended to provide official or final guidance to participants in the program. Once approved by the JBRC and SFAA, final guidance will be published on the website of the South Carolina State Housing Finance and Development Authority (SC Housing).*

### **Proposed State Ceiling Criteria**

For those projects seeking an allocation of state ceiling or carryforward for a multifamily project intending to utilize 4% federal low-income housing tax credits, SC Housing will require certain threshold criteria as detailed in the applicable Qualified Allocation Plan (QAP) which is the controlling document related to the allocation of the credit. This threshold criteria includes items such as financial feasibility, minimum applicant experience, site control, financial capacity of the applicant, and readiness to proceed (i.e., without limitation, establishment of the bond working group, existence of letters of interest or letters of intent from lenders, syndicators, and other parties). Additionally, SC Housing will require projects to meet the requirements outlined in SC Housing's Multifamily Tax-Exempt Bond Finance Program manual.

Projects meeting the threshold criteria described above will be ranked for state ceiling utilizing the following criteria that evidence the highest value and greatest public benefit as required by Act 202 of 2022 and the State Ceiling Allocation Plan. Section O of the State Ceiling Allocation Plan requires, at a minimum, certain measures to be included. The following criteria meet the requirements of the State Ceiling Allocation Plan:

- State resources per heated residential square foot
  - This criterion will rank projects from lowest to highest, based on a calculation of state resources (bond ceiling and state tax credit) per heated residential square foot (i.e., excluding common areas), to demonstrate the most efficient use of state resources for the portion of total project costs applicable to actual tenant housing.
- State resources per bedroom
  - This criterion will rank projects from lowest to highest, based on a calculation of state resources per bedroom, to demonstrate the most efficient use of state resources for the number of families the project will house.
- State resources per dollar of total project costs
  - This criterion will rank projects from lowest to highest, based on a calculation of state resources to total project costs to demonstrate the most efficient investment of state resources in the project overall.
- State resources per potential tenant
  - This criterion will rank projects from lowest to highest, based on a calculation of state resources per potential tenant to demonstrate the most efficient use of state resources for the number of potential residents the project will house.

A 30% adjustment to state resources will be made as a ranking consideration for projects located in USDA-designated rural areas. A 10% adjustment to state resources will be made for new construction units, as a ranking consideration for projects providing an overall increase in affordable housing. These adjustments apply for the sole purpose of establishing project rankings.

## Exhibit B - 2022 & 2023 Competitive Criteria for Multi-family Housing Projects

Development [FICTITIOUS PROJECTS]	Location	USDA Rural Eligibility	Issuance Approval Date	Annual STC	10 Year STC	State Historic Tax Credit	State Abandoned Building Credit	TEB Ceiling Allocation	Total Project Costs	Net New Units	Residential Square Footage	Efficiency/ Studio	Project Unit Mix						Est Tenants	Total State Resources	Rural Bonus	New Construction Bonus	ADJUSTED Total State Resources	Ranking Criteria				Development Ranking																											
													1BR	2BR	3BR	4BR	Total BRs	Total Units						State Resources per Res SF	State Resources per BR	Total Project Costs (Value)	State Resources per Potential Tenant (Public Benefit)	State Resources per Res SF	State Resources per BR	Total Project Costs (Value)	State Resources per Potential Tenant (Public Benefit)	Total	Overall																						
Maple Avenue Apartments	Beaufort	N	TBD	\$ 1,987,326.00	\$ 19,873,260	\$ -	\$ -	\$ 25,000,000	\$ 48,687,000	185	301,528			15	20	150	690	185	1,380	\$ 44,873,260	0.0		0.1	\$ 40,385,934	\$ 133.94	\$ 58,530.34	0.8295	\$ 29,265	1	1	3	1	6	1																					
Main Street Village	Greenville	N	TBD	\$ 447,194.00	\$ 4,471,940	\$ -	\$ 263,000	\$ 8,200,000	\$ 16,750,000	72	68,916		61	11			83	72	166	\$ 12,934,940	0.0	0.1	\$ 11,641,446	\$ 168.92	\$ 140,258.39	0.6950	\$ 70,129	2	4	2	4	12	2																						
Pomaria Mill	Pomaria	Y	TBD	\$ 778,523.00	\$ 7,785,230	\$ -	\$ -	\$ 16,000,000	\$ 20,475,000	70	72,000			45	20	5	170	70	340	\$ 25,352,433	0.3	0.1	\$ 15,211,460	\$ 211.27	\$ 89,479.18	0.9987	\$ 44,740	4	2	5	2	13	3																						
Charbonneau Apartments	Columbia	N	TBD	\$ 2,000,000.00	\$ 20,000,000	\$ -	\$ -	\$ 22,000,000	\$ 45,327,406	200	211,000		50	100	50		400	200	800	\$ 42,000,000	0.0	0.1	\$ 37,800,000	\$ 179.15	\$ 94,500.00	0.8339	\$ 47,250	3	3	4	3	13	3																						
Rolling Hills Farms	York	Y	TBD	\$ 875,000.00	\$ 8,750,000	\$ -	\$ -	\$ 14,000,000	\$ 26,150,000	70	64,523		50	16	4		94	70	188	\$ 22,750,000	0.3	0.1	\$ 13,650,000	\$ 211.55	\$ 145,212.77	0.5220	\$ 72,606	5	5	1	5	16	5																						
			TOTAL:	\$ 6,088,043.00				\$ 85,200,000																																															
Column A: Development name																																																							
Column B: Development location																																																							
Column C: USDA Rural Designation of the developent property. Properties located in rural areas receive a preference bonus reflected in a 30% adjustemnt to the total state resources figure.																																																							
Columns F through H: Annual state tax credits (housing, historic, abaondoned building) in the project																																																							
Column I: Tax exempt bond ceiling allocation being requested by the developer/sponsor																																																							
Column J: Total development project cost																																																							
Column K: In mixed-use proposals, the amount of the overall development cost apportioned to multifamily residential. NB: Market rate units are not included in the total.																																																							
Column L: The net newly produced units in the proposed project. Projects where a majority of the units are newly produced receive a preference bonus reflected in a 10% adjustment to the total state resources figure.																																																							
Column M: Residential square footage is that portion of heated saure footage comprising living units, and is of direct use and benefit to the tenants.																																																							
Columns N-R: The unit mix of the development project by bedroom size of units.																																																							
Column U: The number of potential tenants served in the development; 2 persons per bedroom is the standard.																																																							
Column V: Total tax exempt bond request plus all state tax credits																																																							
Columns W & X: projects located in rural areas as designated by the USDA receive a 30% preference bonus; projects where the majority of units are new (rather than rehab of existing) receive a 10% preference bonus.																																																							
Column Y: Adjusted total state resources (see Column T) after the rural and new unit preferences have been factored in.																																																							
Column Z: State resources per residential square footage; this reflects the value of the building as an asset and is a compenent of determining "highest and best value" for the state's investment.																																																							
Column AA: State resources per bedroom; this reflects the potential utility of the building to tenants and is a compenent of determining the "public benefit" of the state's investment.																																																							
Column AB: Total project costs ratio; this reflects the value of the state's adjusted total investment relative to the total residential development cost and is a measure of the "highest and best value" for the state's investment.																																																							
Column AC: State resources per potential tenant housed in the development; this is reflective of the potential number of citizens served and therefore of the "public benefit" for the state's investment .																																																							
Columns AD through AI: Development projects are ranked by relative score in Columns X through AA; a development's rank is totaled across all four ranking categories to produce an Overall Rank within the competitive pool.																																																							



Exhibit C - Evaluation and Ranking Report Format for Multi-family Housing Projects

1	Project Name
2	Location (Municipality)
3	Issuer
4	Attorney
5	State Tax Credits (1 year)
6	State Tax Credits (10 years)
7	State Tax Credit Letter Date
8	Current Year-Ceiling Allocation Request Amount
9	Ceiling Allocation Date
10	Carryforward granted by SFAA or SC Housing
11	Amount of Carryforward requested from SHFDA
12	Balance of Carryforward held by SHFDA
13	Annual State Tax Credit needed
14	Balance of Annual State Tax Credits Allocated to 4% projects

STATE FISCAL ACCOUNTABILITY AUTHORITY

REGULAR SESSION

MEETING OF January 31, 2023

ITEM NUMBER 14

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AGENCY: State Fiscal Accountability Authority

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SUBJECT: Future Meeting

The next regular meeting of the State Fiscal Accountability Authority will be held at 9:30 a.m. on Tuesday, March 28, 2023, in Room 252, Edgar A. Brown Building.

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AUTHORITY ACTION REQUESTED:

Agree to meet at 9:30 a.m. on Tuesday, March 28, 2023, in Room 252, Edgar A. Brown Building.

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ATTACHMENTS: