

STATE FISCAL ACCOUNTABILITY AUTHORITY

Meeting of Thursday, March 9, 2017 -- 9:30 A. M.

Room 252, Edgar A. Brown Building

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AGENCY: State Treasurer's Office

SUBJECT: Bond Counsel Selection

The State Treasurer's Office has provided the following notification of the assignment of bond counsel for conduit issues for which Authority approval is requested:

CONDUIT ISSUES:

Description of Issue	Agency/Institution (Borrower)	Borrower's Counsel	Issuer's Counsel
\$47,500,000 Economic Development Bonds	SC Episcopal at Still Hopes Conduit: JEDA	Haynsworth Sinkler Boyd	McNair Law Firm, P. A.
\$ 68,265,000 Economic Development Revenue & Refunding Bonds	Upstate Senior Living dba The Woodlands at Furman Conduit: JEDA	Haynsworth Sinkler Boyd	Howell Linkous and Nettles, LLC
\$ 6,000,000 Hospital Facilities Refunding and Improvement Revenue Bonds (AAMC Project)	Abbeville Area Medical Center Conduit: Abbeville County	Pope Flynn, LLC	Pruitt Law Firm

OTHER REVENUE ISSUES:

Description of Issue	Agency/Institution	Approved Bond Counsel
\$7,250,000 Higher Education Refunding Revenue Bonds	Coastal Carolina University	Pope Flynn, LLC

AUTHORITY ACTION REQUESTED:

Approve the referenced bond counsel assignment as recommended by the State Treasurer's Office.

ATTACHMENTS:

Bond Counsel Selection Approved by the State Treasurer's Office

Items for March 9, 2017 State Fiscal Accountability Authority
 Bond Counsel and Issuer Counsel Selections by the State Treasurer's Office are as follows:

CONDUIT ISSUES:

Description of Issue	Agency/Institution (Borrower)	Borrower's Counsel	Issuer's Counsel	Date STO Approved
\$47,500,000 Economic Development Bonds	SC Episcopal at Still Hopes Conduit: JEDA	Haynsworth Sinkler Boyd	McNair Law Firm, P. A.	01/27/2017
\$ 68,265,000 Economic Development Revenue & Refunding Bonds	Upstate Senior Living dba The Woodlands at Furman Conduit: JEDA	Haynsworth Sinkler Boyd	Howell Linkous and Nettles, LLC	01/27/2017
\$ 6,000,000 Hospital Facilities Refunding and Improvement Revenue Bonds (AAMC Project)	Abbeville Area Medical Center Conduit: Abbeville County	Pope Flynn, LLC	Pruitt Law Firm	1/31/2017

OTHER REVENUE ISSUES:

Description of Issue	Agency/Institution	Approved Bond Counsel	Date STO Approved
\$7,250,000 Higher Education Refunding Revenue Bonds	Coastal Carolina University	Pope Flynn, LLC	1/31/2017

SPECIAL ASSIGNMENT OF BOND COUNSEL:

Description of Issue	Agency/Institution	Approved Bond Counsel	Date STO Approved

STATE FISCAL ACCOUNTABILITY AUTHORITY
MEETING OF March 9, 2017

BLUE AGENDA
ITEM NUMBER 2

AGENCY: State Treasurer's Office

SUBJECT: The South Carolina Attorney General's Opinion regarding S. C. Code Ann. §9-1-1085 and PEBA's Unlawful Use of an "Open Amortization" Schedule in Connection with the S. C. Retirement System

The South Carolina Attorney General's Office issued and published a formal opinion on January 10, 2017, interpreting the dictates of S. C. Code Ann. §9-1-1085 as it relates to PEBA and the South Carolina Retirement Systems. The Authority is asked to receive the Attorney General's Opinion as information along with the State Treasurer's Position Statement.

AUTHORITY ACTION REQUESTED:

As co-trustees of the South Carolina Retirement Systems, receive only as information the Attorney General's Opinion and the State Treasurer's Position Statement.

ATTACHMENTS:

Copy of the S. C. Attorney General's Opinion dated January 10, 2017; South Carolina State Treasurer's Position Statement; SC PEBA Briefing paper on state law related to the funding of the state's public pension plans; Moody's South Carolina Pension Report 2/9/17

STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: March 9, 2017

Regular Agenda



1. Submitted By:

(a) Agency: State Treasurer's Office

(b) Authorized Official Signature:

2. **Subject:** The S.C. Attorney General's Opinion regarding S.C. Code Ann. § 9-1-1085 and PEBA's unlawful use of an "open amortization" schedule in connection with the SC Retirement System.

3. **Summary Background Information:** The South Carolina Attorney General's Office issued and published a formal opinion on January 10, 2017 interpreting the dictates of S.C. Code Ann. § 9-1-1085 as it relates to PEBA and the S.C. Retirement System.

4. **What is Authority asked to do?** As cotrustees of the South Carolina Retirement Systems, receive the Attorney General's Opinion and State Treasurer's Position Statement as information.

5. **What is the recommendation of the Agency involved?** Receive as information.

6. **List of Supporting Documents:**

- A) Copy of the S.C. Attorney General's Opinion dated January 10, 2017; and
- B) South Carolina State Treasurer's Position Statement.



ALAN WILSON
ATTORNEY GENERAL

January 10, 2017

The Honorable Curtis M. Loftis
South Carolina State Treasurer
Post Office Box 11778
Columbia, SC 29211

Dear Treasurer Loftis:

You have sought our opinion as to the following:

Should the calculation of a thirty year amortization schedule for the unfunded liabilities of the South Carolina Retirement System as required by S.C. Code Ann. § 9-1-1085(C)

1. Be based on a closed or an open amortization schedule?
2. Include contributions rates/values for employer and/or employee contributions, which have not yet been adopted by the PEBA Board or funded by the General Assembly?

By way of background, you note that:

Experts agree that essentially perpetual open amortization schedules are regarded as unsound. Moreover, recent analysis of South Carolina's own pension systems found that PEBA's consultant's use of an open schedule has contributed to the continuing growth of the pension plans' unfunded liabilities, including a 2016 interest cost to SCRS of \$1,256,494,125. In other words, open amortization schedules are far more likely to be "unsound" and result in a "devastating impact on the fiscal integrity of the State Retirement System." Kennedy [v. S.C. Retirement System], 345 S.C. [339] at 352, 549 S.E.2d [243], at 250.

The question we now raise is whether the General Assembly intended the requirement imposed by S.C. Code Ann. § 9-1-1085(C) to use a thirty year amortization schedule for the unfunded liabilities of the system to be based upon an open amortization schedule, rather than a closed schedule for a fixed 30 year period. We suggest that, given the problematic nature of an open amortization schedule, the use of open amortization is not consistent with the General Assembly's instruction that 2012 Act 278, including S.C. Code Ann. § 9-1-1085(C), be the "most reliable and efficient means of addressing the long term sustainability issues of the system." 2012 Act No. 278, Findings, Section 1. (B). Similarly, the use of an open amortization schedule violates the General Assembly's instruction that "pension costs should be allocated . . . on an equitable basis over time and not perpetually pushed

into the future or immediately imposed on current taxpayers.” Id. at Section 1. (D). As such, the interpretation of a thirty year amortization schedule as an OPEN amortization schedule must be rejected because such interpretation would “lead to an absurd result that the Legislature could not have intended.” Kennedy, 345 S.C. at 351, 549 S.E.2d at 249.

Law/Analysis

I. The calculation of the amortization schedule of the unfunded liabilities of the South Carolina Retirement System should be based on a closed amortization schedule.

With regard to your first question concerning closed and open amortization schedules, the relevant statute is S.C. Code Ann. § 9-1-1085(C),¹ which addresses employer and employee contribution rates and sets forth the requirement for an amortization schedule of “no more than thirty years.” This statute provides:

If the scheduled employer and employee contributions provided in subsection (A), or the rates last adopted by the board pursuant to subsection (B), are insufficient to maintain a thirty year amortization schedule for the unfunded liabilities of the system, then the board shall increase the contribution rate as provided in subsection (A) or as last adopted by the board in equal percentage amounts for employer and employee contributions as necessary to maintain an amortization schedule of no more than thirty years. Such adjustments may be made without regard to the annual limit increase of one-half percent of earnable compensation provided pursuant to subsection (B), but the differential in the employer and employee contribution rates provided in subsection (A) or subsection (B), as applicable, of this section must be maintained at the rate provided in the schedule for the applicable fiscal year.

The term “amortization schedule” is not defined in Title 9 of the South Carolina Code relating to the South Carolina Retirement System, or elsewhere in the South Carolina Code. In general, the term “amortization” is defined to mean the gradual pay off of an obligation by making periodic payments over time, such as is the case with a mortgage. See <http://www.merriamwebster.com/dictionary/amortizing>. However, in the opinion of this Office, the term “amortization schedule,” as used in S.C. Code Ann. § 9-1-1085, contains an ambiguity because the statutory language does not specify the methodology by which this schedule is to be calculated.

Accordingly, we must look to the rules of statutory construction for guidance as to the precise meaning of this term. “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” Sonoco Products Co. v. South Carolina Dep't of Revenue, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008)

¹ This code section was enacted as 2012 Act No. 278, Pt I, Section 2.B, eff. July 1, 2012.

(citations omitted). “If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory construction and the court has no right to look for or impose another meaning.” Paschal v. State Election Comm'n, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). However, where an ambiguity prevents the statute from conveying a clear and definite meaning, it is necessary to construe the terms of the statute according to settled rules of construction. Grant v. City of Folly Beach, 346 S.C. 74,79,551 S.E.2d 229,231 (2001) (citations omitted); see also Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956) (“But where the language of the statute gives rise to doubt or uncertainty as to the legislative intent, the search for that intent may range beyond the borders of the statute itself; for it must be gathered from a reading of the statute as a whole in the light of the circumstances and conditions existing at the time of its enactment.” An ambiguity arises when the meaning of the language is doubtful or provides “doubleness of meaning.” Chapman v. Metropolitan Life Ins. Co., 172 S.C. 250, 173 S.E. 801, 803 (1934); see also Southeastern Fire Ins. Co. v. S.C. Tax Comm'n, 253 S.C. 407, 171 S.E.2d 355 (1969) (language is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses.).

In order to ascertain the meaning of an ambiguous term, courts must follow the rules of statutory construction, which dictate consideration of the legislative history to effectuate the purpose of the statute. Hyde v. South Carolina Dep't of Mental Health, 314 S.C. 207, 210, 442 S.E.2d 582, 583 (1994) (citations omitted). In construing a statute, courts look to the language as a whole, in light of the statute's manifest purpose. Simmons v. City of Columbia, 280 S.C. 163, 164,311 S.E.2d 732,733 (1984). Furthermore, the Legislature is presumed to intend that its statutes accomplish something. State v. Long, 363 S.C. 360,364,610 S.E.2d 809,812 (2005). When faced with an undefined statutory term, courts consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 111, 779 (1997).

Mindful of these principles of statutory construction and cognizant that the determination of legislative intent is a matter of law,² we begin with the constitutional provisions relating to public pensions. Art. X, § 16 of the South Carolina Constitution provides:

The governing body of any retirement or pension system in this State funded in whole or in part by public funds shall not pay any increased benefits to members or beneficiaries of such system above the benefit levels in effect on January 1,1979, unless such governing body shall determine that funding for such increase on a sound actuarial basis has been provided or is concurrently provided.

The General Assembly shall annually appropriate funds and prescribe member contributions for any state-operated retirement system which shall insure the

² Wehle, 363 S.C. at 403, 611 S.E.2d at 244, citing City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 543 S.E.2d 538 (2001); Charleston County Parks and Recreation Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

availability of funds to meet all normal and accrued liability to the system on a sound actuarial basis as determined by the governing body of the system.

(emphasis added.) As this Office has recently opined, “[t]hus, it is clear that the General Assembly possesses the duty under the South Carolina Constitution to preserve the fiscal integrity and soundness of the State Retirement System.” See Op. S.C. Atty. Gen., 2016 WL 4698867 (August 29, 2016).

Further, this Office has noted that “[o]ur Supreme Court has recognized that the maintenance of the fiscal integrity and soundness of the South Carolina Retirement Systems is paramount and is strongly in the public interest.” Id. Additionally, in Wehle v. South Carolina Retirement System, 363 S.C. 394, 400, 611 S.E.2d 240, 242-3 (2005), Special Referee (now Justice) Kittredge, whose report was adopted by the Court, found that Art. X, § 16 requires that, should it be determined that “any retirement system is not funded on a sound actuarial basis, the General Assembly must provide funding necessary to restore the fiscal integrity of the System.” Wehle, 363 S.C. at 399, 611 S.E.2d at 242. Similarly, in Kennedy v. South Carolina Retirement System, 345 S.C. 339, 351, 549 S.E.2d 243,249 (2001), the Court stated: “It must be assumed the legislature intends to maintain the soundness of the State Retirement System,” and held that any proposed statutory construction which might “render[] the State Retirement System arbitrarily unsound [or] cause a devastating impact on the fiscal integrity of the State Retirement System” must be rejected because such interpretation would “lead to an absurd result that the Legislature could not have intended.” Therefore, it follows that courts would likely conclude that any proposed statutory interpretation that would render the retirement system arbitrarily unsound could not have been intended by the Legislature.

We further note that S.C. Code Ann. § 9-1-1085 was enacted as part of 2012 Act No. 278 for the specific purpose of addressing problems in the public employee retirement systems. In enacting these amendments to the state retirement system, the General Assembly specifically found that:

The financial stability and long term viability of the [South Carolina public employee retirement] systems are threatened by the following factors:

- The funding ratio of South Carolina Retirement System has eroded over the past ten years and is currently in the lowest third of the state and local government defined benefit plans in the United States (126 plans as of July 1,2011).³
- Unanticipated negative returns during the recession of 2008-2009 and aggressive investment assumptions which have not materialized.
- Demographic and economic actuarial assumptions which were overly optimistic.

2012 Act No. 278, Findings, Section 1. (B). The General Assembly further found that

³ According to testimony recently presented to the Joint Committee on Pension System Review, South Carolina’s unfunded pension liability now ranks 43rd of the 50 states. See 2016-10 Pew Presentation: Public pensions: 50-State Overview & South Carolina Comparison at p. 4.

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taken as a whole, the changes made by the [2012] act constitute the most reliable and efficient means of addressing the long term sustainability issues of the system. The changes made by this act are intended to satisfy the principle of intergenerational equity, that is, pension costs should be allocated among employees, employers and taxpayers on an equitable basis over time and not perpetually pushed into the future or immediately imposed on current taxpayers.

Id., Findings, Section 1. (D) (emphasis added). Thus, in enacting the 2012 Act, the Legislature expressly recognized its constitutional duty to preserve the fiscal integrity of the State Retirement System.

Although this Office is unaware of an applicable statute or regulation specifying which sort of amortization schedule is to be used in connection with the South Carolina Retirement System, in your letter, you provide various sources explaining different types of schedules. For example, you cite to an August 24, 2016 issue brief from the Research and Analysis section of the Pew Charitable Trusts⁴ entitled “The State Pension Funding Gap: 2014” (Pew Brief). The Pew Brief states in part:

Public pension plans have three basic ways of setting a payment schedule for their unfunded liabilities: closed amortization, open amortization, and layered amortization. A closed schedule is like a typical mortgage — over a fixed period of time[,] annual payments are set that will pay the debt by the end of the time frame. An open amortization schedule similarly calculates payments based on a set period but annually resets the payment schedule back to year one. An open amortization schedule can lead to a payment plan where the debt never actually gets paid off. . . . A layered amortization schedule records gains and losses for each year and pays them off on a separate closed schedule.

Pew Brief at p. 22 n. 10 (emphasis added).

You also cite other sources which criticize open amortization schedules which reset each year, including a 2013 issue brief by the Center for State and Local Government Excellence, entitled “How Sensitive is Public Pension Funding to Investment Returns” (“CSLGE Public Pension Funding Issue Brief”). The CSLGE brief concludes that:

[P]ension plan sponsors that pay 100 percent of the annual required contribution (ARC) can expect to reach full funding in a 30-year time frame if plans earn their assumed return. However, if employers reset the amortization period each year, they will not achieve that goal, even if their investment returns are realized.

CSLGE Public Pension Funding Issue Brief at p. 2 (emphasis added).

⁴ The Pew Charitable Trusts is an independent, nonprofit global research and public policy organization.

Finally, we understand that on October 25, 2016 the South Carolina General Assembly's Joint Committee on Pension Systems Review heard testimony discussing the adverse effects of an open amortization schedule upon South Carolina's pension funds. According to your letter, testimony presented during the Joint Committee hearing included a presentation by the Reason Foundation's Pension Integrity Project,⁵ which determined that one of the primary causes of the unfunded liability is negative amortization:

- Unfunded liability amortization payments have been less than interest on the so-called pension debt for more than a decade.
- The current 30-year, open amortization method is what has been the driver of this negative amortization problem.

* * *

- The open amortization method with a long schedule leads to negative amortization that increases unfunded liability in absolute terms and undermines the efforts to improve the funded status.

(quoting Reason Foundation presentation at pp. 6, 8, emphasis in original). You further provide evidence that testimony by the Reason Foundation Pension Integrity Project to the Joint Committee on Pension Systems Review also revealed that the open amortization method creates major solvency problems:

1. The open amortization method has undermined South Carolina pension plan solvency by keeping contributions towards the unfunded liability below levels adequate enough fully pay off the unfunded liabilities.
 - This method allows the plan to continuously reset the amortization schedule every year, making it unlikely to ever be fully paid off.

* * *

2. As a result liabilities are allowed to grow in absolute terms leading to negative amortization.

(quoting Reason Foundation presentation at p. 9 (emphasis in original). This presentation also quotes Former GASB⁶ Chairman James F. Antonio on open amortization methods:

⁵ A copy of the Reason Foundation's presentation can be found at the website maintained by Joint Committee on Pension Review:

<http://www.scstatehouse.gov/CommitteeInfo/Joint%20Committee%20n%20Pension%20Syste ms%20Review/102516Meeting/Reason%20Foundation-South%20Carolina%20SCRS%20Pension%20Reform%20Analysis%202016Oct25.pdf>

⁶ GASB is the Governmental Accounting Standards Board, the independent organization recognized by governments, the accounting industry, and capital markets as the official source of generally accepted accounting principles for state and local governments.

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Even though actuaries may consider this to be an amortization method because the unfunded actuarial liability decreases over time as a percentage of payroll, it is not an amortization method in an accounting sense because the liability increases in absolute amount. (1994)

Id.

As discussed supra, the General Assembly is constitutionally obligated to preserve the fiscal integrity and soundness of the State Retirement System. Moreover, its expressed intent in enacting the 2012 amendments was to make changes which would “constitute the most reliable and efficient means of addressing the long term sustainability issues of the [retirement] system.” (emphasis added). Therefore, it is the opinion of this Office that any interpretation of the term “amortization schedule” must be consistent with and advance this constitutional duty and expressed legislative intent.

A consideration of the various types of amortization schedules necessitates the conclusion that the South Carolina Legislature intended a closed amortization schedule be utilized for the State Retirement System. A closed amortization schedule is most likely to achieve the constitutionally required actuarial soundness and thus meets the express legislative goal of using “the most reliable and efficient means of addressing long term sustainability issues” of the retirement systems. In contrast, it appears that an open amortization schedule, which continuously resets every year, is inconsistent with stated legislative intent of the 2012 Act “not [to] perpetually push [pension costs] into the future.” Thus, in the opinion of this Office, the courts are unlikely to conclude that the Legislature intended to authorize the use of an open amortization schedule, which would actually undermine efforts to reduce the unfunded liabilities and thus could not qualify as “the most reliable and efficient means” to address long-term sustainability issues of the Retirement System. Instead, an open amortization schedule could result in a “devastating impact on the fiscal integrity of the State Retirement System,” much like the construction rejected as absurd in Kennedy, 345 S.C. at 352, 549 S.E.2d at 250. Therefore, in our opinion, it is likely that a court would reject an interpretation of S.C. Code Aim. § 9-1-1085(C) as permitting an open amortization schedule because such interpretation would “lead to an absurd result that the Legislature could not have intended.” Kennedy, 345 S.C. at 351, 549 S.E.2d at 249. Accordingly, we believe that a court would construe the term “amortization schedule” to mean a closed schedule, under which annual payments are set to pay the unfunded liability by the end of the time frame, which is consistent with expert recommendations concerning best practices to reduce unfunded liabilities.

II. The amortization schedule should not be based upon contribution rates which have not been adopted by the PEBA Board, approved by the SFAA,⁷ or funded by the General Assembly.

The second part of your question seeks our opinion regarding those constraints which S.C. Code Ann. § 9-1-1085(C) imposes upon the calculation of the amortization schedule for unfunded liabilities of the South Carolina Retirement System. In your request letter, you note that PEBA has calculated the thirty year amortization schedule for the unfunded liabilities of the pension system assuming future contribution rates in excess of currently approved rates. You also note that these assumed future contribution increases have not yet been presented to the General Assembly for funding consideration. You further provide evidence that the only contribution rates approved by the State Fiscal Accountability Authority as of the date of your opinion request are those for Fiscal Year 2016-2017,⁸ and assert that the use of such assumed contribution rates are not contemplated by the enabling legislation and is subject to being manipulated to achieve a desired outcome or result.

S.C. Code Ann. § 9-1-1085(C) provides:

If the scheduled employer and employee contributions provided in subsection (A), or the rates last adopted by the board pursuant to subsection (B), are insufficient to maintain a thirty year amortization schedule for the unfunded liabilities of the system, then the board shall increase the contribution rate as provided in subsection or as last adopted by the board. . . .

We now consider the practice of calculating an amortization schedule based on contribution rates not yet adopted by PEBA's Board, or approved by the State Fiscal Accountability Authority. Your concern is whether such practice, which assumes commitments of public funds yet to be appropriated by the General Assembly is consistent with this statutory authorization and other South Carolina constitutional and statutory law.

As noted earlier, S.C. Code Ann. § 9-1-1085(C) mandates the calculation of an amortization schedule to address the unfunded liabilities of the public pension system. Such a schedule must necessarily include a factor for future contributions which will be used to fund a public obligation, namely, the future payments under the various state retirement systems. Accordingly, the issues to be determined are (1) what, if any, constraints upon the calculation of "the amortization schedule for the unfunded liabilities of the system" are imposed by this statute or other constitutional and statutory requirements; or (2) in the alternative, if no constraints are imposed (either expressly or impliedly), whether a statutory grant to PEBA of discretion to use

⁷ S.C. Code Ann. § 9-4-45 requires that all "policy determination" made by the PEBA Board, including any "adjustments in employer and employee contributions" be approved by the State Fiscal Accountability Authority.

⁸ We noted that on December 13, 2016 the Fiscal Accountability Authority approved contribution rate increases to 9.16% for employees and 12.06% for employers, effective July 1, 2017.

as yet unapproved and unappropriated public contributions would be consistent with the nondelegation doctrine⁹ and/or separation of powers.

First, we look to the language of S.C. Code Ann. 9-1-1085(C) itself. In interpreting a statute, the terms must be construed in context and their meaning determined by looking at the other terms used in the statute. Gilstrap v. South Carolina Budget and Control Board, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992), citing Southern Mutual Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n, 306 S.C. 339, 412 S.E.2d 377 (1991). A provision should be given a reasonable and practical construction consistent with the purpose and policy of the Act. Gilstrap, 310 S.C. at 216, 423 S.E.2d at 105, citing Gardner v. Biggart, 308 S.C. 331, 417 S.E.2d 858 (1992); Laurens County School Districts 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992). Here, the sentence in § 9-1-1085(C) which mandates the preparation of the amortization schedule begins with a reference to contribution rates then existing at the time of the amortization calculation:

the scheduled employer and employee contributions provided in subsection (A), or the rates last adopted by the board pursuant to subsection (B).

Section (A) sets forth contribution rates for fiscal years 2012-2013 and 2013-2014 and provides a baseline rate for 2014-2015 and after. Section (B) sets forth a procedure by which rates can be increased from baseline after June 30, 2015. In reading the opening phrase referring to existing contribution rates in conjunction with the subsequent directive to prepare an amortization schedule, the legislative intent is apparent. The statute tasks the Board to use the amortization schedule to determine the continuing adequacy of contribution rates. To perform this task, the amortization schedule must be based upon then existing contribution rates. To construe this section otherwise would contravene the intent of the Legislature.

As stated, the General Assembly emphasized that its intent in enacting the 2012 amendments, including S.C. Code Ann. § 9-1-1085, was to establish “the most reliable and efficient means of addressing the long term sustainability issues of the system, [while] not perpetually push[ing pension costs] into the future.” Findings at §1(D). Construing Section (C) to require that any changes to contribution rates be based on an amortization schedule rooted in known payments, namely, the actual contribution rates in effect when the PEBA Board is making the contribution rate recommendation, advances this legislative purpose.

Our Supreme Court has held that the General Assembly is ultimately responsible for the fiscal integrity of the retirement systems. Wehle, 363 S.C. at 399, 611 S.E.2d at 242-43. The U.S. Court of Appeals for the Fourth Circuit has similarly noted that the General Assembly “would be obligated to account for any deficiency by increasing appropriations to the Retirement System or by requiring employers, including the State itself, to increase their contributions” and that insolvency in the retirement system could even harm the State's credit rating. Hutto v. South

⁹ See e.g., Gilstrap v. S.C. Budget and Control Board, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992), citing Bauer, 271 S.C. at 233, 246 S.E.2d at 876.

Carolina Retirement System, 773 F.3d 536, 544 (2014). In meeting this obligation, the legislature must rely upon “the official valuations prepared in keeping with the authority delegated to the [PEBA] Board and plan actuary.” Wehle, 363 S.C. at 399, 611 S.E.2d at 242-43. Accordingly, retirement system obligations must be determined with reference to known factors, namely, previously approved expenditures.

Moreover, the General Assembly could not have intended that S.C. Code § 9-1-1085(C) allow amortization schedules based upon as yet unapproved payments because such an interpretation would violate the separation of powers provision of the State Constitution and the non-delegation doctrine. S.C. Const, art. I, § 8. At its simplest, the constitutional division of powers can be described as “[t]he legislative department makes the laws; the executive department carries the laws into effect, and the judicial department interprets and declares the laws.” State ex rel McLeod v. Yonce, 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979). In our division of powers, the General Assembly has plenary power over all legislative matters unless limited by some constitutional provision. Clarke v. South Carolina Pub. Serv. Auth., 113 S.C. 427, 438-39, 181 S.E. 481, 486 (1935). Included within the legislative power is the sole prerogative to make policy decisions and to exercise discretion as to what the law will be. State v. Moorer, 152 S.C. 455, 479, 150 S.E. 269, 277 (1929); Sutton v. Catawba Power Co., 101 S.C. 154, 157, 85 S.E. 409, 410 (1915). However, the legislature may not delegate its power to make laws, including the appropriation of public funds. State ex rel McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982); Bauer v. S.C. State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978); Gregory v. Rollins, 230 S.C. 269, 95 S.E.2d 487 (1956). The executive branch is constitutionally tasked with ensuring “that the laws be faithfully executed.” S.C. Const, art. IV, § 15. Of course, executive branch agencies like PEBA may exercise discretion in executing the laws, but only that discretion given by the Legislature. See Moorer, 152 S.C. at 478, 150 S.E. at 277. Thus, while non-legislative bodies may make policy determinations when properly delegated such power by the Legislature, absent such a delegation, policymaking is an intrusion upon the legislative power. Therefore, a statute which effectively gives an administrative body “an absolute, unregulated, and undefined discretion” bestows arbitrary powers and as such, is an unlawful delegation of legislative powers. Gilstrap v. S.C. Budget and Control Board, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992), citing Bauer, 271 S.C. at 233, 246 S.E.2d at 876 (emphasis in original).

The South Carolina Supreme Court has considered a similar question of statutory interpretation in Gilstrap. There, the Budget and Control Board decided to impose budget cuts based on the rate of growth in each agency's budget rather than across the board proportional cuts based on total appropriations. The Court found that this action exceeded the agency's authority, and, moreover that had the authorizing legislation purported to grant such authority, it would have been an unconstitutional delegation in violation of the separation of powers provision. 310 S.C. at 217, 423 S.E.2d at 105. Similarly, in Hampton v. Haley, 403 S.C. 395, 743 S.E.2d 258 (2013), the Supreme Court again rejected an unconstitutional exercise of power by the Budget and Control Board, then acting as the predecessor to PEBA in the operation of the state retirement systems. Although the legislature had appropriated sufficient funds to pay premium

increases for state employee health insurance, the Board decided to instead split the premium increase equally between the State and the enrollees. Again, the Court rejected this purported exercise of unbridled power to disregard the General Assembly's appropriation decisions in favor of its own alternative priorities. Id. at 408, 743 S.E.2d at 265. Further, the Court noted that had this been contemplated by the legislation, it would have constituted an impermissible delegation of legislative powers in violation of the separation of powers doctrine. Id.

Our opinions illustrate this same non-delegation principle. For example in Op. S.C. Atty. Gen., 2006 WL 981690 (March 31, 2006), we concluded that "giving the Department of Insurance the authority to make the final determination as to whether to enact the law constitutes a delegation of the Legislature's power to make the laws." Moreover, in Op. S.C. Atty. Gen., 1993 WL 720089 (Op. No. 93-16) (March 15, 1993), we found that "DHEC has exercised 'absolute, unregulated, and undefined discretion in reducing the appropriation to rape crisis centers by more than twenty percent in light of the mandated four percent across-the-board reductions,' thus amounting to an unlawful delegation of legislative powers. . . ."

And, in Op. S.C. Atty. Gen., 2003 WL 22862787 (November 13, 2002), we concluded that "the delegation of discretion to individual members of County Council to determine how [county] . . . funds may be spent in their district constitutes an unlawful delegation of legislative power." In our view, "[r]ather than this being a delegation of mere administrative or ministerial functions, Florence County Council has delegated legislative authority without the necessary governing standards or guidelines to avoid serious constitutional concerns regarding these expenditures."

Here, the General Assembly has tasked PEBA with using the most reliable and efficient means to prepare an amortization schedule and with using that schedule to adopt contribution rates within certain parameters, while not perpetually pushing pension costs into the future. The amortization schedule, once appropriately developed consistent with the statutory mandates, dictates future contribution rates. If there are no constraints on the future contribution rates used in the calculation of that amortization schedule, then the near term contribution rates could be manipulated by assumptions upon which the amortization schedule is based. For example, a projection of large, as yet unadopted and unapproved future increases could be used to create an amortization schedule which could be used to justify inaction in the near term, even though such a result is contrary to legislative intent not to push costs off into the future. In other words, if Section 9-1-1085 is so broad as to allow the incorporation of as yet unapproved future contribution rates into the amortization schedule which forms the basis of those future contribution rates, the effect would be to allow unfettered discretion in setting contribution rates. This would be an unconstitutional delegation of power, in violation of the General Assembly's obligation to "annually appropriate funds and prescribe member contributions for any state-operated retirement system." S.C. Const, art. X, § 16.

Statutes should not be construed to permit unconstitutional exercises of power. For the same reasons that our Supreme Court rejected statutory interpretations which would have granted

executive agencies broad authority to establish what are essentially legislative prerogatives of prioritization and spending in Gilstrap and Hampton, it is our opinion that a court would likely interpret S.C. Code Ann. § 9-1-1085(C) to avoid such an unconstitutional grant of unfettered discretion and, instead, interpret that statute to require the amortization schedule to be based upon “the rates last adopted by the board.” Such a requirement would provide an amortization schedule based on accurate information which is necessary for the fulfillment of the General Assembly’s constitutional mandate to fund the pension system. Therefore, it is this Office’s opinion that the mandated amortization schedule should be based on existing rates and not upon rates that have not yet been adopted by PEBA, approved by the SPAA or appropriated by the Legislature.

Conclusion

The South Carolina Retirement System is “administered under an elaborate statutory and constitutional scheme designed to protect the independence, integrity and actuarial soundness of the funds.” Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 41, 659 S.E.2d 125, 127 (2006) (quoting Wehle v. S.C. Ret. Sys., 363 S.C. 394, 399, 611 S.E.2d 240, 242 (2005)). As we recently stated in Op. S.C. Atty. Gen., 2016 WL 4698867 (August 29, 2016), Art. X, § 16 of the Constitution requires that the fiscal integrity of the State Retirement System be maintained. There, we observed that “[o]ur Supreme Court has recognized that maintenance of the fiscal integrity and soundness of the South Carolina Retirement System is paramount and is strongly in the public interest.” The Court has “noted that Art. X, § 16 [of the State Constitution] required that should it be determined that ‘any retirement system is not funded on a sound actuarial basis, the General Assembly must provide funding necessary to restore the fiscal integrity of the Systems.’” Id. (quoting Wehle v. S.C. Retirement System, 363 S.C. at 399, 611 S.E.2d at 242 (2005)). As the Court had emphasized, “[i]t must be assumed the legislature intends to maintain the soundness of the Retirement System. . . .” Kennedy v. S.C. Retirement System, 345 S.C. 339, 351, 549 S.E.2d 243, 249 (2001).

With these fundamental principles in mind, it is the opinion of this Office that the constitutional directive, judicial interpretations, and legislative findings related to S.C. Code Ann. § 9-1-1085 demonstrate that the legislative intent underlying S.C. Code Ann. § 9-1-1085 was to adopt “the most reliable and efficient means” to bring about change in the state retirement system and not to “perpetually push [unfunded liabilities] into the future.” S.C. Code Ann. § 9-1-1085(C) requires the use of an otherwise undefined “thirty year amortization schedule.” In our opinion, any interpretation of this requirement which would permit use of an open amortization schedule would violate the legislative intent underlying the statute because such open schedule is not a reliable or effective means to reduce the unfunded liability of the South Carolina Retirement System, in part because it would have the effect of perpetually pushing the liability into the future. Instead, in our opinion, an interpretation which requires a closed amortization schedule is consistent with legislative intent because such an interpretation would require payment of the unfunded liability of the State Retirement System over a fixed thirty year period,

The Honorable Curtis M. Loftis
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which is consistent with S.C. Code Ann. § 9-1-1085, as well as legislative intent to preclude the perpetuation of the unfunded liability into the future.

Similarly, in our opinion, the amortization schedule required by S.C. Code Ann. § 9-1-1085(C) should be calculated based upon the "rates last adopted" as specified in the authorizing legislation without reference to future contribution rates which are as yet unadopted, unapproved and unappropriated. The use of any contribution rates other than those already adopted and approved would be inconsistent with the express language of S.C. Code Ann. § 9-1-1085, as well as the legislative purpose behind the 2012 amendments which were designed to prevent perpetually pushing pension costs into the future. Any contrary interpretation would directly conflict with and thus violate the non-delegation doctrine and the separate of powers provision of the state constitution by placing essentially unfettered policy-setting discretion in the hands of an executive branch agency. As we have emphasized many times, such delegation cannot be done, consistent with our Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a faint, larger version of the same signature.

Robert D. Cook
Solicitor General



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

South Carolina State Treasurer's Office ("STO") Briefing and Position Statement Concerning the South Carolina Attorney General's Opinion Interpreting the Dictates of S.C. Code Ann. § 9-1-1085.

It is well established that South Carolina faces an intensifying crisis in pension funding. Years of below average and even negative investment returns, combined with inadequate contributions, have resulted in an escalating unfunded liability that exceeds \$24 billion (an amount more than triple the Palmetto State's annual budget).

During hearings convened by the General Assembly, pension funding experts from the Reason Foundation told the Joint Committee on Pension Systems Review that "Problem 1" of the causes of today's unfunded liability is the *open* 30-year amortization method employed by PEBA. The South Carolina Attorney General's Office recently issued and published a formal opinion clearly stating that the use of an open 30-year amortization method 1) violates S.C. Code Ann. § 9-1-1085, 2) violates the legislative intent underlying the statute, and 3) is not a reliable or effective means to reduce the unfunded liabilities of the South Carolina Retirement System.

More specifically, the following questions, together with the STO's answers based in law and facts, frame the issue.

1. What are "amortization schedules" and how do they relate to South Carolina's public pension plans?

Amortization is the payment of an obligation or debt over time. A common example is a 5 year car loan or a 15 or 30 year mortgage. These examples follow a *closed* amortization schedule – at the end of the fixed payment period, the debt is paid off. In other words, you make *fixed*, regular payments over a *set* period of time and at the end of the loan your debt is fully paid. Thereafter, you own your car or home.

Open amortization schedules are quite different. Under an open schedule, the payment period may be *reset* every year, with every year becoming year one of a new funding period. Simply put, you may *never* own the car or home in this predatory, quasi-fraudulent payment scheme. Moreover, the danger in annually resetting the open funding period is if the payments during the first year are not enough to cover the interest on the debt incurred during that year, *the debt does not decrease, but instead increases*. This is known as negative amortization – with the cumulative payment period actually increasing, as it is reset every year. This means it is unlikely that the debt will *ever* be fully paid off. As set forth below, PEBA readily admits to employing this method.

2. What kinds of amortization schedules are authorized by South Carolina law?

Since the 2012 amendments to South Carolina pension law, the governing statute has required the use of a “thirty year amortization schedule for the unfunded liabilities of the system.” S.C. Code Ann. § 9-1-1085(C). In adopting this thirty year funding period, the General Assembly *clearly* stated its intent to establish “the most reliable and efficient means of addressing the long term sustainability issues of the system, [while] not perpetually push[ing pension costs] into the future.” (Emphasis added).

The South Carolina Attorney General’s opinion expressly states that “an interpretation which requires a *closed* amortization schedule is consistent with legislative intent, because such an interpretation would require payment of the unfunded liability of the State Retirement System over a *fixed* thirty year period, which is consistent with S.C. Code Ann. § 9-1-1085, as well as the express legislative intent to preclude the perpetuation of the unfunded liability into the future.” PEBA has not complied with the law and has flagrantly disregarded the express legislative intent by using an open system.

3. Does the open amortization schedule used by PEBA in administering the State’s public pension plans conform to the statutory requirement to use a closed amortization schedule?

No, it does not. On February 3, 2017, PEBA issued an official statement regarding the Attorney General’s opinion and interpretation of South Carolina pension law. PEBA did not dispute that a closed amortization schedule would accomplish the legislative goals of establishing “the most reliable and efficient means” of addressing long term sustainability issues while not perpetually pushing pension costs into the future. PEBA did not even disagree that an open amortization schedule can cause serious problems like negative amortization or that such a schedule would be improper under South Carolina law.

Most significantly, PEBA did not claim that it uses a closed amortization schedule in its administration of the State’s public pension plans. To the contrary, and as clearly evidenced by the 2016 Comprehensive Annual Financial Report (“CAFR”), PEBA *admittedly* does *not* use a closed amortization schedule. The CAFR clearly shows that PEBA has used the same, reset 30 year amortization period every year since 2012, when the 30 year requirement was adopted. If PEBA had been properly and lawfully using a closed schedule, PEBA would now be in year 25 and not still in year 30 of its funding plan. In laymen’s terms, PEBA is *no closer* to owning the car it has been driving the past five years and is *no closer* to owning the home it has been making payments on the past five years. PEBA’s unlawful actions have cost, and will cost for decades to come, South Carolina public servants, retirees and taxpayers tens of billions of dollars.

Astonishingly, PEBA’s own actuary attests to these facts as well. A December 2016 report written by PEBA’s own actuary, Gabriel Roeder Smith & Company (“GRS”), expressly characterizes PEBA’s amortization methods as follows:

“Amortization period for contribution rate: 30-year open period”

Furthermore, during a December 2015 South Carolina General Assembly Legislative Audit Council (“LAC”) review of the SC Public Pension Funds, the LAC requested a copy of the PEBA legal opinion as to whether PEBA’s projected payment schedule for paying off the unfunded liability exceeded the maximum time period specified in the S.C. Code of Laws. PEBA patently *refused* to produce its *own* legal opinion on the simple question of law and claimed attorney-client privilege to keep it from being disclosed. One can only conclude the legal opinion researched and drafted by its own legal counsel was not favorable to PEBA. In such an event, PEBA knowingly continued to violate prudent investment standards -- and South Carolina law.

Regardless, it is clear PEBA uses an unlawful open amortization schedule in contravention to S.C. law as evidenced on page 84 of the 2016 CAFR. As evidenced below, the word “open” is expressly stated no fewer than *three times* in connection with the “Amortization Method” employed by PEBA.

Summary of Actuarial Methods and Significant Assumptions

	SCRS	PORS	GARS	JSRS	SCNG
Valuation date	07/01/15	07/01/15	07/01/15	07/01/15	07/01/15
Actuarial cost method	Entry age normal	Entry age normal	Entry age normal	Entry age normal	Entry age normal
Amortization method	Level percent open	Level percent open	Level dollar closed	Level percent open	Level dollar closed
Amortization period	30 years	27 years	12 years	27 years	17 years
Asset Valuation method	20% difference recognition method	20% difference recognition method	20% difference recognition method	20% difference recognition method	20% difference recognition method

It is manifestly evident that PEBA is *not* in compliance with its statutory obligations under S.C. Code § 9-1-1085(C), as interpreted by the Attorney General. PEBA should be ordered to immediately cease and desist this unlawful practice.

Briefing paper on state law related to the funding of the state's public pension plans

A recent opinion issued by the South Carolina Attorney General's Office has been misused to suggest that the state's public pension plans are not being administered in accordance with state law and actuarially sound practices. In response to the misuse of that opinion, the South Carolina Public Employee Benefit Authority (PEBA) has issued this briefing paper to reassure stakeholders and other interested parties that the state's public pension plans have been, and will continue to be, administered and funded in full compliance with all applicable state laws and professional actuarial standards of practice.

Misuse of the South Carolina Attorney General's opinion issued January 10, 2017

The Attorney General's January 10, 2017, opinion has been mischaracterized in recent media releases as finding that the methods used to fund the state's public pension plans are illegal and unconstitutional. However, as explained below, the opinion makes no such finding.

The Attorney General's opinion does not make findings of fact

The recent opinion issued by the Attorney General's Office makes no finding that PEBA or any other entity has administered the state's public pension plans in a manner that violates the state constitution, state statutes or actuarial standards of practice. The Attorney General's Office has long stated that, in issuing its advisory legal opinions, the office does not have the necessary fact-finding authority and resources to investigate or decide factual questions. Accordingly, in responding to the question posed by the South Carolina State Treasurer, the Attorney General's Office did not communicate with PEBA or the plans' actuaries to investigate or determine any facts related to how the state's public pension plans are funded, but rather, issued an opinion based only upon the factual assertions made in the Treasurer's request for an opinion.

The assertions in the opinion request do not reflect actual practice

The factual assertions that were provided in the opinion request, and that the Attorney General's Office relied upon in issuing its opinion, do not reflect the actual practices used to administer the state's public pension plans. In particular, the opinion addresses two hypothetical funding practices: (1) the use of an open amortization method under which contribution rates would be continually reset every year at the minimum rate necessary to stay at a 30-year funding period to pay off the unfunded liabilities of the pension plan, and (2) a method of setting the required contribution rates for the plan that would not set current contribution rates at a level sufficient to pay off the plans' unfunded actuarial liabilities within the required funding period, but that would rely upon future contribution rate increases to satisfy the

required funding levels. Neither of these methods is used in the administration of the state's public pension plans.

Amortization method

The state does not continually reset contribution rates for its public pension plans every year at the minimum rate to stay at a 30-year funding period to pay off the unfunded liabilities of the plans. Rather, since 2012, state law has prohibited contribution rates from being decreased until the plans are at least 90 percent funded. Therefore, once the contribution rates have been set to pay off the unfunded actuarial liabilities on a schedule that does not exceed 30 years, those rates cannot be reduced to later reset the 30-year funding period, unless the plan were over 90 percent funded. Under the current amortization method, the only way that the funding period could regress is if the plan has negative fiscal experience, such as underperforming investment returns that do not meet expectations, which, unfortunately, has occurred in recent years. If those deferred investment losses are not offset by future gains, contribution rates will be increased as necessary so that the funding period does not exceed 30 years at any time, as required by state law.

Future contribution increases

The state sets contribution rates for its public pension plans at a level sufficient to pay off the plans' unfunded actuarial liabilities within the required funding period without relying upon future contribution rate increases. As certified by the plans' actuaries, contribution rates set based upon the annual actuarial valuations of the plans are the full rates required to pay off the unfunded actuarial accrued liabilities of the plans within the funding period required by law, without any future increases. However, it is important to recognize that these rates are based upon the actuarial condition of the plan on the date of the actuaries' valuation. If there is an expectation of negative fiscal experience after the valuation date, such as the recognition of deferred investment underperformance, the actuaries have also produced comparative projections that illustrate what increases in contribution rates might be required if that negative experience is realized. These projections are not actuarial valuations of the plans' assets and liabilities on those future dates, and do not set the required contribution rates, but are simply educational information for the plans' stakeholders and decision makers on what sort of funding requirements may be necessary if the plans experience negative fiscal circumstances.

The Attorney General does not investigate or determine factual questions in rendering an advisory opinion on a question presented. In this instance, the factual assertions in the question presented to the Attorney General's Office do not reflect the actual funding methods for the state's public pension plans. Accordingly, it is a misuse of that opinion to assert that the opinion finds that the funding methods for the state's pension plans are illegal, unconstitutional or actuarially unsound.

The state funds its public pension plans in full compliance with state law and actuarial standards of practice

As stated at the outset, the state's public pension plans have been funded in full compliance with the requirements of state law and actuarial standards of practice. All contribution rates for the plans have been set based upon the certified annual actuarial valuations of the plans performed by the plans' actuaries and have only taken effect upon approval by the PEBA Board of Directors and the plans' co-

trustees at the State Fiscal Accountability Authority (or its predecessor, the State Budget and Control Board). The plans' current actuaries, Gabriel Roeder Smith (GRS), were selected through a competitive bidding process in 2011 by a panel with representatives from each of the five members of the former State Budget and Control Board, and the basic actuarial methodologies used by the actuaries for determining the funding requirements for the plans, including the current amortization method, are the methodologies that were adopted by the Budget and Control Board in November 2011 upon retaining the current actuaries. Many of these methodologies, including the amortization method, were also used by the prior actuaries for the plans, and the actuarial methodologies adopted or reaffirmed in 2011 are the same methodologies that were incorporated in the fiscal projections used by the General Assembly when it enacted the retirement reform legislation in Act 278 of 2012.

Under that reform legislation, prior to June 30, 2015, PEBA only had the authority to approve an increase in the contribution rates for the plans if such an increase was necessary to maintain a funding period for the plans that did not exceed 30 years. Since July 1, 2015, PEBA has been authorized to increase the employer and member contribution rates for the plans beyond the minimum requirements, up to 0.5 percent each year, in order to improve the funded status of the plans. Pursuant to that authorization, PEBA has adopted, and the State Fiscal Accountability Authority has approved, the maximum 0.5 percent increase in employer and member contribution rates for the past two years in an effort to improve the funding of the plans to the full extent of their authorization.

PEBA is working with the Joint Committee on Pension Systems Review to address the funding of the state's public pension plans

Although the state's public pension plans have been funded to the maximum extent authorized under current law, PEBA recognizes, and has testified to such before the General Assembly's Joint Committee on Pension Systems Review, that additional funding for the pension plans will be necessary if the plans are to absorb the magnitude of existing deferred investment losses and continue to make expected progress toward paying off the plans' existing liabilities. PEBA considers securing the necessary funding for the state's public pension plans to be its highest priority, and is actively working with the Joint Committee as it addresses these funding challenges. For more information on the Joint Committee and its review of these funding issues, visit [the Committee's website](#).

SECTOR COMMENT

9 February 2017

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State and Local Government - South Carolina

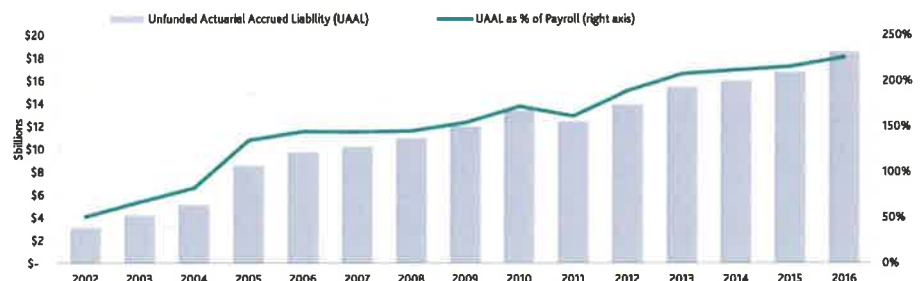
South Carolina Attorney General Highlights Requirement for Sound Pension Funding, a Credit Positive

In an opinion released January 31, the South Carolina Office of the Attorney General raised several legal issues surrounding the state's obligation to fund its pension systems. The opinion is credit positive because it increases the likelihood that pension contributions by the state and its local governments will increase, and growth in unfunded liabilities will slow or reverse.

The attorney general's office reinforced the state's obligation under its constitution to fund its retirement systems on a "sound actuarial basis." The attorney general also noted that when enacting a 2012 funding law, the state legislature intended to spread pension costs across generations in a manner where they are not "perpetually pushed into the future."

With a Moody's adjusted net pension liability (ANPL) of \$22.6 billion, amounting to 177% of its revenues, the [State of South Carolina](#) (Aaa stable) had the [ninth-highest pension burden under our standard adjustments](#) out of the 50 states, based on fiscal 2015 reporting. The [burden of unfunded retirement benefits](#) represents one of South Carolina's key credit challenges, and while not the only cause, current contribution levels perpetuate growing unfunded pension liabilities. Reported unfunded liabilities of the largest state plan, the South Carolina Retirement System (SCRS), have increased every year but one since 2003 (see Exhibit 1).

Exhibit 1
SCRS' Unfunded Liabilities Have Continued to Rise



Source: South Carolina Retirement System actuarial valuation

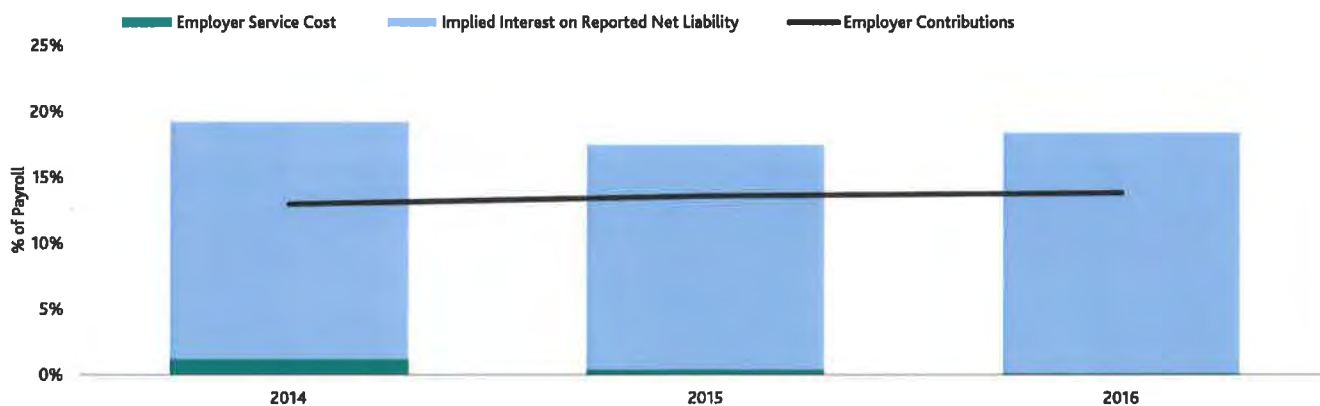
The South Carolina Public Employee Benefit Authority (PEBA) oversees the SCRS and several other pension plans in which South Carolina and its local governments participate. State

statutes govern annual contribution requirements to statewide pension plans, and in general, limit contribution increases to 0.5% of payroll per year for both employees and government employers. However, contributions may be increased by a greater amount, if necessary, in order to maintain a statutory maximum 30-year amortization period.

Contribution rates set by PEBA currently comply with the statutory 30-year maximum amortization requirement. However, government contributions to SCRS have annually fallen below our "tread water" indicator, the contribution level necessary to cover the employer share of current-year benefit accruals, or "service cost," plus implied interest on reported net liabilities. In the case of SCRS, employee contributions cover nearly all of the annual service cost (see Exhibit 2).

Exhibit 2

Government Contributions to the South Carolina Retirement System Fall Below the 'Tread Water' Indicator



Source: Moody's Investors Service, based on SCRS comprehensive annual financial reports

These contribution levels below the "tread water" level result in growing unfunded liabilities on a reported basis, even if the plan achieves its assumed rate of investment return. Along with other events such as adverse investment performance, these contribution levels have also prevented the outstanding amortization period on SCRS' unfunded liabilities from declining below 30 years in recent valuation snapshots.

The legal views pertaining to the state's pension funding obligations in the attorney general's letter make it more likely that South Carolina will consider contribution increases relative to the funding needs of the state's retirement systems. In fact, a state legislative committee is examining a number of potential changes to address the unfunded liabilities of the state's plans and to reduce the remaining amortization period to 20 years within the next decade. As of its February 2017 meeting, the committee is considering options such as higher employee and government contribution rates, in conjunction with lowering its assumed rate of investment return to 7.25% from the current rate of 7.50%.

This report was included in [Weekly Credit Outlook - US PFG: February 16, 2017](#).

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moody.com for the most updated credit rating action information and rating history.

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REPORT NUMBER

1059110

AGENCY: Department of Administration, Real Property Services

SUBJECT: Easements

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

- (a) County Location: Horry
From: Horry-Georgetown Technical College
To: South Carolina Public Service Authority (Santee Cooper)
Consideration: \$5
Description/Purpose: To grant a permanent 0.07 acre easement for the purpose of constructing, extending, inspecting, operating, replacing, relocating, allocating, repairing and maintaining electric lines and associated facilities upon property of Horry-Georgetown Technical College to serve the new Advanced Manufacturing Center. The easement is being sought by the College for the benefit of the property.
- (b) County Location: Charleston
From: Department of Administration
To: AT&T South Carolina
Consideration: \$746
Description/Purpose: To grant a 1.23 acre easement for the installation, operation and maintenance of a telecommunication conduit beneath Sand Creek to accommodate SCDOT's SC-174 Bridge Replacement Project. The existing conduit is attached to the bridge and must be relocated before SCDOT can demolish the existing bridge. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.

AUTHORITY ACTION REQUESTED:

Approve granting the referenced easements as recommended by the Department of Administration, Real Property Services.

ATTACHMENTS:

Agenda item worksheet and attachments

STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: March 9, 2017

Blue Agenda

1. Submitted by:

- (a) Agency: Department of Administration,
Real Property Services
(b) Authorized Official Signature:



Ashlie Lancaster, Director

2. Subject:

EASEMENTS

3. Summary Background Information:

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

- (a) County Location: Horry
From: Horry-Georgetown Technical College
To: South Carolina Public Service Authority (Santee Cooper)
Consideration: \$5
Description/Purpose: To grant a permanent 0.07 acre easement for the purpose of constructing, extending, inspecting, operating, replacing, relocating, allocating, repairing and maintaining electric lines and associated facilities upon property of Horry-Georgetown Technical College to serve the new Advanced Manufacturing Center. The easement is being sought by the College for the benefit of the property.
- (b) County Location: Charleston
From: Department of Administration
To: AT&T South Carolina
Consideration: \$746
Description/Purpose: To grant a 1.23 acre easement for the installation, operation and maintenance of a telecommunication conduit beneath Sand Creek to accommodate SCDOT's SC-174 Bridge Replacement Project. The existing conduit is attached to the bridge and must be relocated before SCDOT can demolish the existing bridge. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.
-

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

5. What is recommendation of the Department of Administration? Recommend approval of the referenced easements.

6. List of Supporting Documents:

1. SC Code of Laws Sections 1-11-80, 1-11-100 and 10-1-130
2. Exhibits (maps, plats, etc.)
 - (a) South Carolina Public Service Authority (Santee Cooper)
 - (b) AT&T South Carolina

SOUTH CAROLINA CODE OF LAWS

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

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

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

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

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

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

AGENCY: Department of Administration, Real Property Services

SUBJECT: Real Property Conveyances

The Department of Administration, Real Property Services recommends approval of the following real property conveyances:

- (a) **Controlling Agency:** **Medical University of South Carolina**
Acreage: 3.27 ± acres and a 180,449 square foot 10-story office building with a 641 space structured parking garage (Harborview Office Tower)
Location: 19 Hagood Avenue, Charleston
County: Charleston
Purpose: To dispose of surplus real property.
Price/Transferred To: Not less than appraised value/To be determined
Disposition of Proceeds: To be retained by MUSC pursuant to Proviso 93.23.
- (b) **Controlling Agency:** **Medical University of South Carolina**
Acreage: 2.10 ± acres and a 34,581 square foot office building
Location: 295 Calhoun Street, Charleston
County: Charleston
Purpose: To dispose of surplus real property.
Price/Transferred To: Not less than appraised value/To be determined
Disposition of Proceeds: To be retained by MUSC pursuant to Proviso 93.23.

AUTHORITY ACTION REQUESTED:

Approve the real property conveyances as recommended by the Department of Administration, Real Property Services.

ATTACHMENTS:

Agenda item worksheet and attachments

STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: March 9, 2017

Blue Agenda

1. Submitted by:

(a) Agency: Department of Administration,
Real Property Services

(b) Authorized Official Signature:

Ashlie Lancaster, Director

2. Subject: REAL PROPERTY CONVEYANCES

3. Summary Background Information:

- (a) **Controlling Agency:** Medical University of South Carolina
Acreage: 3.27 ± acres and a 180,449 square foot 10-story office building with a 641 space structured parking garage (Harborview Office Tower)
Location: 19 Hagood Avenue, Charleston
County: Charleston
Purpose: To dispose of surplus real property.
Price/Transferred To: Not less than appraised value/To be determined
Disposition of Proceeds: To be retained by MUSC pursuant to Proviso 93.23.
- (b) **Controlling Agency:** Medical University of South Carolina
Acreage: 2.10 ± acres and a 34,581 square foot office building
Location: 295 Calhoun Street, Charleston
County: Charleston
Purpose: To dispose of surplus real property.
Price/Transferred To: Not less than appraised value/To be determined
Disposition of Proceeds: To be retained by MUSC pursuant to Proviso 93.23.

4. What is Authority asked to do? Approve the property conveyances as requested.

5. What is recommendation of Department of Administration? Approve the property conveyances as requested.

6. List of Supporting Documents:

1. SC Code of Laws Section 1-11-65
2. 2016-2017 Appropriations Bill H.5001, Part 1B, Proviso 93.23
3. (a) Medical University of South Carolina – Charleston County
(b) Medical University of South Carolina – Charleston County

SOUTH CAROLINA CODE OF LAWS

SECTION 1-11-65. Approval and recordation of real property transactions involving governmental bodies.

(A) All transactions involving real property, made for or by any governmental bodies, excluding political subdivisions of the State, must be approved by and recorded with the Department of Administration for transactions of one million dollars or less. For transactions of more than one million dollars, approval of the State Fiscal Accountability Authority is required in lieu of the department, although the recording will be with the department. Upon approval of the transaction, there must be recorded simultaneously with the deed, a certificate of acceptance, which acknowledges the department's and authority's approval of the transaction as required. The county recording authority cannot accept for recording any deed not accompanied by a certificate of acceptance. The department and authority may exempt a governmental body from the provisions of this subsection.

(B) All state agencies, departments, and institutions authorized by law to accept gifts of tangible personal property shall have executed by its governing body an acknowledgment of acceptance prior to transfer of the tangible personal property to the agency, department, or institution.

HISTORY: 1985 Act No. 201, Part II, Section 5; 1989 Act No. 26, Section 1; 1997 Act No. 153, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Editor's Note

Except for designation of the paragraphs, this section and former Section 1-11-57 were identical. For consistency, Section 1-11-57 is treated as an amendment to this section.

Effect of Amendment

2014 Act No. 121, Section 7.C, rewrote subsection (A).

South Carolina General Assembly
121st Session, 2015-2016

H. 5001
General Appropriations Bill for fiscal year 2016-2017
As Ratified by the General Assembly

PART IB

OPERATION OF STATE GOVERNMENT

SECTION 93 – D50-DEPARTMENT OF ADMINISTRATION

93.23. (DOA: Sale of Surplus Real Property) Up to fifty percent of the proceeds, net of selling expenses, from the sale of surplus real properties shall be retained by the Department of Administration and used for the deferred maintenance of state-owned buildings. The remaining fifty percent of the net proceeds shall be returned to the agency that the property is owned by, under the control of, or assigned to and shall be used by that agency for nonrecurring purposes. This provision applies to all state agencies and departments except: institutions of higher learning; the Public Service Authority; the Ports Authority; the MUSC Hospital Authority; the Myrtle Beach Air Force Redevelopment Authority; the Department of Transportation; the Columbia State Farmers Market; the Department of Agriculture's Columbia Metrology Lab building and property; the Charleston Naval Complex Redevelopment Authority; the Department of Commerce's Division of Public Railways; the Midlands Technical College Enterprise Campus Authority; the Trident Technical College Enterprise Campus Authority; the Commissioners residence at the Department of Corrections and the Educational Television Commission's Key Road property.

The Educational Television Commission shall be authorized to retain the net proceeds from the sale of its property on Key Road, and such proceeds may be used for the renovation of the ETV Telecommunications Center and other maintenance and operating expenses. If it is determined that sufficient net proceeds are not to be derived from the sale of its property on Key Road to cover the cost of all renovations of the Telecommunications Center, the property on Key Road shall not be sold. Any proposed sale hereunder shall, prior to said sale, be submitted to the Department of Administration for approval as being in compliance with the requirements of this subsection.

The Department of Corrections shall be authorized to retain the net proceeds from the sale of the residence provided for the Commissioner of the Department of Corrections and use such proceeds for deferred maintenance needs at the Department of Corrections.

The Forestry Commission shall be authorized to retain the net proceeds from the sale of surplus land for use in firefighting operations and replacement of firefighting equipment.

The Department of Natural Resources shall be authorized to retain the net proceeds from the sale of existing offices originally purchased with a federal grant or with restricted revenue from hunting and fishing license sales for the improvement, consolidation, and/or establishment of regional offices and related facilities.

The Department of Vocational Rehabilitation shall be authorized to retain the net proceeds from the sale of 3.205 acres located at 22861 Highway 76 East in Clinton, South Carolina to be used for capital projects and deferred maintenance.

The Department of Agriculture, the Educational Television Commission, the Department of Corrections, the Department of Natural Resources, the Forestry Commission, and the Department of Vocational Rehabilitation shall annually submit a report, within sixty days after the close of the fiscal year, to the Senate Finance Committee and the House Ways and Means Committee on the status of the sale of the identified property and a detailed accounting on the expenditure of funds resulting from such sale.

This provision is comprehensive and supersedes any conflicting provisions concerning disposition of state-owned real property whether in permanent law, temporary law or by provision elsewhere in this act.

Any unused portion of these funds may be carried forward into succeeding fiscal years and used for the same purposes.

**(a) Medical University of South Carolina
Charleston County**

List of Supporting Documents:

1. Letter from MUSC dated January 30, 2017
2. Map



Office of Space Management Support
28 Ehrhardt Street, MSC 205
Charleston, SC 29425
(843) 792-5996

January 30, 2017

Linda Gordon
The South Carolina
Department of Administration
Real Property Services
1200 Senate Street, Suite 460
Columbia, SC 294201

RE: Request to Sell Harborview Office Tower, 19 Hagood Avenue (TMS #460-00-00-017 and #460-10-02-002)

Dear Ms. Gordon:

The Medical University of South Carolina (MUSC) requests the Department of Administration and State Fiscal Accountability Authority (SFAA) approve the sale of Harborview Office Tower located at 19 Hagood Avenue in Charleston, South Carolina. This sale was approved by the MUSC Board of Trustees on December 9, 2016.

Harborview Office Tower is a 180,449 square foot building that has significant deferred maintenance needs and high operating costs due to its age and current condition. The building layout is also obsolete making the current office space poorly utilized and inefficient. It is expected that by relocating the current occupants, the square footage needed could be reduced to an estimated 45,000 square feet. Of this figure, some of it could be relocated off peninsula to lower cost space. Although leased property will be needed to accommodate the occupants, it is expected this relocation would still result in a significant operational cost savings to MUSC.

Harborview Office Tower is a development opportunity in the Charleston community and has a greater value being divested for other critical needs rather than being refurbished. MUSC requests the SFAA approve the sale of this property for an amount no less than the appraised value as indicated in the attached appraisal dated October 14, 2016. The sale of the property would include an option for MUSC to maintain ownership of the adjacent garage, although some spaces may need to be leased to the potential buyer. It may also be necessary to maintain occupancy for two years as part of the sale agreement until adequate space can be identified for the current occupants.

Sincerely,

A handwritten signature in black ink that reads "Rachel Jones". The signature is written in a cursive style with a large, sweeping initial "R".

Rachel Jones

Leasing Manager

Google Maps 19 Hagood Ave



Map data ©2017 Google 100 ft

**(b) Medical University of South Carolina
Charleston County**

List of Supporting Documents:

1. Letter from MUSC dated February 7, 2017
2. Map



Office of Space Management Support
28 Ehrhardt Street, MSC 205
Charleston, SC 29425
(843) 792-5996

February 7, 2017

Linda Gordon
The South Carolina
Department of Administration
Real Property Services
1200 Senate Street, Suite 460
Columbia, SC 294201

RE: Request to Sell 295 Calhoun Street (TMS #457-02-02-001)

Dear Ms. Gordon:

The Medical University of South Carolina (MUSC) requests the Department of Administration and State Fiscal Accountability Authority (SFAA) approve the sale of 295 Calhoun Street in Charleston, South Carolina. This sale will be approved by the MUSC Board of Trustees on February 10, 2017.

295 Calhoun Street is a 34,581 square foot building that has significant deferred maintenance needs and high operating costs due to its age and current condition. The building layout is also obsolete making the current office space poorly utilized and inefficient. This building is currently leased in its entirety to the Medical University Hospital Authority (MUHA) and the sale of this property would result in no relocation expenses to MUSC.

The MUSC Master Plan excludes any development or expansion on the South side of Calhoun Street. This property is a development opportunity in the Charleston community and has a greater value being divested for other critical needs rather than being refurbished. MUSC requests the SFAA approve the sale of this property for an amount no less than the appraised value as indicated in the attached appraisal dated October 13, 2016.

Sincerely,

Rachel Jones
Leasing Manager

Google Maps 295 Calhoun St



AGENCY: Executive Director

SUBJECT: Revenue Bonds

The required review on the following proposal to issue revenue bonds have been completed with satisfactory results. The projects require approval under State law.

- a. Issuing Authority: Abbeville County
Amount of Issue: Not Exceeding \$6,000,000 Hospital Facilities Refunding Revenue Bonds (\$6,000,000 refunding involved)
Allocation Needed: -0-
Name of Project: Refunding of Series 2014 Bonds (Abbeville Area Medical Center)
Employment Impact: none
Project Description: the refunding of the outstanding principal amount of the originally issued \$7,880,000 Hospital Facilities Refunding Revenue Bond (Abbeville Area Medical Center Project), Series 2014 of Abbeville County
Bond Counsel: Josiah C. T. Lucas, Pope Flynn, LLC

- b. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: N/E \$47,500,000 Residential Care Facilities Revenue Bonds
Allocation Needed: -0-
Name of Project: South Carolina Episcopal Home at Still Hopes
Employment Impact: maintain permanent employment (both direct and indirect) for approximately 279 people and provide additional employment for 12 when the project is placed in full operation
Project Description: (i) defray the cost of constructing and equipping a new 48 bed skilled nursing facility and a 22 apartment community residential care facilities, and (ii) pay costs of issuance of the bonds
Note: *private sale or underwriting*
Bond Counsel: Kathleen Crum McKinney, Haynsworth Sinkler Boyd, P.A.

- c. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: \$68,265,000 Economic Development Revenue Bonds (\$68,265,000 refunding involved)
Allocation Needed: -0-
Name of Project: Upstate Senior Living, Inc. d/b/a/ The Woodlands at Furman
Employment Impact: 186 (maintain – permanent)
Project Description: the current refunding of certain obligations issued by Jobs-Economic Development Authority Health and the Institution which obligations were issued to finance and refinance the cost of the acquisition, construction, furnishing, and equipping of the institution’s continuing care retirement community in Greenville,

AGENCY: Executive Director

SUBJECT: Revenue Bonds -- Continued

known as the Woodlands at Furman, and the funding of routine capital expenditures on the community.

Note:

negotiated private sale

Bond Counsel:

F. Mitchell Johnson, Jr., Haynsworth Sinkler Boyd, P.A.

- d. Issuing Authority: Housing Authority of the City of Greenville
Amount of Issue: \$9,302,000 Multifamily Housing Revenue Bonds
Allocation Needed: \$9,302,000 (approved on 1/31/17)
Name of Project: Elements West End
Employment Impact: n/a
Project Description: to provide financing for the acquisition, construction, and renovation of a historic warehouse for conversion into 60 rental units geared toward workforce housing
Bond Counsel: Samuel W. Howell, IV, Howell Linkous & Nettles, LLC

AUTHORITY ACTION REQUESTED:

Adopt the resolutions approving the referenced proposal to issue revenue bonds.

ATTACHMENTS:

Resolution with attachments

SOUTH CAROLINA STATE FISCAL
ACCOUNTABILITY AUTHORITY RESOLUTION
ABBEVILLE COUNTY, SOUTH CAROLINA
HOSPITAL FACILITIES REFUNDING REVENUE BONDS

RESOLUTION APPROVING THE ISSUANCE BY ABBEVILLE COUNTY, SOUTH CAROLINA, OF ITS HOSPITAL FACILITIES REFUNDING REVENUE BONDS IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$6,000,000, PURSUANT TO THE PROVISIONS OF TITLE 44, CHAPTER 7, ARTICLE 11 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

WHEREAS, the County Council of Abbeville County, the governing body of Abbeville County, South Carolina (the "**County**"), has, pursuant to the provisions of Title 44, Chapter 7, Article 11 of the Code of Laws of South Carolina 1976, as amended (the "**Act**"), requested the approval by the South Carolina State Fiscal Accountability Authority (the "**Authority**") of the issuance by the County of its Hospital Facilities Refunding Revenue Bonds in an aggregate principal amount of not exceeding \$6,000,000 (the "**Bonds**"); and

WHEREAS, the County desires to assist in refinancing of the outstanding principal amount of the County's originally issued \$7,880,000 Hospital Facilities Refunding Revenue Bond (Abbeville Area Medical Center Project), Series 2014 (the "**Refunding**"), all pursuant to the authorizations of the Act; and

WHEREAS, the County proposes to issue the Bonds to provide permanent financing to defray a portion of the costs of the Refunding, and to pay the costs of issuance associated with the Bonds, and it is presently contemplated that the Bonds shall be purchased by the United States Department of Agriculture – Rural Development; and

WHEREAS, the Hospital will agree in one or more Loan Agreements (collectively, the "**Loan Agreement**") between the County and the Hospital to pay the County amounts sufficient to provide for the payment of the Bonds and the costs and expenses resulting from the issuance thereof; and

WHEREAS, pursuant to one or more Assignments, the County will assign certain of its rights under the Loan Agreement to the purchaser of the Bonds; and

WHEREAS, the obligations of the Hospital under the Loan Agreement will be secured by a first lien position on all real and personal assets of the Hospital and a debt service reserve fund.

NOW, THEREFORE, BE IT RESOLVED by the South Carolina State Fiscal Accountability Authority, in meeting duly assembled:

1. Acceptance of Petition. The Authority has made such review of the matters set forth in the Petition as it deems appropriate, and on the basis of such review, it is hereby found, determined and declared:

a. The Petition contains all matters required by law and the rules of the Authority to be set forth therein, and that in consequence thereof, the jurisdiction of the Authority has been properly invoked under and pursuant to the Act; and

b. The consummation of the Refunding is intended to promote the purposes of the Act and is reasonably anticipated to affect such result.

2. Approval of Petition and Issuance of Bonds. In light of the foregoing, the Authority accepts the provisions of the Petition and hereby authorizes and approves the execution and delivery of the Bonds. This approval shall not be affected by any changes in the details of the proposal of the County so long as such changes do not impose a pecuniary liability upon the County or its general credit or taxing power.

3. Notice of Authority's Action. Notice of the action taken by the Authority in approving the above-described undertaking of the County shall be published in The Press and Banner, a newspaper of general circulation in the County (the "*Notice*").

4. Form of Notice. The Notice shall be in substantially the form set forth in Exhibit A of this Resolution.

Adopted: March 9, 2017



OFFICE OF STATE TREASURER

New Debt Information Form (NDIF) - Initial Form

SFAA Approval Date: 03/09/17

Final Version Date: 00/00/00

AGENCY/ISSUER & FINANCING INFORMATION

Agency #: _____ Issuer: Abbeville County, S.C. Series: 2017
 Borrower (if not Issuer): Abbeville County, S.C., on behalf of Abbeville Area Medical Center (AAMC)
 Bond Caption: Hospital Facilities Refunding and Improvement Revenue Bonds (AAMC Project)
 Bond Resolution Amount: \$6,000,000.00 Est. Production/Par Amt: \$6,000,000.00

(* Used to calculate initial COI percentages; STO bond issues must use Par Amt *)

Final Production/Par Amt: \$0.00

Submitted By:

ENTITY: Pope Flynn, LLC
 BY: Joe Lucas
 ITS: Bond Counsel
 Tel: 803-354-4916
 Email: ilucas@popeflynn.com

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): N

MSRB (EMMA) Continuing Disclosure Responsible Party: N/A

2. FINANCING (NEW PORTION)

Project #: _____ Project Name: New money portion of project approved by SFAA in October 2015. See Attachment 1.
 Project Address/Location: _____ Amount: \$0.00
 Project Type: _____ County: _____
 Projected Avg Interest Rate: _____ Final Maturity: 01/00/00

3. FINANCING (REFUNDED PORTION)

Series to be Refunded	Refunded Maturities	Principal Refunded	IR of Refunded Bids	Est. Yield of Refunding Bids	Est NPV Svgs. (\$)	Est NPV Svgs. (% of Ref. Bids)
Series 2014		\$ 6,024,915.00	3.29%	3.63%	\$ (43,476.00)	-0.73%
		\$			\$	
		\$			\$	
		\$			\$	
	Total	\$ 6,024,915.00	*****	*****	\$ (43,476.00)	-0.73%

4. FINANCING WORKING GROUP

Financial Advisor: Raymond James Disclosure Counsel: N/A
 Bond Counsel: Pope Flynn, LLC Issuer's Counsel: Pruitt Law Firm
 Underwriter: N/A Trustee: N/A
 Paying Agent: N/A 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)

Abbeville County, on behalf of Abbeville Area Medical Center ("AAMC"), seeks approval of \$6,000,000 in debt sold to the USDA to refund the County's Hospital Refunding Revenue Bond, Series 2014. The purpose of the refunding is not to realize savings but restructure AAMC's debt to (i) substantially reduce AAMC's annual debt service; (ii) avoid an interest rate reset in 2021; and (iii) gain access to USDA's flexible financing. This issuance will be combined with the issuance of a \$6,000,000 bond approved by SFAA in October 2015 to fund construction of a medical office building. Section 8 shows sources and uses of the combined project. See Attachment 1 for further explanation.

6. FINANCING/PROJECT APPROVAL DATES

Financing Approvals		Notes:
Issuer/Borrower Approval:	11/14/16	County Approval
JBRC Approval:	00/00/00	
SFAA Approval:	03/09/17	Proposed

Project Approvals - Phase II (State Entities Only)		Notes:
Issuer/Borrower Approval:	00/00/00	
JBRC Approval:	00/00/00	
SFAA Approval:	00/00/00	

7. TAX AND ARBITRAGE MATTERS & SPEND DOWN SCHEDULE

a. Is any portion of the project, once completed, to be managed by a third-party pursuant to a management contract? (if yes, please attach copy)

Yes	No
	X

b. Will any third-party payments (from support organizations, private entities or the federal government) related to the facility, however indirectly, be used to pay debt service on the bonds?

	X
--	---

c. If yes to any of the above, please provide a square footage and cost estimate of the portion affected.

Sq. Footage -	
Cost Estimate -	\$0

Est. Expenditures - Through 6 Months
 Est. Expenditures - Through 12 Months
 Est. Expenditures - Through 18 Months
 Est. Expenditures - Through 24 Months
 Est. Expenditures - Through 36 Months
 Est. Expenditures - Through 48 Months
 - Estimated Expenditures: Thru FY:

Bond Proceeds	FYE	Spend Down Schedule Notes
\$ 12,000,000.00	9/30/2017	COI, Redemption Price, Escrow, Project Fund
\$	00/00/00	
\$	00/00/00	
\$	00/00/00	
\$	00/00/00	
\$	00/00/00	
\$ 12,000,000.00		

8. ESTIMATED/ACTUAL PROJECT SOURCES AND USES

Sources	Est. Project Budget (Sources)	Est. Project Budget (Uses)	Uses
(1) Bond Proceeds: (a) Par	\$ 12,000,000.00	\$ 6,000,000.00	Project Fund
(b) Premium/Accr. Int.	\$	\$	Capitalized Interest Fund
(2) Issuer/Borrower Contr.	\$ 112,808.00	\$	Debt Service Reserve Fund
(3) Debt Service Fund Trans.	\$	\$ 6,024,915.00	Redemption Price/Escrow Deposit
(4) Debt Service Reserve Fund Contribution	\$	\$ 87,893.00	Cost of Issuance (Incl. UW Disc.)
(5) Other (Specify) Type -	\$	\$	Accrued Interest
Residual Project Sources		\$	Other
(6) Other	\$	\$	Other
(a) GF -	\$	\$	Other
(a) FF -	\$	\$	Other
(c) OF -	\$	\$	Other
Total Project Sources	\$ 12,112,808.00	\$ 12,112,808.00	Total Project Uses

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	Raymond James			\$ 24,143.00	\$	\$ 24,143.00
Bond Counsel	Pope Flynn, LLC			\$ 45,000.00	\$	\$ 45,000.00
Disclosure Counsel				\$	\$	\$
Issuer's Counsel	Pruitt Law Firm			\$ 18,750.00	\$	\$ 18,750.00
Underwriter's Counsel				\$	\$	\$
Transaction Counsel				\$	\$	\$
Legal Expenses				\$	\$	\$
				\$	\$	\$
Rating Agency - S&P				\$	\$	\$
Rating Agency - Moody's				\$	\$	\$
Rating Agency - Fitch				\$	\$	\$
Underwriter's Compensation				\$	\$	\$
Registrar / Paying Agent				\$	\$	\$
Escrow Agent				\$	\$	\$
Accountant				\$	\$	\$
Verification Agent				\$	\$	\$
Printing				\$	\$	\$
Publishing				\$	\$	\$
Advertising				\$	\$	\$
Contingency				\$	\$	\$
Issuer's Fee	SC JEDA / SC SHFDA			\$	\$	\$
				\$ 87,893.00	\$	\$ 87,893.00

Est. / Actual COI Fees (% of Transaction):

Financial Advisor: % of Transaction
 Bond Counsel: % of Transaction
 Total Legal Costs: % of Transaction
 Rating Agencies: % of Transaction

0.40%	#DIV/0!
0.75%	#DIV/0!
1.06%	#DIV/0!
0.00%	#DIV/0!

UW Comp: % of Transaction
 Other COI: % of Transaction
 Total COI: % of Transaction

0.00%	#DIV/0!
0.00%	#DIV/0!
1.46%	#DIV/0!



South Carolina Office of State Treasurer New Debt Information Form Attachment

*03.09.17 – Abbeville County – Abbeville Area Medical Center (AAMC)
Hospital Facilities Refunding and Improvement Revenue Bonds -
\$6,000,000*

In October 2015, the State Fiscal Accountability Authority (“SFAA”) approved the issuance of not exceeding \$6,000,000 principal amount Abbeville County, South Carolina Hospital Facilities Revenue Bonds by Abbeville County (the “County”), on behalf of Abbeville Area Medical Center (“AAMC”), to finance the construction of AAMC’s new medical office building (the “MOB”). Subsequent to SFAA’s approval, AAMC reached an agreement with the United States Department of Agriculture – Rural Development (“USDA”) to finance the construction of the MOB and also refund the outstanding principal amount of the originally issued \$7,880,000 Hospital Facilities Refunding Revenue Bond (Abbeville Area Medical Center Project), Series 2014 of the County (the “Series 2014 Bond”).

If approved by SFAA, the County and AAMC intend to combine the refunding of the Series 2014 Bond with the bond approved in October 2015 financing the construction of the MOB and issue a single hospital refunding and improvement revenue bond to USDA in the aggregate amount of \$12,000,000 (the “Series 2017 Bond”). The County and AAMC ask that SFAA approve the issuance of an additional \$6,000,000 in debt in order to allow for the refunding of the Series 2014 Bond. AAMC may contribute a small amount of funds, if necessary, to pay the outstanding principal amount of and accrued interest on the Series 2014 Bond above the par amount of the Series 2017 Bond.

AAMC proposes to refund and restructure the Series 2014 Bond to (i) extend the term from 10 years to 40 years; (ii) avoid interest rate risk when the rate on the Series 2014 Bond is scheduled to reset in 2021; and (iii) consolidate all outstanding debt with USDA, which offers terms providing operational and functional benefits versus the existing terms of the Series 2014 Bond. While AAMC may continue to make annual debt service payments in an amount equal to those of the Series 2014 Bond in the near term, the refunding will give AAMC flexibility to reduce budgeted annual debt service to meet potential challenges going forward.

AAMC anticipates that, while the refunding will result in total additional interest costs of \$4,118,315, if AAMC takes full advantage of the reduction in annual debt service afforded by the refunding, it will realize a slight net present value savings of \$9,808. The County and AAMC now ask that the SFAA approve the issuance of an additional \$6,000,000 in debt in order to allow for the refunding of the Series 2014 Bond.

A RESOLUTION APPROVING THE ISSUANCE BY THE SOUTH CAROLINA JOBS-ECONOMIC DEVELOPMENT AUTHORITY THROUGH PRIVATE SALE OR UNDERWRITING OF NOT EXCEEDING \$47,500,000 AGGREGATE PRINCIPAL AMOUNT RESIDENTIAL CARE FACILITIES REVENUE BONDS (SOUTH CAROLINA EPISCOPAL HOME AT STILL HOPES), IN ONE OR MORE SERIES, PURSUANT TO THE PROVISIONS OF SECTION 41-43-110 OF SOUTH CAROLINA CODE ANNOTATED, TITLE 11, CHAPTER 43 (1976), AS AMENDED.

WHEREAS, the South Carolina Jobs-Economic Development Authority (the "**Authority**") has heretofore under and pursuant to the provisions of Section 41-43-110 of South Carolina Code Annotated, Title 41, Chapter 43 (1976), as amended (the "**Act**"), requested approval by the State Fiscal Accountability Authority of the issuance by the Authority pursuant to the Act of its Residential Care Facilities Revenue Bonds (South Carolina Episcopal Home at Still Hopes), in one or more series, in the aggregate principal amount of not exceeding \$47,500,000 (the "**Bonds**"), through private sale or underwriting which the Authority has determined to be most advantageous; and

WHEREAS, the Authority represents to the State Fiscal Accountability Authority of the State of South Carolina (the "**SFAA**") that the Bonds will be sold by the Authority through private sale or underwriting to a financial institution acceptable to the Authority;

NOW, THEREFORE, BE IT RESOLVED, by the State Fiscal Accountability Authority of the State of South Carolina, as follows:

Section 1. It is hereby found, determined and declared by the SFAA that the Petition filed by the Authority contains all matters required by law and the rules of the SFAA to be set forth therein, and that in consequence thereof the jurisdiction of the SFAA has been properly invoked under and pursuant to Section 41-43-110 of the Act.

Section 2. In consequence of the foregoing, the proposal of the Authority to issue the Bonds through private sale or underwriting is hereby in all respects approved.

Section 3. This Resolution shall take effect immediately.



OFFICE OF STATE TREASURER

New Debt Information Form (NDIF) - Initial Form

SFAA Approval Date: 03/09/17

Final Version Date: 00/00/00

AGENCY/ISSUER & FINANCING INFORMATION

Agency #: _____ Issuer: South Carolina Jobs-Economic Development Authority Series: 2017
 Borrower (if not Issuer): South Carolina Episcopal Home at Still Hopes
 Bond Caption: Economic Development Revenue Bonds
 Bond Resolution Amount: \$47,500,000.00 Est. Production/Par Amt: \$47,500,000.00

(* Used to calculate initial COI percentages; STO bond issues must use Par Amt *)

Submitted By:

Final Production/Par Amt: \$0.00

ENTITY: SCJEDA
 BY: Harry Huntley
 ITS: Executive Director
 Tel: 803-737-0627
 Email: hhuntley@scjeda.com

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): Yes

MSRB (EMMA) Continuing Disclosure Responsible Party: Ray Colston, South Carolina Episcopal Home at Still Hopes, CFO

2. FINANCING (NEW PORTION)

Project #: _____ Project Name: South Carolina Episcopal Home at Still Hopes Project
 Project Address/Location: One Still Hopes Drive, West Columbia Amount: \$47,500,000.00
 Project Type: Senior Housing Facilities County: City of West Columbia (Lexington)
 Projected Avg Interest Rate: 5.50% Final Maturity: 12/31/52

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: N/A Disclosure Counsel: N/A
 Bond Counsel: Haynsworth Sinkler Boyd Issuer's Counsel: McNair Law Firm. P.A.
 Underwriter: BC Ziegler & Co. Trustee: U.S. Bank, N.A.
 Paying Agent: N/A Corporate Counsel: Haynsworth Sinkler Boyd

5. FINANCING/PROJECT DESCRIPTION

(Briefly, explain the financing/project, the anticipated costs, & the basis for these cost estimates. Use an attachment if needed)

See attached.

6. FINANCING/PROJECT APPROVAL DATES

Financing Approvals		Notes:
Issuer/Borrower Approval:	04/26/17	SCJEDA
JBRC Approval:	00/00/00	
SFAA Approval:	03/09/17	SFAA

Project Approvals - Phase II (State Entities Only)		Notes:
Issuer/Borrower Approval:	00/00/00	
JBRC Approval:	00/00/00	
SFAA Approval:	00/00/00	

7. TAX AND ARBITRAGE MATTERS & SPEND DOWN SCHEDULE

a. Is any portion of the project, once completed, to be managed by a third-party pursuant to a management contract? (if yes, please attach copy)

Yes	No
	X

b. Will any third-party payments (from support organizations, private entities or the federal government) related to the facility, however indirectly, be used to pay debt service on the bonds?

Yes	No
	X

c. If yes to any of the above, please provide a square footage and cost estimate of the portion affected.

Sq. Footage - _____
 Cost Estimate - \$0

	Bond Proceeds	FYE	Spend Down Schedule Notes
Est. Expenditures - Through 6 Months	\$ 27,837,736.00	00/00/00	Project Fund, Capitalized Interest, COI
Est. Expenditures - Through 12 Months	\$ 10,753,302.00	00/00/00	Project Fund
Est. Expenditures - Through 18 Months	\$ 8,908,962.00	00/00/00	Project Fund
Est. Expenditures - Through 24 Months	\$	00/00/00	
Est. Expenditures - Through 36 Months	\$	00/00/00	
Est. Expenditures - Through 48 Months	\$	00/00/00	
- Estimated Expenditures: Thru FY:	\$ 47,500,000.00		

8. ESTIMATED/ACTUAL PROJECT SOURCES AND USES

Sources	Est. Project Budget (Sources)	Est. Project Budget (Uses)	Uses
(1) Bond Proceeds: (a) Par	\$ 47,500,000.00	\$ 34,000,000.00	Project Fund
(b) Premium/Accr. Int.	\$	\$ 4,280,000.00	Capitalized Interest Fund
(2) Issuer/Borrower Contr.	\$	\$ 4,270,000.00	Debt Service Reserve Fund
(3) Debt Service Fund Trans.	\$	\$	Redemption Price/Escrow Deposit
(4) Debt Service Reserve Fund Contribution	\$	\$ 950,000.00	Cost of Issuance (Incl. UW Disc.)
(5) Other (Specify) Type -	\$	\$ 4,000,000.00	Other (Inducement Contingency)
Residual Project Sources		\$	Other
(6) Other		\$	Other
(a) GF -	\$	\$	Other
(a) FF -	\$	\$	Other
(c) OF -	\$	\$	Other
Total Project Sources	\$ 47,500,000.00	\$ 47,500,000.00	Total Project Uses
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				\$	\$	\$
Bond Counsel	Haysworth Sinkler Boyd			\$ 65,000.00	\$	\$ 65,000.00
Disclosure Counsel				\$	\$	\$
Issuer's Counsel	McNair Law Firm. P.A.			\$ 15,000.00	\$	\$ 15,000.00
Underwriter's Counsel	Butler Snow			\$ 50,000.00	\$	\$ 50,000.00
Transaction Counsel	Haysworth Sinkler Boyd			\$ 35,000.00	\$	\$ 35,000.00
Trustee Counsel				\$ 5,000.00	\$	\$ 5,000.00
Bank Counsel	Moore & Van Allen			\$ 40,000.00	\$	\$ 40,000.00
Rating Agency - S&P	n/a			\$	\$	\$
Rating Agency - Moody's	n/a			\$	\$	\$
Rating Agency - Fitch	n/a			\$ 50,000.00	\$	\$ 50,000.00
Underwriter's Compensation	BC Ziegler			\$ 570,000.00	\$	\$ 570,000.00
Trustee	U.S. Bank, NA			\$ 5,000.00	\$	\$ 5,000.00
Feasibility Study				\$	\$	\$
Accountant	Dixon Hughes Goodman			\$ 15,000.00	\$	\$ 15,000.00
Verification Agent				\$	\$	\$
Printing	Image Master			\$ 7,500.00	\$	\$ 7,500.00
Publishing				\$	\$	\$
Advertising				\$	\$	\$
Contingency				\$ 50,000.00	\$	\$ 50,000.00
Issuer's Fee	SC JEDA SC SHFDA			\$ 42,500.00	\$	\$ 42,500.00
				\$ 950,000.00	\$	\$ 950,000.00

Est. / Actual COI Fees (% of Transaction):

Financial Advisor: % of Transaction
 Bond Counsel: % of Transaction
 Total Legal Costs: % of Transaction
 Rating Agencies: % of Transaction

0.00%	#DIV/0!
0.14%	#DIV/0!
0.44%	#DIV/0!
0.11%	#DIV/0!

UW Comp: % of Transaction
 Other COI: % of Transaction
 Total COI: % of Transaction

1.20%	#DIV/0!
0.25%	#DIV/0!
2.00%	#DIV/0!



**South Carolina Office of State Treasurer
New Debt Information Form Attachment**

***03.09.17 – SC JEDA – SC Episcopal Home at Still Hopes - Economic
Development Revenue Bonds - \$47,500,000***

The South Carolina Episcopal Home at Still Hopes, a continuing care retirement community located in West Columbia, SC, is considering a Series 2017 financing to fund the construction of both (i) a new 48-bed replacement skilled nursing facility, and, (ii) add an additional 22 assisted living beds. Still Hopes is an outstanding organization with an investment grade credit profile. The information contained herein assumes that Still Hopes completes a public offering of tax exempt bonds. At the same time, Still Hopes is in discussions with its bank, SunTrust, to provide financing for the project. Depending on SunTrust's proposal, Still Hopes will pursue financing as either a direct placement or a public offering in the April/May 2017 time frame. To the extent that the bank financing approach is successful, it is expected that the borrowing amount and associated fees will be lower.

STATE FISCAL ACCOUNTABILITY AUTHORITY

A RESOLUTION

APPROVING THE UNDERTAKING OF THE SOUTH CAROLINA JOBS - ECONOMIC DEVELOPMENT AUTHORITY TO ISSUE NOT EXCEEDING \$68,265,000 SOUTH CAROLINA JOBS - ECONOMIC DEVELOPMENT AUTHORITY ECONOMIC DEVELOPMENT REVENUE BONDS (THE WOODLANDS AT FURMAN) SERIES 2017 IN ONE OR MORE SERIES (the "**Bonds**") PURSUANT TO TITLE 41, CHAPTER 43, CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED (the "**Act**").

WHEREAS, heretofore the South Carolina Jobs - Economic Development Authority (the "**Authority**"), did, pursuant to the Act, petition the State Fiscal Accountability Authority, the statutory successor to the State Budget and Control Board of South Carolina, (the "**State Board**") seeking the approval of the State Board for an undertaking by the Authority pursuant to the Act; and

WHEREAS, the proposed undertaking (the "**Undertaking**") consists of the issuance and delivery of the Bonds for the benefit of Upstate Senior Living, Inc. d/b/a The Woodlands at Furman (the "**Institution**"), a South Carolina nonprofit corporation and an organization described in §501(c)(3) of the Internal Revenue Code of 1986, as amended, and in an aggregate amount not exceeding \$68,265,000 to (i) finance the refunding and defeasance of (a) the South Carolina Jobs - Economic Development Authority Revenue Bonds (The Woodlands at Furman Project) Series 2007A (the "**Series 2007A Bonds**") issued by the Authority on October 17, 2007, in the original principal amount of \$44,930,000 and with an estimated outstanding principal amount on the projected date of the refunding and defeasance of \$1,335,000, (b) the South Carolina Jobs - Economic Development Authority Revenue Bonds (The Woodlands at Furman Project) Series 2007B Extendable Rate Adjustable SecuritiesSM (EXTRASSM) (the "**Series 2007B Bonds**") and, together with the Series 2007A Bonds, the "**Series 2007 Bonds**") issued by the Authority on October 17, 2007, in the original principal amount of \$2,000,000 and with an estimated outstanding principal amount on the projected date of the refunding and defeasance of \$175,000, (c) the South Carolina Jobs - Economic Development Authority Refunding Revenue Bonds (The Woodlands at Furman Project) Series 2012A (the "**Series 2012A Bonds**") issued by the Authority on March 6, 2012, in the original principal amount of \$31,794,463 and with an estimated outstanding principal amount on the projected date of the refunding and defeasance of \$26,041,133, (d) the South Carolina Jobs - Economic Development Authority Subordinate Capital Appreciation Refunding Revenue Bonds (The Woodlands at Furman Project) Series 2012B (the "**Series 2012B Bonds**") and, together with the Series 2012A Bonds, the "**Series 2012 Bonds**") issued by the Authority on March 6, 2012, in the original principal amount of \$13,626,128 and with an estimated outstanding principal amount on the projected date of the refunding and defeasance of \$14,133,547, (e) the Variable Rate Direct Note Obligation, Series 2012C (the "**Series 2012C Obligation**") issued by the Institution on March 6, 2012, in the original principal amount of \$21,213,222 and with an estimated outstanding principal amount on the projected date of the refunding and defeasance of \$14,925,673, and (f) the Subordinate Capital Appreciation Direct Note Obligation, Series 2012D (the "**Series 2012D Obligation**") and, together with the Series 2012C Obligation, the "**Series 2012C/D Obligations**") issued by the Institution on March 6, 2012, in the original principal amount of \$8,962,809 and with an estimated outstanding principal amount on the projected date of the refunding and defeasance of \$9,953,642 all of which were issued to finance or refinance the acquisition, construction, furnishing, and equipping of the Institution's continuing care retirement community (the "**Community**") located at 83 Old Roe Ford Road on the campus of Furman University in the City of Greenville, South Carolina, and in Greenville County, South Carolina (the "**County**"); (ii) to fund routine capital expenditures by the Institution with respect to the Community for the next three (3) years (the "**Series 2017 Project**"); (iii) to fund a debt service reserve fund for the Bonds; and (iv) pay certain fees and expenses to be incurred in connection with the issuance of the Bonds (collectively, the "**Undertaking**"), all pursuant to resolution (the "**Bond Resolution**") adopted by the Board of Directors of the Authority, and to one or more Bond Trust Indentures (collectively, the "**Bond Indentures**") between the Authority and a trustee to be named by the Institution with the approval of the State Treasurer, as Bond Trustee (the "**Bond Trustee**"); and

WHEREAS, the Series 2007 Bonds, the Series 2012 Bonds, and the Series 2012C/D Obligations were originally issued to finance or refinance the cost of the acquisition, construction, furnishing, and equipping of the Community; and

WHEREAS, it is anticipated that the Bonds will be initially sold to B. C. Ziegler and Company (the "**Underwriter**") for resale to the public either as rated obligations or as unrated obligation; and

WHEREAS, the Authority proposes to enter into one or more Loan Agreements (collectively, the "*Loan Agreements*") with the Institution pursuant to which the Authority will lend the proceeds of the Bonds to the Institution to finance the costs of the Undertaking; and

WHEREAS, pursuant to the Loan Agreements, the Institution will agree to pay to the Authority amounts sufficient to provide for the payment of the Bonds and the costs and expenses resulting from the issuance thereof; and

WHEREAS, the Authority proposes to enter into the Bond Indentures prescribing the terms and conditions upon which the Bonds will be issued and pledging to the payment of the Bonds the loan repayments to be made by the Institution pursuant to the Loan Agreements; and

WHEREAS, the Authority has heretofore determined that:

(a) the Institution is a responsible party engaged in the business of owning and operating the Community, and the Community is located in the County,

(b) the Community constitutes a "business enterprise" as said term is referred to in §41-43-160 of the Act, and the issuance of the in an aggregate principal amount not to exceed \$27,800,000 in two or more series to finance the Undertaking will subserve the purposes and in all respects conform to the provisions and requirements of the Act.

(c) the Institution has demonstrated to the Authority that the assistance of the Authority by the issuance of the Bonds will result in the maintenance of permanent employment (both direct and indirect) for approximately one hundred eighty-six (186) people (123 full-time and 63 part-time) from the County and surrounding areas, with a resulting alleviation of unemployment and a substantial increase in payrolls and other public benefits incident to the conduct of such businesses not otherwise provided locally, and the number of jobs resulting from the assistance authorized herein bears a reasonable relationship to the amount of program funds committed (*i.e.*, the principal amount of the Bonds), taking into account factors such as the amount of dollars invested per employee at comparable facilities,

(d) the amount of program funds committed (*i.e.*, the principal amount of the Bonds) bears a reasonable relationship to the amount of private funds committed to the Community, and

(e) the size and scope of the Community is such that a definite benefit to the economy of the State, and the County in particular is reasonably expected to result therefrom; and

WHEREAS, the Authority has also determined that prior to the issuance of the Bonds it will find that:

(a) the provisions, terms, and conditions of the agreements to be entered into by the Authority in connection with the issuance of the Bonds are reasonable and proper, taking into account such factors as the type of program involved, the amount of program funds involved, and the number and type of jobs involved, and

(b) the public interest is adequately protected by the terms of such documents; and

WHEREAS, in order to finance the Undertaking, the Authority proposes to provide for the issuance and delivery of the Bonds pursuant to the Act, to the Bond Resolutions and to the Bond Indentures, payable by the Authority from the amounts derived from the Loan Agreements and secured by the Bond Indentures pursuant to which the Authority will pledge substantially all of its right, title and interest in and to the Loan Agreements to the Bond Trustee; and

NOW, THEREFORE, BE IT RESOLVED BY THE STATE FISCAL ACCOUNTABILITY AUTHORITY IN MEETING DULY ASSEMBLED:

1. It has been found and determined by the State Board that the Authority has filed a proper petition with the State Board in accordance with the provisions of the Act and that it has made the findings required by the Act.

2. On the basis of the foregoing findings, the proposed undertaking of the Authority to finance the Undertaking through the issuance of not exceeding \$68,265,000 of the Authority's Economic Development Revenue Bonds in two or more series through a negotiated private sale to the Underwriter pursuant to the Act, the Bond Resolution, and the Bond Indentures, to be payable from the revenues to be derived by the Authority from the Loan Agreements, and to be secured by the Bond Indentures, all pursuant to the Act (including changes in any details of the said financing as finally consummated which do not materially affect the said undertaking) be and the same are hereby approved.



OFFICE OF STATE TREASURER

New Debt Information Form (NDIF) - Initial Form

SFAA Approval Date: 03/09/17

Final Version Date: 00/00/00

AGENCY/ISSUER & FINANCING INFORMATION

Agency #: _____ Issuer: South Carolina Jobs - Economic Development Authority Series: 2017
 Borrower (if not Issuer): Upstate Senior Living dba The Woodlands at Furman
 Bond Caption: Economic Development Revenue & Refunding Bonds
 Bond Resolution Amount: \$68,265,000.00 Est. Production/Par Amt: \$64,260,000.00

(* Used to calculate initial COI percentages, STO bond issues must use Par Amt *)

Final Production/Par Amt: \$0.00

Submitted By:

ENTITY: SCJEDA
 BY: Harry Huntley
 ITS: Executive Director
 Tel: Executive Director
 Email: hhuntley@scjeda.com

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): YMSRB (EMMA) Continuing Disclosure Responsible Party: Kevin Parkland, The Woodlands at Furman, Executive Director

2. FINANCING (NEW PORTION)

Project #: _____ Project Name: Capital Improvements
 Project Address/Location: 83 Old Roe Ford Road Greenville Amount: \$7,185,000.00
 Project Type: _____ County: Greenville
 Projected Avg Interest Rate: 6.00% Final Maturity: 05/01/47

3. FINANCING (REFUNDED PORTION)

Series to be Refunded	Refunded Maturities	Principal Refunded	IR of Refunded Bids	Est. Yield of Refunding Bids	Est NPV Svgs (\$)	Est NPV Svgs (% of Ref. Bids)
Series 2007A; Series 2007B		\$ 1,510,000.00	5.375% to 6.875%	6.00%	\$ (13,294.11)	-1.00%
Series 2012A; Series 2012C		\$ 40,966,806.00	5.00% to 6.00%	6.00%	\$ (1,894,197.58)	-4.62%
Series 2012B; Series 2012D		\$ 7,010,000.00	4.04% CAB	6.00%	\$ 16,448,956.00	70.00%
Total		\$ 49,486,806.00	*****	*****	\$ 14,541,464.31	

4. FINANCING WORKING GROUP

Financial Advisor: RBC Capital Markets Disclosure Counsel: Butler Snow
 Bond Counsel: Haynsworth Sinkler Boyd Issuer's Counsel: Howell & Linkous
 Underwriter: BC Zeigler & Co. Trustee: _____
 Paying Agent: _____ Corporate Counsel: Haynsworth Sinkler Boyd

5. FINANCING/PROJECT DESCRIPTION

(Briefly, explain the financing/project, the anticipated costs, & the basis for these cost estimates. Use an attachment if needed)

See attached for general description.
 Note, above for the Series 2012B, Series 2012D savings - this is estimated based on the expected redemption of these subordinate bonds at a roughly 70% discount to the par value. Negotiations with the holders of these subordinate bonds are ongoing and ultimate results are subject to negotiation.

6. FINANCING/PROJECT APPROVAL DATES

Financing Approvals		Notes:
Issuer/Borrower Approval:	01/25/17	SCJEDA
JBRC Approval:	00/00/00	
SFAA Approval:	03/09/17	SFAA

Project Approvals - Phase II (State Entities Only)		Notes:
Issuer/Borrower Approval:	00/00/00	
JBRC Approval:	00/00/00	
SFAA Approval:	00/00/00	

7. TAX AND ARBITRAGE MATTERS & SPEND DOWN SCHEDULE

a. Is any portion of the project, once completed, to be managed by a third-party pursuant to a management contract? (if yes, please attach copy)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

c. If yes to any of the above, please provide a square footage and cost estimate of the portion affected.

Sq. Footage -	Entire Facility
Cost Estimate -	\$0

C.

STATE FISCAL ACCOUNTABILITY AUTHORITY
MEETING OF March 9, 2017

REGULAR SESSION
ITEM NUMBER 1

AGENCY: Office of the State Auditor

SUBJECT: 2016 Audit - CAFR

The State Auditor will report to the Authority on the results of 2016 CAFR Audit.

AUTHORITY ACTION REQUESTED:

Receive the State Auditor's report on the 2016 CAFR Audit as information only.

ATTACHMENTS:

Overview of the 2016 Financial Statement Audit State of South Carolina

Presentation to the State Fiscal Accountability Authority
March 9, 2017

George Kennedy, CPA - State Auditor
Bill Early, CPA – Partner at CliftonLarsonAllen

1. Audited financial statements for the year ended June 30, 2016
 - a. Comprehensive Annual Financial Report (CAFR) Issued December 12, 2016
 - b. Joint auditors' opinion is unmodified or "clean" opinion
 - c. CAFR provides a comprehensive view of the State's financial position at June 30, 2016 and how it performed financially over the year

2. Auditors' Communication With Those Charged With Governance (SAS 114 letter)
 - a. Significant audit findings
 - b. Audits of group financial statements
 - c. Other information in documents containing audited financial statements

3. Internal Control Over Financial Reporting and on Compliance and Other Matters (SAS 115 report)
 - a. We evaluated internal control but do not express an opinion on its effectiveness
 - b. We identified deficiencies in internal control
 - c. The report contains items we consider to be *material weaknesses* or *significant deficiencies*
 - d. Our audit tests disclosed no instances of noncompliance
 - e. Management responses to our findings are included in the report

4. Status of the Audit of Expenditures of Federal Awards
 - a. On track to issue mid-March, ahead of the March 31 deadline
 - b. Programs tested as major selected based on risk and include expenditures totaling approximately \$5.1 billion of approximately \$7.9 billion total statewide.
 - c. We are In the process of reviewing findings with responsible agencies and obtaining their responses and plans for corrective action



State of South Carolina
Office of the State Auditor



CliftonLarsonAllen

December 12, 2016

The Honorable Henry McMaster, Governor
and
Members of the General Assembly
State of South Carolina
Columbia, South Carolina

We have jointly audited 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 State of South Carolina (the State) as of and for the year ended June 30, 2016, and have issued our report thereon dated December 12, 2016. We have previously communicated to you information about our responsibilities under auditing standards generally accepted in the United States of America and *Government Auditing Standards*, as well as certain information related to the planned scope and timing of our audit. Professional standards also require that we communicate to you the following information related to our audit.

Significant audit findings

Qualitative aspects of accounting practices

Accounting policies

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the State are described in Note 1 of the financial statements.

For the year ended June 30, 2016, as described in Note 1, the financial statements include the impact of the adoption of Governmental Accounting Standards Board Statement (GASB) numbers 72, *Fair Value Measurements*.

We noted no transactions entered into by the entity during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- *Capital Assets and Depreciation Expense* – Capital assets are valued at historical cost or at estimated historical cost if actual historical data are not available. Donated capital assets are recorded at estimated fair value on the donation date. Infrastructure assets acquired prior to fiscal years ended after June 30, 1980 are reported at cost beginning in the year 1917.

Guidance found in implementation guides for GASB Statement No. 34 published by the Governmental Accounting Standards Board was followed in determining the useful lives for various asset classes including the depreciation of infrastructure. Depreciation was calculated under the straight-line method based on the useful lives.

The State does not depreciate capitalized individual works of art and historical treasures determined to have inexhaustible useful lives.

We evaluated the key factors and assumptions used to estimate the useful lives for various asset classes including the depreciation of infrastructure in determining that it is reasonable in relation to the financial statements taken as a whole.

- *Other Post-Employment Benefits (OPEB) Plan Asset/Obligation* – The State participates in a cost-sharing multiple-employer plan. As such, any potential OPEB asset or liability arising from over or under funding of the plan, is based on the State's payments of contractually required contributions as determined by the management of the plan. Based on discussions with management and their past discussions with representatives of the Governmental Accounting Standards Board (GASB), the State's plan meets the definition of cost-sharing multiple employer plan. Furthermore, it was determined that the State's plan meets the conditions described in GASB Statement No. 45 where by the plan "...should recognize annual OPEB expense/expenditures for their contractually required contributions to the plan in fund financial statements on the accrual basis or on the modified accrual basis, whichever applies for the fund(s) used to report the employer's contributions ... OPEB liabilities and assets result from the difference between contributions required and contributions made..." as specified when a plan is a cost-sharing multiple employer plan. A net OPEB obligation was not recognized, as the State funded 100% of their contractually required contributions. We evaluated the key factors and assumptions used to develop the OPEB plan asset/obligation in determining that it is reasonable in relation to the financial statements taken as a whole.
- *Allowance for Doubtful Accounts Receivable* – Allowances are estimated using past collection experience. We evaluated the key factors and assumptions used to develop the allowance for doubtful accounts receivable in determining that it is reasonable in relation to the financial statements taken as a whole.
- *Medicaid Claims Liability* – The payable for claims incurred but not reported, or reported but not paid as of or prior to the fiscal year ended June 30, 2016, is estimated by the Department of Health and Human Services. This estimate uses actual claim payments made during the first two months of the subsequent fiscal year, for the claims that were incurred during the current fiscal year, and projects the results to the remaining ten months of the subsequent fiscal year using historical trends for claim payment activity to determine the current fiscal year's estimated liability. We evaluated the key factors and assumptions used to develop the Medicaid claims liability in determining that it is reasonable in relation to the financial statements taken as a whole.
- *Unclaimed Property Liability* – The liability related to unclaimed property is estimated by the State Treasurers Office. This estimate uses actual collections and claim payments made from inception through June 30, 2016 and projects the results to the current outstanding balance year using historical trends for claim payment activity to determine the current fiscal year's estimated liability. We evaluated the key factors and assumptions used to develop the unclaimed property liability in determining that it is reasonable in relation to the financial statements taken as a whole.

Financial statement disclosures

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosure affecting the financial statements was:

- Note 14 to the financial statements, Fund Equity Reclassifications and Restatements discloses restatements of beginning balances as a result of the implementation of GASB 68, *Accounting and Financial Reporting for Pensions* and GASB 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date* and corrections of errors in a prior period.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties encountered in performing the audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Uncorrected misstatements

Professional standards require us to accumulate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. The attached Exhibits A and B summarize uncorrected misstatements of the financial statements. Management has determined that their effects are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Corrected misstatements

Adjustments to correct errors made by the Comptroller General's Office in the compilation of the financial statements were detected as a result of audit procedures and were corrected by management.

Disagreements with management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditors' report. No such disagreements arose during our audit.

Management representations

We requested certain representations from management that are included in the management representation letter dated December 12, 2016, attached at Exhibit C.

Management consultations with other independent accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the entity's financial statements or a determination of the type of auditors' opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Significant issues discussed with management prior to engagement

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to engagement as the entity's auditors. However, those discussions occurred in the normal course of our professional relationship and our responses were not a condition to our engagement.

Other audit findings or issues

We have provided a separate letter to you dated December 12, 2016, communicating internal control related matters identified during the audit.

Audits of group financial statements

We noted no matters related to the group audit that we consider to be significant to the responsibilities of those charged with governance of the group.

We have provided a separate letter to you dated December 12, 2016, communicating internal control related matters relevant to the group audit and identified by us or by a component auditor during the audit.

Quality of component auditor's work

There were no instances in which our evaluation of the work of a component auditor gave rise to a concern about the quality of that auditor's work.

Limitations on the group audit

There were no restrictions on our access to information of components or other limitations on the group audit.

Other information in documents containing audited financial statements

With respect to the required supplementary information (RSI) accompanying the financial statements, we made certain inquiries of management about the methods of preparing the RSI, including whether the RSI has been measured and presented in accordance with prescribed guidelines, whether the methods of measurement and preparation have been changed from the prior period and the reasons for any such changes, and whether there were any significant assumptions or interpretations underlying the measurement or presentation of the RSI. We compared the RSI for consistency with management's responses to the foregoing inquiries, the basic financial statements, and other knowledge obtained during the audit of the basic financial statements. Because these limited procedures do not provide sufficient evidence, we did not express an opinion or provide any assurance on the RSI.

With respect to the supplementary information (collectively, the supplementary information) accompanying the financial statements, on which we were engaged to report in relation to the financial statements as a whole, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period or the reasons for such changes, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves. We have issued our report thereon dated December 12, 2016.

The Honorable Henry McMaster, Governor
and
Members of the General Assembly
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The introductory section and statistical section accompanying the financial statements, which is the responsibility of management, was prepared for purposes of additional analysis and is not a required part of the financial statements. Such information was not subjected to the auditing procedures applied in the audit of the financial statements, and, accordingly, we did not express an opinion or provide any assurance on it.

Our auditors' opinion, the audited financial statements, and the notes to financial statements should only be used in their entirety. Inclusion of the audited financial statements in a document you prepare, such as an annual report, should be done only with our prior approval and review of the document.

This communication is intended solely for the information and use of the parties addressed above and management of the State of South Carolina, and is not intended to be and should not be, used by anyone other than these specified parties. Please contact George L. Kennedy, III, State Auditor, or William A. Early, Jr., Principal at CliftonLarsonAllen, LLP, if you have any questions regarding the matters included in this letter.



Columbia, South Carolina
December 12, 2016



Baltimore, Maryland
December 12, 2016

Attachments

- A** Passed Adjustment Summary – Departmental Program Summary
- B** Passed Adjustment Summary – Governmental Activities
- C** Signed Management Representation Letter

PASSED ADJUSTMENT SUMMARY
State of South Carolina
Departmental Program Services
Year Ended June 30, 2016

Effect of misstatements on:

Description	Assets and Deferred Outflows of Resources	Liabilities and Deferred Inflows of Resources	Fund Balance	Net Expense/Revenue and Change in Fund Balance
Offsetting Grants Receivable balances with Deferred Revenue	\$ 12,174,268	\$ 12,174,268	\$ -	
Subtotals	<u>12,174,268</u>	<u>12,174,268</u>		-
Net prior year misstatements	\$ 12,174,268	\$ 12,174,268	\$ -	-
Total misstatements	<u>\$ 964,418,000</u>	<u>\$ 701,790,000</u>	<u>\$ 262,628,000</u>	<u>\$ -</u>
Financial statement totals				<u>\$ 19,689,000</u>

PASSED ADJUSTMENT SUMMARY
State of South Carolina
Governmental Activities
Year Ended June 30, 2016

Effect of misstatements on:

Description	Assets and Deferred Outflows of Resources	Liabilities and Deferred Inflows of Resources	Net Position	Net Expense/Revenue and Change in Net Position
Offsetting Grants Receivable balances with Deferred Revenue	\$ 12,174,268	\$ 12,174,268	\$ -	-
Subtotals	<u>12,174,268</u>	<u>12,174,268</u>	<u>-</u>	<u>-</u>
Net prior year misstatements	\$ 12,174,268	\$ 12,174,268	\$ -	-
Total misstatements	<u>\$ 27,862,844,000</u>	<u>\$ 10,340,776,000</u>	<u>\$ 17,522,068,000</u>	<u>\$ 1,478,328,000</u>
Financial statement totals				



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) 734-1785
E-Mail: ogoffice@cg.sc.gov

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

WILLIAM E. GUNN
CHIEF OF STAFF

December 12, 2016

Mr. William Early, Jr., CPA
CliftonLarsonAllen LLP
1966 Greenspring Drive, Suite 300
Timonium, Maryland 21093

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

Dear Sirs:

This representation letter is provided in connection with your audit of the financial statements of 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, 2016, 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 \$3,000,000 collectively are not considered to be exceptions that require 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.

December 12, 2016

CliftonLarsonAllen LLP and South Carolina Office of the State Auditor

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We confirm, to the best of our knowledge and belief, as of December 12, 2016, 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 9, 2016 and in South Carolina 2015-2016 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 generally accepted accounting principles to be included in the financial reporting entity.
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 the 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 identified in the accompanying Exhibits I and II are immaterial, both individually and in the aggregate, to the financial statements for each applicable opinion unit. In addition, you have proposed adjusting journal entries that have been posted to the State's accounts. We have reviewed and approved those adjusting journal entries and understand the nature of the changes and their impact on the financial statements. We are in agreement with those adjustments and accept responsibility for them.

9. We have made all adjustments to convert our financial information from budgetary to 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.
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 are recorded at their estimated net realizable value.

December 12, 2016

CliftonLarsonAllen LLP and South Carolina Office of the State Auditor

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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 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 used to measure pension and post retirement liabilities and costs for financial accounting and disclosure purposes are appropriate in the circumstance.
27. We believe the method used to measure the State's Medicaid liability 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.

December 12, 2016

CliftonLarsonAllen LLP and South Carolina Office of the State Auditor

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28. We have no knowledge that the State plans to make frequent 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. As described in Note 2 of the financial statements, the State has properly implemented the following new accounting standards and made all adjustments to the financial statements and note disclosures required by the statements:
 - a. GASB issued Statement No. 72, *Fair Value Measurement and Application*, is intended to provide guidance for determining a fair value measurement for financial reporting purposes and also provides guidance for applying fair value to certain investments and disclosures related to all fair value measurements.
 - b. GASB issued Statement No. 76, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments*, reduces the Generally Accepted Accounting Principles (GAAP) hierarchy to two categories of authoritative GAAP and addresses the use of authoritative and non-authoritative literature in the event that the accounting treatment for a transaction or other event is not specified within a source of authoritative GAAP.
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 State from whom you determined it necessary to obtain audit evidence.

December 12, 2016

CliftonLarsonAllen LLP and South Carolina Office of the State Auditor

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- d. All minutes, which we make available to you at 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, or deficiencies in, financial reporting practices.
 - 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, 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 State and involves:
- a. Management;
 - b. Employees who have significant roles in internal control; or
 - c. 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, nor have we been informed by State investigative agencies (including the State Inspector General's Office and State Law Enforcement Division), of any allegations of fraud, or suspected fraud, affecting the State's financial statements communicated by employees, former employees, regulators, or others beyond that which we or law enforcement officials who investigate or prosecute such conduct have previously disclosed where such actual or suspected fraudulent conduct

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CliftonLarsonAllen LLP and South Carolina Office of the State Auditor

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could have a material effect on the State's financial statements, involving management, employees who have significant roles in internal control, or others.

38. We have no knowledge of any instances of noncompliance or suspected noncompliance with laws and regulations and provisions of contracts and grant agreements, or abuse whose effects should be considered when preparing financial statements.
39. We have disclosed to you all known actual or possible litigation, claims, and assessments whose effects should be considered when preparing the financial statements.
40. 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.
41. 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; trusts for benefit of employees, such as pension and other post-employment benefit trusts that are managed by or under the trusteeship of management.
42. 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.
43. We have a process to track the status of audit findings and recommendations.
44. We have identified to you any previous audits, attestation engagements, and other studies of which we are aware related to the audit objectives of your audit.
45. We have provided our views on reported findings, conclusions, and recommendations, as well as our planned corrective actions, for the report.
46. 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.

December 12, 2016

CliftonLarsonAllen LLP and South Carolina Office of the State Auditor

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47. 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.
48. 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.
49. The State has followed all applicable laws and regulations in adopting, approving, and amending budgets.
50. 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 would be presented as major are particularly important to financial statement users.
51. Components of net position (net investment in capital assets; restricted; and unrestricted) and fund balance amounts are properly classified and, if applicable, approved.
52. Investments, derivative instruments, and land and other real estate held by endowments are properly valued.
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.

December 12, 2016

CliftonLarsonAllen LLP and South Carolina Office of the State Auditor

Page 9

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, except for the impact of the implementation of new accounting pronouncements as disclosed in the financial statements. 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.

Signature:



Title:

COMPTROLLER GENERAL

Signature:



Title:

SENIOR ASSISTANT
COMPTROLLER GENERAL

EXHIBIT . I

PASSED ADJUSTMENT SUMMARY
 State of South Carolina
 Departmental Program Services
 Year Ended June 30, 2016

Effect of misstatements on:

Description	Assets and Deferred Outflows of Resources	Liabilities and Deferred Inflows of Resources	Fund Balance	Net Expense/Revenue and Change in Fund Balance
Offsetting Grants Receivable balances with Deferred Revenue	\$ 12,174,268	\$ 12,174,268	\$ -	
Subtotals	12,174,268	12,174,268		-
Net prior year misstatements	\$ 12,174,268	-	-	-
Total misstatements	\$ 964,418,000	\$ 12,174,268	\$ -	\$ -
Financial statement totals	\$ 701,790,000	\$ 262,628,000	\$ 19,689,000	\$ -

EXHIBIT II

PASSED ADJUSTMENT SUMMARY
State of South Carolina
Governmental Activities
Year Ended June 30, 2016

Effect of misstatements on:

Description	Assets and Deferred Outflows of Resources	Liabilities and Deferred Inflows of Resources	Net Position	Net Expense/Revenue and Change in Net Position
Offsetting Grants Receivable balances with Deferred Revenue	\$ 12,174,268	\$ 12,174,268	\$ -	-
Subtotals	12,174,268	12,174,268	-	-
Net prior year misstatements	\$ 12,174,268	\$ 12,174,268	\$ -	-
Total misstatements	\$ 27,862,844,000	\$ 10,340,776,000	\$ 17,522,068,000	\$ 1,478,328,000
Financial statement totals				

STATE OF SOUTH CAROLINA

**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***

JUNE 30, 2016

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State of South Carolina
Office of the State Auditor



CliftonLarsonAllen

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 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 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, 2016, and the related notes to the financial statements, which collectively comprise the State's basic financial statements and have issued our report thereon dated December 12, 2016. We conducted our joint audit in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to the financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The financial statements of the State Ports Authority, Connector 2000 Association, Inc., South Carolina Research Authority and South Carolina Medical Malpractice Liability Joint Underwriting 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 State Ports Authority, Connector 2000 Association, Inc., South Carolina Research Authority and South Carolina Medical Malpractice Liability Joint Underwriting Association. Our report includes a reference to other auditors who audited the financial statements of certain agencies and component units of the State of South Carolina, which represent the indicated percent of total assets and total revenues as described in our report on the State's financial statements and as presented in the following tables. 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.

	Percentage Audited by CliftonLarsonAllen LLP Separately		Percentage Audited by Other Auditors	
	Total Assets and Deferred Outflows of Resources	Total Revenue	Total Assets and Deferred Outflows of Resources	Total Revenue
Government-wide				
Governmental activities	2%	11%	62%	10%
Business-type activities	-	-	80%	85%
Component units	-	-	98%	99%

Fund Statements	Percentage Audited by CliftonLarsonAllen LLP Separately		Percentage Audited by Other Auditors	
	Total Assets and Deferred Outflows of Resources	Total Revenue	Total Assets and Deferred Outflows of Resources	Total Revenue
Governmental Funds	-	-	23%	10%
Enterprise Funds	-	-	80%	85%
Internal Service Funds	33%	89%	55%	7%
Fiduciary Funds	80%	21%	19%	79%
Discretely Presented Component Units	-	-	98%	98%

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) to determine the 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.

Our consideration of internal control was for the limited purpose described in the preceding paragraph 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. However, as described in the accompanying schedule of findings, we identified certain deficiencies in internal control that we consider to be material weaknesses and significant deficiencies.

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 State's financial statements will not be prevented, or detected and corrected on a timely basis. We consider the deficiencies described in the accompanying schedule of findings as 2016-001 and 2016-002 to be material weaknesses.

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. We consider the deficiency described in the accompanying schedule of findings as 2016-003 to be a significant deficiency.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the State of South Carolina's financial statements are free of 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 determination of financial statement amounts. 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 State of South Carolina's Response to Findings

The State's responses to the findings identified in our audit are included in the section of this report titled "Management's Responses." The State's responses were not subjected to the auditing procedures applied in the joint audit of the financial statements and, accordingly, we express no opinion on them.

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 result 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
December 12, 2016



Baltimore, Maryland
December 12, 2016

MATERIAL WEAKNESSES

2016-001 FINANCIAL REPORTING – PREPARATION OF STATEWIDE ACCOUNTING RECORDS AND COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) – COMPTROLLER GENERAL’S OFFICE

Criteria

Section 1.6, An Overview of the Year-End Reporting Process, of the Comptroller General's Reporting Policies and Procedures Manual, states, "The Comptroller General's Office will use SCEIS functionality to compile the statewide financial statements. Specifically, they will evaluate the completeness of SCEIS and identify and post entries necessary for GAAP compliance in SCEIS." This policy acts as a control over financial reporting for the State's financial statements.

Condition

Internal controls over financial reporting were inadequate to prevent or detect multiple misstatements during the preparation of the State's CAFR and in the supporting accounting records, requiring the Comptroller General's Office to post material adjustments to the State's CAFR.

Context

The Comptroller General's Office is responsible for the reporting of State financial accounting data in the CAFR. Upon receipt of State agencies' financial accounting data, the Comptroller General's Office compiles the State's CAFR using the State agencies' data, and records statewide accounting adjustments to that data to properly reflect the State's overall financial position at year end. There were misstatements in the compilation of the CAFR and the related financial accounting data which were not detected or corrected by the Comptroller General's Office supervisory staff during the review process, and as a result, audit adjustments were recorded. These misstatements consisted of:

- The reporting of balances related to tax receivables and payables included in the general ledger that did not agree to the underlying accounting records and which could not be substantiated.
- The reporting and classification of general ledger account balances included in the State's accounting system but related to an enterprise fund that is separately audited.
- The omission of an entity which was determined to qualify as a discretely presented component unit.
- Elimination of certain revenue and expenditure activity which should not have been eliminated.

Cause

Accounting data compiled by the Comptroller General's Office staff during preparation of the CAFR contained errors. These errors were not detected during Office supervisory staff review and the internal controls of the Office failed to document that all Office transactions had been reviewed.

Effect

Internal controls related to the preparation and fair presentation of the financial statements did not facilitate management's identification of material misstatements. As a result, audit adjustments were required.

Recommendation

We recommend that additional procedures and controls be developed and implemented to ensure that the State's financial accounting data is reported accurately, including properly defining the reporting entity, in accordance with Section 1.6 of the procedures manual referenced above and that the data compiled by the Comptroller General's Office staff is adequately reviewed by appropriate personnel.

Views of Responsible Officials and Corrective Action Plan

See page 10.

2016-002 FINANCIAL REPORTING – SOUTH CAROLINA ENTERPRISE INFORMATION SYSTEM (SCEIS) IMPLEMENTATION OF CASH, CASH EQUIVALENTS, AND INVESTMENTS – STATE TREASURER'S OFFICE**Criteria**

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control Framework states that control activities are a component of internal control. Control activities are policies and procedures established to ensure that management directives are carried out, and consist of two elements, a policy that establishes what should be done and the procedure that implements the policy. COSO Framework states that control activities must be in place for there to be adequate internal control procedures over financial reporting. Internal control procedures affect the State's ability to ensure financial transactions are authorized and accurate. The preparation of reconciliations between ledgers and sub-ledgers is a key component of an entity's internal control framework.

Condition

Internal controls over financial reporting were inadequate to prevent or detect misstatements of cash, cash equivalents, and investment balances while reconciling the amounts included the South Carolina Enterprise Information System (SCEIS) to the support provided by the State Treasurer's Office (STO).

Context

During fiscal year 2016 the STO converted legacy systems used to account for cash, cash equivalents and investments to SCEIS. This implementation was not completed by the end of the fiscal year and as a result adjustments were required to be posted in order to compile the State's CAFR.

Cause

SCEIS was not fully implemented by June 30, 2016, resulting in unreconciled variances between the supporting documentation and SCEIS balances related to cash, cash equivalents and investments.

Effect

Cash, cash equivalents, and investments reported in SCEIS did not reconcile to the amount of cash, cash equivalents, and investment balances supported by the STO, and as a result audit adjustments were required to be recorded. Inadequate reconciliation may prevent management from identifying misstatements, due to error or fraud.

Recommendation

We recommend that the STO fully complete its SCEIS implementation and that any variances be investigated and adjusted. Upon full implementation, we recommend the STO review its policies and procedure related to the reconciliation and review of year end balances.

Views of Responsible Officials and Corrective Action Plan

See page 13.

SIGNIFICANT DEFICIENCY

2016-003 FINANCIAL REPORTING – REPORTING OF GRANT RECEIVABLES AND UNEARNED GRANT REVENUE – DEPARTMENT OF SOCIAL SERVICES/DEPARTMENT OF PUBLIC SAFETY/DEPARTMENT OF HEALTH AND HUMAN SERVICES

Criteria

Internal control procedures affect an agency's ability to process financial transactions that are authorized and accurate. 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.

Condition

Grant receivables and unearned revenue should be calculated at the individual grant award level, as determined by the original award document from the grantor, in order to accurately capture the grant receivable and unearned grant revenue balances as of the fiscal year end. In order to properly report receivable and unearned revenue balances cash receipts must be posted against the correct account. During our review of the grant receivable and unearned revenue reporting packages we became aware of grants that had both receivable and unearned revenue amounts reported in the general ledger.

Context

Cash receipts for several grants were not properly recorded, these errors created a receivable balance in one subledger and unearned revenue in another subledger account, which caused an overstated asset and liability balances by approximately \$2.7 million, \$1.4 million, and \$7.9 million for the Department of Health and Human Services, Department of Public Safety, and the Department of Social Services, respectively.

Cause

The agencies record revenue and receivables by Catalog of Federal Domestic Assistance (CFDA) number and grant year in a subledger account when expenditures are incurred. When cash is received by the State Treasurer's Office the agencies research these cash receipts and then either post against a receivable balance or record unearned revenue. There was a lack of adequate review by supervisory personnel that failed to detect the overstatement.

Effect

Agencies are causing the overstatement of grant receivables and unearned revenue balances by not properly recording grant transactions in the accounting system.

Recommendation

We recommend that additional procedures and controls be developed and implemented to ensure that the grant managers are accurately reporting grant activity to the correct subledger within the general ledger and that grant activity is accurately reported in the reporting package in accordance with Section 1.7 of the manual referenced above.

Views of Responsible Officials and Corrective Action Plan

See pages 14 - 16.

SUMMARY OF PRIOR FINDINGS

During the current engagement, we reviewed the status of corrective action taken on the findings in the prior report on compliance and internal control over financial reporting at the basic financial statement level, dated November 25, 2015 to determine if the conditions still existed. Based on our audit procedures, we determined that the State has not taken adequate corrective action on the identified deficiencies listed as 2015-001, 2015-002 and 2015-004. Therefore, we have repeated the comments at findings 2016-001, 2016-002 and 2016-003, respectively. Comment 2015-003 has not been repeated in this report.

MANAGEMENTS' RESPONSES



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: cgoffice@cg.sc.gov

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

WILLIAM E. GUNN
CHIEF OF STAFF

Feb. 10, 2017

Mr. George L. Kennedy, III, CPA
State Auditor
S.C. Office of the State Auditor
1401 Main St., Ste. 1200
Columbia, S.C. 29201

Dear Mr. Kennedy:

We have reviewed audit comment 2016-001, which addresses our office. The comment contained four bulleted auditor findings, each of which was said to have resulted in “misstatements in the compilation of the CAFR and the related financial accounting data which were not corrected by the Comptroller General’s Office supervisory staff during the review process, and as a result, audit adjustments were recorded.”

We acknowledge our office’s responsibility for:

- ✓ reviewing certain financial accounting data of State agencies
- ✓ recording statewide adjustments to the accounting data (to the extent we ascertain that adjustments are necessary) to properly reflect the State’s overall financial position at year end
- ✓ using the data to compile the CAFR

The 1st bulleted finding indicates that our office allowed an agency to provide us tax receivables and payables balances that we included in the general ledger but that did not agree to the underlying accounting records and that could not be substantiated. *We respectfully disagree with this assertion.*

The tax receivables and payables balances were provided to our office in a year end “reporting package” by the State agency responsible for administering tax law and overseeing and accounting for tax collections on behalf of State government. In discharging its tax oversight responsibilities, that agency closely controls taxpayer information, including taxpayer information in its accounting and tax

subsystems. Unlike the necessary access to taxpayer information it provides to State Auditor personnel, our office does not have similar access.

The tax agency did provide our office, as it does every year, with a 2016 reporting package that contained end of year balances derived from its tax accounting subsystem for tax receivables and payables. We needed this information for the CAFR. The reporting package we received included the signature of the agency's Chief Financial Officer asserting that the information being provided had been reviewed and that it was accurate and complete. The agency also provided us a written explanation for why the totals in this 2016 reporting package varied significantly from totals it had provided us in its 2015 reporting package. That explanation did not appear to be unreasonable or meritless. It explained that a new integrated tax accounting subsystem it was implementing gave it expanded reporting functionality and more accurate and complete information than could be obtained from its old non-integrated subsystems. We had no way to test the reporting package information. Yet aware that the CAFR auditors were scheduling their audit of the agency, we recorded the information from this reporting package into SCEIS as is our responsibility for reporting package information we receive from all State agencies.

As a part of compiling the 2016 CAFR, our office received a total of 790 separate reporting packages from State agencies. It is our practice to review each package to assure that an agency director or his/her designee attests to the accuracy and completeness of the data included thereon. We then, as a normal and necessary step in compiling the CAFR, record that data into SCEIS. During this process, if we detect an obvious error in a reporting package we try to resolve it to avoid entering obviously erroneous data into the State's central accounting system. Yet it is not within the scope of our office's responsibility or authority to audit the content of agency reporting packages in the manner a financial statement auditor would.

The 2nd bulleted finding indicates that our office misclassified and reported general ledger accounts in SCEIS that were related to a separately-audited enterprise fund. We agree that in compiling the CAFR we should not have included the entity's accounting information in SCEIS. *However, we respectfully disagree with the assertion that our office misclassified this entity's general ledger accounts, thereby producing "misstatements in the compilation of the CAFR."*

This assertion involved three general ledger cash accounts that a SCEIS consultant working with the Treasurer's office had asked our office to establish in connection with that office's ongoing conversion of its cash and investments subsystem from STARS to SCEIS. We were instructed to group these two new accounts within the State's general fund.

We have since been informed that these accounts should have been grouped with an enterprise fund rather than with the State's general fund. Yet the written documentation we received accompanying the request instructed us to group them exactly as we did within the general fund. We will analyze our

longstanding procedures for establishing new accounts to see if there are additional safeguards we can employ to eliminate similar errors in the future.

The 3rd bulleted finding reports “the omission (*in our compilation of the CAFR*) of an entity which was determined to qualify as a discretely presented component unit.” *We believe this finding creates a misleading impression that this was a finding discovered and corrected by the auditors.*

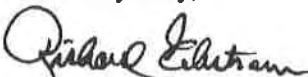
Prior to 1994 the omitted entity had been included in the State’s CAFR as a nonmajor enterprise fund. For reasons that we have not been able to identify, a decision was made in FY 1994 to no longer include it in the CAFR. During FY 2016 our office decided to take a fresh look at that decision. We re-examined this entity, including its relationship with the State, and concluded that based on prevailing accounting standards we would include the entity in the 2016 CAFR as a nonmajor discretely presented component unit. Before the auditors began their year-end testing, we informed them of our decision to include it in the 2016 CAFR because of our determination that it met the test provided in GASB 61 of a discretely presented component unit of the State.

The 4th bulleted finding indicates that we eliminated certain revenue and expense activity that should not have been eliminated in compiling the CAFR. *We agree with this finding.*

During the STARS to SCEIS conversion in 2012, a report to eliminate internal activity that had been available in STARS was no longer available after converting to SCEIS. Consequently, in compiling the CAFR in subsequent years we calculated estimated amounts for internal activity eliminations based on account balance relationships existing in FY 2011. In FY 2016, our office worked with SCIES to develop a new calculation methodology to ensure more accurate reporting and we rebuilt our former STARS-based report in its entirety to create a report from SCEIS. We appreciate the auditors’ review of the complex process we followed in creating this new report. The results of their review produced improvements that benefit the CAFR compilation process.

We appreciate this opportunity to respond to your findings in order to provide this essential detail.

Yours very truly,



Richard Eckstrom
Comptroller General

THE HONORABLE CURTIS M. LOFTIS, JR.

State Treasurer

February 10, 2017

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

Dear Mr. Kennedy,

It was a pleasure working with your team during your recent audit of the State's CAFR. We are in receipt of the **2016-002 Financial Reporting – South Carolina Enterprise Information System (SCEIS) Implementation of Cash, Cash Equivalents and Investments – State Treasurer's Office**. We also thank you for the kind words of praise expressed during the exit conference and your recognition of the tremendous progress made due to the SCEIS Treasury Management module conversion.

We are extremely proud to have completed this important work. As you know, this statewide module conversion should have been undertaken in 2007. However, no other State Treasurer chose to commit the substantial time and effort required to complete the conversion from the 30-year-old legacy system. The Treasury module conversion did prove to be a tremendous undertaking, and we are pleased to note confirmation by your office, as well as the outside audit firm, Clifton Larson Allen, that the data and accounting supported by the State Treasurer's Office was *never in question* during the conversion as to the amount of cash, cash equivalents, or investment balances held within the Treasury, nor was there any question regarding the safe custody thereof.

These conversion efforts represent quantum improvements over the legacy systems that were external to the SCEIS enterprise. The State Treasurer's Office looks forward to finalizing the innovative internal control procedures over financial reporting that will further enhance the already improved transparency, timeliness, and accuracy of Treasury activities within the State Enterprise. We look forward to an even more successful reporting process next year as we further implement reconciliation procedures to ensure that Treasury data is accurately reflected within the Financial Accounting enterprise of SCEIS and inculcate recommendations in any and all practices and processes.

Please feel free to contact me should you have any questions regarding this matter.

Sincerely,



Tonia L. Morris, CPA
Deputy State Treasurer

38



HENRY McMASTER, GOVERNOR
V. SUSAN ALFORD, STATE DIRECTOR

February 8, 2017

Sue F. Moss, CPA
Director of State Audits
South Carolina Office of the State Auditor
1401 Main Street, Suite 1200
Columbia, SC 29201

Dear Ms. Moss:

The South Carolina Department of Social Services respectfully submits the following corrective action plan for the finding identified in the SC Comprehensive Annual Financial Report audit for the year ended June 30, 2016.

2016-003 Financial Reporting – Reporting of Grant Receivables and Unearned Grant Revenue Recommendation

We recommend that additional procedures and controls be developed and implemented to ensure that the grant managers are accurately reporting grant activity to the correct subledger within the general ledger and that grant activity is accurately reported in the reporting package in accordance with Section 1.7 of the manual referenced above.

Views of Responsible Official and Corrective Action Plan

The Department administers several federal grants which have multiple grant years whose activity may cross state fiscal year, which causes more than one program grant year to be active. This lends itself to the event of having a receivable for one grant at state fiscal year end and a deferred revenue for the same grant, but for a different grant year. The occurrence for this finding was due to necessary adjusting transactions not being posted prior to state fiscal year end, which would have alleviated the balances highlighted in the review.

Grant balances are currently reconciled and reviewed on a quarterly basis. The Department will take the necessary action(s) to ensure grant receivable and unearned revenue balances are accurately stated.

Thank you,

LaTonya Rish, Assnt. Director
Cost Allocation & Reporting



S. C. DEPARTMENT OF PUBLIC SAFETY

Financial Services

P.O. Box 1993 Blythewood, SC 29016 Telephone: 803-896-7900 Fax: 803-896-5201

February 10, 2017

State of South Carolina
Office of the State Auditor
1401 Main Street, Suite 1200
Columbia, SC 29201

Please see our response to your finding below:

Response to Audit Finding – Reporting of Grants Receivable and Unearned Grant Revenue

View of Responsible Officials

We concur with this condition and recommendation.

Corrective Action Plan

We plan to review our internal controls, meet with specialist with the Comptroller General's Office to develop new procedures to ensure more accurate reporting.

Sincerely,

A handwritten signature in blue ink that reads "Paul Lewis".

Paul Lewis
Chief Financial Officer

/swt

February 7, 2017

Sue F. Moss, CPA
Director of State Audits
South Carolina Office of the State Auditor
1401 Main Street, Suite 1200
Columbia, South Carolina 29201

We have reviewed the audit finding related to the Department of Health and Human Services (DHHS) for the Fiscal Year 2016 State of South Carolina CAFR, and offer the following response for your consideration:

2016-003 Financial Reporting – Reporting of Grant Receivables and Unearned Grant Revenue – Department of Social Services / Department of Public Safety / Department of Health and Human Services

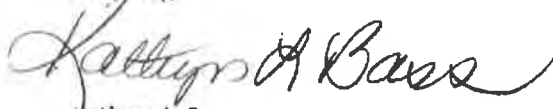
Recommendation

We recommend that additional procedures and controls be developed and implemented to ensure that the grant managers are accurately reporting grant activity to the correct sub-ledger within the general ledger and that grant activity is accurately reported in the reporting package in accordance with Section 1.7 of the manual referenced above.

Views of Responsible Officials and Corrective Action Plan

Agency staff who prepare the reporting package have been made aware of the error and the reporting files have been notated for future reference. An additional level of supervisory review will be implemented for the Fiscal Year 2017 reporting packages to help detect any potential overstatements.

Sincerely,



Kathryn L. Bass
Deputy Director and CFO

AGENCY: Department of Administration, Executive Budget Office

SUBJECT: Permanent Improvement Projects

Establish Project for A&E Design

- (a) Summary 6-2017: JBRC Item 1. (H17) Coastal Carolina University
 Project: 9613, Ingle Residence Hall Renovation
 Included in Annual CPIP: Yes – CPIP Priority 1 of 3 in FY17
 JBRC/SFAA Phase I Approval: N/A

CHE Recommended Approval: 1/6/17

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Student Housing Revenue	0.00	0.00	0.00	57,000.00	57,000.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>57,000.00</u>	<u>57,000.00</u>

Funding Source: \$57,000 Other, Student Housing Revenue, which are funds generated through housing rates charged only to students who are living in campus residence halls. The student housing rate is based on the number of bedrooms per suite or apartment, and location of the residence hall, which is approved each year by the Board of Trustees. The University did not increase housing rates on any level in FY17.

Request: Establish project and budget for \$57,000 (Other, Student Housing Revenue) to begin design work for the renovation of Ingle Residence Hall. This project encompasses upgrades to the HVAC units, electrical, IT, and fire sprinkler systems, mass notification system, as well as, some interior refurbishments. The HVAC units will be converted from a two-pipe system to a four-pipe system. This will allow the temperatures to be balanced in the rooms and common areas throughout the year. Electrical upgrades will provide for improved bathroom exhaust fans. Ingle hall was constructed in 2000, is 80,536 square feet, houses approximately 400 students and contains four administrative offices. There is one professional staff apartment as well. Due to normal wear and tear, the University Repair and Maintenance schedule dictates that the these structural repairs are needed to assure that this building maintains a safe and healthy living environment for students and working environment for staff. The agency estimates that the completed project will cost approximately \$3,800,000 and no additional annual operating costs will result from the project.

AGENCY: Department of Administration, Executive Budget Office

SUBJECT: Permanent Improvement Projects

- (b) Summary 6-2017: JBRC Item 6. (N04) Department of Corrections
 Project: 9738, Security Upgrades to Housing Unit Inmate Cells at Level 3 Correctional Institutions
 Included in Annual CPIP: Yes – CPIP Priority 1 of 7 in FY17
 JBRC/SFAA Phase I Approval: N/A

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Appropriated State, FY16 Carryforward Funds	0.00	0.00	0.00	15,000.00	15,000.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>15,000.00</u>	<u>15,000.00</u>

Funding Source: \$15,000 Appropriated State, FY16 Carryforward Funds, which are from general fund personnel and fringe lines of the last two budget years.

Request: Establish project and budget for \$15,000 (Appropriated State, FY16 Carryforward Funds) to begin pre-design work to furnish and install several Security Upgrades to Housing Unit Inmate Cells at Level 3 Correctional Institutions. These renovations and upgrades will consist of security window frames and glazing, opaque glazing, food flaps, cuff ports, etc. This scope of work will provide additional security to the inmate cells, housing units and correctional facility, but will also directly impact SCDC's efforts to deter contraband from entering the institutions. The agency estimates that the completed project will cost approximately \$1,000,000 and no additional annual operating costs will result from the project.

- (c) Summary 6-2017: JBRC Item 7. (U12) Department of Transportation
 Project: 9742, SCDOT Headquarters Building Guaranteed Energy Savings Contract
 Included in Annual CPIP: No
 JBRC/SFAA Phase I Approval: N/A

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, State Highway Fund	0.00	0.00	0.00	60,000.00	60,000.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>60,000.00</u>	<u>60,000.00</u>

Funding Source: \$60,000 Other, State Highway Fund, which is derived from the state motor fuel user fee.

AGENCY: Department of Administration, Executive Budget Office

SUBJECT: Permanent Improvement Projects

Request: Establish project and budget for \$60,000 (Other, State Highway Fund) to establish Phase I of a Guaranteed Energy Savings Contract (GESc) for the Headquarters Building located at 955 Park St. in Columbia. The contracting method is in compliance with the state procurement process for energy performance contracting. The cost of the energy performance measures and design services for the GESc and the Phase I services are to be paid from the savings realized from reduced energy costs over a 12-14 year contract term. Financing will be provided by the Master Lease Program. The Phase I pre-design services will further define the energy measures, their guaranteed cost, and financing terms for a Guaranteed Energy Savings Contract. If SCDOT does not enter into a GESc, the cost of the pre-design services will be paid from the stipend. Phase I costs will be included in the final contract costs and funded by savings. If a GESc is executed, no funds will be paid by SCDOT as they will be included in the contract. Energy measurers include lighting upgrades, water conservation upgrades, HVAC airside upgrades, HVAC boiler plant, HVAC dynamic air filtration, HVAC chilled water plant, VAV retrofits with DDC controls, replace existing AHU vane axial fans, and air side and water side balancing. The Division of General Services of the Department of Administration determined, via an engineering study, that SCDOT leaving the state energy plant should not have any negative impact to General Services or the other buildings on the Statehouse grounds. The 38 year old Headquarters Building is 228,000 square feet with an 802 space parking garage. All administrative functions of SCDOT are housed in the Headquarters Building which is utilized by 900 persons. The agency estimates that the completed project will be totally funded through the State Treasurer's Department Master Lease program. The Lease will, in turn, be paid with funds realized through operating energy savings guaranteed by the Energy Service Company (ESCO). Additional annual operating cost savings of \$240,000 in years 1 thru 3 are expected.

Establish Construction Budget

- (d) Summary 6-2017: JBRC Item 8. (H12) Clemson University
Project: 9925, Clemson House Demolition
Included in Annual CPIP: Yes – CPIP Priority 4 of 6 in FY17
JBRC/SFAA Phase I Approval: September 2016

CHE Recommended Approval: 2/21/2017

AGENCY: Department of Administration, Executive Budget Office

SUBJECT: Permanent Improvement Projects

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Maintenance & Stewardship Funds	95,000.00	0.00	95,000.00	1,805,000.00	1,900,000.00
Other, Housing Improvement Funds	0.00	0.00	0.00	1,900,000.00	1,900,000.00
All Sources	<u>95,000.00</u>	<u>0.00</u>	<u>95,000.00</u>	<u>3,705,000.00</u>	<u>3,800,000.00</u>

Funding Source: \$1,900,000 Other, Maintenance & Stewardship funds, which are tuition, matriculation, and other debt retirement and plant transfers revenues that are not formally obligated to fund debt service in the current period. \$1,900,000 Other, Housing Improvement Funds, which are from bond covenant-required transfers from Housing Operations to allow for the maintenance and replacement of capital assets funded by bond issues.

Request: Increase budget to \$3,800,000 (add \$3,705,000 Other, Maintenance & Stewardship and Other, Housing Improvement Funds) to establish the Phase II construction budget to demolish the approximately 135,000 square foot Clemson House located adjacent to the Douthit Hills Student Community Construction at Clemson University. The 66 year old building was constructed in 1950 and has been the most expensive housing facility to operate. It is no longer in use by University Housing and Dining. The Clemson House does not have "good bones" worthy of reinvestment or renovation. Originally constructed as a hotel, the quality of construction and materials used are not institutional quality. Renovation of the building would require replacing the building's exterior skin, a complete seismic retrofit, and removing the slab to create more space, resulting in only 50% space utilization. The cost to renovate the facility for use as classroom, meeting, and office or conference space would exceed the cost to construct a new building on the site. The existing facility is located on a prominent site on campus which merits a building of approximately 200,000 square feet. Renovating the existing building would result in inefficient space and leave prime University land underutilized. After demolition the Clemson House site will be developed as green space with some parking. With Douthit Hills opening in 2018 and the Business School opening in 2019, both immediately adjacent to the Clemson House site, the additional area will be put to good use. The agency estimates that the completed project will cost approximately \$3,800,000 with additional annual cost savings of \$936,000 in year 1, \$954,720 in year 2, and \$973,814 in year 3. The agency also reports the projects date for execution of the construction contract is May 2017 and for completion of construction is January 2018.

AGENCY: Department of Administration, Executive Budget Office

SUBJECT: Permanent Improvement Projects

Phase II Increase

- (e) Summary 6-2017: JBRC Item 9. (J12) Department of Mental Health
 Project: 9732, Harris Hospital Utility Building Renovations
 Included in Annual CPIP: Yes – CPIP Priority 6 of 8 in FY15
 JBRC/SFAA Phase II Approval: June 2015

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Capital Improvement & Maintenance Fund	15,000.00	931,000.00	946,000.00	224,900.00	1,170,900.00
All Sources	<u>15,000.00</u>	<u>931,000.00</u>	<u>946,000.00</u>	<u>224,900.00</u>	<u>1,170,900.00</u>

Funding Source: \$1,170,900 Other, Capital Improvement & Maintenance Fund which is derived from irregular one time funds from legal settlements, operating revenue (Medicaid fee-for-service earned revenue), sale of land, and interest earned on the Deferred Maintenance Fund account.

Request: Increase budget to \$1,170,900 (add \$224,900 Other, Capital Improvement & Maintenance Fund) to add funds to provide sufficient design and construction dollars to allow waterproofing of the entire rear wall and ensure a long term solution is put in place to re-mediate the leaking in that area. This project is to repair/replace the Harris Hospital Utility/Support Building roof and wall waterproofing. The building is remotely located from the hospital complex, with the entire roof of the building being completely underground. The roof of the building is comprised of precast concrete framing, poured concrete deck covered with a membrane roofing system and then covered with approximately 18 inches of soil. The roofing system is leaking and allows water to enter the facility, causing concrete spalling and allowing small pieces of concrete to fall from the concrete roof framing and deck. The contract has been awarded to replace the roof to re-mediate the immediate hazard and will re-grade the surrounding area to leave it uncovered in the future. The entire rear wall is also underground. The current scope of the work awarded will replace the waterproofing to a level of six feet. The desired solution is to expose the entire rear wall, replace the waterproofing system and install a French drain system at the foundation level. The facilities in this 13,016 square foot building are 29 years old. The building houses the Central plant mechanical equipment, Maintenance, Transportation, Materials Management and Laundry Operations

AGENCY: Department of Administration, Executive Budget Office

SUBJECT: Permanent Improvement Projects

and is utilized by 16 people. The entire population of the hospital including over 500 staff and clients are affected by the support functions housed here. The agency reports the total projected cost of this project is \$1,170,900 and no additional operating costs will result from the project. The agency reports the date of execution of the construction contract was December 2016 and for the completion of construction is December 2017.

AUTHORITY ACTION REQUESTED:

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

ATTACHMENTS:

Agenda item worksheet and attachments

**ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS
RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY Code U12 Name South Carolina Department of Transportation

2. PROJECT Project # 9742 Name SCDOT Headquarters Building Guaranteed Energy Savings Contract

3. ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS. (Check whether reporting costs or savings.)

COSTS SAVINGS NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS / SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2020	\$	\$	\$ (240,000.00)	\$ (240,000.00)
2) 2021	\$	\$	\$ (240,000.00)	\$ (240,000.00)
3) 2022	\$	\$	\$ (240,000.00)	\$ (240,000.00)

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).
The State Highway Fund.

6. Will the additional costs be absorbed into your existing budget? YES NO

If no, how will additional funds be provided?

SCDOT will realize savings estimated at \$240,000/year in energy savings. The first 12-14 years of savings will repay the loan. A definitive energy savings amount will be determined at the end of Phase I.

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

	<u>COST FACTORS</u>	<u>AMOUNT</u>
1.	Utility Savings	(\$240,000.00)
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
	TOTAL	(\$240,000.00)

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. _____

9. Submitted By: Christy A. Hall Christy A. Hall, Sec. of Transportation 1-13-17
Signature of Authorized Official and Title Date

**ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS
RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY
Code H12 Name Clemson University

2. PROJECT
Project # 9925 Name Clemson House Demolition

3. ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS. (Check whether reporting costs or savings.)

COSTS SAVINGS NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS/SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2017-18	\$	\$	\$936,000.00	\$936,000.00
2) 2018-19	\$	\$	\$954,720.00	\$954,720.00
3) 2019-20	\$	\$	\$973,814.00	\$973,814.00

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).
Savings realized from demolition will be in Housing Operating Funds.

6. Will the additional costs be absorbed into your existing budget? N/A YES NO
If no, how will additional funds be provided?

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>	<u>AMOUNT</u>
1. <u>Utilities</u>	<u>\$468,000.00</u>
2. <u>Maintenance</u>	<u>\$468,000.00</u>
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
TOTAL	<u>\$936,000.00</u>

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved.

9. Submitted By: Brett A. O'Quinn 1-13-17
Signature of Authorized Official and Title Date

Permanent Improvement Project Information for March 9, 2017 SFAA Meeting

Agency/ Project No.	Agency/Project Name	Original		Date of		Phase I		Included in CPIP	Total Projected Project Cost
		Approved Budget	Approval	Original Approval	Phase I Approval	Amount	Phase I Approval		
H17-9613	Ingle Residence Hall Renovation	N/A	N/A	N/A	N/A	\$57,000	N/A	Yes	\$3,800,000
N04-9738	Security Upgrades to Housing Unit Inmate Cells at Level 3 Correctional Institutions	N/A	N/A	N/A	N/A	\$15,000	N/A	Yes	\$1,000,000
U12-9742	SCDOT Headquarters Building Guaranteed Energy Savings Contract	N/A	N/A	N/A	N/A	N/A	N/A	No	\$0
H45-9925	Clemson House Demolition	\$95,000	9/20/16	9/20/16	9/20/16	\$95,000	9/20/16	Yes	\$3,800,000
J12-9732	Harris Hospital Utility Building Renovation	\$15,000	10/14/14	10/14/14	10/14/14	\$15,000	10/14/14	Yes	\$1,170,900

Additional Information on Funding Sources for Higher Education Permanent Improvement Projects

Item (a) – Coastal Carolina University – Ingle Residence Hall Renovation

The source of funds for pre-design is Other, Student Housing Revenue, which are funds generated through housing rates charged only to students who are living in campus residence halls.

The source of funds for construction is anticipated to be Other, Student Housing Revenue.

The University reports that no increase in any student fee or tuition will be required for this project.

Item (e) – Clemson University – Clemson University

The source of funds for construction is Other, Maintenance & Stewardship funds, which are tuition, matriculation, and other debt retirement and plant transfers revenues that are not formally obligated to fund debt service in the current period, as well as, Other, Housing Improvement funds, which are funds from bond covenant-required transfers from Housing Operations to allow for the maintenance and replacement of capital assets funded by bond issues.

The University reports that no increase in any student fee or tuition will be required for this project.

AGENCY: Department of Commerce, Division of Public Railways d/b/a Palmetto Railways

SUBJECT: Hampton and Branchville Railroad Acquisition and Loan

Hampton & Branchville Railroad Company agreed to sell the assets of the Hampton & Branchville Railroad (the "Railroad") located in Hampton County and Colleton County, South Carolina to Colleton County Intermodal Corporation ("CCIC"), a South Carolina nonprofit corporation in a \$7.55 million transaction to be financed by bonds issued by or on the credit of Colleton County (the "County"). Colleton County and Palmetto Railways are partnering in an economic development initiative to restore railroad service to western Colleton County and Hampton County. The nonprofit corporation was established because the County is unable to acquire and operate the Railroad for several reasons: it is prohibited under State law from owning a railroad without first conducting a referendum, it does not meet the Surface Transportation Board's definition of a common carrier, and it has no experience in operating a rail line or staff to do so. The assets would continue to be operated as a railroad by Palmetto Railways.

Palmetto Railways would take possession of the assets, maintain the assets, and operate the Railroad. The Railroad originates in Hampton, SC at its connection with CSX Corp. and then runs from Hampton, SC to Canadys, SC. The Railroad also serves the former South Carolina Electric and Gas Company power generating station in Canadys, which the partners in the initiative are marketing for economic development in addition to other properties along the rail line. Preserving the Railroad and having rail service available to properties adjacent to the rail line allows the County and State to be more competitive in attracting large scale projects and investments. The primary assets to be acquired include: 45.77 miles of rail line, 3 surplus land parcels totaling 32 acres, and 10 buildings. Once the County issues revenue bonds ("Bonds") in its own name in the approximate par amount of \$7,555,000, Colleton County Intermodal Corporation ("CCIC"), a South Carolina non-profit corporation created by the County, will lend the proceeds derived from the sale of the bonds to Palmetto Railways via a non-recourse loan. The proceeds of the loan will then be used to purchase the Railroad, fund a debt service reserve fund for the bonds and pay closing costs and expenses associated with the issuance of the bonds and the acquisition of the railroad.

Debt payments to CCIC for the Bonds will be made by the Palmetto Railways solely from the revenue generated from the operation of the Railroad. Palmetto Railways shall pay to CCIC, on an annual basis, (i) ten percent of all gross revenues received by Palmetto Railways in connection with the operation or use of or otherwise in connection with the Railroad plus (ii) twenty-five percent of the net income generated from the ownership, operation and use of the Railroad. CCIC will use 100% of the funds received from Palmetto Railways to cover its debt service payments on the

AGENCY: Department of Commerce, Division of Public Railways d/b/a Palmetto Railways

SUBJECT: Hampton and Branchville Railroad Acquisition and Loan

Bonds. Under the terms of this agreement, the County will satisfy any remaining annual debt payments on the Bonds. After five years, Palmetto Railways has the right to relinquish its rights to the Railroad.

AUTHORITY ACTION REQUESTED:

As recommended by the Department of Commerce, Division of Public Railways d/b/a/ Palmetto Railways, approve the acquisition of the assets of the Hampton & Branchville Railroad in accordance with the Asset Purchase and Sale Agreement and the financing of the acquisition pursuant to the Loan and Security Agreement.

ATTACHMENTS:

Agenda item worksheet; SC Department of Commerce request for approval; Executive Summary – Hampton & Branchville Railroad and Related Properties; Asset Purchase and Sale Agreement by and Between Hampton & Branchville Railroad Company and South Carolina Division of Public Railways d/b/a Palmetto Railways; Loan and Security Agreement by and Between Collection County Intermodal Corporation and South Carolina Division of Public Railways d/b/a Palmetto Railways

STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for:

Regular Agenda

1. Submitted by:

- (a) Agency: Department of Commerce
Div. of Public Railways d/b/a Palmetto Railways:
(b) Authorized Official Signature:



2. Subject:

Hampton & Branchville Railroad acquisition and loan

3. Summary of Background Information:

Hampton & Branchville Railroad Company agreed to sell the assets of the Hampton & Branchville Railroad (the "Railroad") located in Hampton County and Colleton County, South Carolina to Colleton County Intermodal Corporation ("CCIC"), a South Carolina nonprofit corporation in a \$7.55 million transaction to be financed by bonds issued by or on the credit of Colleton County (the "County"). Colleton County and Palmetto Railways are partnering in an economic development initiative to restore railroad service to western Colleton County and Hampton County. The nonprofit corporation was established because the County is unable to acquire and operate the Railroad for several reasons: it is prohibited under State law from owning a railroad without first conducting a referendum, it does not meet the Surface Transportation Board's definition of a common carrier, and it has no experience in operating a rail line or staff to do so. The assets would continue to be operated as a railroad by Palmetto Railways.

~~Palmetto Railways would take possession of the assets, maintain the assets, and operate the Railroad.~~ The Railroad originates in Hampton, SC at its connection with CSX Corp. and then runs from Hampton, SC to Canadys, SC. The Railroad also serves the former South Carolina Electric and Gas Company power generating station in Canadys, which the partners in the initiative are marketing for economic development in addition to other properties along the rail line. Preserving the Railroad and having rail service available to properties adjacent to the rail line allows the County and State to be more competitive in attracting large scale projects and investments. The primary assets to be acquired include: 45.77 miles of rail line, 3 surplus land parcels totaling 32 acres, and 10 buildings. Once the County issues revenue bonds ("Bonds") in its own name in the approximate par amount of \$7,555,000, Colleton County Intermodal Corporation ("CCIC"), a South Carolina non-profit corporation created by the County, will lend the proceeds derived from the sale of the bonds to Palmetto Railways via a non-recourse loan. The proceeds of the loan will then be used to purchase the Railroad, fund a debt service reserve fund for the bonds and pay closing costs and expenses associated with the issuance of the bonds and the acquisition of the railroad.

Debt payments to CCIC for the Bonds will be made by the Palmetto Railways solely from the revenue generated from the operation of the Railroad. Palmetto Railways shall pay to CCIC, on an annual basis, (i) ten percent of all gross revenues received by Palmetto Railways in connection with the operation or use of or otherwise in connection with the Railroad plus (ii) twenty-five percent of

the net income generated from the ownership, operation and use of the Railroad. CCIC will use 100% of the funds received from Palmetto Railways to cover its debt service payments on the Bonds. Under the terms of this agreement, the County will satisfy any remaining annual debt payments on the Bonds. After five years, Palmetto Railways has the right to relinquish its rights to the Railroad.

4. What is Authority asked to do?

Consider the approval of the acquisition of the assets of the Hampton & Branchville Railroad in accordance with the Asset Purchase and Sale Agreement and the financing of the acquisition pursuant to the Loan and Security Agreement.

5. What is recommendation of Department of Administration involved?

Item is complete and ready for SFAA review.

6. List of Supporting Documents:

1. SC Department of Commerce request for approval
 2. Executive Summary – Hampton & Branchville Railroad and Related Properties
 3. Asset Purchase and Sale Agreement by and Between Hampton & Branchville Railroad Company and South Carolina Division of Public Railways d/b/a Palmetto Railways
 4. Loan and Security Agreement by and Between Collection County Intermodal Corporation and South Carolina Division of Public Railways d/b/a Palmetto Railways
-



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Robert M. Hitt III
Secretary

February 9, 2017

Mr. Grant Gillespie
Executive Director
State Fiscal Accountability Authority
1200 Senate Street
Columbia, SC 29201

Dear Mr. Gillespie:

The purpose of this letter is to notify you of the intention of the South Carolina Department of Commerce ("Commerce") and its Division of Public Railways ("Palmetto Railways") to seek the approval of the State Fiscal Accountability Authority ("SFAA") to acquire the assets of the Hampton & Branchville Railroad (the "Railroad") located in Hampton and Colleton Counties for \$6,500,000. After completing some additional due diligence last fall concerning the economic development potential for sites along the Railroad, Commerce is ready to proceed with the transaction. The Joint Bond Review Committee has previously authorized the acquisition at its meeting on July 28, 2016.

PROPOSED ACQUISITION

This transaction is a very important economic development project for Colleton County, which cannot legally acquire or operate a railroad. The County has partnered with Palmetto Railways and worked very hard for more than a year to structure a transaction that will preserve the Railroad without creating risk for Palmetto Railways or the State of South Carolina. To that end, the County has established a non-profit economic development corporation to serve as issuer of revenue bonds in the amount of approximately \$7,555,000, the proceeds of which will finance the transaction via a non-recourse loan to Palmetto Railways. Palmetto Railways will acquire, own, and operate the Railroad for a minimum of five (5) years while Palmetto Railways and Colleton County market sites along the rail line to economic development prospects. The maintenance costs of the Railroad, anticipated conservatively not to exceed \$50,000 annually, even if no new business locates on the Railroad, will be more than offset by anticipated revenues generated from storing rail cars on the Railroad. Further background concerning the Railroad and the transaction are contained in the Executive Summary included in the package submitted to JBRC and SFAA.

STATE BENEFIT

Preservation of short-line railroads is good for South Carolina because it opens up rural, undeveloped areas of the state to industrial development. Whenever possible, we should support efforts to keep this type of existing infrastructure intact. In many cases, there are often obstacles that cannot be overcome whether it be the cost to rehabilitate existing lines and/or lack of resources. But, in this transaction, the rail infrastructure is in good condition, and Colleton County has stepped up to finance the transaction and enable Palmetto Railways to offer its assistance without jeopardizing other important state priorities.

Mr. Grant Gillespie
February 9, 2017
Page Two

Preserving the rail service to properties adjacent to the rail line will allow the State to be more competitive in attracting large scale projects and investments. There are 17 industrial sites (only three of which are in current inventory) and one existing building along the rail line that would be marketable if the line remains active. The County and the Southern Carolina Alliance have spent approximately \$41,000 evaluating property along the rail line and completing due diligence, and the County has approved \$3.5 million for water and wastewater improvements for priority sites. Hampton County and the SC Powerteam are also expected to participate in development of available sites.

Additionally, the transaction is structured in a way that allows Palmetto Railways to walk away with no penalty if after five (5) years Palmetto Railways does not believe it is advantageous to continue owning and operating the Railroad. If Palmetto Railways opts to walk away, the County and the non-profit lender can sell the Railroad for its scrap value, which is estimated to be sufficient to satisfy the outstanding loan. Alternatively, if Palmetto Railways and Colleton County are successful in attracting economic development along the rail line and the Railroad becomes profitable, Palmetto Railways can choose to pay off the loan or continue under the current financing arrangement until such time as Colleton County recovers its costs. Under any scenario, the transaction provides low risk for the parties involved with significant upside potential.

LEGAL AUTHORITY FOR ACQUISITION & FINANCING

Palmetto Railways has the authority under its enabling legislation to acquire and mortgage property (S.C. Code Section 13-1-1330(2)); to acquire, maintain, and operate other railroads (Section 13-1-1330(4)); to issue, among other instruments, notes to defray the cost of acquiring a short-line railroad that are payable from the revenues to be derived from the operation of the railroad (Section 13-1-1330(7)); to do all things necessary to fulfill its mission, including undertaking a loan to undertake an acquisition (Section 13-1-1330(8)); and to extend its operations and the financing of same, subject to the approval of the SFAA (Section 13-1-1350).

LOCAL SUPPORT

Colleton and Hampton Counties clearly win if our joint efforts are successful to attract taxable investment and new job creation along the Railroad. My understanding is that the counties collectively believe that keeping the Railroad viable is essential to the economic future of this rural area. The local legislative delegation, the administrations of Colleton and Hampton Counties, the county economic development organizations, and the affected school districts have all submitted letters of support for the acquisition, which are included in the package submitted to SFAA.

STAFF REVIEW & APPROVAL OF TRANSACTIONAL DOCUMENTS

The key transactional documents to implement the acquisition include the (1) Asset Purchase and Sale Agreement, (2) Loan and Security Agreement, Mortgage, and Promissory Note. My understanding is that my legal and finance staff along with Palmetto Railways, the seller, and Colleton County have worked previously with the staff of JBRC and SFAA, and the Department of Administration ("DOA") to ensure that the various transactional documents are in a form that is acceptable to all approving entities and the parties. We are currently in the process of reviewing the transactional documents to determine if any dates

Mr. Grant Gillespie
February 9, 2017
Page Three

need to be updated, but the substance of the transaction previously presented to and approved by JBRC and reviewed by SFAA and DOA staff has not changed so the transactional documents previously presented for approval serve as accurate forms for the contemplated loan and acquisition of the Railroad.

REQUEST FOR APPROVAL

As described more fully above, the Department of Commerce and Palmetto Railways respectfully request that the SFAA take the following actions:

1. Approve acquisition of the assets of the Hampton & Branchville Railroad in accordance with Asset Purchase and Sale Agreement, subject to review and approval by SFAA and/or DOA staff and any required updates to the transactional dates provided therein.
2. Approve the financing of the acquisition pursuant to the Loan & Security Agreement, Mortgage, and Promissory Note, subject to review and approval by SFAA and/or DOA staff and any required updates to the transactional dates provided therein.

Sincerely,



Robert M. Hitt III

cc: Marcia S. Adams, Executive Director, Department of Administration
Jennifer LoPresti, Capital Budgeting Manager, Executive Budget Office
Jeff McWhorter, President, Palmetto Railways
Chris Huffman, Chief Financial Officer

RMHIII/km

Colleton County, South Carolina



June 20, 2016

The Honorable Robert M. Hitt III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

On behalf of Colleton County, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

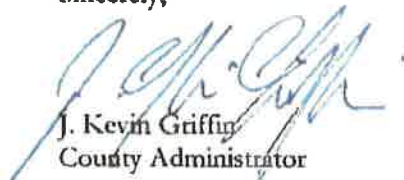
The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

Palmetto Railways will ultimately be the purchaser and operator of the railroad. Colleton County, through Colleton County Intermodal Corporation (CCIC), and its partners will assist with the financing and will be involved in developing sites along the rail line for users.

In addition to the marketing efforts by Palmetto Railways, Colleton County Economic Alliance, and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

Sincerely,


J. Kevin Griffin
County Administrator

213 N. Jefferies Blvd. • Walterboro, South Carolina 29488
Telephone 843-782-4525 • Fax 843-782-3502



Franklin L. Foster, EdD
Superintendent of Education

June 20, 2016

The Honorable Robert M. Hitt III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

On behalf of Colleton County School District, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

Palmetto Railways will ultimately be the purchaser and operator of the railroad. Colleton County, through Colleton County Intermodal Corporation (CCIC), and its partners will assist with the financing and will be involved in developing sites along the rail line for users.

In addition to the marketing efforts by Palmetto Railways, Colleton County Economic Alliance, and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

Sincerely,

A handwritten signature in black ink, appearing to read "Franklin L. Foster".

Franklin L. Foster, EdD
Superintendent



July 15, 2016

The Honorable Robert M. Hitt, III
Secretary
South Carolina Department of Commerce
1201 Main Street
Columbia, South Carolina 29201

Dear Secretary Hitt:

To follow through on your recommendations that you gave to our H&B Railroad acquisition team a couple of years ago, Colleton County and its allies have endeavored to identify, study and acquire properties along the H&B Railroad that have good potential for industrial development. Since then, we have employed the services of Bruce Facilities Planning Consultants, AMEC-Foster Wheeler and TranSystems to identify and vet candidate sites.

I am pleased to advise you that from the several site possibilities identified by the aforementioned site experts, Colleton has optioned 1400+ acres of a 2000-acre site. Alliance Engineers and S&ME are to commence due diligence thereon before the end of July 2016. We have also negotiated a purchase for a 140-acre site and have had AMEC-FW conduct environmental studies on that property. Lastly, SCANA has agreed to lease up to 167 acres of their Canadys site for Colleton County to sublease to prospective companies. Likewise, Hampton County has worked to identify viable sites on the H&B Railroad and have two primary sites under consideration.

We are excited about the near-term and long-term possibilities for development along the H&B Railroad with the help of Palmetto Railways, South Carolina Department of Commerce and our other key allies. Please call on me if you wish to further discuss our efforts to identify, study and acquire viable industrial sites along the H&B Railroad.

With highest regards,

A handwritten signature in black ink, appearing to read "H. Horton", written in a cursive style.

Heyward Horton
Executive Director



July 11, 2016

The Honorable Robert M. Hitt, III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

Re: H&B Railroad

Dear Secretary Hitt:

On behalf of Hampton County, I would like to voice my support for the acquisition of the H&B rail line, a private concern, by Palmetto Railways and financed by a bond issued by Colleton County for economic development.

The acquisition of the of the rail line will open many viable sites for economic development in Hampton County, including the 99-acre Lightsey tract adjacent to Downtown Hampton, the 56-acre former Nevamar facility as well as the former Hampton Country Club.

We look forward to working with our regional economic development partners at the Southern Carolina Alliance as well as your team at the Department of Commerce to monetize this project through job creation and capital investment.

The expected closing date is October 2016.

Sincerely,

Rose-Dobson-Elliott
Administrator, Hampton County

HAMPTON COUNTY GOVERNMENT
200 Jackson Avenue East
Hampton, South Carolina 29924
Telephone: (803) 914-2100 Fax (803) 914-2107



HAMPTON COUNTY SCHOOL DISTRICT ONE

P.O. BOX 177

HAMPTON, SC 29924

PHONE: (803) 943-4576

DOUGLAS E. McTEER, JR., Ph.D.
SUPERINTENDENT

TREACHER DOBSON
DEPUTY SUPERINTENDENT

June 30, 2016

The Honorable Robert M. Hitt, III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

Re: H&B Railroad

Dear Secretary Hitt:

On behalf of Hampton School District One, I support the acquisition of the H&B rail line, a private concern, by Palmetto Railways and financed by a bond issued by Colleton County for economic development. Southern Carolina Alliance has assisted with identifying acreage along the rail line that would be viable sites for economic development in both Hampton and Colleton counties.

The expected closing date is October 2016.

Sincerely,

Douglas E. McTeer, Jr., Ph.D.
Superintendent



Danny R. Black, *President*

1750 Jackson Street, Suite 100 Barnwell, SC 29812

June 23, 2016

The Honorable Robert M. Hitt, III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

Re: H&B Railroad

Dear Secretary Hitt:

On behalf of Southern Carolina Regional Development Alliance I support the acquisition of the H&B rail line, a private concern, by Palmetto Railways and financed by a bond issued by Colleton County Intermodal Corporation for economic development. Southern Carolina Alliance has assisted with identifying acreage along the rail line that would be viable sites for economic development in both Hampton and Colleton counties.

We are excited about the possibility of adding additional rail site for marketing within our region.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Black", is written over a light blue horizontal line.

Danny Black
President & CEO



House of Representatives

State of South Carolina

Kenneth F. Hodges

District No. 121 - Colleton-Beaufort
Counties
P. O. Drawer 355
Greenpond, SC 29446

434-A Blatt Building
Columbia, SC 29211

Tel. (803) 734-3062

July 6, 2016

Committee:

**Agriculture, Natural Resources
and Environmental Affairs**

The Honorable Robert M. Hitt III
Secretary, SC Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

On behalf of Colleton County, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

Palmetto Railways will ultimately be the purchaser and operator of the railroad. Colleton County, through Colleton County Intermodal Corporation (CCIC), and its partners will assist with the financing and will be involved in developing sites along the rail line for users.

In addition to the marketing efforts by Palmetto Railways, Colleton County Economic Alliance, and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth F. Hodges", written over a horizontal line.

Kenneth F. Hodges

The House of Representatives



STATE OF SOUTH CAROLINA

STATE HOUSE

P. O. BOX 11867

Columbia 29211

(803) 212-6907

JUSTIN BAMBERG

DISTRICT 80

MEDICAL, MILITARY, PUBLIC

AND MUNICIPAL AFFAIRS COMMITTEE

OPERATIONS AND MANAGEMENT

COMMITTEE

July 14, 2016

HOME ADDRESS
216 FAMILY CIRCLE DRIVE
BAMBERG, SC 29003
(803) 682-2860

The Honorable Robert M. Hitt III, Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

On behalf of Colleton County, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

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Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Bamberg".

Justin Bamberg

JB/vhr/2016july14-10

ST. GEORGE

District No. 97
Colleton & *Dorchester* Counties
P. O. Box 663
St. George, SC 29477

Fax (843) 563-4701
Cell (843) 560-2200
Email pknight_scdist97@bellsouth.net

Committees:

Agriculture, Natural Resources
and Environmental Affairs
Operations and Management,
Secy./Treas.



**House of
Representatives**

State of South Carolina

Patsy G. Knight

COLUMBIA

P.O. Box 11867
306-B Blatt Building
Columbia, SC 29211

Tel. (803) 734-2960
Fax (803) 734-2925

July 14, 2016

The Honorable Robert M. Hitt III, Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

On behalf of Colleton County, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

Palmetto Railways will ultimately be the purchaser and operator of the railroad. Colleton County, through Colleton County Intermodal Corporation (CCIC), and its partners will assist with the financing and will be involved in developing sites along the rail line for users.

In addition to the marketing efforts by Palmetto Railways, Colleton County Economic Alliance, and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

Sincerely,

Patsy G. Knight



House of Representatives

State of South Carolina

Robert L. Brown

District No. 116 - Charleston-
Colleton Counties
5925 Hwy. 162
Hollywood, SC 29449

330-D Blatt Building
Columbia, SC 29211

Tel. (803) 734-3170
Fax (843) 889-9035

June 22, 2016

Committee:

Education and Public Works

The Honorable Robert M. Hitt III
Secretary, SC Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

Dear Secretary Hitt:

On behalf of Colleton County, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

Palmetto Railways will ultimately be the purchaser and operator of the railroad. Colleton County, through Colleton County Intermodal Corporation (CCIC) and its partners, will assist with the financing and will be involved in developing sites along the rail line for users.

In addition to the marketing efforts by Palmetto Railways, Colleton County Economic Alliance and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Brown".

Robert L. Brown

MARGIE BRIGHT MATTHEWS

SENATOR, ALLENDALE, BEAUFORT, CHARLESTON,
COLLETON, HAMPTON AND JASPER COUNTIES
SENATORIAL DISTRICT NO. 45

HOME ADDRESS:

P.O. BOX 499
WALTERBORO, SOUTH CAROLINA 29488



OFFICE ADDRESS:

P.O. BOX 142
COLUMBIA, SOUTH CAROLINA 29202
TELEPHONE (803) 212-6056
FAX (803) 212-6299

EMAIL:

MARGIEBRIGHTMATTHEWS@SCSENATE.GOV

July 12, 2016

The Honorable Robert M. Hitt III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

On behalf of Colleton County, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

Palmetto Railways will ultimately be the purchaser and operator of the railroad. Colleton County, through Colleton County Intermodal Corporation (CCIC), and its partners will assist with the financing and will be involved in developing sites along the rail line for users.

In addition to the marketing efforts by Palmetto Railways, Colleton County Economic Alliance, and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

Sincerely,

A handwritten signature in black ink, appearing to read "Margie", with a long, sweeping flourish extending to the right.

Margie Bright Matthews

JOHN W. MATTHEWS
SENATOR, ORANGEBURG, BERKELEY, CALHOUN,
COLLETON, AND DORCHESTER COUNTIES
SENATORIAL DISTRICT NO. 39

HOME ADDRESS:
BOX 460
BOWMAN, SC 29018
(803) 829-2383
(803) 829-2423



COMMITTEES:
AGRICULTURE AND NATURAL RESOURCES
BANKING AND INSURANCE
EDUCATION
ETHICS AND INVITATIONS
FINANCE
INTERSTATE COOPERATION

SENATE ADDRESS:
SUITE 613
GRESSETTE SENATE OFFICE BUILDING
P. O. BOX 142
COLUMBIA, SC 29202
(803) 212-6066
FAX: (803) 212-6299
EMAIL: JOHNMATTHEWS@SCSENATE.GOV

FACEBOOK.COM/SENATORJOHNMATTHEWS

July 13, 2016

The Honorable Robert M. Hitt III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

On behalf of Colleton County and as a Senate delegation member, I support the efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCE&G to preserve and develop an existing, more than forty-mile, short line railroad in Colleton County.

The short line railroad includes over forty miles of well-maintained, industrial-grade rail through Colleton and a portion of Hampton County. The railroad is connected to CSX in Hampton, crosses Interstate 95 and runs along several candidate industrial sites to the Edisto River in Canadys.

Palmetto Railways will ultimately be the purchaser and operator of the railroad. Colleton County, through Colleton County Intermodal Corporation (CCIC), and its partners will assist with the financing and will be involved in developing sites along the rail line for users.

In addition to the marketing efforts by Palmetto Railways, Colleton County Economic Alliance, and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

Colleton County Economic Alliance is receiving support from the Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, the SC Power Team and SCANA/SCE&G to identify and secure viable industrial sites along the rail line.

Sincerely,

A handwritten signature in black ink that reads "John W. Matthews". The signature is written in a cursive style.

John W. Matthews,

Brad Hutto

South Carolina Senate District 40
Orangeburg, Allendale, Bamberg,
Barnwell, Colleton and Hampton
Counties

Committees:

Corrections and Penology
Education
Ethics
Fish, Game and Forestry
Judiciary
Medical Affairs
State Regulation of Public Utilities
Review Committee
Joint Citizens and Legislative
Committee on Children



Senate Office Address:
Suite 510 Gressette Senate Office
Building
Post Office Box 142
Columbia, South Carolina 29202
Telephone: (803) 212-6140
Fax: (803) 212-6299
Email: bradhutto@scsenate.gov

Home Office Address:
Post Office Box 1084
Orangeburg, South Carolina 29116
Telephone: (803) 534-5218
Fax: (803) 536-6298

June 20, 2016

The Honorable Robert M. Hitt III
Secretary
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Dear Secretary Hitt:

Please accept this letter in support of Colleton County and their efforts to partner with Palmetto Railways, Southern Carolina Regional Development Alliance, Coastal Electric Cooperative, and SCANA/SCE&G to preserve and develop an existing short line railroad in Colleton County.

As the Senator representing a portion of Colleton and Hampton Counties, I am in full support of the railroad which will include over forty miles of industrial-grade rail through Colleton and a portion of Hampton Counties by connecting to CSX in Hampton County, crossing Interstate 95, and running along several candidate industrial sites to the Edisto River in Canadys. This is a very attractive proposal and a potential economic engine for this area. Inasmuch as this is a portion of my Senatorial District, I am very interested in this project.

It is my understanding that Palmetto Railways will ultimately be the purchaser and operator of the railroad with Colleton County Intermodal Corporation (CCIC) and its partners assisting in financing and developing sites along the rail line for users. Further, Palmetto Railways, Colleton County Economic Alliance, and Southern Carolina Regional Development Alliance will work with South Carolina Department of Commerce to develop sites and attract industries to the line.

I ask that you give this your utmost attention and favorable consideration; however, if you wish to speak with me personally, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Brad Hutto".

Brad Hutto

EXECUTIVE SUMMARY

To: Karen Manning, Chief Legal Counsel
The South Carolina Department of Commerce

From: George J. Bullwinkel, III, Esq.
Robert H. Mozingo, Esq.
Nexsen Pruet, LLC

cc: Jeff McWhorter, CEO & President
Palmetto Railways

Re: Executive Summary - Hampton & Branchville Railroad and Related Properties

Date: June 2, 2016

GENERAL OVERVIEW:

Colleton County (the "County") and Palmetto Railways ("Palmetto") are partnering in an economic development initiative to restore railroad service to western Colleton County by purchasing and operating the assets of Hampton & Branchville Railroad (such assets being referred to herein as "H&B Railroad" or the "Railroad"). The County is unable to acquire and operate the Railroad because it is prohibited under State law from owning a railroad without first conducting a referendum, it does not meet the Surface Transportation Board's definition of a common carrier, and it has no experience in operating a rail line or staff to do so. However, recognizing the importance of a rail line to the State's and the County's economic development programs, Palmetto has agreed to work with the County and to acquire and operate the Railroad.

DESCRIPTION OF RAILROAD:

The Railroad originates in Hampton, SC at its connection with other rail lines owned by CSX Corp. and then runs from Hampton, SC to Canadys, SC. The Railroad also serves the former South Carolina Electric and Gas Company ("SCE&G") power generating station in Canadys, which the partners in the initiative are marketing for economic development in addition to other properties along the rail line. Preserving the Railroad and having rail service available to properties adjacent to the rail line allows the County and State to be more competitive in attracting large scale projects and investments. The primary assets to be acquired include:

- 45.77 miles of rail line.
- Surplus land parcels (described in more detail below)(the "Surplus Parcels"):
 - Surplus Parcel 1: A tract of land approximately 26.91 acres in area located within the Town of Hampton (Hampton County TMS # 119-06-01-001) (the "Hampton Site").

- Surplus Parcel 2: A tract of land approximately 4.50 acres in area located within the unincorporated community of Miley (Hampton County TMS 146-00-00-005 and 146-00-00-006)(the “1st Miley Site”).
 - Surplus Parcel 3: A tract of land approximately 0.662 acres in area located within the unincorporated community of Miley (a portion of Hampton County TMS # 146-00-00-005)(the “2nd Miley Site”).
- Buildings:
 - Railroad Office, Hampton, SC
 - Hampton Depot, Hampton, SC
 - Commissary Structure, Hampton, SC
 - Lightsey Brothers Office, Miley, SC
 - Miley Depot, Miley, SC
 - Pump House, Miley, SC
 - Power House, Miley, SC
 - Garage/Open Shed, Miley, SC
 - Railroad/Locomotive Shop, Miley, SC
 - Depot Building, Williams, SC

For additional detail on these and the other assets to be acquired, please see the proposed *Asset Purchase and Sale Agreement* attached hereto as Exhibit A.

ENVIRONMENTAL CONDITIONS:

Palmetto has obtained a Phase I Environmental Site Assessment (a “Phase I”) for each of the above-described Surplus Parcels included in this transaction. In addition, Palmetto has obtained a Phase I for: (i) a 40-mile section of railroad track running from Miley, SC to Canadys, SC (the “40-mile track segment”); and (ii) a site located at the former SCE&G power generating station in Canadys identified as Colleton County TMS # 044-00-00-083 (the “Canadys Site”). Palmetto will not be acquiring fee title to the actual Canadys Site, but will acquire certain access rights over the Canadys Site along with ownership of several sections of railroad track located thereon.

The Phase I’s turned up varying levels of contamination on and/or under each parcel. Environmental counsel has advised Palmetto to enter into Non-Responsible Party Voluntary Cleanup Contracts (“NRP-VCCs”) with the South Carolina Department of Health and Environmental Control (“DHEC”).

A Phase I is performed to qualify for the 1) innocent landowner defense, 2) the contiguous property owner defense, or 3) the bona fide prospective purchaser (“BFPP”) defense under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), commonly known as Superfund.

Environmental counsel has advised that Palmetto enter into NRP-VCCs with DHEC to minimize environmental risk to Palmetto. NRP-VCCs provide an incentive to conduct response actions at a site by providing Non-Responsible Parties (such as, in this particular case, Palmetto) a 1) covenant not to sue, 2) contribution protection, and 3) third party liability protection. (S.C. Code Ann. § 44-56-710 et seq.). Under environmental law, a “Non-Responsible Party” or “NRP” is generally described as a person who (or an entity which) is not responsible for the presence of hazardous substances at a site.

Due to Palmetto’s status as a NRP and entering into a NRP-VCC, DHEC will likely only require Palmetto to perform subsurface soil, and surface soil, and groundwater testing to gather data on the environmental impact on H&B Railroad. The responsible party(ies) - past owners and operators - would be responsible for corrective actions, environmental cleanup, remediation, and other environmental testing and delineation.

For more information on the environmental conditions of these sites, see the Memo to Karen Manning dated May 11, 2016, regarding Environmental Conditions and Protections, prepared by the Pflug Law Firm, attached hereto as Exhibit D.

ACQUISITION FINANCING:

The purchase price to be paid by Palmetto for the Railroad is \$6,500,000. Colleton County Intermodal Corporation (“CCIC”), a South Carolina non-profit corporation created by the County, will provide a non-recourse loan in the approximate principal amount of \$7,555,000 (the “Loan”) to Palmetto for the purpose of financing Palmetto’s purchase of the Railroad. First, CCIC will issue revenue bonds in its own name in the approximate par amount of \$7,555,000. Then, CCIC will lend the proceeds derived from the sale of the bonds to Palmetto via the Loan and subject to the terms and conditions set forth in the proposed *Loan and Security Agreement* between CCIC and Palmetto (the “Loan Agreement”) attached hereto as Exhibit B. The proceeds of the Loan will then be used to purchase the Railroad, fund a debt service reserve fund for the bonds and pay closing costs and expenses associated with the issuance of the bonds and the acquisition of the Railroad, all as more particularly set forth and described on the preliminary “*Sources and Uses of Funds*” report dated June 1, 2016, prepared by Oppenheimer & Co., Inc., attached hereto as Exhibit C. Palmetto will grant CCIC a mortgage and security interest in the Railroad as collateral for its obligations under the Loan and the Loan Agreement pursuant to a mortgage and security agreement (the “Mortgage”).¹ Since the Loan is non-recourse, in the event of a default CCIC’s recovery will be limited solely to the collateral (i.e., Palmetto (and thus the State) is not personally liable for the debt).

The term of the Loan is ten (10) years beyond the term of the revenue bond issue. Assuming a 20-year bond issue, the Loan will mature 30 years from the date of closing and the estimated total cost of financing over the term of the 30-year Loan will be \$11,074,065 (rounded), which includes all scheduled principal and interest payments due on the bonds (and, in turn, the Loan) over said 30-year period. For more information on the proposed debt service, see the

¹ CCIC will then assign its rights under the Mortgage and the Reimbursement Agreement (as defined herein) to the bond trustee as security for the payment of the bonds.

preliminary "Bond Debt Service" report dated June 1, 2016, prepared by Oppenheimer & Co., Inc., attached hereto as Exhibit C.²

Debt service payments on the Loan will be made by Palmetto solely from the revenue generated from the operation of the Railroad. More specifically, Palmetto shall pay to CCIC, on an annual basis, (i) ten percent (10%) of all gross revenues received by Palmetto in connection with the operation or use of or otherwise in connection with the Railroad plus (ii) twenty-five percent (25%) of the net income, if any, generated from the ownership, operation, use or disposal of the Railroad. One hundred percent of the funds paid to CCIC will, in turn, be used by CCIC to cover its debt service payments on the bonds. In addition, because the Railroad is not expected to generate substantial revenues during its early years of operations, the County will enter into a Deposit and Reimbursement Agreement with CCIC and the bond trustee for the revenue bonds (the "Reimbursement Agreement"). Under the terms of the Reimbursement Agreement, should the revenue generated from the operation of the Railroad be insufficient to satisfy the annual debt service on the Loan (and, thus, the bonds), then the County will satisfy the debt service on the bonds either from its general fund revenue or from the proceeds of general obligation bonds to be issued by the County for that purpose.

In the event that the County fails to perform under the Reimbursement Agreement and there is insufficient revenue from the operation of the Railroad to satisfy the debt service payments on the Loan (and, thus, the bonds), then Palmetto could elect (but will not be obligated) to make up the difference and cover the debt service payments on the Loan (and, thus, the bonds). If Palmetto chooses not to make up the difference and cover such debt service payments, then CCIC could seize the collateral. Because the Loan is non-recourse, however, CCIC's recovery is limited to the collateral even if the value of the collateral does not cover the remaining outstanding debt and CCIC cannot seek further recovery from Palmetto. According to a "Net Liquidation Value (NLV) Estimate" dated April 21, 2014, and prepared for the Hampton & Branchville Railroad by Kenneth Young & Associates, the estimated "Net Liquidation Value" of the Railroad as of February 25, 2014, was approximately \$7,577,212 (the "NLV Estimate"). A copy of the NLV Estimate is attached hereto as Exhibit E.

The County approved the issuance of the revenue bonds by CCIC and the issuance of general obligation bonds, as necessary, by the County via ordinance on November 3, 2015.

OPERATION AND MAINTENANCE:

Palmetto will operate and maintain the Railroad. Until the Railroad becomes active, the annual cost to Palmetto of maintaining the Railroad is expected to be less than \$50,000 per year.

² Please note that the attached "Bond Debt Service" report and the figures contained therein are estimates based on current market conditions and assumptions. Actual figures may vary.

ATTACHMENTS:

- Exhibit A - Asset Purchase and Sale Agreement
- Exhibit B - Loan and Security Agreement
- Exhibit C - Preliminary Bond Model Reports (Sources and Uses of Funds report, Bond Pricing report, Bond Debt Service report, Net Debt Service report, Cost of Issuance report and Bond Summary Statistics report), dated June 1, 2016, prepared by Oppenheimer & Co., Inc. NOTE: These reports and the figures contained therein are estimates based on current market conditions and assumptions. Actual figures may vary.
- Exhibit D - Memo to Karen Manning dated January 6, 2016, regarding Environmental Conditions and Protections
- Exhibit E - Net Liquidation Value (NLV) Estimate

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of September __, 2016 (the "Effective Date"), is made by and between HAMPTON & BRANCHVILLE RAILROAD COMPANY ("Seller"), a railroad corporation chartered by the State of South Carolina, and SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS d/b/a PALMETTO RAILWAYS ("Palmetto Railways" or "Buyer"), a division of the South Carolina Department of Commerce, an administrative agency of the State of South Carolina. Buyer and Seller are sometimes referred to collectively herein as the "Parties" and individually as a "Party." CLARK HILL PLC ("Escrow Agent"), a Michigan professional liability company, joins in the execution of this Agreement for the sole purpose of acknowledging its agreement to act as escrow agent in accordance with the terms of this Agreement and the New Escrow Agreement (as defined herein). COLLETON COUNTY INTERMODAL CORPORATION ("CCIC"), a South Carolina nonprofit corporation, joins in the execution of this Agreement for the sole purpose of acknowledging its agreement to comply with the requirements set forth in Section 4 and Section 8(a)(x) of the Agreement.

WHEREAS, Seller entered into a term sheet dated February 25, 2015 (the "Term Sheet"), under which it agreed to sell the assets of Hampton & Branchville Railroad located in Hampton County and Colleton County, South Carolina, to CCEDC One, Inc., a South Carolina non-profit corporation doing business as CCEDC1, Inc. ("CCEDC1"), in a transaction to be financed by bonds issued by or on the credit of Colleton County; and

WHEREAS, it was contemplated in the Term Sheet that the assets would continue to be operated as a railroad by Palmetto Railways; and

WHEREAS, CCEDC1 has assigned its rights and obligations under the Term Sheet to Buyer; and

WHEREAS, the Parties agree that the provisions of the Term Sheet will continue to apply to the transactions that are the subject of this Agreement, except to the extent inconsistent with the terms of this Agreement; and

WHEREAS, Seller desires to sell and Buyer desires to buy all of Seller's right, title and interest in and to the assets of the Hampton & Branchville Railroad on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS.

- (a) Definitions. Whenever used in this Agreement, the following terms shall have the following meanings:

"Applicable Law" means all applicable laws, statutes, directives, codes, ordinances, rules, regulations, municipal by-laws, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards, consent orders, consent decrees and policies of any Governmental Authority, including Environmental Laws.

"Business Day" means any day other than Saturday, Sunday and any other day when banks are closed for business in the State of South Carolina.

"Code" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended.

"Environmental Laws" means all Applicable Law relating to pollution, protection, preservation or restoration of the environment (including ambient air, surface water, groundwater, land surface, or subsurface strata) or natural resources or preservation or protection of human health or safety, including Applicable Law relating to releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, transport, or handling of, or exposure of any Person or property to, Hazardous Substances.

"Excluded Assets" means the following:

- (i) all equipment, tangible personal property and other contents of the Buildings that (A) are not affixed to the Buildings, (B) can be and are removed by Seller or its agents from the Buildings, without causing any damage to the Buildings, prior to Closing, (C) are not installed as part of the Rail Line or shown in the NLV Appraisal as hereinafter defined, and (D) are not Records;
- (ii) all of Seller's respective tax-related documents, filings or records;
- (iii) copies (but not the originals of) all Records;
- (iv) the originals of the following categories of documents (which do not constitute Records): corporate records of Seller (including correspondence of any kind among shareholders, directors, management and their advisors), financial statements and accounting records of Seller (except as specified as being a part of Records), attorney-client or accountant-client privileged Records of Seller, personal records of the shareholders, directors and management of Seller;
- (v) all insurance proceeds and condemnation awards except as provided in Section 15(b);
- (vi) claims of Seller for refund of or loss carry forwards with respect to (i) Taxes attributable to any period prior to the Closing Date or (ii) any Taxes attributable to the Excluded Assets;

- (vii) all work product of Seller's attorneys, records relating to the negotiation and consummation of the transactions contemplated hereby and documents that are subject to a valid attorney-client privilege; and
- (viii) The name "Hampton & Branchville Railroad" and all variations thereof, trade names and logos related thereto.

Notwithstanding the foregoing or anything else in this Agreement to the contrary, "Excluded Assets" shall not include the Other Miley Parcel or any assets, real or personal, listed in the NLV Appraisal.

"Governmental Authority" means any government, any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal or judicial or arbitral body (federal, state or local or, in the case of an arbitral body, whether governmental, public or private).

"Hazardous Substances" means any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et. seq.) ("CERCLA") or any regulations promulgated under CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et. seq.) ("RCRA") or regulations promulgated under RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et. seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under any environmental law, ordinance, rule or regulation, now or hereafter enacted, or the common law, or any other applicable laws relating to the Purchased Assets.

"Lien" means any monetary lien, including without limitation any mortgage, pledge, claim, charge or security interest, but not including any Tax Lien.

"Permits" means all permits, licenses, certificates, orders, approvals, authorizations, grants, consents, exemptions, variances, concessions, warrants, franchises and similar rights and privileges required by Applicable Laws to own, operate, or maintain the Purchased Assets.

"Person" means any natural person, sole proprietorship, corporation, partnership (general or limited), limited liability company, trust, joint venture, joint stock company, unincorporated association, unincorporated syndicate, unincorporated organization, or other entity or association, including any that is a Governmental Authority, and, where the context requires, any of the foregoing in its capacity as trustee, executor, administrator or other legal representative.

"Property Interests" means fee property, rights-of-way, easements, surface use agreements, licenses, leases, permits (including road crossing permits or other rights-of-way permits from Governmental Authorities or other Persons), and all other right, title, and interest of Seller in and to real property.

"Records" means all of the following categories of documents to the extent they are not privileged, and in the possession of Seller as of the date of this Agreement: Contracts, documents, filings and records in Seller's possession that relate to any of the Purchased Assets or the operation or maintenance thereof, including real estate records and records concerning contractual and other arrangements with shippers on the Rail Line, records relating to compliance with Federal Railroad Administration, the STB (including its predecessor, the Interstate Commerce Commission) and other regulatory requirements, and records relating to the marketing of services on the Rail Line.

"Required Removal Exceptions" means: (i) any and all ad valorem real property taxes assessed against the Purchased Assets which constitute a Tax Lien; (ii) any and all Liens against or otherwise encumbering the Purchased Assets, except for Buyer-created Liens and (iii) any new recorded encumbrances created by Seller between the Effective Date and Closing. The Required Removal Exceptions shall be cured and removed by Seller, at Seller's sole cost and expense, prior to Closing with or without objection by Buyer.

"STB" means the Surface Transportation Board.

"Taxes" means all taxes, assessments, duties, levies, fees and other governmental charges of any kind whatsoever relating to the ownership, use or operation of the Purchased Assets (including net or gross income taxes, employment, value added, rent, excise, occupancy, sales, use, ad valorem, intangibles, gross receipts, personal property, real property, franchise, doing business, withholding, payroll and capital taxes of the United States (federal, state or local) or any other applicable jurisdiction), together with any interest thereon, penalties, additions to tax or additional amounts with respect thereto, and any interest in respect of any such penalties, additions or additional amounts.

"Tax Return" means any report, statement, form, return or other document or information required to be supplied to a taxing authority in connection with Taxes and income taxes due with respect to amounts to be paid pursuant to this Agreement and any penalties, interest or charges related thereto.

- (b) Other Definitions. Each of the following terms is defined in the section or provision set forth opposite such term:

<u>Defined Term</u>	<u>Cross-Reference</u>
Additional Earnest Money	4(f)
Additional Studies	5(d)
Agreement	Preamble

Allocation Statement	3(b)
New Escrow Agreement	4(e)
Assignment and Assumption	11(c)(iii)
Bill of Sale	11(c)(ii)
Buildings	2(a)(iii)
Buyer	Preamble
CCEDC1	Preamble
CCIC	Preamble
Closing	11(a)
Closing Date	11(a)
Colleton County	Preamble
Contracts	2(a)(vi)
CCIC Loan	10(b)(vi)
Effective Date	Preamble
Environmental Reports	5(d)
Escrow Agent	Preamble
Feasibility Period	5(a)
Feasibility Studies	5(a)
Gap Defect	5(d)
Initial Earnest Money	4(a)
JBRC	8(a)(x)(2)
Miley 4.5-acre Parcel	Schedule 2(a)(ii)(1)
NLV Appraisal	2(a)(viii)
Original Earnest Money	4(c)
Original Escrow Agent	4(b)
Original Escrow Agreement	4(b)
Other Agreements	7(a)(ix)
Other Assets	2(a)(viii)
Other Miley Parcel	Schedule 2(a)(ii)(1)
Party or Parties	Preamble
Personal Property	2(a)(v)
Post-Closing Escrow	11(e)
Post-Closing Escrow Agreement	11(e)
Purchase Price	3(a)
Purchased Assets	2(a)
Quit Claim Deed	11(c)(i)
Rail Line	2(a)(i)
Real Property Interests	2(a)(ii)
Retained Liabilities	9
SCDHEC	5(a)
SCDOA	8(a)(x)(2)
SFAA	8(a)(x)(2)
Seller	Preamble
Seller's Post-Closing Obligations	11(e)(2)(i)
Seller's Response Period	5(d)

Supplemental Earnest Money	4(c)
Tax Liens	7(a)(vi)
Term Sheet	Preamble
Title Commitment	5(d)
Title Company	5(d)
Title Update	5(d)
VCC	5(a)

2. SALE AND PURCHASE OF RAILROAD ASSETS.

(a) Sale and Purchase of Assets. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell, transfer, assign, convey, set over and deliver to Buyer, and Buyer agrees to purchase, all of Seller's right, title and interest in and to the following (collectively, the "Purchased Assets"):

(i) Railroad Facilities. The approximately 45.77 mile railroad, commonly known as the Hampton & Branchville Railroad, that runs (A) from Hampton, SC (MP 0.0) to H&B Junction, SC (MP 16.8+/- aka ACL 461+/-), then southeast to Stokes, SC (ACL MP 447+/-), then northeast to the terminus at Canadys, SC (ACL MP 456.78+/-), together with all sidings appurtenant thereto, for a total length of approximately 43.8 miles, together also with all rail, cross ties, switches, ballast, bridges-in-place, grade crossings, culverts, earthworks, signal equipment, tie plates, rail anchors, gauge rods, spikes, joint bars/bolts, rail anchors, other track material and other components of such railroad other than Excluded Assets, and (B) the two segments of non-operating corridor from Lodge, SC (ACL MP 462.37+/-) to H&B Junction, SC (ACL MP 461+/-), and Stokes, SC (ACL MP 447+/-) to Walterboro, SC (ACL MP 443.18+/-) described in Schedule 2(a)(i) (subsections (A) and (B) being collectively, the "Rail Line").

(ii) Real Property Interests.

(1) The Property Interests through, upon, under or adjacent to which any or all of the Rail Line is located and operated, including the Property Interests described in the NLV Appraisal and the Other Miley Parcel, all as generally described in Schedule 2(a)(ii)(1) and the NLV Appraisal;

(2) Any and all roads, streets, alleys or public and private rights-of-way, open or proposed, bounding the foregoing Property Interests and all rights and appurtenances belonging or appertaining thereto.

(collectively, the "Real Property Interests").

(iii) Buildings. All buildings, structures and other improvements now or hereafter located on the Real Property Interests and all fixtures now or

hereafter affixed thereto (collectively, the "Buildings"), including the following Buildings located on the Real Property Interests:

- (1) Railroad Office, City of Hampton, SC;
 - (2) Hampton Depot, City of Hampton, SC;
 - (3) Commissary Structure, City of Hampton, SC;
 - (4) Lightsey Brothers Office, Miley, SC;
 - (5) Miley Depot, Miley, SC;
 - (6) Pump House, Miley, SC;
 - (7) Power House, Miley, SC;
 - (8) Garage/Open Shed, Miley, SC;
 - (9) Railroad/Locomotive Shop, Miley, SC; and
 - (10) Depot Building in Williams, SC.
- (iv) Assignable Permits. All Permits that are used or held for use by Seller in connection with the ownership, use, operation or maintenance of the Purchased Assets that are assignable or transferrable by Seller under Applicable Law.
- (v) Personal Property. All personal property of every kind and nature, whether tangible or intangible, that is held for use by Seller in connection with, the ownership, use, operation or maintenance of the Rail Line, Real Property Interests, Permits, or Other Assets, but excluding the Excluded Assets (collectively, the "Personal Property").
- (vi) Contracts. The leases, licenses, occupancy and other agreements (collectively, "Contracts") described on Schedule 2(a)(vi), which are all of the leases, licenses and other agreements that relate to the ownership, use, operation or maintenance of the Purchased Assets.
- (vii) Intellectual Property. All (if any) patents, copyrights, trademarks, service marks, discoveries and improvements, processes and formulae, trade secrets, proprietary technical information, technical information, technical know-how, research, marketing and other data and intellectual property rights and applications and registrations therefor used in connection with the Hampton & Branchville Railroad, but shall not include the name "Hampton & Branchville Railroad" and all variations thereof, trade names or logos related thereto.

- (viii) Other Assets. All other assets and items listed in that certain Net Liquidation (NLV) Estimate for the Hampton & Branchville Railroad, Hampton, South Carolina, dated April 21, 2014 (the "NLV Appraisal"), prepared by Kenneth Young & Associates (collectively, the "Other Assets").
 - (ix) Incidental Rights. All keys, lock combinations and other devices or information necessary to permit Buyer to gain entry to or take possession of the Rail Line, Real Property Interests, Buildings, Personal Property and Other Assets.
 - (x) Records. All Records that are not subject to a valid attorney-client or accountant-client privilege, to the extent in the current possession or control of Seller or Seller's agents as of the date of this Agreement.
- (b) Excluded Assets. Notwithstanding anything in Section 2(a) to the contrary, the sale and purchase of the Purchased Assets shall not include any of the Excluded Assets; provided, however, "Excluded Assets" shall not include the Other Miley Parcel or any assets, real or personal, listed in the NLV Appraisal.
- (c) Limitations on Assignments. Notwithstanding anything to the contrary contained herein, this Agreement shall not constitute an agreement to assign any Purchased Asset or any right thereunder as to which the transfer or attempted assignment, without obtaining any consent of or other action by any third party or Governmental Authority, would constitute a breach or in any way adversely affect the rights of Buyer or Seller thereunder or subject Buyer or Seller to civil or criminal liability. To the extent that any approval, waiver, authorization, novation, notice or filing which is necessary for the effective transfer to Buyer of any Purchased Asset cannot be obtained or made and, as a result thereof, the full benefits of such Purchased Asset cannot be provided to Buyer following Closing, then, if Buyer so requests, Buyer and Seller will cooperate with each other and enter into such mutually agreeable, reasonable and lawful arrangements (including a trust arrangement or subcontracting, subleasing or sublicensing, if permitted) in an attempt to provide to the Parties the economic (taking into account all burdens and benefits, including tax costs and benefits) and operational equivalent, to the extent permitted, of providing for Buyer the benefit of the Purchased Asset and the performance by Buyer of all obligations relating to such Purchased Asset (excluding the Retained Liabilities). There shall be no reduction in the Purchase Price on account of any Purchased Asset or right thereunder that cannot be assigned. Buyer's sole remedy in the event that any material Purchased Asset or right thereunder that cannot be assigned, shall be to terminate this Agreement by giving written notice to Seller not later than Closing of such termination, in which event: (i) if any such written termination notice is given to Seller twenty (20) days or more prior to Closing, then Seller shall retain all of the Original Earnest Money, and the Additional Earnest Money shall be promptly returned to CCIC; (ii) if any such written termination notice is given to Seller less than twenty (20) days prior to Closing, then Seller shall retain all of the Original

Earnest Money, if paid, and the Additional Earnest Money shall be released to Seller; and (iii) thereafter the Parties hereto shall be released from any further liabilities or obligations hereunder.

3. PURCHASE PRICE.

- (a) Purchase Price. The purchase price for the Purchased Assets shall be Six Million Five Hundred Thousand and 00/100 Dollars (\$6,500,000.00) (the "Purchase Price"), which shall be paid at Closing after crediting Buyer with the Original Earnest Money, and the Additional Earnest Money. Buyer shall pay to Seller the balance of the Purchase Price by certified check, cashier's check, or wire transfer of current funds received and credited to the account of the Seller.
- (b) Allocation of Purchase Price. At least thirty (30) days prior to the Closing Date, Seller shall determine, in consultation with Buyer, and deliver to Buyer a proposed allocation among the Purchased Assets of the consideration paid (or treated as paid for federal income Tax purposes) for the Purchased Assets, in accordance with Section 1060 of the Code (the "Allocation Statement"). Buyer and Seller shall prepare and file all Tax Returns (including such reports and information returns as may be required under Section 1060 of the Code and any regulations thereunder and any corresponding or comparable provisions of applicable state and local Tax laws) in a manner consistent with the Allocation Statement. In the event such allocation is disputed by any taxing authority, the Party receiving notice of such dispute shall promptly notify the other Party and the Parties shall consult with each other concerning the resolution of the dispute. The Parties agree that each will furnish the other a copy of Form 8594 (Asset Acquisition Statement under Section 1060) as filed with the Internal Revenue Service by such Party thereof within thirty (30) days of the filing of such form with the Internal Revenue Service. Neither Seller nor Buyer shall take any position which is inconsistent with the Allocation Statement, except to the extent required by Applicable Law pursuant to a "determination" within the meaning of Section 1313(a) of the Code.
- (c) Gift/Bargain Sale. Buyer acknowledges that Seller may elect to structure all or a portion of the transfer of the Purchased Assets to Buyer as a gift or bargain sale. If Seller makes such election, then provided that Buyer shall incur no additional liability, cost or expense in connection therewith, and such election shall cause no delay in the Closing Date, Buyer shall cooperate in structuring the transaction as such gift or bargain sale. Buyer's obligation to cooperate pursuant to this Section 3(c) shall not include taking title to any property other than the Purchased Assets.
- (d) Seller shall indemnify, defend and hold Buyer harmless from and against any and all claims, liabilities, injuries, obligations, losses, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common), reasonable amounts paid in settlement approved by Seller, and damages whenever arising or incurred (including outside costs of investigation and the reasonable fees and expenses of counsel arising directly or indirectly out of or relating to Seller's

election to structure (or Seller's attempt to structure) all or a portion of the transfer of the Purchased Assets to Buyer as a gift or bargain sale and/or Buyer's cooperation under this Section 3(c). Buyer agrees first to seek satisfaction of the indemnity under this section from the "Post-Closing Escrow" as defined in Section 11(e); provided, however, such indemnity shall survive Closing and any termination of the Post-Closing Escrow Agreement as defined in Section 11(e) and/or any release or other distribution of the Escrow Funds Seller agrees that Buyer (and each officer, director, employee, representative, and other agent of Buyer) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of any gift or bargain sale contemplated by Section 3(c) and all materials of any kind (including opinions or other tax analyses) that are provided to Buyer or such Person relating to such tax treatment and tax structure, but only to the extent necessary to comply with any applicable federal or state securities laws, tax laws or other laws including without limitation State or Federal Freedom of Information Acts ("FOIA"). This authorization is not intended to permit disclosure of any other information, including (i) any portion of any materials to the extent not related to the tax treatment or tax structure of the transaction, (ii) the identities of participants or potential participants in the transaction, (iii) any pricing or financial information (except to the extent such pricing or financial information is related to the tax treatment or tax structure of the transaction), or (iv) any other term or detail not relevant to the tax treatment or the tax structure of the transaction, that is not required to be disclosed under FOIA. For purposes of this Agreement, the terms "tax treatment" and "tax structure" shall have the meanings ascribed to such terms in Treasury regulations section 1.6011-4(c).

4. EARNEST MONEY.

- (a) Pursuant to the Term Sheet, on or before March 15, 2015, Colleton County on behalf of CCEDC1 delivered to Robert M. Nettles, Esq. (the "Original Escrow Agent"), as escrow agent, the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Initial Earnest Money").
- (b) Pursuant to the Term Sheet, Seller, CCEDC1 and the Original Escrow Agent entered into an Escrow Agreement dated as of June 16, 2015 ("Original Escrow Agreement"), and Original Escrow Agent held the Initial Earnest Money thereunder as the "Escrow Deposit."
- (c) On July 21, 2015, Colleton County on behalf of CCEDC1 delivered to the Original Escrow Agent an additional One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the "Supplemental Earnest Money"; the Initial Earnest Money and the Supplemental Earnest Money, together with all accrued interest thereon, if any, collectively, the "Original Earnest Money") to be held under the Original Escrow Agreement as part of the "Escrow Deposit" along with the Initial Earnest Money

- (d) In accordance with the Original Escrow Agreement and the mutual instructions of Seller and CCEDC1, the Original Earnest Money was distributed to Seller on December 9, 2015. The Original Escrow Agreement has been terminated by the parties thereto.
- (e) On or before the deposit to be made by CCIC under subsection 4(f), Seller, Buyer, CCIC and Escrow Agent will enter into a new escrow agreement by and among Seller, Buyer, CCIC and Escrow Agent (the "New Escrow Agreement").
- (f) Under the New Escrow Agreement, as part of the financing of the transaction, CCIC, on behalf of Buyer, will deposit the sum of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00)(said sum, together with all accrued interest thereon, if any, the "Additional Earnest Money"), as additional earnest money to be held under the New Escrow Agreement. The deposit by CCIC will be made within ten (10) days after Buyer is in receipt of all material governmental consents, approvals, orders or authorizations, required for the consummation by Buyer of the transactions contemplated hereby, including without limitation the approval of Buyer's financing and the other transactions contemplated by this Agreement, by the STB, SCDOA, JBRC and SFAA, each in form and substance reasonably acceptable to Buyer.

5. DUE DILIGENCE.

- (a) From March 15, 2015 until July 15, 2015 (the "Feasibility Period"), Buyer and CCEDC1, at their sole cost and expense, had the right to conduct such surveys, title searches, inspections, reviews, audits and feasibility studies of the Purchased Assets, including engineering, structural, environmental, soil boring, development and economic feasibility audits and studies (collectively, "Feasibility Studies") as Buyer deemed necessary or desirable. Seller cooperated fully with Buyer and CCEDC1 and their agents in permitting access to the Purchased Assets to conduct the Feasibility Studies. Buyer will provide Seller with copies of all Feasibility Studies at no cost to Seller. Seller shall, at no cost to Seller (other than ordinary administrative costs) provide Buyer, CCEDC1 and their agents, from time to time during business hours, with access to and copies of all documents that are not subject to a valid attorney-client privilege and that relate to the Purchased Assets or the operation thereof, including the items listed on Schedule 5(a) attached hereto, to the extent in the current possession or control of Seller or Seller's agents. Seller makes no representation that the documents are complete. In performing any Feasibility Studies, Buyer agrees to keep the Real Property Interests free of all liens and encumbrances caused by or through Buyer, CCEDC1 or their agents (including mechanic's and materialmen's liens), and to cause any and all such liens or encumbrances to be immediately removed. Prior to execution of this Agreement, Buyer has provided the Feasibility Studies to the South Carolina Department of Health and Environmental Control ("SCDHEC") for the purposes of the Buyer obtaining Non-Responsible Party Voluntary Cleanup Contracts ("VCC"). The Seller agrees to cooperate in all respects with SCDHEC, the Buyer and any environmental consultants of Buyer, during the

VCC process, provided that (1) any VCC is binding solely on Buyer after Closing, and shall not be binding on Seller if Closing does not occur, and (2) Buyer shall, at Buyer's sole cost and expense, perform all work and take all actions required of Buyer in the VCC subject to Section 6(b). Except as set forth above or as may be required under FOIA, Buyer may not provide any Feasibility Studies to any Person other than the County and CCIC and their respective employees, consultants and attorneys, without the prior written consent of Seller.

- (b) During the Feasibility Period, Buyer and CCEDC1 did not discover or otherwise object to any title or environment issue(s) related to the Purchased Assets, except for the ownership of the Miley 4.5-acre Parcel and the Other Miley Parcel which Seller hereby agrees to cure, at Seller's sole cost and expense, on or before Closing to the reasonable satisfaction of Buyer.
- (c) Neither Buyer nor CCEDC1 terminated the Term Sheet or this Agreement on or before the expiration of the Feasibility Period, and the Original Earnest Money became non-refundable to Buyer and CCEDC1 and has been distributed to Seller as set forth in Section 4(d) above.
- (d) Despite the expiration of the Feasibility Period, (i) Buyer and its agents shall have the right, at any time and from time to time prior to Closing, at Buyer's expense, after reasonable notice to Seller to go on to the Real Property Interests or into the Buildings to cause and perform such other additional studies as Buyer deems necessary ("Additional Studies"), including those certain environmental studies and reports described in schedule 5(d) ("Environmental Reports"), and (ii) Buyer shall have the right, at Buyer's expense, to update title to the Purchased Assets and to have the Title Commitments (as defined herein) updated at any time and from time to time prior to Closing (any such update being referred to herein as a "Title Update"). If any Title Update discloses or otherwise reveals any new defect or other exception to title not caused by Buyer and such defect or exception is first reflected in a Title Update after the Effective Date of this Agreement (any such defect or exception being referred to herein as a "Gap Defect"), then Buyer shall have the right to notify Seller in writing prior to the Closing of any objections by Buyer to any such Gap Defects and, in such event, Seller shall give written notice to Buyer within ten (10) business days after Seller's receipt of such Buyer's notice (but not later than Closing) as to whether or not Seller intends to cure or otherwise remove any such Gap Defects (such time period being referred to herein as the "Seller's Response Period"); provided, however, Seller shall have no obligation to cure or otherwise remove any such Gap Defects, except for the Required Removal Exceptions. For purposes of this Agreement, "Title Commitments" means those certain Commitments for Title Insurance for an ALTA Owner's Policy of Title Insurance issued by Chicago Title Insurance Company (the "Title Company") to Buyer (and/or its assignee), covering the Real Property Interests, or a portion thereof, and having an original effective date of June 15, 2015 at 8:00 a.m., and bearing Commitment Numbers 859-C File 45314-3. If Seller fails to provide the required notice within the Seller's Response Period, or if Seller's notice advises Buyer that Seller is unable or unwilling to

cure or otherwise remove a Gap Defect prior to the Closing, or if despite Seller's notice that Seller will cure or otherwise remove a Gap Defect Seller fails to do so prior to Closing, then Seller shall not be in default under this Agreement (unless such Gap Defect is a Required Removal Exception), but Buyer may then, at its sole election (without limiting any additional rights or remedies available to Buyer under the terms of this Agreement in the event of any default by Seller under the terms of this Agreement), either: (1) accept such title, environmental condition or physical condition of the Purchased Assets as Seller may be able to deliver, without any abatement of the Purchase Price, and proceed to Closing under this Agreement and accept title to and condition of the Purchased Assets subject to such uncured or unremoved Gap Defect; or (2) terminate this Agreement by giving written notice of such termination to Seller, in which event (A) Seller shall retain all of the Original Earnest Money, (B) the Escrow Agent shall immediately refund (or, if the Additional Earnest Money has been delivered to Seller as herein provided, Seller shall refund) all of the Additional Earnest Money to CCIC, and (C) and upon receipt of such sum Buyer and Seller shall have no further rights or obligations under this Agreement except those that expressly survive termination.

- (e) Notwithstanding the foregoing, Buyer has completed its due diligence and no longer has a need to access the Purchased Assets prior to Closing.

6. "AS IS, WHERE IS" CONDITION.

- (a) BUYER ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT PERMITTED BY LAW, THE SALE OF THE PURCHASED ASSETS AS PROVIDED FOR HEREIN WILL BE MADE IN AN "AS IS, WHERE IS" CONDITION AND BASIS, WITH ALL FAULTS, AND EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY, QUALITY OR WORKMANSHIP, FITNESS FOR USE OR A PARTICULAR PURPOSE, MAINTENANCE OR MARKETABILITY THEREOF, AND BUYER ACKNOWLEDGES THAT BUYER WILL BE RELYING ON ITS DUE DILIGENCE AND INVESTIGATIONS IN PURCHASING THE PURCHASED ASSETS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES BY SELLER SET FORTH HEREIN, UPON CLOSING, BUYER SHALL ASSUME THE RISK OF ANY ADVERSE MATTERS, INCLUDING CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS.
- (b) Seller agrees to establish at Closing a Post-Closing Escrow as defined in Section 11(e) to be applied to the extent Seller or Buyer is compelled or required by any governmental agency to conduct and/or contribute to any environmental cleanup related to known or unknown environmental conditions that existed prior to Closing, including, but not limited to any corrective action, remediation, any surface and/or subsurface soil removal and disposal, waste material and/or

segregated source removal and disposal. Buyer and Seller mutually agree that Buyer shall be responsible for the performance and cost of the initial Non-Responsible Party Voluntary Cleanup Contract assessment tasks and further responsible for the performance of any possible additional VCC tasks required by SCDHEC, however, said costs of any required additional VCC tasks may be paid by, or reimbursed from, the funds in the Post-Closing Escrow. The establishment of the Post-Closing Escrow is not intended as an acknowledgement of any liability by Seller, or to affect or limit any liability of Seller or any assumption of risk by Buyer.

- (c) Buyer acknowledges that Buyer has had the opportunity throughout the Feasibility Period, and will have the continued opportunity through Closing, to inspect the Purchased Assets, including the physical condition, state of repair and all other physical, operational and other aspects of the Purchased Assets. All determinations as to suitability and condition of the Purchased Assets shall be at the discretion of Buyer and, not as a result of any representation of Seller or Seller's officers, directors, shareholders, agents, representatives and employees, whether actual or implied, except as set forth herein. Buyer agrees to rely wholly on its own inquiry and investigation to determine the merits, usefulness and suitability of the Purchased Assets, and the quality and extent of construction of the Buildings. Buyer acknowledges and agrees that the documents and materials being provided to Buyer by Seller are solely as a convenience to Buyer in the performance of Buyer's inspections; that Seller makes no warranty or representation of any kind or nature whatsoever, except as may be expressly set forth herein, as to the truth, accuracy or completeness of all or any portion of any of the documents and materials provided by Seller; and that, Buyer shall rely upon the documents and materials provided by Seller at Buyer's own risk, without recourse to Seller or Seller's officers, directors, shareholders, agents, representatives and employees. In no event shall Seller have any obligation to make or effect any repairs or improvements to the Purchased Assets, except to the extent required by Section 8 herein. This Agreement, as written, contains all the terms of the agreement entered into between the parties as of the Effective Date, and Buyer acknowledges that neither Seller nor any of Seller's officers, directors, shareholders, agents, employees or representatives, has made any representations, or held out any inducements to Buyer or to Buyer's agents, employees or representatives (other than those, if any, expressed herein). Buyer acknowledges, represents and warrants that Buyer has conducted all such examinations and inspections of the Purchased Assets, including the construction, use and operation thereof, as Buyer considers desirable, Buyer has determined to its own satisfaction the status of and compliance with the permits and all governmental and quasi-governmental laws, ordinances and regulations applicable to the Purchased Assets, and Buyer has accepted and is fully satisfied in all respect with the foregoing and with the physical, including environmental, condition, value, financing status, use, operation, tax and assessment status, income and expenses of the Purchased Assets, subject to the other terms of this Agreement and the terms of any documents to be delivered by Seller at the Closing.

7. REPRESENTATIONS AND WARRANTIES.

- (a) Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:
- (i) Organization. Seller is a railroad corporation chartered by the State of South Carolina, validly existing and in good standing under the laws of the State of South Carolina.
 - (ii) Authority to Own and Sell Purchased Assets. Seller has the requisite power and authority to own and sell its right, title and interest in and to the Purchased Assets. No portion of the Rail Line has been formally abandoned. Seller has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and duly executed and delivered by Seller and constitute, or will constitute, as appropriate, the legal, valid and binding obligation of Seller, enforceable in accordance with their terms.
 - (iii) No Violation of Laws, Agreements; No Liens. The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby: (a) are not prohibited by and do not violate any provision and will not result in the breach of or default under, with or without the passing of time or the giving of notice or both, or accelerate or permit the acceleration of the performance required by the terms of (i) any Applicable Law, (ii) the organizational statute or documents of Seller, or (iii) any contract, indenture, agreement or commitment to which Seller is a party or is bound or any contract, indenture, agreement or commitment to which any of the Purchased Assets are subject, in each case in any material respect, and (b) have not resulted and will not result in the creation or imposition of any Lien on any Purchased Asset.
 - (iv) Liens. Seller has not mortgaged, pledged or otherwise subjected any of the Purchased Assets to any Lien, or any such Lien will be satisfied or removed, at Seller's sole cost and expense, on or before Closing.
 - (v) No Litigation. There is no legal action, suit, claim filed, arbitration, or other proceeding or any investigation or inquiry pending or, to the knowledge of Seller, after due inquiry, threatened against, relating to or involving Seller (before any court, agency, arbitrator or otherwise) with respect to the Purchased Assets, and neither Seller nor the Purchaser Assets are subject to any outstanding judgment, decree or order entered in any lawsuit or proceeding brought against it or them with respect to the Purchased Assets.

- (vi) Tax Returns; Taxes. All Taxes required to be paid with respect to the Purchased Assets have been paid in full, and there are no liens for Taxes (“Tax Liens”) with respect to any of the Purchased Assets.
- (vii) Brokers and Finders. Seller has not employed or retained anyone acting as broker, finder, financial advisor or in any similar capacity or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with this Agreement or any of the transactions contemplated hereby for which Buyer has any liability.
- (viii) Records and Other Documents. True and complete copies of all of the non-privileged Records and other items listed in Schedule 5(a) in Seller’s current possession or control have been made available to Buyer.
- (ix) No Other Agreement. Except for this Agreement or as disclosed in Schedule 7(a)(ix)(the agreements, if any, set forth in Schedule 7(a)(ix) being referred to herein as the “Other Agreements”), Seller has not entered into (and the Purchased Assets are not subject to) any agreement, recorded or unrecorded, written or oral, to sell, lease, mortgage or otherwise encumber or dispose of its interest in the Purchased Assets or any part thereof.
- (x) No Violations. Seller has not received notice of any violation of any covenant or restriction applicable to the Purchased Assets, or any part thereof, from any governmental authority or third party or notice of any violation of any zoning, building, fire or health code or any other statute, ordinance rule or regulation applicable (or alleged to be applicable) to the Purchased Assets, or any part thereof.
- (xi) All bills and invoices for labor and material of any kind relating to the Purchased Assets have been or prior to the Closing will be paid in full, and there are no liens or claims outstanding or available to any party in connection with the Purchased Assets.
- (xii) To the best of Seller’s knowledge, there are no unpaid assessments, fees or taxes which are presently due and owing relating to the Purchased Assets.
- (xiii) Seller has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief relating to Seller or any of Seller’s property under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Seller. No general assignment of Seller’s property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Seller or any material portion of Seller’s property. Seller is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Seller insolvent.

(xiv) NO OTHER REPRESENTATIONS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE DELIVERED BY SELLER AT THE CLOSING, SELLER HAS NOT AND DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, OR GIVE ANY INDEMNIFICATION OF ANY KIND, TO BUYER CONCERNING THE PURCHASED ASSETS. This disclaimer is set out in more detail in Section 6 of this Agreement.

(b) Statements of Buyer. Buyer hereby states to Seller as follows:

(i) Organization of Buyer. Buyer is a political subdivision of the State of South Carolina.

(ii) Authority to Purchase Purchased Assets. Buyer has the requisite power and authority to purchase Seller's right, title and interest in and to the Purchased Assets. Buyer has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Buyer at the Closing will be, authorized and duly executed and delivered by Buyer and constitute, or will constitute, as appropriate, the legal, valid and binding obligation of Buyer, enforceable in accordance with their terms.

(iii) No Violation of Laws; Agreements. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby are not prohibited by, and do not violate any provision and will not result in the breach of or default under, with or without the passing of time or the giving of notice or both, or accelerate or permit the acceleration of the performance required by the terms of (a) any Applicable Law, (b) the organizational documents of Buyer or (c) any contract, indenture, agreement or commitment to which Buyer is a party or is bound or any contract, indenture, agreement or commitment to which any of Buyer's properties are subject, in each case in any material respect.

(iv) Brokers and Finders. Buyer has not employed or retained anyone acting as broker, finder, financial advisor or in any similar capacity or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with this Agreement or any of the transactions contemplated hereby for which Seller has any liability.

8. COVENANTS.

(a) From and after the Effective Date through the earlier of Closing or termination of this Agreement:

- (i) Restricted Dealings. Seller shall not take any of the following actions: (i) abandon or sell any portion of the Purchased Assets; (ii) enter into any new contracts that would be binding upon Buyer or the Purchased Assets after Closing unless such Seller notifies Buyer of its intent to enter into a new contract and unless such new contracts are cancellable by Buyer, without penalty, within thirty (30) days of the Closing Date; (iii) grant, place or affirmatively cause any Liens, restrictions, covenants, easements, leases or other encumbrances to be placed upon or affect the Purchased Assets; (iv) modify any existing Liens, restrictions, covenants, easements, leases or other encumbrances affecting the Purchased Assets; or (v) commit to any of the foregoing.
- (ii) Permits. Seller shall maintain all Permits held by Seller as of the Effective Date in full force and effect, and shall file timely, all reports, statements, renewal applications and other filings, and shall pay timely all fees and charges in connection therewith that are required to keep the Permits in full force and effect.
- (iii) Maintenance and Repairs. Seller shall maintain the Purchased Assets through Closing in the same condition as of the Effective Date, ordinary wear and tear excepted. Seller shall not remove or permit to be removed from the Purchased Assets any item or article other than the Excluded Assets.
- (iv) Insurance. Seller shall maintain in full force and effect substantially the same public liability, casualty insurance and hazard insurance coverage (including the amount of any deductibles in respect to such insurance policies) in effect with respect to the Purchased Assets as of the Effective Date.
- (v) Taxes and Assessments. Seller shall (i) pay all Taxes against the Purchased Assets no later than the due date and (ii) provide Buyer, within ten (10) business days of receipt, copies of any notices Seller receives with respect to any special assessments or proposed increases in the valuation of the Purchased Assets.
- (vi) Condemnation Notices. Seller shall provide Buyer, within three (3) business days of receipt, copies of any notices Seller receives with respect to any condemnation or eminent domain proceedings affecting the Real Property Interests or Buildings.
- (vii) No Binding Commitments. Except as set forth in this Agreement, Seller shall not make any commitments or representations to any applicable Governmental Authorities, any adjoining or surrounding property owners, any civic association, any utility or any other person or entity that would in any manner be binding upon Buyer or the Purchased Assets (except for acquisition of the Miley Easement Parcel and Other Miley Parcel that will

become part of the Purchased Assets), without Buyer's prior written consent in each instance, which consent Buyer may withhold in its sole discretion. Seller shall not initiate, consent to, approve or otherwise take any action with respect to zoning or any other governmental rules or regulations currently applicable to all or any part of the Purchased Assets.

- (viii) Environmental Compliance. Except in the ordinary course of maintaining and operating the Purchased Assets and then only in a manner that is fully compliant with applicable Environmental Laws, Seller shall not (i) manufacture, store, release, discharge, treat or install any Hazardous Substances on, in, under or from the Property, (ii) install in or remove from the Property any storage tanks, or (iii) permit any Hazardous Substances to be manufactured, stored, released, discharged, treated or installed on, in, under or from the Property, or permit any storage tanks to be installed in or removed from the Property. Seller shall advise Buyer promptly in writing of any notice or other communication, written or oral, from any Governmental Authority with respect to any alleged violation of any Environmental Laws received by Seller after the Effective Date.
- (ix) Information. In addition to the information referenced in Schedule 5(a), Seller shall, at no expense to Seller (other than ordinary administrative costs) and at the Parties' reasonable mutual convenience, furnish to Buyer promptly all other non-privileged information concerning the Purchased Assets in Seller's current possession or control that Buyer may from time to time reasonably request. Seller shall also promptly deliver to Buyer true copies of any notices concerning the Purchased Assets (and not addressed above) received by Seller after the Effective Date.
- (x) Cooperation. Each Party shall use its reasonable, good faith efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under Applicable Law to cause the transactions contemplated hereby to be effected as soon as practicable (but in any event no later than the Closing Date) in accordance with the terms hereof and shall cooperate fully with the other Party in connection with any step required to be taken as a part of its obligations hereunder, including the following:
 - (1) Third Party Approvals. Seller shall act in good faith and diligently to obtain each consent or waiver that is required to be obtained from any Person (other than a Governmental Authority) to permit the transfer and assignment of Seller's interests in the Purchased Assets to Buyer; and
 - (2) Governmental Approvals or Exemptions. Buyer shall act in good faith and diligently to obtain the issuance of all approvals and exemptions that may be required to be obtained from any Governmental Authority to permit the sale of Seller's interest in

the Purchased Assets to Buyer or for an assignee from Buyer or a third party to operate the Purchased Assets after such sale, including any required approvals or exemptions from the STB, approvals of the VCCs by the SCDHEC, approval of the indebtedness contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement by the South Carolina Joint Bond Review Committee ("JBRC"), the South Carolina Department of Administration ("SCDOA") and the South Carolina State Fiscal Accountability Authority ("SFAA"). Promptly after the Effective Date of this Agreement (if it has not already done so), Buyer shall submit, or cause to be submitted, to the STB a notice of exemption or application for approval of its purchase of the Rail Line, as appropriate. Seller shall be provided with a draft of the STB filing, and shall cooperate with Buyer in the preparation of filings necessary to achieve such consents or exemptions and shall not oppose Buyer's request for such approvals or exemptions. Promptly after the Effective Date of this Agreement (if it has not already done so), Buyer shall submit to SCDHEC applications for VCCs, provided that Buyer may delay the submission of an application for a VCC with respect to the tracks and related rights located in Canadys, as provided in Section 11(f). Promptly after the Effective Date of this Agreement (if it has not already done so), Buyer shall request that JBRC, SCDOA and SFAA consider the current transaction on or before the next SFAA meeting currently scheduled for September 20, 2016, or as soon thereafter as reasonably possible.

- (3) Revenue Bonds. CCIC shall act in good faith and diligently to obtain the approvals necessary for the issuance of, and to sell, the revenue bonds referenced in subsection 10(a)(iii) herein within eight (8) weeks after the approvals of JBRC, SCDOA and SFAA referred to in subsection 8(a)(x)(2) above, and Buyer and CCIC shall enter into the necessary agreements to finance Buyer's purchase of the Purchased Assets. As between Buyer, Seller and CCIC, CCIC shall be responsible for all costs and administrative expenses associated with the issuance and sale of the revenue bonds.
- (4) From and after Closing, Buyer shall keep and preserve the Records for a period of seven (7) years, and shall make them available to Seller if needed by Seller for any reasonable business purpose.

9. NO ASSUMPTION OF LIABILITIES.

Seller acknowledges and agrees that Buyer is not assuming any obligations or liabilities of Seller. All obligations and liabilities which arise out of or relate to the operation of the

Purchased Assets prior to the Closing Date (collectively, the "Retained Liabilities"), shall continue to be obligations and liabilities of Seller.

10. CLOSING CONDITIONS.

- (a) Joint Conditions. The obligation of each Party to close on the sale of the Purchased Assets is subject to the satisfaction at or prior to the Closing Date of each of the following conditions:
- (i) Any STB exemptions or approvals that may be required under 49 U.S.C 10101, et seq., as amended, and the rules and regulations of the STB for the purchase of the Rail Line by Buyer, and for the operation of the Rail Line by Buyer, shall have become effective;
 - (ii) The Colleton County Council shall have passed an ordinance approving the terms of this Agreement, the issuance and sale of the revenue bonds referenced in subsection 10(a)(iii) herein, and the financing agreements with Buyer;
 - (iii) Colleton County shall have issued and sold revenue bonds, or obtained other financing, in an amount sufficient to pay the entire Purchase Price and all of Buyer's other costs of acquiring the Purchased Assets pursuant to the terms of this Agreement, and upon such terms and conditions as are satisfactory to both Buyer and Colleton County (in their sole and absolute discretion);
 - (iv) There shall not be in effect any Applicable Law that enjoins, prohibits, makes illegal or materially restricts or otherwise prevents the consummation of the transactions contemplated hereby;
 - (v) Seller shall have acquired, at Seller's sole cost and expense, title to the Miley 4.5-acre Parcel and the Other Miley Parcel to the reasonable satisfaction of Buyer so that such parcels and the title thereto can be included in the property being transferred under the Quit Claim Deed;
 - (vi) All material consents, licenses and approvals from Third Parties (other than Governmental Authorities) to the transfer and assignment of the Purchased Assets by Seller to Buyer, each in form and substance reasonably acceptable to Seller and Buyer, shall have been obtained;
 - (vii) All material governmental consents, approvals, orders or authorizations, (other than the STB exemption or approval referenced in subsection 10(a)(i) herein) required for the execution and delivery of this Agreement by Buyer, and for the consummation by Buyer of the transactions contemplated hereby, including without limitation the approval of Buyer's financing and the other transactions contemplated by this Agreement by SCDOA, JBRC and SFAA, each in form and substance reasonably acceptable to Seller and Buyer, shall have been obtained;

- (b) Buyer Conditions. The obligation of Buyer to close on the purchase of the Purchased Assets is subject to the satisfaction at or prior to the Closing Date of each of the following conditions, in addition to those set forth in Section 10(a), any one or more of which may be waived (but only in writing) by Buyer:
- (i) Seller shall have delivered to Buyer or the Escrow Agent all of the documents and other items listed in Section 11(c) herein;
 - (ii) All of the Required Removal Exceptions shall have been satisfied or removed by Seller, at Seller's sole cost and expense;
 - (iii) Seller shall have complied in all material respects with its covenants and obligations hereunder;
 - (iv) All of the representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date);
 - (v) Buyer shall have obtained VCCs covering the Purchased Assets other than the tracks at Canadys and rights related thereto (which VCCs must be satisfactory to Buyer, in Buyer's sole and absolute discretion), provided that any VCC is binding solely on Buyer after Closing, and shall not be binding on Seller if Closing does not occur; and
 - (vi) On or before Closing, CCIC shall have: (x) made and fully funded a loan to Buyer in an amount sufficient to pay the entire Purchase Price (the "CCIC Loan") and upon such terms and conditions as are satisfactory to both Buyer and CCIC (in their sole and absolute discretion); and (y) paid and/or reimbursed Buyer for any and all of Buyer's other reasonable costs of acquiring the Purchased Assets pursuant to the terms of this Agreement.
- (c) Seller Conditions. The obligation of Seller to close on the sale of the Purchased Assets is subject to the satisfaction at or prior to the Closing Date of each of the following conditions, in addition to those set forth in Section 10(a), any one or more of which may be waived (but only in writing) by Seller:
- (i) Buyer shall have delivered to Seller or the Escrow Agent all of the documents and other items listed in Section 11(d);
 - (ii) Buyer shall have complied in all material respects with its covenants and obligations hereunder; and
 - (iii) All of the statements made by Buyer in this Agreement shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date).

11. CLOSING; DELIVERIES AT CLOSING.

- (a) Closing. The closing of the sale and purchase of the Purchased Assets ("Closing") shall take place at the offices of Nexsen Pruet, LLC in Charleston, South Carolina, at 10:00 a.m. (Eastern time) on or before the later of November 18, 2016, or eight (8) weeks after the receipt by Buyer of all material governmental consents under Section 10(a)(vii) (the date of Closing, including any extension thereof as herein provided, being referred to herein as the "Closing Date").
- (b) Outside Date of Closing, Governmental Consents. If, as of the Closing Date under subsection (a), any of the conditions to Closing under Sections 10(a), 10(b) and 10(c) shall not have been satisfied, and such non-satisfaction shall not be attributable to the fault of a Party, then, in each case, that Party shall be entitled to terminate this Agreement by written notice to the other Party. Additionally, if Buyer has not received all material governmental consents under Section 10(a)(vii) on or before September 30, 2016, then either Party shall be entitled to terminate this Agreement by written notice to the other Party. Unless the termination is a result of a breach by Seller of its representations and warranties or covenants and agreements to be performed prior to Closing hereunder, then, upon such termination, (1) Seller shall retain all of the Original Earnest Money, (2) the Additional Earnest Money shall be released to Seller, and (3) both Parties shall be released from further obligations hereunder, except those that expressly survive termination of this Agreement. If, however, Closing shall not have occurred as a result of a breach by Seller of its representations and warranties or covenants and agreements to be performed prior to Closing hereunder, then (x) CCIC shall be entitled to a full refund of the Additional Earnest Money, and (y) Buyer shall be further entitled to seek and pursue its rights and remedies under Section 12(b) herein for a Seller default.
- (c) Closing Deliveries. At Closing, Seller shall deliver (duly and fully executed, acknowledged and notarized as appropriate) to Escrow Agent or Buyer, as applicable:
- (i) A recordable quitclaim deed or deeds (each, a "Quitclaim Deed or recordable assignments without warranty, as applicable, to each of the Real Property Interests, including the Miley 4.5-acre Parcel, the Other Miley Parcel and the other surplus land parcels described in Schedule 2(a)(ii)(1), together with the Buildings thereon, if any, in form and substance acceptable to both Parties;
 - (ii) A Bill of Sale without warranty, in form and substance acceptable to both Parties (the "Bill of Sale");
 - (iii) An Assignment and Assumption of the Contracts in form and substance acceptable to both Parties (the "Assignment and Assumption");

- (iv) Certified copies of the resolutions of the Board of Directors and shareholders of Seller authorizing Seller to enter into this Agreement and to consummate the transactions contemplated hereunder;
 - (v) All documents reasonably required by Title Escrow Agent or Buyer with respect to compliance with the Foreign Investment in Real Property Tax Act (Internal Revenue Code § 1445, as amended, and the regulations issued thereunder);
 - (vi) A certificate that the representations and warranties of Seller are true and accurate in all material respects as of the Closing Date;
 - (vii) Evidence that any Liens on the Purchased Assets have been released;
 - (viii) Copies of all consents, licenses and approvals required for the assignment of the Real Property Interests to Buyer;
 - (ix) All Records and Other Assets; and
 - (x) Such other documents as Buyer or Escrow Agent may reasonably request.
- (d) At the Closing, Buyer shall deliver (duly and fully executed, acknowledged and notarized as appropriate) to Escrow Agent or Seller, as applicable:
- (i) Written instructions to Escrow Agent to release the Additional Earnest Money for disbursement in accordance with this Agreement;
 - (ii) The balance of the Purchase Price and all Closing and other costs required of Buyer under this Agreement;
 - (iii) The Bill of Sale;
 - (iv) The Assignment and Assumption;
 - (v) Evidence that Buyer is authorized to enter into this Agreement and consummate the transactions contemplated hereby; and
 - (vi) Such other documents as Seller or Escrow Agent may reasonably request.
- (e) At Closing, the Parties agree to enter into a Post-Closing Escrow Agreement (the "Post-Closing Escrow Agreement") into which Seller will deposit the sum of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) (the "Post-Closing Escrow"). The Post-Closing Escrow Agreement shall include the following terms, and such other terms as the Parties may mutually agree:
- (i) Each Party shall appoint one attorney to serve as Co-Escrow Agents for a total of two Co-Escrow Agents;

- (ii) The Post-Closing Escrow shall secure (and shall be available and applied to satisfy) the following Seller obligations (collectively, "Seller's Post-Closing Obligations"):
 - (1) All of Seller's obligations and liabilities under Section 3(d) above; and
 - (2) All of Seller's obligations and liabilities under Section 6(b) above.
- (iii) At the end of three (3) years following Closing, if (1) less than Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) of the Post-Closing Escrow has actually been applied to satisfy any of Seller's Post-Closing Obligations and (2) there are no pending requests or other claims from Buyer to apply the Post-Closing Escrow, or any portion thereof, to satisfy any of Seller's Post-Closing Obligations, then the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) less any amounts applied, or reasonably set aside to apply to pending claims, shall be released from escrow and paid to Seller, or if directed by Seller prior to distribution hereunder, to the shareholders of the Seller in such percentages as Seller shall designate to the Co-Escrow Agents; otherwise, the balance of the Post-Closing Escrow shall remain in escrow and shall be released in accordance with Subsection 11(e)(iv) below.
- (iv) At the end of five (5) years following Closing, any amounts remaining in the Post-Closing Escrow shall be paid to Seller, or if directed by Seller prior to the expiration of the Post-Closing Escrow Agreement, to the shareholders of the Seller in such percentages as Seller shall designate to the Co-Escrow Agents; provided, however, any amounts remaining in the Post-Closing Escrow reasonably needed to pay any pending requests or other pending claims from Buyer to apply the Post-Closing Escrow, or any portion thereof, to satisfy any of Seller's Post-Closing Obligations shall remain in escrow until such time as all such requests and claims are paid in full or otherwise resolved by mutual agreement of the Parties.
- (f) If Buyer has not obtained a VCC with respect to the track at Canadys and related rights, then Buyer may at its option elect to defer the acquisition of the Canadys track and related rights. If Buyer so elects, the Buyer and Seller will at Closing, place into escrow (the "Canadys Escrow") an executed assignment and assumption agreement of the Canadys agreements identified on Schedule 2(a)(vi) and a bill of sale for the Canadys tracks. The Canadys Escrow Agreement will be in a mutually acceptable form and will appoint Clark Hill PLC as the escrow agent, and will provide for the release of the documents to Buyer upon written notice by Buyer given within six (6) months of Closing that Buyer is satisfied with the environmental issues related to the Canadys site. If written notice is not received within the specified time, then the escrow agent will cancel the documents and return them to Seller, the Canadys tracks and related rights will be

deemed excluded from the sale transaction, and Seller may thereafter dispose of the property and rights.

- (g) At Closing, both Parties agree to duly execute and deliver all other documents reasonably necessary to consummate the sale and purchase of the Purchased Assets, including, without limitation, a settlement statement setting forth the charges, credits and adjustments to each Party.

12. DEFAULT.

(a) Buyer's Default.

- (i) Provided that Seller is ready, willing and able to close under this Agreement, if Buyer fails to close in accordance with the terms of this Agreement or shall otherwise be in breach of any of the terms or conditions of this Agreement, then Seller shall give Buyer and Escrow Agent written notice specifying the failure of Buyer to Close or the nature of the breach.
- (ii) Buyer shall have ten (10) Business Days from receipt of Seller's notice of breach within which to cure the specified breach. If Buyer does not cure such breach within said 10-Business Day period and such breach is not waived in writing by Seller, then the Additional Earnest Money shall be forfeited to Seller, Seller shall retain any Closing Extension Deposits paid, and this Agreement shall automatically terminate and Seller and Buyer shall be relieved from all further liability or obligation hereunder except those that expressly survive termination.
- (iii) Forfeiture of the Additional Earnest Money shall be Seller's sole and exclusive remedy at law or in equity for Buyer's failure to close or breach of this Agreement. Seller waives any and all equitable remedies, including without limitation the right to specific performance of this Agreement. Neither Buyer's nor Seller's attendance or appearance at Closing shall be deemed to nullify or void the provisions of this subsection 12(a)(iii) for forfeiture of the Additional Earnest Money, as full liquidated damages and as Seller's sole remedy for Buyer's default. Seller and Buyer agree that forfeiture of the Additional Earnest Money shall be liquidated damages and not a penalty, and that actual damages resulting to Seller from Buyer's breach of this Agreement would be difficult or impossible to measure because of the uncertainties of the real estate market and fluctuations of property values and differences with respect thereto, and that the Additional Earnest Money paid is a reasonable estimate of those damages.

(b) Seller's Default.

- (i) Provided that Buyer is ready, willing and able to close under this Agreement, if Seller fails to close in accordance with the terms of this

Agreement, or shall otherwise be in breach of any of the terms or conditions of this Agreement, then Buyer shall give Seller and Escrow Agent written notice specifying the nature of the breach.

- (ii) Seller shall have ten (10) Business Days from receipt of Buyer's notice of breach within which to cure the specified breach. If Seller does not cure such breach within said 10-Business Day period and such breach is not waived in writing by Buyer, then Buyer, at its option, shall have the right, as Buyer's only remedies, to either:
 - (1) terminate this Agreement, by written notice given to Seller and Escrow Agent, in which event, Escrow Agent shall refund (or, if the Additional Earnest Money has been delivered to Seller as herein provided, Seller shall refund) all of the Additional Earnest Money to CCIC, and, upon such refund, Seller and Buyer shall be relieved from all further liability or obligation hereunder, in law or in equity, except that if Seller enters into an agreement to sell the Rail Line or substantially all of its assets within six (6) months after termination, then, within thirty (30) days after Seller's receipt of Buyer's written demand for same, Seller shall reimburse Buyer for its demonstrated out-of-pocket engineering and environmental due diligence costs not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00); or
 - (2) elect, by written notice given to Seller and Escrow Agent, to proceed to Closing, in which event Buyer shall be entitled to specific performance of this Agreement by Seller.

13. INDEMNIFICATION.

- (a) After Closing, Seller shall indemnify, defend and hold harmless Buyer and Buyer's officers, directors, employees, agents and representatives and the heirs, executors, successors and assigns of any of the foregoing from and against any and all claims, liabilities, obligations, damages, losses, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common) and damages whenever arising or incurred (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:
 - (i) any liability or obligation of Sellers with respect to the Excluded Assets;
 - (ii) any Retained Liabilities;
 - (iii) any breach of any agreement, covenant, representation or warranty made by Seller in this Agreement; and

- (iv) any claims or proceedings relating to this Agreement or such transactions made or brought by or on behalf of any shareholder, director, officer, agent, nominee or employee of Seller.
- (b) [Intentionally omitted.]
- (c) The provisions of Section 13 shall survive Closing and the delivery of the Quitclaim Deed.

14. TAXES AND EXPENSES.

- (a) General Taxes. All Taxes levied or imposed upon or in connection with the Purchased Assets for the period on or before the Closing Date other than any roll back taxes, shall be borne and paid by Seller, subject to the right to contest the same in appropriate proceedings. All Taxes levied or imposed upon or in connection with the Purchased Assets after the Closing Date, other than any roll back taxes, shall be borne and paid by Buyer, subject to the right to contest the same in appropriate proceedings. Any roll back tax due in connection with the Deed or the Purchased Assets under any state, county, township, municipal or local law, regulation or ordinance (or any similar tax or assessment) shall be borne and paid equally by Seller and Buyer whether assessed before or after Closing.
- (b) Transfer Taxes and Expenses. All recording fees, transfer Taxes or similar expenses applicable to the transactions contemplated by this Agreement shall be borne by Buyer. The Parties shall reasonably cooperate to establish the application of any exemption available under Applicable Law from such recording fees, transfer Taxes or similar expenses.
- (c) Allocations. The following shall be adjusted as of midnight immediately preceding the Closing Date: (i) all assessments, including special assessments applicable to the Real Property Interests and Buildings, whether or not due and payable, all real estate Taxes, all water and sewer rents, and all fees or rents under Contracts. If taxes for the fiscal year in which the sale is closed are not available as of the Closing Date, such taxes shall be prorated on the basis of taxes assessed in the previous fiscal year, with a subsequent cash adjustment of the proration to be made between Seller and Buyer, if necessary, when actual tax figures are available.
- (d) Expenses. Except as otherwise provided in this Section 14, each Party shall bear and pay its own expenses and taxes incurred in connection with the transactions referred to in this Agreement.
- (e) Survival. The provisions of this Section 14 shall survive Closing and the delivery of the Deed.

15. RISK OF LOSS - CASUALTY; CONDEMNATION.

- (a) Title and risk of loss with respect to the Purchased Assets shall pass to Buyer at the Closing Date; provided, however, that should the Closing not occur, title and risk of loss shall be deemed to remain in Seller for all purposes and for all periods of time.
- (b) Destruction or Damage Prior to Closing. If at any time prior to Closing, all or any portion of the Purchased Assets are destroyed or damaged as a result of fire or any other cause whatsoever, Seller shall give written notice thereof promptly to Buyer. The rights and the obligations of the Parties by reason of such destruction or damage shall be as follows:
- (i) If the cost of repairing such destruction or damage shall be reasonably determined by Buyer within twenty (20) days after receipt of notice of the damage to be more than ten percent (10%) of the Purchase Price, Buyer may, at its option, terminate this Agreement by giving written notice to Seller not later than ten (10) days after Buyer obtains the estimate of the repair cost, in which event (i) Seller shall retain all of the Original Earnest Money, (ii) the Additional Earnest Money shall be promptly returned to CCIC, and (ii) thereafter the Parties hereto shall be released from any further liabilities or obligations hereunder.
- (ii) If Buyer is entitled, but does not elect, to terminate this Agreement pursuant to subsection 15(b)(i) or the estimated repair cost is ten percent (10%) or less of the Purchase Price, then Buyer shall be obligated to proceed to Closing in accordance with this Agreement and the net proceeds actually collected by Seller under the provisions of any insurance policies, to the extent that they are attributable to loss of or damage to the Purchased Assets, shall be credited against the Purchase Price due at Closing. In the event that Seller has not actually collected such proceeds as of the date of Closing, Seller shall assign to Buyer the right to such proceeds.
- (c) Condemnation. If Seller has knowledge of any pending or threatened condemnation proceedings or actions, Seller shall advise Buyer in writing promptly. If, on or prior to the Closing Date, any portion of the Rail Line (other than the two (2) segments of non-operating corridor described in clause (B) of subsection 2(a)(i) herein), or any material Real Property Interests or Buildings shall be condemned or taken pursuant to any governmental or other power of eminent domain, any written notice of taking or condemnation is issued, or any proceedings are instituted by any Governmental Authority having the power of eminent domain (in each case other than by Colleton County), then Buyer shall have the option either (i) of proceeding to Closing and accepting the Purchased Assets subject to the condemnation or taking, and reducing the Purchase Price by the amount of the condemnation award received by Seller (or receiving an assignment of all of Seller's rights to such award if it has not yet been received by

Seller), or (ii) of terminating this Agreement by giving written notice to Seller not later than fifteen (15) days after receiving written notice from Seller advising of the condemnation or taking. For the purposes of this section "material" shall mean if the taking would interfere with the ability of the Buyer or its assignee or operator to conduct operations over the Rail Line. If Closing is scheduled to occur during said 15-day period, Closing shall be delayed to allow Buyer the full benefit of the said 15-day period. If Buyer gives notice of termination, (A) Seller shall retain all of the Original Earnest Money, (B) the Additional Earnest Money shall be promptly returned to CCIC, and (C) thereafter the Parties hereto shall be released from any further liabilities or obligations hereunder. If Buyer fails to give such notice of termination timely, Buyer shall be deemed to have elected option (i) above. If Buyer elects or is deemed to have elected to proceed to Closing and accept the Purchased Assets subject to the condemnation or taking, and the portion of the Purchased Assets to be condemned has not yet been taken and paid for by the condemning authority by the Closing Date, then there shall be no abatement in the Purchase Price and Seller shall assign to Buyer at Closing all of Seller's right to any unpaid condemnation awards, and Seller shall convey all of the Purchased Assets to Buyer.

16. SURVIVAL. All of the obligations of Seller and Buyer, including all covenants, agreements, indemnities, representations and warranties (to the extent not performed at Closing) shall survive Closing and shall not be deemed to merge upon the acceptance of delivery or recordation of the Deed or assignment of easements by Buyer or the Escrow Agent.
17. ESCROW AGENT. Escrow Agent has executed this Agreement to acknowledge Escrow Agent's responsibilities hereunder and under the New Escrow Agreement, which may be modified only by a written amendment signed by the Parties and Escrow Agent. Any amendment to this Agreement or the New Escrow Agreement that is not signed by Escrow Agent shall be effective as to the Parties, but shall not be binding on Escrow Agent.
18. MISCELLANEOUS.
 - (a) Schedules and Exhibits. The Schedules and Exhibits hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.
 - (b) Further Assurances. From and after the Closing, each Party shall from time to time, at the other Party's request, execute and deliver to the requesting Party, such other instruments of conveyance and transfer, without warranty (including without limitation, additional assignments suitable for recording), and take such other action as the requesting Party may reasonably request so as more effectively to sell, transfer, assign and deliver and vest in Buyer, title to and possession of the Purchased Assets, without warranty, as provided in this Agreement, to establish any exemptions (including by timely completing and filing any applicable

exemption forms) of the type described in Section 14(b) above, or otherwise to consummate the transactions contemplated by this Agreement.

- (c) Notices. Any notice, request, instruction, waiver or other communication to be given hereunder by a Party shall be in writing and shall be considered duly delivered if personally delivered, sent by messenger or overnight delivery service, or sent by registered or certified first class mail, return receipt requested, postage prepaid, to the address of the Parties as follows:

If to Seller, to:

Norris L. Laffitte
Hampton & Branchville Railroad Company
100 Mill Street
PO Box 56
Hampton, SC 29924

With a copy to:

Eric M. Hocky, Esq.
Clark Hill PLC
2005 Market Street, Suite 1000
Philadelphia, PA 19103

If to Buyer, to:

Jeffrey McWhorter, President & CEO
Palmetto Railways
540 East Bay Street
Charleston, SC 29403

With a copy to:

George J. Bullwinkel, III, Esq.
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401

And with a copy to:

Chaun William Pflug, Esq.
The Pflug Law Firm, LLC
211 Scott Street
Mount Pleasant, SC 29464

If to CCIC, to:

Kevin Griffin, President
Colleton County Intermodal Corporation
403 E. Washington St., Suite B
Walterboro, SC 29488

With a copy to:

Alan B. Linkous, Esq.
Howell Linkous & Nettles, LLC
The Lining House
106 Broad Street
Charleston, South Carolina 29401

If to Escrow Agent, to:

Clark Hill PLC
Attn: Eric M. Hocky, Esq.
2005 Market Street, Suite 1000
Philadelphia, PA 19103

or at such other address as a respective Party may designate by written notice to the other Party in the manner provided in this Section 18(c). Notice by mail shall be deemed to have been given and received on the third calendar day after posting. Notice by overnight delivery service or personal delivery shall be deemed given on the date of actual delivery. Either Party may from time to time change its address by giving notice to the other Party in accordance with the provisions of this section.

- (d) Assignment. No assignment or transfer by either Party of such Party's rights and obligations hereunder shall be made without the prior written consent of the other Party. This Agreement and the rights and duties hereunder shall be binding upon and inure to the benefit of the successors and permitted assigns of each of the Parties hereto.
- (e) Complete Agreement. This Agreement and the Exhibits and Schedules hereto set forth the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of either Party with respect to the subject matter hereof.
- (f) Governing Law and Venue. This Agreement and all matters arising hereunder or in connection herewith, whether arising in tort, contract or otherwise, shall be governed by and construed and enforced in accordance with the internal laws of the State of South Carolina without giving effect to the principles of conflicts of

laws thereof. Nothing herein shall be construed as a waiver by Buyer of any sovereign rights. Any action or proceeding between the Parties relating to or arising out of this Agreement shall be commenced and maintained exclusively in the state or federal courts of South Carolina, and each Party submits itself unconditionally and irrevocably to the personal jurisdiction of such courts.

- (g) No Third-Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights or remedies under or by reason of this Agreement. The rights, duties and obligations under this Agreement are for the sole benefit of the Parties and their respective successors and permitted assigns, and are for the benefit of no other Person.
- (h) Amendment; Waivers. No amendment, modification, waiver, replacement, termination or cancellation of any provision of this Agreement will be valid, unless the same is in writing and signed by the Parties. Each waiver of a right hereunder does not extend beyond the specific event or circumstance giving rise to the right. No waiver by either Party of any default, misrepresentation or breach of warranty or agreement hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of either Party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor does any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.
- (i) Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.
- (j) Interpretation.
 - (i) Unless otherwise indicated, all references to a "Section," "subsection," "Exhibit," or "Schedule" followed by a number and/or a letter refer to the specified Section, or subsection of, or Exhibit or Schedule to, this

Agreement and all such Sections, subsections, Exhibits and Schedules are incorporated into this Agreement by reference. The terms "this Agreement," "hereof," "herein," and "hereunder" and similar expressions refer to this Agreement and not to any particular Section, subsection, Exhibit, Schedule, or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.

- (ii) The word "including" means "including without limitation."
 - (iii) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, includes all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation which supplements or supersedes any such statute or any such regulation.
 - (iv) Unless the context otherwise requires, words importing the singular include the plural and vice versa.
 - (v) Unless otherwise expressly stated, references to any Person also include its permitted successor and assigns.
 - (vi) The headings of the Sections and subsections of this Agreement and of the Exhibits and Schedules to this Agreement are inserted for convenience of reference only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.
 - (vii) "Actual knowledge" of Buyer means the actual knowledge of any officer or manager of Buyer following reasonable inquiry.
- (k) Publicity. Any public announcements or other publicity with respect hereto or the transactions contemplated hereby shall be made only at such time and in such manner as Seller and Buyer shall mutually agree, except that either Party shall be free to make such public announcements as it shall deem reasonably necessary, after prior notice to the other Party, to comply with Applicable Law.
- (l) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- (m) Negotiated Transaction. The provisions of this Agreement were negotiated by the Parties, and this Agreement shall be deemed to have been drafted by both Parties.
- (n) Relationship of the Parties. The relationship between the Parties is limited to the purpose herein. Nothing in this Agreement shall be deemed to constitute, create or give effect to or otherwise recognise any partnership, joint venture, or formal business entity between the Parties.

- (o) Time of the Essence. Time shall be of the essence with respect to each and every provision of this Agreement.

[SIGNATURES ON NEXT PAGE(S)]

IN WITNESS WHEREOF, the Parties have signed and delivered this Agreement as of the Effective Date.

SELLER:

HAMPTON & BRANCHVILLE RAILROAD
COMPANY

By: _____

Name: _____

Title: _____

BUYER:

SOUTH CAROLINA PUBLIC RAILWAYS d/b/a
PALMETTO RAILWAYS

By: _____

Name: _____

Title: _____

This Asset Purchase and Sale Agreement was approved by the South Carolina State Fiscal Accountability Authority at its meeting held on the ___ day of _____, 2016.

SOUTH CAROLINA STATE FISCAL
ACCOUNTABILITY AUTHORITY

By: _____

Name: _____

Title: _____

The undersigned executes this Agreement as its agreement to act as escrow agent in accordance with the terms of this Agreement and the New Escrow Agreement.

Clark Hill PLC

By: _____
Name: Eric M. Hocky
Title: Member

The undersigned executes this Agreement as its agreement to comply with requirements set forth in Section 4 and Section 8(a)(x) of the Agreement.

Colleton County Intermodal Corporation

By: _____
Name: _____
Title: _____

SCHEDULE 2(a)(ii)(1)

SURPLUS LAND PARCELS

1. Surplus Parcel 1: A tract of land approximately 26.91 acres in area located within the Town of Hampton, County of Hampton, State of South Carolina. The property abuts the operating railroad corridor and contains two structures. (A third structure is on adjacent property.)
2. Surplus Parcel 2: A tract of land approximately 4.50 acres in area located within the unincorporated community of Miley, County of Hampton, State of South Carolina (the "Miley 4.5-acre Parcel"). The property abuts the former operating railroad corridor and contains six structures.
3. Surplus Parcel 3: A tract of land approximately 0.662 acres in area located within the unincorporated community of Miley, County of Hampton, State of South Carolina (the "Other Miley Parcel"). The property abuts the former operating railroad corridor and contains zero (-0-) structures.

SCHEDULE 2(a)(vi)

CONTRACTS

- (1) License Agreement between Viacom and H&B dated July 7, 2005, and related documents.
- (2) Agreement between SCEG and ACL dated November 25, 1959, as supplemented by Agreement between SCEG and SCL dated August 8, 1967 (Canadys agreements).
- (3) All agreements shown on the following spreadsheet.

SCHEDULE 5(a)

DUE DILIGENCE ITEMS

1. Records reflecting interests in real estate or use thereof.
2. Phase I or Phase II environmental reports and engineering reports, flood plain reports, surveys and appraisals relating to the Real Property Interests or Buildings.
3. Property tax records, assessments and assessment appeals relating to the Real Property Interests or Buildings.
4. Permits in effect as of the Effective Date.
5. Certificates evidencing all fire, liability and other insurance policies presently in effect on the Purchased Assets with a description of all claims for the prior three (3) year period, together with a description of all outstanding claims under such policies.
6. Contracts in effect as of the Effective Date.
7. Other property records, studies, communications, documents, images or data related to the Purchased Assets.
8. All other Records.

All due diligence items are limited to non-privileged items in the current possession or control of Seller.

SCHEDULE 5(d)

ENVIRONMENTAL REPORTS

1. Phase 1 Environmental Assessment Reports Pursuant to ASTM E1527-13.

SCHEDULE 7(a)(ix)

OTHER AGREEMENTS

See the contracts shown on Schedule 2(a)(vi).

CERTIFICATE OF THE DIRECTOR
OF
THE SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS D/B/A PALMETTO RAILWAYS,
A DIVISION OF THE SOUTH CAROLINA DEPARTMENT OF COMMERCE

I, the undersigned, Jeffrey M. McWhorter, do hereby certify as follows:

I am, as of this date, the duly qualified and acting sole Director and President of the South Carolina Division of Public Railways d/b/a Palmetto Railways ("*Palmetto*"), a division of the South Carolina Department of Commerce. I am authorized to execute this certificate on behalf of Palmetto, and I am knowledgeable with respect to the matters set forth herein.

Pursuant to the authority and requirements of Sections 13-1-1330(2), 13-1-1330(4), 13-1-1330(7), 13-1-1330(8), 13-1-1350, and 13-1-1390 of the Code of Laws of South Carolina, 1976, as amended, I hereby find and certify as follows:

1. The acquisition of the assets of the Hampton and Branchville Railroad (the "*Railroad*") by Palmetto and the extension of Palmetto's operations thereby are desirable in the public interest to promote and foster economic growth and development.
2. Such acquisition and extension of Palmetto's operations do not involve the extension of mainline trackage.
3. The acquisition of the Railroad will give rise to no pecuniary liability of Palmetto or a charge against its general credit or a charge against the full faith and credit or taxing power of the State of South Carolina or, except as more particularly described in Section 7 below, any political subdivision thereof.
4. Palmetto will not issue any bonds to finance its acquisition of the Railroad, but Colleton County Intermodal Corporation ("*CCIC*"), a South Carolina non-profit corporation created by Colleton County (the "*County*"), will provide a non-recourse loan ("the "*Loan*") in the approximate principal amount of \$7,555,000 to Palmetto to finance Palmetto's acquisition of the Railroad. In order to fund the Loan, CCIC will first issue taxable economic development revenue bonds in its own name in the approximate par amount of \$7,555,000 (the "*Bonds*"), which Bonds have been authorized and will be issued by CCIC for the purpose of promoting economic development and for financing the acquisition of the Railroad via the Loan.
5. The proceeds from the issuance of the Bonds will then fund the non-recourse Loan from CCIC to Palmetto and shall be evidenced by a Loan and Security Agreement and Promissory Note, the form of which are attached hereto as *Exhibits A* and *B*, which shall be secured by a Mortgage held by CCIC, the form of which is attached as *Exhibit C*.
6. The Loan will be used to purchase the Railroad, fund a debt service reserve fund for the Bonds and pay closing costs and expenses associated with the issuance of the Bonds and the acquisition of the Railroad as set forth in *Exhibit D* hereto, which also shows the estimated amount necessary in each year to pay the principal and interest on the Bonds.¹

¹ Please note that the "Bond Debt Service" report attached hereto as Exhibit D hereto and the figures contained therein are estimates based on current market conditions and assumptions. Actual figures may vary.

7. Debt service payments on the Loan will be made by Palmetto solely from the revenue generated from the operation of the Railroad. More specifically, Palmetto shall pay to CCIC, on an annual basis, (i) ten percent (10%) of all gross revenues received by Palmetto in connection with the operation or use of or otherwise in connection with the Railroad plus (ii) twenty-five percent (25%) of the net income, if any, generated from the ownership, operation, use or disposal of the Railroad. One hundred percent of the funds paid to CCIC will, in turn, be used by CCIC to cover its debt service payments on the Bonds. In addition, because the Railroad is not expected to generate substantial revenues during its early years of operations, the County will enter into a Deposit and Reimbursement Agreement with CCIC and the bond trustee for the Bonds (the "*Reimbursement Agreement*"). Under the terms of the Reimbursement Agreement, should the revenue generated from the operation of the Railroad be insufficient to satisfy the annual debt service on the Loan (and, thus, the Bonds), then the County will satisfy the debt service on the Bonds either from its general fund revenue or from the proceeds of general obligation bonds to be issued by the County for that purpose.

8. The estimated cost of maintaining the Railroad in good repair is estimated not to exceed \$50,000 annually, and the maintenance cost and the cost of property insuring the Railroad shall be paid from revenues earned by Palmetto from the Railroad and/or shall be absorbed as general operating costs of Palmetto.

IN WITNESS WHEREOF, I have set my hand this 29 of August, 2016.

SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS
D/B/A PALMETTO RAILWAYS, A DIVISION OF THE
SOUTH CAROLINA DEPARTMENT OF COMMERCE

By 
Jeffrey M. McWhorter, Director and President

other Loan Documents to the contrary, no warranty of title is given by the Borrower as to the Purchased Assets or the Collateral, or any portion thereof.

(i) Upon completion of the actions set forth in Annex J, the Borrower, to the Borrower's knowledge, will have created a valid and perfected first priority security interest in favor of the Lender in all Collateral subject to no prior Lien or to any agreement purporting to grant to any third party a Lien on the Collateral, enforceable against the Borrower and all third parties in accordance with this Agreement and securing payment of the Borrower's Obligations.

(j) Other than financing statements or other similar documents perfecting the security interests of the Lender, no financing statements or similar documents covering all or any part of the Collateral are, to the Borrower's knowledge, on file or of record in any government office in any jurisdiction in which such filing or recording would be effective to perfect a security interest in such Collateral, nor to the Borrower's knowledge, is any of the Collateral in the possession of any Person (other than the Borrower) asserting any claim thereto or security interest therein.

(k) There is no action, suit or proceeding pending against, or to the knowledge of the Borrower threatened against or affecting, the Borrower before any Governmental Authority in which there is a reasonable possibility of an adverse decision which could adversely affect the business, financial position or results of operations of the Borrower which in any manner draws into question the validity of the Loan Documents and, to the Borrower's knowledge, there is no basis known to the Borrower for any such action, suit or proceeding.

(l) Borrower has provided a copy of this Agreement to the Borrower's insurance agent(s)/broker(s), who have been instructed by the Borrower to procure the insurance coverages required by this Agreement. Insurance coverage provided in the amounts set forth herein shall not be construed to otherwise relieve the Borrower from any liability hereunder in excess of such coverage or otherwise except as such liability is limited by the express terms of this Agreement and the other Loan Documents and by the South Carolina Tort Claim Act, S.C. Code Ann. §§ 15-78-10, *et seq.*, (the "**Tort Claims Act**") and other laws of the State of South Carolina, nor shall it preclude the Borrower from taking such other action as is available to it under any other provision of this Agreement or otherwise in law.

Section 4.2 Lender's Representations. The Lender represents and warrants as of the date hereof that:

(a) The Lender is a South Carolina nonprofit corporation and has full statutory power and authority to enter into this Agreement and to carry out the obligations of the Lender hereunder.

(b) The Lender has taken all action required by law or otherwise to be taken to authorize the execution and delivery of this Agreement and the performance thereof. This Agreement is a valid and binding agreement of the Lender enforceable against the Lender in

accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and general principles of equity.

(c) Neither the Lender's execution and delivery of this Agreement, nor its performance thereof, will (i) violate any statute or law, or any judgment, decree, order, regulation or rule of any Governmental Authority, or (ii) violate any agreement to which it is bound.

Article 5 Borrower's Covenants

Until all of the Borrower's Obligations have been Fully Satisfied, the Borrower covenants as follows:

Section 5.1 Operation and Use of Line. The Borrower shall operate and use the Line to provide common carrier rail freight service, including the right to access and interchange traffic directly with all present and future railroads at Hampton, South Carolina, regardless of whether or not the Line is profitable or Gross Revenues are sufficient to pay for any or all of the Operating Expenses and costs of Capital Improvements. The Borrower shall also have the right to use the Line for passenger operations. The Borrower shall not grant to any railroad the right to operate over the Line without the prior written consent of the Lender, or use the Line for any purpose other than for rail freight service and activities ancillary thereto.

Section 5.2 Suspension or Discontinuance of Operations. The Borrower shall not suspend or discontinue its operation by rail over all or any part of the Line without first obtaining from the STB any necessary approvals or exemptions from regulation for such discontinuance of service on the Line; provided, however, until Borrower's Obligations have been Fully Satisfied the Borrower will not file such notice of intent to terminate or seek such regulatory authority or, if no regulatory authority is needed, take any action to discontinue service on the Line, without the Lender's prior written consent, which may be given or withheld in the Lender's sole discretion except as permitted elsewhere in this Agreement. Notwithstanding the foregoing, subject to any regulatory requirements, the Borrower may, without such prior notice, temporarily embargo its operations over all or any part of the Line due to events of force majeure or other temporary disabilities.

Section 5.3 Removal and Replacement of Line. The Borrower shall, subject to the provisions of Section 5.29 (Replacement of Track Materials), have the right to remove, replace, and add to or relay elements of the Line in the interest of cost or operating efficiency, provided that a continuous and usable line of railroad between the termini is maintained. The Borrower shall have the right to apply the net proceeds from salvaged materials to maintenance or improvement of the Line. Any such net proceeds not reinvested in the Line shall be Gross Revenues. Improvements to the Line, whether normal maintenance or otherwise, shall become part of the Line.

Section 5.4 Maintenance of Line. The provisions of Section 5.3 shall also apply and govern any work or maintenance done by the Borrower pursuant to Section 5.28 (Maintenance).

No later than one hundred twenty (120) days after the end of each Fiscal Year, the Borrower shall provide the Lender with a written summary of all salvage or other materials removed from the Line, the proceeds received therefor and the manner in which the proceeds were reinvested during the preceding calendar year.

Section 5.5 Sidetracks and Spur Tracks. The Borrower may from time to time establish, relocate or remove sidetracks or industrial spur tracks on the Line after the Borrower obtains any necessary Governmental Authority and notifies the Lender thereof in writing. Subject to the terms of any agreements preceding the date of this Agreement, that portion of any such spur track which is located upon the Line shall become part of the Line. All industry track agreements, regardless of duration, shall, if reasonably possible, contain provisions expressly indemnifying the Lender and holding it harmless from all liability in connection with the construction, maintenance or operation thereof.

Section 5.6 Contracts.

(a) The Borrower will manage all Contracts.

(b) The Borrower shall enter into, and maintain in effect at all times until all of the Borrower's Obligations have been Fully Satisfied, a track connection between the Line and the tracks of CSXT at Hampton, South Carolina by which rail traffic can be interchanged with CSXT, and shall use its best efforts to maintain in effect an Interchange Agreement with CSXT.

(c) The Borrower shall enter into any other new Contracts that the Borrower determines, acting as a commercially reasonable operator, are required or appropriate for the operation, maintenance or repair of the Collateral. The Borrower shall deliver to Lender a copy of each such Contract no later than thirty (30) days after its consummation.

Section 5.7 Third Party Use of Line. The Borrower shall ensure that: (i) all uses of the Line are pursuant to appropriate documentation and all unauthorized use is promptly removed from the Line; (ii) no use is permitted which could jeopardize the value of the Line; (iii) Contracts for storage or handling of Hazardous Materials on the Line are strictly in conformity with applicable Environmental Laws and any policies promulgated by the Borrower; and (iv) upon the termination of any Contract for any reason whatsoever, the Line is cleared and restored as required by the terms of the Contracts. In addition, if the unauthorized use is of a type which would be covered by a Contract, the Borrower shall endeavor to enter into a Contract with the user.

Section 5.8 Eminent Domain; Fire and Other Casualty.

(a) In the event that the whole or any part of the Line shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose prior to the time that Borrower's Obligations have been Fully Satisfied, the following provisions shall be applicable:

(i) the Borrower shall provide prompt notice to the Lender of any eminent domain proceeding involving the Line of which it becomes aware. Each

Party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other Party, its attorneys, and experts. The Borrower and Lender shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure Borrower's continued ability to use the Line for the conduct of freight railroad operations; and

(ii) Any and all funds payable for the total or partial taking of the Line shall be Gross Revenues.

(b) If the Line is damaged or destroyed by fire, casualty or other cause, Borrower shall use reasonable diligence to cause the damaged or destroyed portion of the Line to be repaired and returned to substantially the same condition as existed prior to the fire or other casualty. The costs of such repairs shall be paid from the proceeds of any available insurance, or to the extent not covered by insurance (other than because of Borrower's failure to maintain the insurance required by Section 5.16) shall be paid as the costs of a Capital Improvement.

Section 5.9 Covenants relating to the Collateral.

The Borrower shall:

(a) not take any action in connection with the Collateral that would materially impair the value of the Collateral or that would impair the interest or rights of the Lender therein;

(b) not, except as expressly contemplated or permitted hereby, sell, assign, transfer, charge, pledge, or encumber in any manner, or otherwise dispose of, or grant any option with respect to, any of the Collateral or the Borrower's interest therein, or allow to exist any Lien on such Collateral or any of the Borrower's interest therein unless such sale, assignment, transfer, charge, pledge or other disposition is in the ordinary course of business. (For purposes of this Agreement, the sale, assignment, transfer, charge, pledge or other disposition of any interest in any of the Purchased Assets is not in the ordinary course of business.);

(c) from time to time, at the Borrower's expense, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Lender may request, in order to perfect, protect, and preserve the pledge, assignment, and security interest granted or purported to be granted hereby or to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral;

(d) continue to be the sole legal and beneficial owner of, with good title to, all of the Collateral and all Proceeds thereof, except as otherwise permitted hereby; and

(e) not change its name or the location of (a) its place of business, or (b) its chief executive office unless, prior to such change, it notifies the Lender of such change, makes all UCC or other filings required hereunder, and takes all other actions necessary or that the Lender may reasonably request to preserve, perfect, confirm and protect the security interests granted hereby.

Section 5.10 Compliance with Applicable Law. The Borrower agrees to comply with all Applicable Law, and the Borrower will not knowingly do, or permit to be done, upon or about the Line, anything forbidden by Applicable Law.

Section 5.11 Notices. The Borrower will advise the Lender promptly and in reasonable detail (a) of any Lien or claim made or asserted against any of the Collateral, and (b) the occurrence of an Event of Default and each event or condition (including each condition after giving effect to any action proposed or requested by the Borrower) that, with the giving of notice or the passage of time, or both, could constitute an Event of Default.

Section 5.12 Payment of Obligations. The Borrower will pay and discharge, as the same shall become due and payable, all of its obligations and liabilities, including all claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like persons which, in any such case, if unpaid, might by law give rise to a Lien upon any of the Collateral.

Section 5.13 Taxes.

(a) As owner of the Line, the Borrower shall be responsible for any taxes and assessments, general and special or otherwise which may be levied, assessed or imposed upon the Line. The Borrower shall pay any such taxes and assessments directly to the taxing authorities on or before the due date, but reserves the right to contest any tax or assessment, in good faith, by appropriate proceeding, as it may deem necessary or appropriate.

(b) The Borrower shall promptly notify the Lender of any asserted or claimed special assessments that are brought to its attention affecting the Line and the Borrower may, upon giving timely notice to the Lender and the taxing authority, contest any such assessment, in good faith, by appropriate legal proceedings. The Borrower shall pay (or reimburse the Lender) any special assessment which is not contested or which becomes legally final and binding.

(c) All Impositions which become payable prior to the time that Borrower's Obligations have been Fully Satisfied (or are properly allocable to such period) shall be Operating Expenses. The Borrower shall pay all such Impositions before any fine, penalty, or interest is added thereto or lien placed upon the Line with respect thereto. The Borrower shall, within thirty (30) days of payment, furnish the Lender with copies of official tax bills and assessments that the Borrower has received, and evidence of payment or contest thereof. The Borrower with the prior consent of the Lender, may initiate proceedings to contest any Imposition, and all reasonable costs of any negotiations or proceedings with respect to any such contest shall be an Operating Expense.

(d) The Borrower shall be responsible for any fines, penalties or interest on any taxes, assessments or Impositions, and shall not be entitled to pay or reimburse itself for such fines, penalties or interest from Gross Revenues.

Section 5.14 Compliance with Terms of Other Agreements. The Borrower will perform, and comply in all material respects with, all of its obligations under all agreements relating to the Collateral to which it or any of its assets are or may be bound.

Section 5.15 Consent Needed for Abandonment. The Borrower will not seek Abandonment authority from the Surface Transportation Board concerning, or Abandon (or cause the Abandonment of) any part of the Line without first obtaining the written consent of the Lender.

Section 5.16 Insurance. Until Borrower's Obligations have been Fully Satisfied, the Borrower shall provide, procure, maintain, and promptly pay when due all premiums for the following kinds of insurance, all of which shall be in such amounts and with such single and aggregate limits as are applicable and necessary to comply with the maximum limits under the Tort Claims Act and other applicable laws:

(a) Railroad Liability insurance covering (A) claims for bodily injury, death or property damage, (B) claims for personal injury and advertising injury liability, and (C) claims under the Federal Employers' Liability Act (FELA). To the extent permitted by law, this insurance shall provide Broad Form Contractual liability and severability of interests. Coverage purchased on a claims made form shall provide for at least a two (2) year extended reporting or discovery period, if (i) the coverage changes from a claims made form to an occurrence form, (ii) there is a lapse/cancellation of coverage, or (iii) the succeeding claims made policy retroactive date is different for the expiring policy.

(b) Automobile Liability insurance, insuring for legal liability caused by bodily injury, property damage arising out of the Borrower's ownership or use of motor vehicles, including any hired or non-owned vehicles.

(c) Worker's Compensation insurance, insuring for occupational disease or injury and employer's liability. The policy will be in a form that complies with the worker's compensation acts and safety laws of the State of South Carolina.

(d) All Risk Property insurance, insuring for all risks of physical loss of or damage (excluding the perils of earthquake and flood, unless specifically required by any lender) to the Line, the personal property of the Lender used to maintain, operate or repair the Line, and new construction, additions, alterations and repairs to structures. The policy shall provide for claims to be paid based upon the replacement cost of the lost or damaged property without any deduction for depreciation, with an endorsement specifically providing for the replacement cost necessary to rebuild or restore the Line in accordance with then existing fire, building and life safety codes. The limits of the policy will be at least the replacement value of the Line (excluding the value of the land, site utilities, foundations and architectural and engineering expenses). The policy shall have an all other perils deductible of no greater than \$100,000 per occurrence. The Borrower and the Lender shall be named as loss payees on such policies as their interests may appear.

Section 5.17 Hazardous Material Insurance. Prior to transporting or permitting the transport of any Hazardous Materials on the Line, the Borrower shall provide, procure and maintain with financially responsible insurance companies qualified to do business in the State of South Carolina, Hazardous Material and General Freight Transportation Insurance, including

pollution coverage, with such single and aggregate limits as shall be reasonable in the circumstances.

Section 5.18 Lender as Additional Insured; Increase in Coverage; No Waiver.

(a) All insurance described in Section 5.16 and, if applicable, Section 5.17 shall be obtained by and be carried in the name of the Borrower. If available, all liability policies shall name the Lender as an additional insured so long as the Borrower does not have to incur any additional premiums or other costs or expenses in connection therewith.

(b) On or before any anniversary date of this Agreement, the Lender may require a commercially reasonable increase in the amount of insurance coverage required under Section 5.16 and Section 5.17 to the extent such increase is permitted by applicable law.

(c) Nothing in this Agreement or otherwise may be construed as expanding the liability of the Borrower as an agency of the State of South Carolina or constituting a waiver of its sovereign or Eleventh Amendment immunities except to the extent waived or abrogated by the South Carolina General Assembly.

Section 5.19 Insurance Premiums as Operating Expenses. Insurance premiums and any other costs or expenses with respect to the insurance required under Section 5.16 and Section 5.17 shall be Operating Expenses. Any reserves, losses, costs or expenses that are uninsured shall be treated as a cost of insurance and shall be Operating Expenses.

Section 5.20 Certificates. Prior to the date hereof and prior to the expiration of each certificate of insurance, the Borrower shall furnish to the Lender certificate(s) evidencing the required coverage and endorsement(s), the declarations pages of the insurance policies (and, if requested by the Lender, copies of the insurance policies, including all endorsements) and evidence of payment of all due premiums for such insurance. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify the Lender in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.

Section 5.21 Insurance Company Rating. As applicable, the insurance policy(ies) shall be written by the South Carolina Insurance Reserve Fund, a Division of the South Carolina State Fiscal Accountability Authority, or a reputable insurance company or companies acceptable to the Lender or with a current Best's Insurance Guide Rating of B and Class VII or better, and authorized to transact business in the State of South Carolina.

Section 5.22 Compliance with Environmental Laws. The Borrower shall comply with applicable Environmental Laws in the performance of its rights and responsibilities hereunder.

(a) Excepting any notification and/or requirements under any NRP-VCC, the Borrower shall promptly notify the Lender in writing of: (i) any enforcement, clean-up, removal, remediation or other governmental or regulatory action instituted, completed or threatened

against the Lender or the Borrower by any Governmental Authority pursuant to any applicable Environmental Laws as a result of the operation or maintenance of the Line; (ii) any claim made or threatened against the Lender or the Borrower by any person or entity relating to damage, contribution, cost recovery, compensation loss or injury resulting from or claimed to result from any Hazardous Materials arising out of or in connection with the operation or maintenance of the Line; (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials removed from the Line or the Real Property Interests on which the Line is situated, including any complaints, notices, warnings, reports or asserted violations in connection therewith; and (d) the discovery of any Hazardous Materials at or about the Line or the Real Property Interests on which the Line is situated that are or may be in violation of applicable Environmental Laws. The Borrower shall also provide to the Lender, as promptly as possible, and in any event within five (5) business days after the Borrower first received or sent the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Line or the Borrower's operation thereof. Upon written request of the Lender (to enable the Lender to defend itself from any claim or charge related to any Environmental Laws), the Borrower shall promptly deliver to the Lender notices of hazardous waste manifests reflecting the legal and proper disposal of all such Hazardous Materials removed from the Line or the Real Property Interests on which the Line is situated.

(b) If, in violation of applicable Environmental Laws, Hazardous Materials are introduced to the Line or the Real Property Interests on or about which the Line is located prior to the time that Borrower's Obligations have been Fully Satisfied, then, unless otherwise required under any NRP-VCC and except as may otherwise be provided in Section 7.1(b), the Borrower will remediate, or cause the same to be remediated, in accordance with applicable Environmental Laws.

(c) To the extent Hazardous Materials are introduced to the Line or the Real Property Interests on or about which the Line is located prior to the time that Borrower's Obligations have been Fully Satisfied as a result of the acts or omissions of Persons other than the Lender or the Borrower or their respective employees, representatives, agents, or contractors, then, unless otherwise required under any NRP-VCC and except as may otherwise be provided in Section 7.1(b), the Borrower shall use diligent efforts to cause such Persons to remediate the Line and such property in accordance with applicable Environmental Laws or to pay all of the costs and expenses of such remediation.

(d) To the extent Hazardous Materials are introduced to the Line or the Real Property Interests on or about which the Line is located prior to the time that Borrower's Obligations have been Fully Satisfied as a result of the acts or omissions of the Borrower or its employees, representatives, agents, or contractors, then, unless otherwise required under any NRP-VCC and except as may otherwise be provided in Section 7.1(b), the Borrower shall pay all of the costs and expenses of remediating the Line and such Real Property Interests, and such costs and expenses shall not be payable from Gross Revenues.

(e) Except as provided in Section 5.22(c) and Section 5.22(d), all costs and expenses of remediating the Line or the Real Property Interests on or about which the Line is located pursuant to Section 7.1(b), performing all work required under the NRP VCC pursuant to

Section 5.22(b) and compliance with applicable Environmental Laws, shall be Operating Expenses.

Section 5.23 Maintenance. The Borrower shall operate and maintain the Line and perform its duties and obligations using reasonable care, in a good and workmanlike manner and in accordance with all Applicable Law and generally accepted industry standards, including those standards promulgated by the AAR, and shall be responsible for complying with any and all Applicable Law and such standards. Without limiting the foregoing, the Borrower shall:

(a) maintain the Line to the FRA standard that is sufficient to continue rail freight service commensurate with the needs of the rail users thereof, in accordance with all Applicable Law and all generally accepted industry standards, and to maintain the Line to no less than FRA Class 1 standards;

(b) protect the Line against all encroachments or unauthorized uses of which it is or should reasonably be aware;

(c) comply with all applicable inspection, maintenance, employee qualification, operating requirements, locomotive standards and other standards and requirements imposed on rail operators by FRA rule or other applicable FRA order or legally binding FRA pronouncement, including any applicable requirement to install and maintain positive train control;

(d) assist, obtain as delegated and take all reasonable steps to keep in full force and effect any and all Licenses;

(e) participate in and be responsible for any survey, inspection or site investigation conducted by any Governmental Authority with authority or jurisdiction over the Line; and

(f) prepare and submit all regulatory filings pertaining to the Line required by any Governmental Authority.

Section 5.24 Third Party Indemnification of Lender. The Borrower shall require all Persons entering upon or performing work on the Line under any agreement with the Borrower (including any other railroads) to agree to hold harmless and indemnify the Lender and its officers, agents, and employees from and against any liability, loss, claim, or expense for bodily injury or death to any persons or damage to any property arising out of any act or omission of such contractor on or in connection with the Line, regardless of the fault, failure or negligence (other than sole negligence) of the Lender. The Borrower shall also require any such person or entity to secure and maintain in effect at all times during the performance of such work on the Line, the insurance described in Section 5.16. The Borrower shall deliver to the Lender a copy of all such policies or certificates of insurance upon request.

Section 5.25 Costs of Maintenance. The cost of routine maintenance, repairs and minor alterations to the Line that can be expensed under GAAP (or such other accounting basis as reasonably determined by the Borrower), consistently applied, and which are necessary to

maintain the Line consistent with the standards set forth in this Agreement, shall be treated by the Borrower as an Operating Expense.

Section 5.26 Lender's Right to Inspect. The Lender shall have the right to inspect the Line at all reasonable times, and the Borrower shall make available responsible officers to consult with the Lender from time to time as may be necessary or required by the Lender in connection with ongoing activities and services performed by the Borrower with respect to the Line. the Lender shall notify the Borrower in writing of any deficiencies in the Borrower's maintenance program identified by the Lender through such inspections and, except if there is no demand for rail service on the affected segment of the Line, the Borrower shall, within ninety (90) days of its receipt of such notice (or within any shorter period required by Applicable Law or advisable or desirable for safety reasons), commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence. The Borrower may relocate switches and industrial tracks from one location on the Line to another location on the Line upon receiving any necessary and proper regulatory authority. Any rehabilitation or reconstruction, including that necessitated by an act of God, will be the sole responsibility of the Borrower. The Borrower shall not be relieved of its obligations under this Agreement, and the Lender shall have no liability to the Borrower, as a result of the Lender not performing inspections or the Lender's failure to identify deficiencies in the Borrower's maintenance program during any such inspection(s).

Section 5.27 Maintenance Standards. Nothing herein shall preclude the Borrower, at its sole cost and expense, from maintaining the Line to a standard higher than the minimum herein provided, but the Borrower shall not be required hereunder to do so.

Section 5.28 Maintenance Obligations. The Borrower's maintenance obligations hereunder shall include, but shall not be limited to, highway grade crossings, grade crossing signal protection devices, bridges, culverts and other structures, and sub-roadbed related to providing rail freight service on the Line.

Section 5.29 Replacement of Track Materials. The Borrower will not replace existing track and other track materials ("*OTM*") on the Line with substitute or replacement track or OTM having a lighter weight, of lesser quality, or having a lower fair market value. Such requirement shall also apply to all other facilities leased hereunder. Any repair or replacement of welded rail shall also be welded. The Borrower may make any replacement and substitute with any material having the same or higher weight and quality as the materials being replaced, provided that the work being performed by the Borrower and the materials being provided by the Borrower are sufficient to maintain the trackage to the standards set forth in Section 5.23.

Section 5.30 Claims for Materials and Labor. Prior to the time that Borrower's Obligations have been Fully Satisfied, the Borrower will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by the Borrower in any construction, repair, maintenance, or removal on the Line and any improvements located thereon.

Section 5.31 Capital Improvements. The Borrower shall make or cause to be made all Capital Improvements that are required in order for the Line to comply with or continue to comply with Applicable Law.

Section 5.32 Impact of Shortfall in Gross Revenues. The Borrower's obligation under this Article 5 will apply whether or not Gross Revenues are sufficient to pay the costs of performing such obligations.

Section 5.33 Financial and Marketing Responsibilities.

The Borrower shall:

(a) manage the cash flow of the Line, including collecting and depositing all Gross Revenues in the Operating Account and making the disbursements therefrom in the order set forth in Section 2.4(b);

(b) be responsible for entering into all contracts for freight transportation over the Line in its own name or that of any connecting railroad with which it participates in through-transportation over the Line and for the operating policies, prices, tariffs, rates and charges for services provided with respect to the Line and scheduling of transportation over the Line and the relationship with all shippers and connecting rail carriers. The Borrower shall not discriminate unreasonably with respect to rates, transportation, and services against any shipper and shall provide transportation or service on reasonable request;

(c) be responsible for negotiating directly with all connecting railroads with respect to switch charges, divisions of revenue, car hire agreements, clerical/data exchange agreements and interchange agreements;

(d) retain all professionals to provide necessary, accounting, legal and other professional services in connection with operation of the Line;

(e) diligently and proactively market and advertise use of the Line and promptly respond to all bona fide inquiries with respect to potential service on the Line;

(f) institute and prosecute such legal actions as the Borrower determines, acting as a commercially reasonable operator, may be necessary to collect delinquent accounts receivable;

(g) pay all bills for water, sewer, gas and electric service on the Line before their due dates. If, despite the Borrower's Obligations in this Agreement, the Lender pays any such bills, the Borrower will promptly reimburse the Lender upon receipt of a bill or bills therefor. If the Line is not billed separately but as a part of a larger tract or parcel, the Borrower shall pay that portion of such bills as is attributable to usage on or in connection with the Line;

(h) not permit any liens or encumbrances on the Line unless such liens or encumbrances are approved in writing by the Lender;

(i) be responsible for any and all obligations to its employees under any labor protection imposed by any regulatory or administrative agency resulting from this Agreement or the operation of the Line; and

(j) perform such other obligations required to be performed by the Borrower pursuant to this Agreement.

Section 5.34 Books and Records. The Borrower shall maintain all books and records relating to the operation and maintenance of the Line in accordance with GAAP (or such other basis as reasonably determined by the Borrower), consistently applied. The Lender, upon not fewer than five (5) business days' prior notice to the Borrower, may examine such records during the Borrower's normal business hours.

Section 5.35 Use of the Line; Defense against Adverse Claims. The Borrower shall not make any use of the Line inconsistent with its right, title and interest therein and which may cause the right to use and occupy the Line to revert to any person other than the Borrower or, as applicable, the Lender. The Borrower shall make all reasonable efforts to defend its title to the Line against any adverse claims.

Section 5.36 Force Majeure.

(a) The Borrower shall have no obligation to operate over any portion of the Line as to which it is prevented from operating by acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control; provided, however, that the Borrower shall use its best efforts to take whatever action is reasonable or appropriate to be able to resume its operations. In the event of damage or destruction caused by an act of God, except for any affected segment of the Line where the Borrower can demonstrate that traffic revenues do not justify repairs to the Line. The Borrower shall commence repairs within ten (10) days of the occurrence causing same and shall pursue such repairs with reasonable diligence.

(b) In the event the cost of such repairs is such that the Borrower will be unable to recover or recoup such costs within a reasonable period of time, the Borrower may, upon documentation of the foregoing, file a notice of intent to terminate service pursuant to 49 C.F.R. 1150.24, if applicable, or otherwise seek authority or exemption from the STB to discontinue its service on the affected segment. All repair cost incurred during the previous lease term shall be for the account of the Borrower.

Article 6
Reporting

Section 6.1 Reports.

(a) Within one hundred twenty (120) days following the close of each Fiscal Year, the Borrower shall prepare and submit to Lender its audited annual financial statements.

(b) Within one hundred twenty (120) days following the close of each Fiscal Year, the Borrower shall prepare and submit to Lender an audited report of the Gross Revenues,

Operating Expenses, Capital Improvements costs, and Net Income for the Line for such Fiscal Year, together with a report of the amounts payable pursuant to Section 2.4(b), certified by an authorized officer of the Borrower as being fairly stated in all material respects. The Lender and the Borrower agree to make such payments or adjustments as may be necessary to true-up or correct any amounts that were paid during such Fiscal Year.

(c) Within one hundred twenty (120) days following the close of each Fiscal Year, the Borrower shall prepare and submit to Lender in a commercially reasonable format, a projection of the estimated total number of carloads that the Borrower expects to originate or terminate of the Line, and the estimated total amount of Gross Revenue Payments to be paid by the Borrower to the Lender during the next Fiscal Year.

(d) In a timely manner, and in any case not later than ten (10) Business Days, after the occurrence of any of the following events relating to the Borrower, the Borrower will provide the Lender notice of the occurrence of such event:

(i) bankruptcy, insolvency, receivership or similar event of the Borrower, 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 Borrower, 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 Borrower; or

(ii) the consummation of a merger, consolidation or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, 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.

(e) The Borrower will also provide to the Lender during the term, such other information or reports regarding the Line or the operation and maintenance thereof as the Lender may from time to time reasonably request, based on the best data available at the time of preparation and subject to revision when more accurate data is available.

(f) The costs of preparing reports pursuant to this Section 6.1 shall be an Operating Expense.

Article 7
Conditions Precedent to the Lender's Obligation

The Lender's obligation to advance the Loan Amount in accordance with this Agreement is subject to prior fulfillment, to the Lender's satisfaction in its sole discretion, of the following conditions precedent and to their continued fulfillment on the date of such advance, unless the Lender otherwise agrees in writing.

Section 7.1 Conditions Precedent. As conditions precedent to the Lender's obligations hereunder:

(a) Any STB exemptions or approvals that may be required under the 49 U.S.C. 10101, *et seq.*, as amended, and the rules and regulations of the STB for the purchase and operation of the Line by the Borrower shall have become effective, and the Borrower shall have obtained any other judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

(b) The Borrower shall have obtained a phase I environmental site assessment of the Line (the "**Phase I**"), and the voluntary cleanup contract(s) described in Annex M (the "**NRP VCC**"). Lender hereby acknowledges that it has been provided with and reviewed copies of those certain environmental studies and reports described in Annex Q (the "**Environmental Reports**") and Lender is aware of and acknowledges those certain preexisting environmental issues concerning the Line and the Collateral as more particularly set forth and described in the Environmental Reports. Notwithstanding anything contained in Section 5.22 or elsewhere in this Agreement or in the other Loan Documents to the contrary, (i) Lender shall not hold Borrower responsible in any capacity for any known and unknown preexisting environmental contamination; and (ii) the Borrower will have no duty or any other obligation to remediate same, or cause the same to be remediated except as may otherwise be expressly set forth in the NRP VCC.

(c) The Borrower shall not be prevented from fulfilling its obligations under this Agreement as a result of legislative, judicial or administrative action.

(d) The Borrower shall not have discovered, and the Borrower states that as of the date of this Agreement, the Borrower has no actual knowledge of, any contract, agreement, award, judgment or title defect that would prevent the Borrower from operating a rail freight operation on the Line. Upon execution hereof, and at the Lender's request, the Borrower shall make available for the Lender's inspection and review all contracts, deeds, agreements and documents in the Borrower's possession pertaining to or affecting the Line.

(e) Delivery by the Borrower to the Lender of the following:

(i) a copy of the fully executed Asset Purchase Agreement in the form of Annex A attached hereto and evidence reasonable acceptable to Lender that closing under the Asset Purchase Agreement shall have occurred;

(ii) the Note substantially in the form attached hereto as Annex N (the “*Note*”), duly executed by the Borrower;

(iii) each of the Mortgages, duly executed and acknowledged by the Borrower;

(iv) the Contract Assignment, duly executed by the Borrower;

(v) evidence satisfactory to the Lender that each of the actions set forth on Annex J (relating to perfection of Liens) has been completed;

(vi) evidence satisfactory to the Lender that all conditions precedent to the purchase by the Borrower of the Purchased Assets have been satisfied; and

(vii) the certificates of insurance required by Section 5.20.

(f) The Lender shall have issued and sold revenue bonds, or obtained other financing, for the purposes of, among other things, financing the Borrower’s acquisition of the Purchased Assets, in the aggregate principal amount sufficient to fund the transactions contemplated hereby.

(g) There shall not be in effect any Applicable Law that enjoins, prohibits, makes illegal or materially restricts or otherwise prevents the consummation of the transactions contemplated hereby.

(h) The Lender shall have received a legal opinion (or legal opinions) from counsel to the Borrower in form and content mutually acceptable to both said counsel and the Lender.

Article 8 **Events of Default**

Section 8.1 Default. Each of the following events or circumstances shall constitute an “*Event of Default*”:

(a) the failure by the Borrower to deposit any or all of the Gross Revenues into the Operating Account;

(b) the failure by the Borrower to pay or distribute the Gross Revenues from the Operating Account for any Accounting Period in accordance with Section 2.4(b);

(c) the Borrower seeks Abandonment authority from the Surface Transportation Board concerning, or Abandons (or cause the Abandonment of), any part of the Line, without the prior written consent of the Lender;

(d) other than as set forth in clauses (a) through (c) above, the failure by the Borrower to keep, observe or perform any covenant, agreement, term or provision of this Agreement, which failure is not cured within thirty (30) days after written notice thereof by the Lender to the Borrower, or if such failure cannot reasonably be cured within such thirty (30) day period, then within such additional period as shall reasonably be required to cure such failure, provided that the Borrower commences to cure such failure within such thirty (30) day period and proceeds diligently to prosecute such cure to completion;

(e) the inability of the Borrower to pay its debts as they mature, the insolvency of the Borrower, the filing of a petition for bankruptcy, reorganization or arrangement of the Borrower by the Borrower pursuant to the United States Bankruptcy Code, 11 U.S.C. §1010 *et seq.* or any similar proceeding, which petition is not dismissed within thirty (30) days;

(f) the filing of any involuntary bankruptcy, receivership or arrangement proceeding against the Borrower, which filing is not dismissed within one hundred twenty (120) days;

(g) this Agreement, or any agreement or document granting the Lender security for the payment of the Note shall cease for any reason to be in full force and effect as such security with the priority stated to be created thereby, or the grantor of such security shall contest the validity or enforceability of the security or deny that it has any further liability or obligation under such agreement or other document;

(h) without its application, approval, acquiescence or consent, any decision or event occurs causing the dissolution or winding up of the Borrower; and/or

(i) the Lender shall determine that the Borrower has failed to comply with any material terms and conditions under the Asset Purchase Agreement.

Article 9

Remedies Upon Event of Default

Section 9.1 Remedies. If any Event of Default shall have occurred and be continuing, subject to the provisions of the Interstate Commerce Act, 49 U.S.C. 10101, *et seq.*, the Lender shall be entitled to exercise any or all rights, powers, and remedies (whether vested in it by this Agreement, by Applicable Law, in equity, or otherwise) to the maximum extent permitted by Applicable Law for the protection and enforcement of the Lender's rights in respect of the Collateral, including:

(a) to receive all Proceeds including all moneys, amounts, dividends and other distributions payable in respect of the Collateral;

(b) to have and exercise all of the rights, powers, and remedies with respect to the Collateral of a pledgeholder or a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, powers, and remedies are asserted), and such additional rights, powers, and remedies to which a pledgeholder or secured party is entitled under the laws in effect in any jurisdiction where any rights, powers, and remedies hereunder may be asserted, including the right to exercise all powers of ownership pertaining to the Collateral (whether or not transferred into the name of the Lender) as if the Lender were the sole and absolute owner thereof, and the Borrower agrees to take all such action as may be appropriate to give effect to such right;

(c) to insert appropriate dates in and deliver any and all transfer instruments to effect the transfer of all or any part of the Collateral into the Lender's name or into the name of its nominee;

(d) to exercise any and all rights and remedies under any or all of the Mortgages;

(e) if required by Applicable Law, to obtain a court resolution or arbitral award from competent authorities authorizing the Lender to foreclose on and dispose of the Collateral in the manner set forth in this Agreement, or as otherwise determined by the applicable court or arbitral panel;

(f) in the name of the Lender or otherwise, to demand, sue for, collect, or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral;

(g) upon compliance with Applicable Law (including the notice requirements set forth in Sections 9-611 and 9-613 of the UCC), to sell, lease, assign, and deliver, or grant options to purchase, or otherwise dispose of all or any part of the Collateral, at such place or places as the Lender may determine, and for cash or on credit or for future delivery (without thereby assuming any credit risk), at public or private sale, it being agreed that the purchaser, lessee, assignee, or recipient of all or any part of the Collateral so disposed of at any public or private sale may thereafter hold the same absolutely free from any claim or right of the Borrower of whatsoever kind, including any right of redemption, and any obligation to see to the application of any part of the purchase money paid therefor or any liability for the misapplication or non-application thereof; and the Lender may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for such sale, and such sale may be made at any time or place to which the same may be so adjourned; and

(h) to appoint any Person as agent to perform any act or acts necessary or incident to any sale or transfer by the Lender of all or any part of the Collateral.

Section 9.2 Abandonment Authority. Notwithstanding anything to the contrary contained herein, upon the occurrence and continuance of an Event of Default, the Borrower shall, if so instructed by Lender, (a) promptly seek Abandonment authority from the Surface

Transportation Board concerning the Line, (b) promptly Abandon (or cause the Abandonment of) the Line, or (c) cooperate with the Lender's efforts to obtain all such regulatory authorizations or exemptions as shall be required for the Lender or its designee to acquire the Line, including through the STB's abandonment process, and for the operator designated by the Lender or its designee to operate the Line. The Borrower shall not oppose or cause any other Person to oppose any petition, notice or request for regulatory approval filed by the Lender or its designee or their respective agents pursuant to clause (c).

Section 9.3 [Intentionally deleted.]

Section 9.4 Notice of Disposition. The Borrower agrees that, to the extent notice of sale shall be required by law, ten (10) days' notice to the Borrower of the time and place of any sale shall constitute reasonable notice.

Section 9.5 Cash Proceeds. All cash proceeds received by the Lender in respect of any sale of, collection from, or other realization on or upon all or any part of the Collateral, or any other payments made in respect of the Collateral and received by the Lender, may, in the discretion of the Lender, be applied in whole or in part by the Lender against all or any of the Borrower's Obligations in any manner elected by the Lender that is permitted by Applicable Law. The Lender shall not have any obligation to invest or otherwise pay interest on any amounts held by it in connection with or pursuant to this Agreement.

Section 9.6 [Intentionally deleted.]

Section 9.7 Lender as Purchaser. To the extent permitted by Applicable Law, the Lender may be a purchaser of all or any part of the Collateral at any sale carried out pursuant to this Agreement, and may bid for and acquire all or any part of the Collateral and in lieu of paying cash may make settlement for the purchase price by crediting upon the Borrower's Obligations the net sales price after deducting the costs and expenses of such sale.

Section 9.8 [Intentionally deleted.]

Section 9.9 [Intentionally deleted.]

Section 9.10 Remedies Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers or privileges or remedies provided by law or in equity, or under any other instrument, document or agreement. The Lender may exercise and enforce each right and remedy available to it either before or concurrently with or after, and independently of, any exercise or enforcement of any other right or remedy of the Lender against any Person or property. All such rights and remedies shall be cumulative, and no one of them shall exclude or preclude any other.

Section 9.11 Disclaimer of Certain Duties; Lender Not Bound.

(a) Except for the notices of default specifically required to be given by the Lender hereunder, the Lender shall be under no duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance,

notice of intent to accelerate, notice of acceleration, or any other notice or demand in connection with any Collateral or the Borrower's Obligations, or to take any steps necessary to preserve any rights against the Borrower or any other Person.

(b) To the extent that Applicable Law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, the Borrower acknowledges and agrees that it is not commercially unreasonable for the Lender (i) to fail to incur expenses reasonably deemed significant by the Lender to prepare Collateral for disposition or otherwise; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain any Authorization for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against other Persons obligated on any of the Borrower's Obligations or to remove any Lien on or any adverse claims against Collateral; (iv) to exercise collection remedies against other Persons obligated on any of the Borrower's Obligations directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as the Borrower, for expressions of interest in acquiring all or any portion of the Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; or (viii) to the extent deemed appropriate by the Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Lender in the collection or disposition of any of the Collateral. The Borrower acknowledges that this Section provides a non-exhaustive indication of what actions or omissions by the Lender would not be commercially unreasonable in the Lender's exercise of remedies against the Collateral and that other actions or omissions by the Lender shall not be deemed commercially unreasonable solely on account of not being indicated herein. Without limiting the foregoing, nothing contained herein shall be construed to grant any rights to the Borrower or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by Applicable Law.

Article 10

Option Call and Optional Put

Section 10.1 Lender's Optional Call. Beginning on the fifth anniversary of Closing, and each anniversary of Closing thereafter, in the event the sum of Gross Revenue Payments and Net Income Payments paid to Lender by Borrower in the prior Fiscal Year was less than the Lender Financing Obligations for that Fiscal Year, Lender shall have the option, in its sole and absolute discretion, of calling the Loan and declaring all amounts due thereunder immediately payable ("**Lender's Optional Call**") by giving written notice to the Borrower of its intention to do so on or before the anniversary date. In the event Lender exercises this option, Borrower shall have ninety (90) days to declare its intent to purchase the Collateral by paying the remaining balance of the Loan due. If the Borrower declares its intent to purchase, Borrower shall have an additional one hundred eighty (180) days to complete the purchase. In the event Borrower fails to declare its intent to purchase or declares its intent to purchase but fails to complete the purchase within two hundred seventy (270) days of the date of Lender's Optional Call, Lender may proceed to exercise all rights to liquidate the Collateral in satisfaction of amounts owed.

Section 10.2 Borrower's Optional Put. Beginning on the fifth anniversary of Closing, and each anniversary of Closing thereafter, Borrower shall have the option, in its sole and absolute discretion, of relinquishing its rights in the Collateral and putting the Collateral back to the Lender in satisfaction of all amounts due and owing under the Loan ("***Borrower's Optional Put***") by giving written notice to the Lender of its intention to do so on or before the anniversary date. In the event Borrower exercises Borrower's Optional Put by giving notice, Lender may immediately proceed to exercise its rights to liquidate the Collateral in satisfaction of amounts due under the Loan.

Article 11
Miscellaneous

Section 11.1 Entire Agreement. This Agreement, together with the other Loan Documents, express the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Agreement or any of the other Loan Documents shall be binding upon any Party thereto unless set forth in writing and duly executed by all of the Parties thereto and approved in writing by the SFAA.

Section 11.2 Exhibits. The Annexes attached hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

Section 11.3 Amendment. No modification, addition or amendments to this Agreement or any of the other Loan Documents shall be effective unless and until such modification, addition or amendment is in writing and signed by all of the Parties thereto and approved in writing by the SFAA.

Section 11.4 Notices. All notices, demands, requests or other communications which may be or are required to be given, served or sent by any Party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

If intended for the Lender, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to the Lender at:

Executive Director
Colleton County Intermodal Corporation
403 E. Washington Street, Suite B
Walterboro, South Carolina 29488

With a copy to:

Alan B. Linkous, Esq.
Howell Linkous & Nettles, LLC
The Lining House
106 Broad Street
Charleston, South Carolina 29401

If intended for the Borrower, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to the Borrower at:

President and Chief Executive Officer
Palmetto Railways
540 East Bay Street
Charleston, South Carolina 29403

with a copy to:

George J. Bullwinkel, Esq.
Nexsen Pruet, LLC
205 – King Street, Suite 400
Charleston, South Carolina 29401

Also, with copy to:

Chaun W. Pflug, Esq.
The Pflug Law Firm, LLC
211 Scott Street
Mt. Pleasant, South Carolina 29464

Each notice, demand, request or communication which shall be mailed by registered or certified mail to any Party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any Party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

Section 11.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Lender and the Borrower, and their respective successors and permitted assigns, subject to the limitations hereinafter set forth.

Section 11.6 Assignment. The Borrower shall not be entitled to assign all or any part of its rights under this Agreement or any interest therein, or attempt to have any other person or entity assume all or any part of its obligations under this Agreement, without the prior written consent of the Lender, which consent may be given or withheld in the sole discretion of the Lender. In the event the Borrower elects to assign its interest in the Line, and the Lender consents to this assignment, the Borrower shall require that its assignee secure the approval of or an exemption from the STB, and/or such other regulatory filings or approvals as may be then required. Any assignment by the Borrower shall not relieve or release the Borrower from any obligation incurred by the Borrower from the date hereof until the time when Borrower's Obligations have been fully satisfied. The Lender shall have the right, without the consent of the Borrower, to assign or participate this Agreement and/or any of the other Loan Documents and

the Borrower's Obligations to any other Person, including to the trustee appointed with respect to any revenue bonds issued and sold by the Lender to financing the Borrower's acquisition of the Purchased Assets.

Section 11.7 Severability. Any provision hereof that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. To the extent permitted by Applicable Law, each Party hereby waives any provision of Applicable Law that renders any such provision prohibited or unenforceable in any respect. If any arbitrators declare that any term or provision hereof is invalid or unenforceable, the Parties agree that the arbitrators making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

Section 11.8 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina. The Borrower's operations under this Agreement shall also comply with the applicable provisions of Federal law and the applicable rules, regulations and policies of any agency thereof.

Section 11.9 Further Assurances. Except as specifically provided in this Agreement, the Lender or the Borrower, as the case may be, shall cause to be executed and delivered to the other Party all such other instruments and shall take or cause to be taken such further or other action as may reasonably and in good faith be deemed by the other Party to be necessary or desirable in order to further assure the performance by the Lender or the Borrower, as the case may be, of any of their respective obligations under this Agreement.

Section 11.10 Consents. Wherever in this Agreement the consent or approval of the Lender is required and the same is not expressly indicated to be at the sole discretion of the Lender, such consent or approval shall not be unreasonably withheld, shall be in writing and shall be executed by a duly authorized officer or agent of the Lender.

Section 11.11 Estoppel Certificates. The Borrower shall at any time and from time to time, upon not less than ten (10) days' prior written notice from the Lender, execute, acknowledge and deliver to the Lender, or to any third party specified by the Lender, a statement in writing: (i) certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications); and (ii) stating whether or not to the best knowledge of the Borrower: (A) there is a continuing breach by the Lender in the performance or observance of any covenant, agreement or condition of the Lender contained in this Agreement; or (B) there shall have occurred any event which, with the giving of notice or passage of time or both, would become such a breach, and, if so, specifying each such breach or occurrence of which the Borrower may have knowledge. Such statement shall be binding upon the Borrower and may be relied upon by the Lender and/or such third party specified by the Lender as aforesaid.

Section 11.12 [Intentionally deleted.]

Section 11.13 [Intentionally deleted.]

Section 11.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 11.15 Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement. In the event of any inconsistency between the provisions hereof and the provisions of any of the other Loan Documents, it is intended that the provisions of this Agreement shall be controlling.

Section 11.16 Nonrecourse. Notwithstanding anything to the contrary contained in this Agreement, the Note, the Mortgage or any of the other Loan Documents or otherwise, neither Borrower, nor the South Carolina Department of Commerce, nor the State of South Carolina, nor any political subdivision thereof, nor any officer, director, shareholder, member, manager, partner, employee, agent, subsidiary or affiliate of any of the foregoing, nor any of their respective heirs, successors or assigns (collectively, the "*Exculpated Parties*"), shall be personally liable in any respect for any obligation or liability arising under or otherwise in connection with the Loan, the Borrower's Obligations, this Agreement, the Note, the Mortgage or any other Loan Document, including, without limitation, the payment of the principal of, or interest on, the Note, or for monetary damages for the breach of performance of any of the covenants or inaccuracy of any representation, statement or warranty contained in this Agreement, the Note, the Mortgage or any of the other Loan Documents. Lender, on behalf of itself and its successors and assigns, agrees that in the event it pursues any remedies available to it under this Agreement, the Note, the Mortgage or any of the other Loan Documents or otherwise, it shall not have any recourse against Borrower, nor any other Exculpated Parties, for any deficiency, loss or claim for monetary damages or otherwise resulting therefrom, and recourse shall be had solely and exclusively against the Collateral.

Lender shall not look to Borrower or any of the other Exculpated Parties with respect to the indebtedness evidenced by this Agreement and the other Loan Documents. In enforcing its rights and remedies under this Agreement or any of the other Loan Documents, Lender shall look solely to the mortgaged premises for the payment of the indebtedness secured by the Mortgage and for the performance of the provisions thereof. Lender shall not seek a deficiency or other money judgment against Borrower or any of the other Exculpated Parties and shall not institute any separate action against Borrower or any of the other Exculpated Parties by reason of any default which may occur in the performance of any term or condition of this Agreement, the Note, the Mortgage or any of the other Loan Documents. This agreement by Lender shall not be construed in any way so as to affect or impair the lien of the Mortgage or Lender's right to foreclose thereunder as provided by law, or to limit or restrict any of Lender's rights or remedies in any foreclosure proceedings or other enforcement of payment of the indebtedness secured thereby out of and from the security given therefor.

Section 11.17 No Third-Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the Parties, any rights or remedies under or by reason of this Agreement. The rights, duties and obligations under this Agreement are for the sole benefit of the Parties and their respective successors and permitted assigns, and are for the benefit of no other person or entity.

Section 11.18 [Intentionally deleted.]

Section 11.19 Waivers; Amendment. No failure or delay of the Lender in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. No provision hereof may be waived, amended or modified except pursuant to an agreement in writing signed by all of the Parties; provided, that any provision hereof imposing obligations on the Borrower may be waived by the Lender in a written instrument executed by the Lender.

Section 11.20 [Intentionally deleted.]

Section 11.21 Lender's Covenants. The Lender shall apply the Gross Revenue Payments and Net Income Payments paid to the Lender by the Borrower to pay the Lender Financing Obligations; provided, however, notwithstanding the foregoing or anything else to the contrary contained in this Agreement, the Note, the Mortgage or any of the other Loan Documents or otherwise, the Borrower shall not be obligated, liable or otherwise responsible for any such Lender Financing Obligations and in no way whatsoever shall the Borrower be deemed (or otherwise be considered to be) a borrower, an obligor or a guarantor of or under the Lender Financing, the Lender Financing Agreements or the Lender Financing Obligations. The Lender further covenants that it shall use its best efforts to cause the County to timely perform and observe all of the County's obligations under the Deposit and Reimbursement Agreement and the Lender shall not modify or amend the Deposit and Reimbursement Agreement (or consent to the modification or amendment of the Deposit and Reimbursement Agreement) without the Borrower's prior written consent accept as shall be expressly permitted therein.

[Signatures on the following page]

[SIGNATURE PAGE TO LOAN AND SECURITY AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have executed this Loan and Security Agreement on the day and year first written above.

Lender:

COLLETON COUNTY INTERMODAL CORPORATION

By _____

Name: _____

Title: _____

Borrower:

**SOUTH CAROLINA DIVISION OF PUBLIC
RAILWAYS d/b/a PALMETTO RAILWAYS**

By _____

Name: _____

Title: _____

This Loan and Security Agreement was approved by the South Carolina State Fiscal Accountability Authority at its meeting held on the ____ day of _____, 2016.

**SOUTH CAROLINA STATE FISCAL
ACCOUNTABILITY AUTHORITY**

By _____

Name: _____

Title: _____

ANNEX A

FORM OF ASSET PURCHASE AGREEMENT

See attached.

DESCRIPTION OF THE RAIL LINE

See attached print showing the Rail Line.

DESCRIPTION OF BULDINGS

1. Railroad Office, City of Hampton, SC;
2. Hampton Depot, City of Hampton, SC;
3. Commissary Structure, City of Hampton, SC;
4. Lightsey Brothers Office, Miley, SC;
5. Miley Depot, Miley, SC;
6. Pump House, Miley, SC;
7. Power House, Miley, SC;
8. Garage/Open Shed, Miley, SC;
9. Railroad/Locomotive Shop, Miley, SC; and
10. Depot Building in Williams, SC.

DESCRIPTION OF SURPLUS LAND PARCELS

1. Surplus Parcel 1: A tract of land approximately 26.91 acres in area located within the Town of Hampton, County of Hampton, State of South Carolina. The property abuts the operating railroad corridor and contains two structures. (A third structure is on adjacent property.)
2. Surplus Parcel 2: A tract of land approximately 4.50 acres in area located within the unincorporated community of Miley, County of Hampton, State of South Carolina (the "Miley 4.5-acre Parcel"). The property abuts the former operating railroad corridor and contains six structures.
3. Surplus Parcel 3: A tract of land approximately 0.662 acres in area located within the unincorporated community of Miley, County of Hampton, State of South Carolina (the "Other Miley Parcel"). The property abuts the former operating railroad corridor and contains zero (-0-) structures.

EXISTING CONTRACTS

See attached.

ANNEX D

CONTRACT ASSIGNMENT

See attached.

ANNEX E

FORM OF MORTGAGE OF REAL ESTATE

See attached.

ANNEX F

ACCOUNT FOR PAYMENT OF LOAN PROCEEDS

Bank: Bank of America

ABA#: _____

For credit to: Account #: _____

Reference: SC Department of Commerce Division of Public Railways: Palmetto Railways H&B

Contact Person: _____

Telephone No.: _____

LENDER FINANCING OBLIGATIONS

See attached.

OPERATING ACCOUNT OF BORROWER

Bank: Bank of America

ABA#: _____

For credit to: Account #: _____

Reference: SC Department of Commerce Division of Public Railways: Palmetto Railways H&B

Contact Person: _____

Telephone No.: _____

ANNEX I

ACCOUNT OF LENDER

Bank: _____
ABA#: _____
For credit to: Account #: _____
Reference: Colleton County Intermodal Corporation
Contact Person: _____
Telephone No.: _____

ACTIONS TO PERFECT SECURITY INTEREST

1. Filing of a UCC-1 Financing Statement (relating to personal property) with the Secretary of State of South Carolina (the "*State Level UCC Financing Statement*").

2. Recording of the Mortgage and a UCC Fixture Filing in each of Colleton County and Hampton County, South Carolina (collectively, the "*County Level Fixture Filings*").

ANNEX K

[Reserved].

ANNEX L

[Reserved].

ANNEX M

VOLUNTARY CLEANUP CONTRACT(S)

See attached.

ANNEX N

FORM OF BORROWER'S PROMISSORY NOTE

See attached.

ANNEX O

[Reserved].

ANNEX P

[Reserved].

ANNEX Q

ENVIRONMENTAL REPORTS

See attached.

EXHIBIT A

(Loan & Security Agreement)

THE INDEBTEDNESS PROVIDED FOR IN THIS LOAN AND SECURITY AGREEMENT IS A LIMITED OBLIGATION OF THE SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS d/b/a PALMETTO RAILWAYS, AND ALL PAYMENTS, IF ANY, DUE UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (AS DEFINED HEREIN) ARE PAYABLE SOLELY OUT OF CERTAIN REVENUES, IF ANY, DERIVED FROM THE OPERATION OF THE LINE (AS DEFINED HEREIN), AS MORE SPECIFICALLY SET FORTH IN THIS AGREEMENT. PAYMENTS DUE UNDER THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS d/b/a PALMETTO RAILWAYS, THE SOUTH CAROLINA DEPARTMENT OF COMMERCE, THE STATE OF SOUTH CAROLINA, OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION, STATUTORY LIMITATION, APPLICABLE LAW OR OTHERWISE AND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE SAME OR A CHARGE AGAINST THE GENERAL CREDIT OF THE SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS d/b/a PALMETTO RAILWAYS, THE SOUTH CAROLINA DEPARTMENT OF COMMERCE, THE STATE OF SOUTH CAROLINA, OR ANY POLITICAL SUBDIVISION THEREOF.

LOAN AND SECURITY AGREEMENT

BY AND BETWEEN

COLLETON COUNTY INTERMODAL CORPORATION

AND

SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS

d/b/a PALMETTO RAILWAYS

THIS LOAN AND SECURITY AGREEMENT (this "*Agreement*") is made as of the ____ day of _____, 2016 by and between **SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS d/b/a PALMETTO RAILWAYS**, a Division of the South Carolina Department of Commerce, an administrative agency of the State of South Carolina and a body corporate under the laws of the State of South Carolina (the "*Borrower*"), and **COLLETON COUNTY INTERMODAL CORPORATION**, a South Carolina nonprofit corporation and non-carrier (together with its successors and assigns, the "*Lender*"). The Borrower and the Lender are sometimes referred to herein individually as a "*Party*" and, collectively, as the "*Parties.*"

RECITALS:

WHEREAS, Hampton & Branchville Railroad Company ("*H&BR*"), as seller, and the Borrower, as purchaser, have entered into that certain Asset Purchase and Sale Agreement (the "*Asset Purchase Agreement*" a copy of which is attached as Annex A) pursuant to which the Borrower will acquire the Purchased Assets (as defined below); and

WHEREAS, the Borrower desires to obtain financing for the purchase price of the Purchased Assets and certain other costs and expenses relating to such acquisition by borrowing from the Lender, and the Lender is willing to provide such financing, on the terms and subject to the conditions of this Agreement; and

WHEREAS, in order to provide the funds required to consummate the transactions contemplated herein, the Lender is issuing its Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016 (the "Lender Financing"); and

WHEREAS, the Borrower is an administrative agency and a body corporate under the laws of the State of South Carolina with the requisite authority and authorization, pursuant to the Constitution and statutes of the State of South Carolina, to enter into this Agreement, accept the Loan, and perform its obligations thereunder.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending legally to be bound hereby, the Lender and the Borrower agree as follows:

Article 1

Definitions and Principles of Interpretation

Section 1.1 Definitions. The following terms as used herein (including in the Recitals) shall have the following respective meanings:

"*AAR*" means the Association of American Railroads.

"*Abandon*" or "*Abandonment*" means initiation or conclusion of the regulatory process administered by the Surface Transportation Board or any successor agency, and currently codified in the regulations of the STB at 49 CFR Part 1152, pursuant to which the Borrower

seeks relief from any common carrier or other legal obligation to provide rail service on all or any portion of the Line. Abandonment includes, but is not limited to, any request to the STB for discontinuance of service over the Line.

“Accounting Period” has the meaning set forth in Section 2.4(b).

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

“Agreement” has the meaning set forth in the preamble, as the same may hereafter be amended, modified or supplemented.

“Applicable Law” means all applicable laws, statutes, directives, codes, ordinances, rules, regulations, municipal by-laws, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, licenses, rulings or awards, consent orders, consent decrees and policies of any Governmental Authority having jurisdiction over the Collateral or the ownership or operation thereof, including Environmental Laws.

“Asset Purchase Agreement” has the meaning set forth in the Recitals.

“Borrower” has the meaning set forth in the preamble.

“Borrower’s Obligations” means all amounts payable, and all other obligations and liabilities now or hereafter to be performed, by the Borrower under, arising out of or in connection with the Loan Documents (including any other instrument or agreement executed in connection with the Loan Documents).

“Borrower’s Optional Put” has the meaning set forth in Section 10.2.

“Buildings” means all buildings, structures and other improvements now or hereafter located on the Real Property Interests and all fixtures now or hereafter affixed thereto (collectively, the “Buildings”), including the Buildings listed in Annex B-2.

“Business Day” means any day other than Saturday, Sunday and any other day when banks are closed for business in the State of South Carolina.

“Capital Improvements” means improvements intended to increase the useful life or add to the value of any of the Collateral (including the Real Property Interests, Buildings, the Rail Line and equipment).

“Closing” has the meaning set forth in Section 2.3.

“*Collateral*” means all of the right, title and interest of the Borrower in the assets specified below, wherever located, whether now owned or hereafter acquired, existing or arising, including the following:

(a) all of the Borrower’s right, title and interest in and to the Rail Line, the Real Property Interests, Buildings, the Permits, the Personal Property, the Contracts, the Intellectual Property, the Other Assets, the Incidental Rights and the Records;

(b) all of the Borrower’s right, title and interest in Receivables, Goods, the Operating Account, Contract Rights, General Intangibles and Investment Property, in each case to the extent related to or arising out of the items in clause (a) above or clause (c) below;

(c) to the extent not covered by clauses (a) through (b) above, (i) all additions, replacements, proceeds and products of any or all of the foregoing, (ii) all proceeds derived from the sale, lease, assignment, conversion, auction, exchange, exercise, payment, liquidation or other disposition thereof, (iii) all investments made with proceeds thereof, (iv) all proceeds of any insurance thereof (whether or not the Lender is a loss payee) and any and all claims or rights to a refund or rebate related thereto and all payments under any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise in respect of any Collateral, (v) any funds or payments received from any reinvestment of such proceeds in whatever form the same may be, and (vi) all rights and privileges pertaining to any of the foregoing, including all right to collect proceeds due in connection with the exercise and enforcement of such rights and privileges, and the right to amend, cancel, terminate and/or supplement the foregoing (collectively sometimes hereinafter referred to as “*Proceeds*”).

“*Contract Assignment*” means the Assignment of Contracts, Licenses, Permits, Agreements and Approvals, in the form attached as Annex D.

“*Contract Rights*” means all of the Borrower’s rights (including all rights to payment, to receive monies due, all claims for damages and remedies, all rights of first refusal, and all rights to compel performance) under each Contract.

“*Contracts*” means all agreements to which the Borrower now or hereafter is a party, of which the Borrower now or hereafter is a beneficiary or which have been or hereafter are assigned to the Borrower and which have been or are hereafter executed in connection with the Collateral, including the leases, licenses, occupancy and other agreements described on Annex C.

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

“*County Level UCC Fixture Filings*” has the meaning set forth in Annex J.

“*CSXT*” means CSX Transportation, Inc.

“*Deposit and Reimbursement Agreement*” means that certain Deposit and Reimbursement Agreement by and among the Lender, the County, and Regions Bank, as Trustee, relating to the Lender Financing.

"Environmental Laws" means: (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, the Solid Waste Disposal Act and Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f through 300j; the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-110, *et seq.*, the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10, *et seq.*, the State Underground Petroleum Environmental Response Bank Act, S.C. Code Ann. §§ 44-2-10 *et seq.*, all as now or hereafter amended; (ii) the regulations promulgated thereunder, from time to time; (iii) all Environmental Permits in effect with respect to, or required in connection with, the Line or use thereof, and (iv) all federal, state and local laws, rules and regulations (now or hereafter in effect) relating to the regulation or protection of the environment or to emissions, discharges, releases, or threatened releases of any Hazardous Materials into the environment or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials.

"Environmental Permits" all permits, licenses, registrations, authorizations, certificates and approvals, and any other similar items, of Governmental Authorities required by Environmental Laws and necessary for or held in connection with the ownership and/or operation of the Line.

"Event of Default" has the meaning set forth in Section 8.1.

"Exculpated Parties" has the meaning set forth in Section 8.16.

"Fiscal Year" means the twelve-month period over which the Borrower reports on the activities that appear in its annual financial statements, which is presently the period beginning on January 1 and ending on December 31.

"FRA" means the Federal Railroad Administration, which term shall include any lawful successor agency thereof.

"Fully Satisfied" means with respect to the Borrower's Obligations, at any time, that all principal constituting the Borrower's Obligations, plus all interest, if any (including any interest that has accrued after the commencement of a bankruptcy proceeding) accrued to such time on such principal and on all other Borrower's Obligations, plus all fees, expenses and other amounts (including contingent obligations) unpaid as of such time which constitute the Borrower's Obligations, have in accordance with the Loan Documents been paid in full in cash.

"GAAP" means generally accepted accounting principles in the United States for governmental entities.

"General Intangibles" has the meaning set forth in the UCC.

"Goods" has the meaning set forth in the UCC.

“Governmental Authority” means any federal, state, municipal, local or similar governmental authority, regulatory or administrative agency, court, or arbitral body with jurisdiction over the Parties hereto, this Agreement or the Line, including the STB and FRA.

“Gross Revenue Payments” means the periodic payment, no less frequently than annually, to the Lender (or an entity identified in writing by the Lender), of the amount equal to ten percent (10%) of Gross Revenues, if any.

“Gross Revenues” means all revenue received by the Borrower in connection with the operation or use of or otherwise in connection with the Collateral.

“Hazardous Materials” means and includes any substance or material containing one or more of any of the following: “hazardous material,” “hazardous waste,” “hazardous substance,” “regulated substance,” “petroleum,” “pollutant,” “contaminant,” or “asbestos” as such terms are defined in any applicable Environmental Law in such concentration(s) or amount(s) as may impose clean-up, removal, monitoring or other responsibility under any applicable Environmental Law.

“H&BR” has the meaning set forth in the Recitals.

“Incidental Rights” means all keys, lock combinations and other devices or information necessary to permit Borrower to gain entry to or take possession of the Rail Line, Real Property Interests, Buildings, Personal Property and Other Assets.

“Impositions” means all real estate and personal property taxes, levies, assessments and similar charges including the following: all water, sewer or similar fees, rents, rates, charges, excises or levies; vault license fees or rentals; license fees; permit fees; inspection fees and other authorization fees and other governmental fees, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed (including all interest and penalties thereon), which, until Borrower’s Obligations have been Fully Satisfied, may be assessed, levied, confirmed or imposed on the Borrower or the Lender or with respect to the Line or the operation thereof, or otherwise in respect of or be a lien upon the Line or any property of the Lender located thereon. Impositions shall not include any income or franchise taxes payable by the Lender or the Borrower.

“Intellectual Property” means all (if any) patents, copyrights, trademarks, service marks, discoveries and improvements, processes and formulae, trade secrets, proprietary technical information, technical information, technical know-how, research, marketing and other data and intellectual property rights and applications and registrations therefor used in connection with the Hampton & Branchville Railroad, but shall not include the name “Hampton & Branchville Railroad” and all variations thereof, trade names and logos related thereto.

“Investment Property” has the meaning set forth in the UCC.

“Lender” has the meaning set forth in the preamble.

“Lender Financing” means the issuance by the Lender of its Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016, to obtain the funds to be used by Lender to advance the Loan to the Borrower, pay related costs and expenses of the acquisition of the Purchased Assets, and pay the costs of issuance of and costs of structuring the Lender Financing.

“Lender Financing Agreements” means all bonds, notes, agreements, instruments, certificates and documents delivered by or on behalf the Lender to evidence or secure the Lender Financing.

“Lender Financing Call Protection Period” means the period, if any, during which the Lender Financing may not be prepaid without a premium or penalty.

“Lender Financing Obligations” means the periodic payments of principal and interest payable by the Lender pursuant to the Lender Financing Agreements, which payments are set forth in Annex G attached hereto.

“Lender’s Optional Call” has the meaning set forth in Section 10.1.

“License” means any license, permit, decree, act, order, authorization or other approval or exemption or instrument which is necessary in order to operate the Line in accordance with Applicable Law or otherwise in accordance with this Agreement, including any STB-issued exemption or Environmental Permit.

“Lien” means any lien, mortgage, pledge, claim, charge or security interest.

“Line” means the Rail Line and all associated improvements and facilities.

“Loan” has the meaning set forth in Section 2.1.

“Loan Amount” has the meaning set forth in Section 2.1.

“Loan Documents” means this Agreement, the Note, the Mortgage, the Contract Assignment, the State Level UCC Financing Statement and the County Level Fixture Filings, as any of the same may hereafter from time to time be supplemented, amended, modified or extended.

“Mortgage” means with respect to the Real Property Interests and Buildings a first priority Mortgage of Real Estate, substantially in the form attached hereto as Annex E, as the same may hereafter from time to time be supplemented, amended, modified or extended.

“Net Income” shall mean net earnings before taking into account interest, taxes, depreciation, and amortization (EBITDA), based on GAAP, and applied to revenues or income generated from the ownership, operation, use or disposal of the Collateral or any portion thereof.

“Net Income Payments” means the annual payment to the Lender (or an entity identified in writing by the Lender) in an amount equal to twenty-five percent (25%) of the Net Income, if any.

“Note” has the meaning set forth in Section 7.1(a).

“Operating Account” has the meaning set forth in Section 2.4(a).

“Operating Expenses” means all costs and expenses incurred by the Borrower in connection with the operation, management and maintenance of the Line, but excludes interest, taxes, depreciation, and amortization.

“Other Assets” means all assets and items listed in that certain Net Liquidation (NLV) Estimate for the Hampton & Branchville Railroad, Hampton, South Carolina, dated April 21, 2014, prepared by Kenneth Young & Associates and that are not included in any other category of the Collateral.

“OTM” has the meaning set forth in Section 5.29.

“Party” or ***“Parties”*** has the meaning set forth in the preamble.

“Permits” means all permits, licenses, certificates, orders, approvals, authorizations, grants, consents, exemptions, variances, concessions, warrants, franchises and similar rights and privileges required by Applicable Laws to own, operate, or maintain the Collateral.

“Person” means any natural person, sole proprietorship, corporation, partnership (general or limited), limited liability company, trust, joint venture, joint stock company, unincorporated association, unincorporated syndicate, unincorporated organization, or other entity or association, including any that is a Governmental Authority, and, where the context requires, any of the foregoing in its capacity as trustee, executor, administrator or other legal representative.

“Personal Property” means all personal property of every kind and nature, whether tangible or intangible, that is held for use by Borrower in connection with, the ownership, use, operation or maintenance of the Rail Line, Real Property Interests, Permits, or Other Assets; provided, however, the terms “Personal Property” and “Collateral” shall be deemed to exclude (and shall not include) any locomotives, boxcars, trains or other personal property not sold and conveyed by H&BR to Borrower as part of the Purchased Assets under the Asset Purchase Agreement notwithstanding the fact that the same might, in fact, be held for use by Borrower in connection with, the ownership, use, operation or maintenance of the Rail Line, Real Property Interests, Permits, or Other Assets.

“Proceeds” has the meaning set forth in the definition of the term “Collateral.”

“Property Interests” means fee property, rights-of-way, easements, surface use agreements, licenses, leases, permits (including road crossing permits or other rights-of-way

permits from Governmental Authorities), and all other right, title, and interest of the Borrower in and to real property.

“Purchased Assets” shall have the meaning set forth in the Asset Purchase Agreement.

“Rail Line” means the approximately 45.77 mile railroad, commonly known as the Hampton & Branchville Railroad, that runs (A) from Hampton, SC (MP 0.0) to H&B Junction, SC (MP 16.8+/- aka ACL 461+/-), then southeast to Stokes, SC (ACL MP 447+/-), then northeast to the terminus at Canadys, SC (ACL MP 456.78+/-), together with all sidings appurtenant thereto, for a total length of approximately 43.8 miles, together also with all rail, cross ties, switches, ballast, bridges-in-place, grade crossings, culverts, earthworks, signal equipment, tie plates, rail anchors, gauge rods, spikes, joint bars/bolts, rail anchors, other track material and other components of such railroad but excluding (A) any inventory of track of less than 90 lbs. that is not installed as part of the railroad, and (B) the two (2) segments of non-operating corridor from Lodge, SC (ACL MP 462.37+/-) to H&B Junction, SC (ACL MP 461+/-), and Stokes, SC (ACL MP 447+/-) to Walterboro, SC (ACL MP 443.18+/-), all as shown on the print attached as Annex B-1.

“Real Property Interests” means:

- (a) The Property Interests through, upon, under or adjacent to which any or all of the Rail Line is located and operated, including the Property Interests shown on Annex B-1;
- (b) The parcels of land described in Annex B-3; and
- (c) Any and all roads, streets, alleys or public and private rights-of-way bounding the foregoing Property Interests and all rights and appurtenances belonging or appertaining thereto;

“Receivables” means all rights to receive the payment of money or other considerations under present or future Contracts or other similar arrangements entered into in connection with Borrower’s ownership, operation, maintenance or repair of the Line.

“Records” means all filings and records that relate to any of the Collateral or the ownership, operation, maintenance or repair thereof, including real estate records and records concerning contractual and other arrangements with shippers on the Line, records relating to compliance with FRA, the STB (including its predecessor, the Interstate Commerce Commission) and other regulatory requirements, and records relating to the marketing of services on the Line.

“SFAA” means the South Carolina State Fiscal Accountability Authority.

“State Level UCC Financing Statement” has the meaning set forth in Annex J.

“Surface Transportation Board” or **“STB”** means the Surface Transportation Board, an agency of the United States of America.

“*Tax*” means any fee (including license, filing and registration fee), tax (including any income, gross receipts, franchise, sales, use or real, personal, tangible or intangible property tax), interest equalization or stamp tax, assessment, levy, impost, duty, charge or withholding of any kind or nature whatsoever, imposed or assessed by any Governmental Authority, together with any penalty, fine or interest thereon.

“*UCC*” means at any time the Uniform Commercial Code as the same may from time to time be in effect in the State of South Carolina; provided that, if, by reason of mandatory provisions of law, the validity or perfection of any security interest granted herein is governed by the Uniform Commercial Code as in effect in any other jurisdiction then, as to the validity or perfection of such security interest, “UCC” shall mean the Uniform Commercial Code in effect in such other jurisdiction.

Section 1.2 Principles of Interpretation. In this Agreement, unless otherwise indicated or otherwise required by the context:

(a) the division of this Agreement into Articles, Sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;

(b) unless otherwise indicated, all references to an “Article,” “Section,” “subsection,” “Annex” or “Exhibit” followed by a number and/or a letter refer to the specified Section, or subsection of, or Annex or Exhibit to, this Agreement and all such Article, Sections, subsections, Annexes and Exhibits are incorporated into this Agreement by reference. The terms “this Agreement,” “hereof,” “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section, subsection, Annex, Exhibit, or other portion hereof and include any agreement or instrument supplementary or ancillary hereto;

(c) where the word “including” or “includes” is used, it means “including (or includes) without limitation”;

(d) reference to any Applicable Law (d) includes all regulations made pursuant to such Applicable Law and, unless otherwise specified, includes all amendments to such Applicable Law or to any such Applicable Law in force from time to time, and any Applicable Law which supplements or supersedes any such Applicable Law;

(e) unless the context otherwise requires, words importing the singular include the plural and vice versa;

(f) unless otherwise expressly stated, references to any person or entity also include its permitted successor and assigns;

(g) accounting terms used herein with respect to any Party but not defined in Section 1.1 shall have the respective meanings given to them under GAAP;

(h) phrases such as “satisfactory to the Lender,” “in such manner as the Lender may determine,” “to the Lender’s satisfaction,” “at the Lender’s election,” “in the

Lender's judgment," and phrases of similar import shall, unless otherwise expressly qualified, authorize and permit the Lender to approve, disapprove, act or decline to act in its reasonable discretion; and

(i) phrases such as "as the Lender may approve," "with the Lender's consent," "as approved by the Lender" and phrases of similar import shall mean the Lender's prior written approval or prior written consent, as applicable.

Article 2

Amount and Terms of Loan

Section 2.1 Loan. Subject to the terms and conditions hereof, the Lender agrees to loan to the Borrower (the "**Loan**") the amount of _____ (\$_____) (the "**Loan Amount**"). The Loan Amount shall be equal to the aggregate sum of the Lender Financing Obligation payments due on the Lender Financing, as set forth in Annex G.

Section 2.2 Use of Loan. The Borrower shall use the proceeds of the Loan solely to purchase the Purchased Assets from H&BR under the Asset Purchase Agreement, to pay related costs and expenses, and to reimburse Lender for the payment of Lender Financing Obligations.

Section 2.3 Closing. The closing of the transactions contemplated hereby (the "**Closing**") shall take place contemporaneously with the execution and delivery of this Agreement at the offices of Howell Linkous & Nettles, LLC, Charleston, South Carolina. The Lender's obligation to make the Loan is subject to the requirements set forth in Article 7. All transactions at the Closing shall be deemed to have taken place contemporaneously, and each of the closing deliveries shall be deemed to occur concurrently with each other.

Section 2.4 Flow of Funds.

(a) The Borrower agrees that all Gross Revenues shall be deposited into a deposit account insured by the Federal Deposit Insurance Corporation designated and controlled by the Borrower ("**Operating Account**"), as set forth in Annex H. From such Operating Account, the Borrower shall make the payments provided for in Section 2.4(b) (and no others), in the order set forth in Section 2.4(b).

(b) Gross Revenues received during each Fiscal Year (each, an "**Accounting Period**") shall be paid or distributed in the following order:

(i) *first*, to pay the Lender, by no later than one hundred twenty (120) days after the end of such Accounting Period, the Gross Revenue Payments for such Accounting Period;

(ii) *second*, to pay Operating Expenses for such Accounting Period or that are otherwise required in order for the Line to comply with or continue to comply with Applicable Law;

(iii) *third*, to pay the costs of any Capital Improvements that are required in order for the Line to comply with or continue to comply with Applicable Law;

(iv) *fourth*, to pay the Lender, by no later than one hundred twenty (120) days after the end of such Accounting Period, the Net Income Payments for such Accounting Period; and

(v) *fifth*, all amounts remaining after satisfaction of the foregoing obligations shall be paid to Borrower (or otherwise retained by Borrower in such Operating Account and disbursed by Borrower from such Operating Account from time to time and at any time for any and all such uses and purposes as Borrower may determine, in Borrower's sole and absolute discretion).

Section 2.5 Manner of Payment. All payments to the Lender under this Agreement or the Note shall be made in U.S. Dollars by wire transfer of immediately available funds without any offset, withholding, or deduction for Taxes or otherwise to the account of the Lender set forth in Annex I.

Section 2.6 Maturity Date.

(a) The Loan shall mature on _____, 2046 [Assuming a 20-year bond issue, this date will be the date which is 30 years from the Closing; assuming a 15-year bond issue, this date will be the date which is 25 years from the Closing.] (the "*Maturity Date*"). To the extent Gross Revenues are available, the Borrower shall pay the outstanding principal balance amount of the Note together with all interest, fees and costs related thereto and all other amounts payable thereunder at such times and in such amounts as are set forth in the Note and, in all events, no later than the Maturity Date.

(b) If, at the time the Maturity Date occurs, the Borrower is current in its obligations hereunder and under the Note and has made payments to the Lender in each of the three prior Fiscal Years immediately preceding the Maturity Date in the amount equal to or greater than the average annual amount of the Lender Financing Obligations paid over the life of the Lender Financing, then the Maturity Date shall automatically be extended for an additional five-year period; provided, however, that the Maturity Date shall not be extended beyond a date which is 50 years after the closing date.

(c) Subject to the terms of the Note, the Borrower may prepay the Note as follows:

(i) After the expiration of the Lender Financing Call Protection Period, the Borrower may prepay all or any portion of the outstanding principal amount of the Loan at any time.

(ii) During the Lender Financing Call Protection Period, the Borrower may prepay the Loan in whole at any time by defeasing the Lender Financing and

paying the Lender an amount equal to the aggregate of all amounts paid by the County under the Deposit and Reimbursement Agreement.

Section 2.7 Closing Costs. Lender agrees to pay, at Closing from proceeds of the Lender Financing, any and all costs and expenses actually incurred by Lender and/or Borrower in connection with Borrower's purchase of the Purchased Assets, the closing of the Loan and the other transactions contemplated herein, including, but not limited to, the preparation of this Agreement and all other Loan Documents contemplated hereby, the closing of the Purchased Assets and the closing of the Loan. For all purposes of this Agreement, such costs and expenses shall include, without limitation: (i) all appraisal fees, cost engineering and inspection fees, legal fees and expenses, accounting fees, environmental consultant fees, auditor fees, UCC filing fees and/or UCC vendor fees, flood certification vendor fees, tax service vendor fees, and the cost to Lender and/or Borrower of any title insurance premiums, title surveys, reconveyance and notary fees; and (ii) Borrower's documented due diligence costs, attorneys' fees incurred in the preparation of this Agreement, in procuring the Phase 1 and the NRP VCC and the documented filing fees and attorneys' fees incurred in the preparation and prosecution of Borrower's necessary filings for STB approval.

Article 3 **Security Agreement**

Section 3.1 Security Interest. As security for the full and complete payment and performance of all of the Borrower's Obligations, the Borrower grants to the Lender, its successors and assigns, a security interest in the Collateral.

Section 3.2 Information Regarding Collateral. The Borrower shall provide the Lender such information as the Lender from time to time reasonably may request with respect to the Collateral, including statements describing, designating and identifying the Collateral.

Section 3.3 Perfection of Security Interest. The Borrower shall perform any and all steps in all relevant or appropriate jurisdictions and with all appropriate Governmental Authorities (including the Surface Transportation Board) as may be necessary or reasonably requested by the Lender to perfect, maintain and protect the Lender's security interest in the Collateral. The Borrower shall pay the Taxes, fees and costs of, or incidental to, any recording or filing of any financing statements or other documents concerning the Collateral. The Borrower agrees that a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement for purposes of a fixture filing.

Section 3.4 Release of Collateral. If all principal and interest on the Note, expenses, and other amounts (including any contingent obligations) constituting the Borrower's Obligations have in accordance with the Loan Documents been paid in full in cash, the Lender will (as soon as reasonably practicable after receipt of notice from the Borrower requesting the same but at the expense of the Borrower) take the necessary steps to terminate its security interest in the Collateral.

Article 4

Statements of Borrower

Section 4.1 Borrower's Statements. To induce the Lender to make the Loan, the Borrower states as of the date hereof that:

(a) It is an administrative agency and body corporate under the laws of the State of South Carolina duly organized, validly existing, and in good standing under the laws of the State of South Carolina and is qualified to do business in the State of South Carolina.

(b) The Loan constitutes indebtedness payable only from a revenue-producing project or from a special source and has been duly authorized in accordance with Section 13 of Article X of the Constitution of South Carolina and all other Applicable Law.

(c) The Borrower has taken all action required by law or otherwise to be taken to authorize the acquisition of the Purchased Assets and the execution and delivery of this Agreement and the performance thereof. This Agreement is a valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and general principles of equity.

(d) The Borrower has full power and authority to acquire the Purchased Assets and to enter into this Agreement, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder, including full power and authority to grant and perfect the security interest in the Collateral provided for in Article 3 and to execute and deliver the Mortgages.

(e) Neither the Borrower's acquisition of the Purchased Assets nor execution and delivery of this Agreement, nor its performance thereof, will (i) violate any statute or law, or any judgment, decree, order, regulation or rule of any Governmental Authority, or (ii) violate any agreement to which it is bound.

(f) There is no investigation by any Governmental Authority pending, or to the Borrower's knowledge, any threatened investigation, action, suit, litigation or other legal or administrative proceeding against the Borrower that would affect the Borrower's ability to acquire and operate the Line or prevent the performance of, or have any adverse change in the ability of the Borrower to perform, this Agreement.

(g) The Borrower has received all consents required to enter into and perform this Agreement, including any authorizations or exemptions from the STB required to acquire, own, and operate the Line.

(h) Except for the security interests granted to the Lender pursuant to this Agreement or claims that may arise under the Asset Purchase Agreement, upon consummation of the Asset Purchase Agreement, the Borrower, to the Borrower's knowledge, is and thereafter will be the sole owner of the Purchased Assets, with good and marketable title thereto, free and clear of any and all Liens. Notwithstanding the foregoing or anything else in this Agreement or the

EXHIBIT B

(Promissory Note)

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
_____)

\$ _____
PROMISSORY NOTE
FROM
SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS
D/B/A PALMETTO RAILWAYS
TO
COLLETON COUNTY INTERMODAL CORPORATION

FOR VALUE RECEIVED, the **SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS d/b/a PALMETTO RAILWAYS**, a Division of the South Carolina Department of Commerce, an administrative agency of the State of South Carolina and a body corporate under the laws of the State of South Carolina (“Palmetto Railways”), promises to pay to the order of **COLLETON COUNTY INTERMODAL CORPORATION**, a South Carolina nonprofit corporation and non-carrier (“CCIC”), the principal sum of _____ and ___/100 Dollars (\$_____) pursuant to, and in accordance with, the terms of that certain Loan and Security Agreement by and between CCIC and Palmetto Railways, dated as of _____, 2016 (the “Loan and Security Agreement”), the terms of which are incorporated herein by reference. Capitalized terms not defined in this Promissory Note (this “Note”) shall have the meanings set forth in the Loan and Security Agreement.

Amounts due and payable by Palmetto Railways under this Note are not fixed, but the amounts due and payable shall be calculated based on, and payment dates shall be determined based on, the provisions of **Section 2.4(b)** of the Loan and Security Agreement. Sums due under this Note (and the Loan evidenced hereby) shall not bear interest.

PAYMENTS DUE HEREUNDER ARE LIMITED OBLIGATIONS OF PALMETTO RAILWAYS, THE PRINCIPAL OF AND INTEREST, IF ANY, ON WHICH ARE PAYABLE SOLELY OUT OF CERTAIN REVENUES, IF ANY, DERIVED FROM THE OPERATION OF THE LINE, AS MORE SPECIFICALLY SET FORTH IN THE LOAN AND SECURITY AGREEMENT. PAYMENTS DUE HEREUNDER SHALL NOT CONSTITUTE AN INDEBTEDNESS OF PALMETTO RAILWAYS, THE SOUTH CAROLINA DEPARTMENT OF COMMERCE, THE STATE OF SOUTH CAROLINA, OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION, STATUTORY LIMITATION, APPLICABLE LAW OR OTHERWISE AND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE SAME OR A CHARGE AGAINST THE GENERAL CREDIT OF PALMETTO RAILWAYS, THE SOUTH CAROLINA DEPARTMENT OF COMMERCE, THE STATE OF SOUTH CAROLINA, OR ANY POLITICAL SUBDIVISION THEREOF.

Pursuant to the terms of **Section 2.6** of the Loan and Security Agreement, and subject to the provisions therein providing for the extension of the maturity of the Loan, this Note shall mature on _____, _____. Upon maturity, all unpaid amounts owing thereunder shall become immediately due and payable, but only from such sources and under such conditions as are provided in the Loan and Security Agreement.

Palmetto Railways may prepay the outstanding principal balance of this Note only in accordance with the provisions of **Section 2.6(c)** of the Loan and Security Agreement; partial prepayments, if permitted by **Section 2.6(c)**, shall be applied against principal installments due on this Note in the inverse order of the maturity dates thereof.

All payments shall be made in money of the United States at the office of CCIC in Walterboro, South Carolina, as set forth in **Annex I** to the Loan and Security Agreement, or at such other place as CCIC may designate in writing, and shall be made in immediately available funds.

This Note is being issued pursuant to the Resolutions of the South Carolina Joint Bond Review Committee adopted on _____, 2016, the Resolutions of the South Carolina State Fiscal Accountability Authority adopted on _____, 2016, [and pursuant to the Resolutions of _____ adopted _____, 2016,] to evidence Palmetto Railway's obligation to repay the Loan made by CCIC to Palmetto Railways under the Loan and Security Agreement.

This Note and the Loan evidenced hereby are non-recourse to Palmetto Railways and the other Exculpated Parties as more specifically set forth in the Loan and Security Agreement.

To the extent there may be any conflict or inconsistency between the Loan and Security Agreement and this Note, the Loan and Security Agreement shall control.

[SIGNATURE ON THE FOLLOWING PAGE]

[SIGNATURE PAGE TO PROMISSORY NOTE]

IN WITNESS WHEREOF, Palmetto Railways has caused this Note to be executed under its seal as of the __ day of _____, 2016.

**SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS
d/b/a PALMETTO RAILWAYS**, a Division of the South Carolina Department of Commerce, an administrative agency of the State of South Carolina and a body corporate under the laws of the State of South Carolina

By: _____ (LS)

Name: _____

Its: _____

ENDORSEMENT

Pay to the order of Regions Bank, without recourse, as Trustee under the Indenture of Trust ("Indenture") dated as of _____, 2016, between Regions Bank, as trustee ("Trustee") and CCIC, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

DATED: _____, 2016

**COLLETON COUNTY INTERMODAL
CORPORATION**

By: _____
Its: _____

EXHIBIT C

(Mortgage of Real Estate)

STATE OF SOUTH CAROLINA)
)
COUNTY OF **COLLETON****HAMPTON**)

MORTGAGE
OF REAL ESTATE

THIS MORTGAGE OF REAL ESTATE (this "Mortgage") is made as of the ___ day of _____, 2016, between the Mortgagor, the SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS d/b/a PALMETTO RAILWAYS, a Division of the South Carolina Department of Commerce, an administrative agency of the State of South Carolina and a body corporate under the laws of the State of South Carolina (herein "Borrower"), and the Mortgagee, COLLETON COUNTY INTERMODAL CORPORATION, a South Carolina nonprofit corporation and non-carrier, whose address is 403 E. Washington Street, Suite B, Walterboro, South Carolina 29488 (herein "Lender").

WHEREAS, pursuant to, and in accordance with, the terms of the Loan and Security Agreement (as defined below) by and between Lender and Borrower, the terms of which are incorporated herein by reference. Lender loaned to Borrower the principal amount of [] (\$) Dollars, which indebtedness is evidenced by Borrower's Promissory Note dated of even date herewith (herein the "Note"), providing for payment or payments as more particularly set forth in the Note and the Loan and Security Agreement, the final payment being due and payable on _____, _____, as more particularly set forth in the Note and the Loan and Security Agreement.

NOW THEREFORE, IN ORDER TO SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest, if any, thereon, the payment of all other sums, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey, subject to the Permitted Exceptions (as defined herein), to Lender and Lender's successors and assigns all of Borrower's right, title and interest, if any, in and to the following described property located in the County of **Colleton****Hampton**, State of South Carolina, to wit:

SEE **EXHIBIT "A"** ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE FOR A FULL AND
COMPLETE LEGAL DESCRIPTION OF THE AFORESAID PROPERTY.

TOGETHER with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders,

TOGETHER with any and all awards or payments, including interest, if any, thereon, and the right to receive the same, which may be made with respect to the premises as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Lender, and of the rents, issues and profits thereof; and also all the estate, right, title, interest, property claim and demand whatsoever of Borrower of, in and to the same and of, in and to every part and parcel thereof. Borrower agrees to execute and deliver, from time to time, such further instruments as may be reasonably requested by Lender to confirm such assignment to Lender of

any such award or payment. All of the foregoing, together with said property are hereinafter referred to as "Property".

TO HAVE AND TO HOLD all and singular the said premises, subject to the Permitted Exceptions, unto the said Lender, its successors and assigns forever.

THE AFORESAID PROPERTY IS HEREBY MORTGAGED SUBJECT TO the following (collectively, the "Permitted Exceptions"): (i) taxes and assessments for the year 2016 and subsequent years, which are a lien, but are not yet due and payable; (ii) all applicable covenants, conditions, restrictions, reservations, easements, rights-of-way and other matters, if any, pertaining to and affecting the property that appear of public record or on recorded plats of the property; and (iii) any matters which would be disclosed by a current and accurate survey and inspection of the property. Notwithstanding the foregoing or anything else in this Mortgage or the other Loan Documents to the contrary, no warranty of title is given as to the Property, or any portion thereof.

AND, except as may otherwise be expressly set forth in the Loan and Security Agreement or the other Loan Documents, Borrower covenants with Lender as follows that:

1. Borrower shall comply in all material respects with the terms, conditions, and covenants of that certain Loan and Security Agreement by and between Lender and Borrower, dated as of _____, 2016 (the "Loan and Security Agreement"), the terms of which are incorporated herein by reference. Capitalized terms not defined in this Mortgage shall have the meanings set forth in the Loan and Security Agreement.
2. No building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered, without the prior written consent of Lender.
3. Upon an Event of Default, Lender may pursue any and all rights and remedies available to Lender under the Loan and Security Agreement and this Mortgage, including, but not limited to, foreclosing this Mortgage.
4. Lender, in any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the premises, shall be at liberty to apply for the appointment of a receiver of the rents and profits of the premises without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the premises as security for the amounts due Lender, or the solvency of any person or corporation liable for the payment of such amounts.
5. In case of any sale under this Mortgage, by virtue of judicial proceedings or otherwise, the premises may be sold in one parcel and as an entirety or in such parcels, manner or order as Lender in its sole discretion may elect.
6. This Mortgage shall secure the payment of the Note, including any and all advancements made by Lender thereunder, together with any renewals or extensions of said Note.

7. Lender and any persons authorized by Lender shall have the right to enter and inspect the Property at all reasonable times.
8. Any failure by Lender to insist upon the strict performance by Borrower of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Lender, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions of this Mortgage to be performed by Borrower.
9. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto.
10. The rights of Lender arising under the clauses contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.
11. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless specifically provided herein, the word "Borrower" shall mean "Borrower and/or any subsequent owner or owners of the premises", the word "Lender" shall mean "Lender or any subsequent holder or holders of this Mortgage, the word "person" shall mean "an individual, corporation, partnership or unincorporated association", and the word "premises" shall include the real estate hereinbefore described, together with all equipment, condemnation awards and any other rights or property interests at any time made subject to the lien of this Mortgage by the terms hereof.
12. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.
13. Borrower acknowledges that the debt which this Mortgages secures was made in consideration for the transactions described herein. Borrower agrees that the property described heretofore secures compliance with all of the terms of the Note and this Mortgage.
14. Lender shall not look to Borrower or any of the other Exculpated Parties with respect to the indebtedness evidenced by this Mortgage. In enforcing its rights and remedies under this Mortgage, Lender shall look solely to the mortgaged premises for the payment of the indebtedness secured hereby and for the performance of the provisions hereof. Lender shall not seek a deficiency or other money judgment against Borrower or any of the other Exculpated Parties and shall not institute any separate action against Borrower or any of the other Exculpated Parties by reason of any default which may occur in the performance of any term or condition of this Mortgage or the Note. This agreement by Lender shall not be construed in any way so as to affect or impair the lien of this Mortgage or Lender's right to foreclose hereunder as provided by law, or to limit or restrict any of Lender's rights or remedies in any foreclosure proceedings or other

enforcement of payment of the indebtedness secured hereby out of and from the security given therefor.

15. Exhibit "A" attached hereto is hereby incorporated into this Mortgage.
16. The Note and the Loan evidenced hereby are non-recourse to Palmetto Railways and the other Exculpated Parties as more specifically set forth in the Loan and Security Agreement.
17. To the extent there may be any conflict or inconsistency between the Loan and Security Agreement and this Mortgage, the Loan and Security Agreement shall control.

PROVIDED ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties to these presents, that if Borrower pays or causes to be paid to Lender, its successors or assigns, or the holder hereof, the said debt or sum of money aforesaid, with the interest thereon, if any, according to the true intent and meaning of said Note, and all sums of money provided to be paid by Borrower, its successors, administrators, or assigns, under the covenants of this Mortgage, then this Mortgage shall cease, terminate and be utterly null and void, otherwise it shall remain in full force and virtue.

(REMAINDER OF PAGE INTENTIONALLY BLANK)

Exhibit A
Legal Description

EXHIBIT D

(Preliminary Bond Model Reports)

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COLLETON COUNTY INTERMODAL CORPORATION
Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
For Discussion Purposes Only

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SOURCES AND USES OF FUNDS

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Dated Date 07/28/2016
 Delivery Date 07/28/2016

Sources:

Bond Proceeds:	
Par Amount	7,555,000.00
	<u>7,555,000.00</u>

Uses:

Project Fund Deposits:	
Acquisition Fund	6,100,000.00
Reimbursement of Acquisition Escrow Fund	<u>400,000.00</u>
	6,500,000.00
Other Fund Deposits:	
Debt Service Reserve Fund	558,635.00
Delivery Date Expenses:	
Cost of Issuance	194,750.00
Underwriter's Discount	113,325.00
Due Diligence Expenses	<u>186,704.14</u>
	494,779.14
Other Uses of Funds:	
Rounding	1,585.86
	<u>7,555,000.00</u>

BOND PRICING

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Serial Bonds:					
	06/01/2017	280,000	1.850%	1.850%	100,000
	06/01/2018	285,000	2.000%	2.000%	100,000
	06/01/2019	295,000	2.100%	2.100%	100,000
	06/01/2020	300,000	2.400%	2.400%	100,000
	06/01/2021	305,000	2.600%	2.600%	100,000
	06/01/2022	315,000	2.850%	2.850%	100,000
	06/01/2023	325,000	3.100%	3.100%	100,000
	06/01/2024	335,000	3.200%	3.200%	100,000
	06/01/2025	345,000	3.300%	3.300%	100,000
	06/01/2026	355,000	3.500%	3.500%	100,000
	06/01/2027	370,000	3.700%	3.700%	100,000
	06/01/2028	380,000	3.800%	3.800%	100,000
	06/01/2029	395,000	3.900%	3.900%	100,000
	06/01/2030	410,000	4.000%	4.000%	100,000
		<u>4,695,000</u>			
Term Bond 2036:					
	06/01/2036	2,860,000	4.500%	4.500%	100,000
		<u>7,555,000</u>			

Dated Date	07/28/2016	
Delivery Date	07/28/2016	
First Coupon	12/01/2016	
Par Amount	7,555,000.00	
Original Issue Discount		
Production	7,555,000.00	100.000000%
Underwriter's Discount	-113,325.00	-1.500000%
Purchase Price	7,441,675.00	98.500000%
Accrued Interest		
Net Proceeds	<u>7,441,675.00</u>	

BOND DEBT SERVICE

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
12/01/2016			93,761.02	93,761.02	
06/01/2017	280,000	1.850%	137,211.25	417,211.25	
06/30/2017					510,972.27
12/01/2017			134,621.25	134,621.25	
06/01/2018	285,000	2.000%	134,621.25	419,621.25	
06/30/2018					554,242.50
12/01/2018			131,771.25	131,771.25	
06/01/2019	295,000	2.100%	131,771.25	426,771.25	
06/30/2019					558,542.50
12/01/2019			128,673.75	128,673.75	
06/01/2020	300,000	2.400%	128,673.75	428,673.75	
06/30/2020					557,347.50
12/01/2020			125,073.75	125,073.75	
06/01/2021	305,000	2.600%	125,073.75	430,073.75	
06/30/2021					555,147.50
12/01/2021			121,108.75	121,108.75	
06/01/2022	315,000	2.850%	121,108.75	436,108.75	
06/30/2022					557,217.50
12/01/2022			116,620.00	116,620.00	
06/01/2023	325,000	3.100%	116,620.00	441,620.00	
06/30/2023					558,240.00
12/01/2023			111,582.50	111,582.50	
06/01/2024	335,000	3.200%	111,582.50	446,582.50	
06/30/2024					558,165.00
12/01/2024			106,222.50	106,222.50	
06/01/2025	345,000	3.300%	106,222.50	451,222.50	
06/30/2025					557,445.00
12/01/2025			100,530.00	100,530.00	
06/01/2026	355,000	3.500%	100,530.00	455,530.00	
06/30/2026					556,060.00
12/01/2026			94,317.50	94,317.50	
06/01/2027	370,000	3.700%	94,317.50	464,317.50	
06/30/2027					558,635.00
12/01/2027			87,472.50	87,472.50	
06/01/2028	380,000	3.800%	87,472.50	467,472.50	
06/30/2028					554,945.00
12/01/2028			80,252.50	80,252.50	
06/01/2029	395,000	3.900%	80,252.50	475,252.50	
06/30/2029					555,505.00
12/01/2029			72,550.00	72,550.00	
06/01/2030	410,000	4.000%	72,550.00	482,550.00	
06/30/2030					555,100.00
12/01/2030			64,350.00	64,350.00	
06/01/2031	425,000	4.500%	64,350.00	489,350.00	
06/30/2031					553,700.00
12/01/2031			54,787.50	54,787.50	
06/01/2032	445,000	4.500%	54,787.50	499,787.50	
06/30/2032					554,575.00
12/01/2032			44,775.00	44,775.00	
06/01/2033	465,000	4.500%	44,775.00	509,775.00	
06/30/2033					554,550.00
12/01/2033			34,312.50	34,312.50	
06/01/2034	485,000	4.500%	34,312.50	519,312.50	
06/30/2034					553,625.00

BOND DEBT SERVICE

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
12/01/2034			23,400.00	23,400.00	
06/01/2035	510,000	4.500%	23,400.00	533,400.00	
06/30/2035					556,800.00
12/01/2035			11,925.00	11,925.00	
06/01/2036	530,000	4.500%	11,925.00	541,925.00	
06/30/2036					553,850.00
	7,555,000		3,519,664.77	11,074,664.77	11,074,664.77

BOND DEBT SERVICE

COLLETON COUNTY INTERMODAL CORPORATION

Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016

For Discussion Purposes Only

Period Ending	Principal	Coupon	Interest	Debt Service
06/30/2017	280,000	1.850%	230,972.27	510,972.27
06/30/2018	285,000	2.000%	269,242.50	554,242.50
06/30/2019	295,000	2.100%	263,542.50	558,542.50
06/30/2020	300,000	2.400%	257,347.50	557,347.50
06/30/2021	305,000	2.600%	250,147.50	555,147.50
06/30/2022	315,000	2.850%	242,217.50	557,217.50
06/30/2023	325,000	3.100%	233,240.00	558,240.00
06/30/2024	335,000	3.200%	223,165.00	558,165.00
06/30/2025	345,000	3.300%	212,445.00	557,445.00
06/30/2026	355,000	3.500%	201,060.00	556,060.00
06/30/2027	370,000	3.700%	188,635.00	558,635.00
06/30/2028	380,000	3.800%	174,945.00	554,945.00
06/30/2029	395,000	3.900%	160,505.00	555,505.00
06/30/2030	410,000	4.000%	145,100.00	555,100.00
06/30/2031	425,000	4.500%	128,700.00	553,700.00
06/30/2032	445,000	4.500%	109,575.00	554,575.00
06/30/2033	465,000	4.500%	89,550.00	554,550.00
06/30/2034	485,000	4.500%	68,625.00	553,625.00
06/30/2035	510,000	4.500%	46,800.00	556,800.00
06/30/2036	530,000	4.500%	23,850.00	553,850.00
	7,555,000		3,519,664.77	11,074,664.77

NET DEBT SERVICE

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Date	Total Debt Service	Debt Service Reserve Fund	Net Debt Service	Annual Net D/S
12/01/2016	93,761.02		93,761.02	
06/01/2017	417,211.25		417,211.25	
06/30/2017				510,972.27
12/01/2017	134,621.25		134,621.25	
06/01/2018	419,621.25		419,621.25	
06/30/2018				554,242.50
12/01/2018	131,771.25		131,771.25	
06/01/2019	426,771.25		426,771.25	
06/30/2019				558,542.50
12/01/2019	128,673.75		128,673.75	
06/01/2020	428,673.75		428,673.75	
06/30/2020				557,347.50
12/01/2020	125,073.75		125,073.75	
06/01/2021	430,073.75		430,073.75	
06/30/2021				555,147.50
12/01/2021	121,108.75		121,108.75	
06/01/2022	436,108.75		436,108.75	
06/30/2022				557,217.50
12/01/2022	116,620.00		116,620.00	
06/01/2023	441,620.00		441,620.00	
06/30/2023				558,240.00
12/01/2023	111,582.50		111,582.50	
06/01/2024	446,582.50		446,582.50	
06/30/2024				558,165.00
12/01/2024	106,222.50		106,222.50	
06/01/2025	451,222.50		451,222.50	
06/30/2025				557,445.00
12/01/2025	100,530.00		100,530.00	
06/01/2026	455,530.00		455,530.00	
06/30/2026				556,060.00
12/01/2026	94,317.50		94,317.50	
06/01/2027	464,317.50		464,317.50	
06/30/2027				558,635.00
12/01/2027	87,472.50		87,472.50	
06/01/2028	467,472.50		467,472.50	
06/30/2028				554,945.00
12/01/2028	80,252.50		80,252.50	
06/01/2029	475,252.50		475,252.50	
06/30/2029				555,505.00
12/01/2029	72,550.00		72,550.00	
06/01/2030	482,550.00		482,550.00	
06/30/2030				555,100.00
12/01/2030	64,350.00		64,350.00	
06/01/2031	489,350.00		489,350.00	
06/30/2031				553,700.00
12/01/2031	54,787.50		54,787.50	
06/01/2032	499,787.50		499,787.50	
06/30/2032				554,575.00
12/01/2032	44,775.00		44,775.00	
06/01/2033	509,775.00		509,775.00	
06/30/2033				554,550.00
12/01/2033	34,312.50		34,312.50	
06/01/2034	519,312.50		519,312.50	
06/30/2034				553,625.00

NET DEBT SERVICE

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Date	Total Debt Service	Debt Service Reserve Fund	Net Debt Service	Annual Net D/S
12/01/2034	23,400.00		23,400.00	
06/01/2035	533,400.00		533,400.00	
06/30/2035				556,800.00
12/01/2035	11,925.00		11,925.00	
06/01/2036	541,925.00	558,635	-16,710.00	
06/30/2036				-4,785.00
	11,074,664.77	558,635	10,516,029.77	10,516,029.77

NET DEBT SERVICE

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Period Ending	Total Debt Service	Debt Service Reserve Fund	Net Debt Service
06/30/2017	510,972.27		510,972.27
06/30/2018	554,242.50		554,242.50
06/30/2019	558,542.50		558,542.50
06/30/2020	557,347.50		557,347.50
06/30/2021	555,147.50		555,147.50
06/30/2022	557,217.50		557,217.50
06/30/2023	558,240.00		558,240.00
06/30/2024	558,165.00		558,165.00
06/30/2025	557,445.00		557,445.00
06/30/2026	556,060.00		556,060.00
06/30/2027	558,635.00		558,635.00
06/30/2028	554,945.00		554,945.00
06/30/2029	555,505.00		555,505.00
06/30/2030	555,100.00		555,100.00
06/30/2031	553,700.00		553,700.00
06/30/2032	554,575.00		554,575.00
06/30/2033	554,550.00		554,550.00
06/30/2034	553,625.00		553,625.00
06/30/2035	556,800.00		556,800.00
06/30/2036	553,850.00	558,635	-4,785.00
	11,074,664.77	558,635	10,516,029.77

COST OF ISSUANCE:

COLLETON COUNTY INTERMODAL CORPORATION
Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
For Discussion Purposes Only

Cost of Issuance	S/1000	Amount
Bond Counsel (Estimated)	10.58901	80,000.00
Bond Counsel Expenses (Estimated)	0.33091	2,500.00
Underwriter's Counsel (Estimated)	4.63269	35,000.00
Corporation Counsel (Estimated)	2.64725	20,000.00
Trustee Acceptance Fee	0.33091	2,500.00
Trustee - 1st Year Annual in Advance	0.39709	3,000.00
Trustee Counsel (Not to exceed)	1.19126	9,000.00
Rating Agency - S&P (\$7.5-10 MM confirmed 5/25/16)	2.11780	16,000.00
POS/OS Printing (Budgeted)	0.23163	1,750.00
FA Fee	3.30907	25,000.00
	25.77763	194,750.00

BOND SUMMARY STATISTICS

COLLETON COUNTY INTERMODAL CORPORATION
 Taxable Economic Development Revenue Bonds (Colleton County Intermodal Project), Series 2016
 For Discussion Purposes Only

Dated Date	07/28/2016
Delivery Date	07/28/2016
Last Maturity	06/01/2036
Arbitrage Yield	4.009211%
True Interest Cost (TIC)	4.181430%
Net Interest Cost (NIC)	4.190841%
All-In TIC	4.790533%
Average Coupon	4.060115%
Average Life (years)	11.474
Duration of Issue (years)	8.928
Par Amount	7,555,000.00
Bond Proceeds	7,555,000.00
Total Interest	3,519,664.77
Net Interest	3,632,989.77
Total Debt Service	11,074,664.77
Maximum Annual Debt Service	558,635.00
Average Annual Debt Service	558,151.94
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	15.000000
Total Underwriter's Discount	15.000000
Bid Price	98.500000

Bond Component	Par Value	Price	Average Coupon	Average Life
Serial Bonds	4,695,000.00	100.000	3.462%	7.821
Term Bond 2036	2,860,000.00	100.000	4.500%	17.471
	7,555,000.00			11.474

	TIC	All-In TIC	Arbitrage Yield
Par Value	7,555,000.00	7,555,000.00	7,555,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount	-113,325.00	-113,325.00	
- Cost of Issuance Expense		-194,750.00	
- Other Amounts		-186,704.14	
Target Value	7,441,675.00	7,060,220.86	7,555,000.00
Target Date	07/28/2016	07/28/2016	07/28/2016
Yield	4.181430%	4.790533%	4.009211%

STATE FISCAL ACCOUNTABILITY AUTHORITY
MEETING OF January 31, 2017

REGULAR SESSION
ITEM NUMBER KL

AGENCY: Coastal Carolina University

SUBJECT: Not Exceeding \$7,250,000 Higher Education Refunding Revenue Bonds, Series 2017, of Coastal Carolina University

The Authority is asked to adopt a resolution making provision for the issuance and sale of not exceeding \$7,250,000 of Higher Education Refunding Revenue Bonds, Series 2017, of Coastal Carolina University Refunding Revenue Bonds,

The proceeds of the bonds will be used to (a) defray the costs of refunding the Refunded Bonds; (b) fund the 2017 Debt Service Reserve Fund Requirement, if any; and (c) pay certain costs and expenses related to the issuance of the Series 2017 Bonds.

AUTHORITY ACTION REQUESTED:

Adopt a resolution making provision for the issuance and sale of not exceeding \$7,250,000 Higher Education Refunding Revenue Bonds, Series 2017, of Coastal Carolina University.

ATTACHMENTS:

Pope 1/31/17 letter; Resolution; NDIF



POPE FLYNN
GROUP

COLUMBIA | CHARLOTTE | SPARTANBURG

Gary T. Pope, Jr. Pope Flynn, LLC
Member 1411 Gervais St., Suite 300
gpope@popeflynn.com Post Office Box 11509 (29211)
DIRECT 803 354.4917 Columbia, SC 29201
FAX 803 354.4899 www.popeflynn.com

January 31, 2017

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 \$7,250,000 of Higher Education Refunding Revenue Bonds, Series
2017 of Coastal Carolina University (the "Bonds")

Dear Delbert:

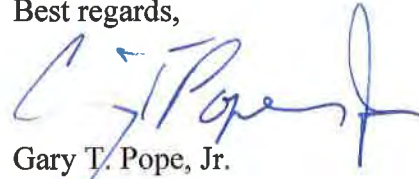
On behalf of Coastal Carolina University, in connection with the authorization of the Bonds, and in anticipation of the South Carolina State Fiscal Accountability Authority (the "Authority") meeting scheduled for March 9, 2017, we respectfully enclose the following for consideration by the Authority:

1. A copy of a bond resolution dated October 2, 2015, of the Board of Trustees of Coastal Carolina University (the "Board of Trustees") providing for the issuance of Revenue Bonds of Coastal Carolina University;
2. A copy of a supplemental resolution anticipated to be adopted by the Board of Trustees on February 23, 2017, authorizing the issuance of the Bonds (we will provide you an executed copy upon adoption);
3. A proposed form of approving resolution of the Authority (an electronic copy is being provided to you contemporaneously with this letter); and
4. A proposed form of opinion of Bond Counsel.

We have provided the Office of State Treasurer with copies of the Bond Counsel Selection Form, the New Debt Information Form (NDIF) – Initial Form, and a copy of this submission package.

Please let us know should you require anything further or if you have any questions regarding the enclosed.

Best regards,

A handwritten signature in blue ink, appearing to read "G. T. Pope, Jr.", with a stylized flourish at the end.

Gary T. Pope, Jr.

c: Stacie A. Bowie, Vice President, Finance and Administration, Coastal Carolina University
Kevin Kibler, Senior Assistant State Treasurer, Office of State Treasurer

Enclosures

A RESOLUTION

APPROVING THE ISSUANCE AND SALE OF NOT EXCEEDING \$7,250,000 HIGHER EDUCATION REFUNDING REVENUE BONDS, SERIES 2017, OF COASTAL CAROLINA UNIVERSITY, SOUTH CAROLINA, AND OTHER MATTERS RELATING THERETO.

BE IT RESOLVED BY THE SOUTH CAROLINA STATE FISCAL ACCOUNTABILITY AUTHORITY, IN MEETING DULY ASSEMBLED:

ARTICLE I

FINDINGS OF FACT

As an incident to the adoption of this resolution (this "Resolution"), the South Carolina State Fiscal Accountability Authority (the "State Authority") finds:

Section 1.01

(a) The Board of Trustees for Coastal Carolina University (the "Board of Trustees"), the governing body of Coastal Carolina University, South Carolina (the "University"), is authorized by Chapters 136 and 147, Title 59 of the Code of Laws of South Carolina 1976, as amended (the "Enabling Act"), to make provision for the issuance of revenue bonds ("Revenue Bonds") from time to time in order to raise funds to defray the cost of financing or refinancing in whole or in part the cost of construction, reconstruction, improvement, and equipment of buildings for the purposes of the University including, dormitories, apartment buildings, dwelling houses, dining halls, cafeterias, parking facilities, sports facilities, and inns or for any one or more of these purposes, all in accordance with and pursuant to the provisions of the Enabling Act.

(b) The Board of Trustees has previously made general provision for the issuance from time to time of revenue bonds of the University (the "Bonds") through the means of a General Bond Resolution adopted on November 10, 1994, entitled "A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" as thereafter from time to time amended and supplemented (the "Original General Bond Resolution"). The Board of Trustees provided for the amendment and restatement of the Original General Bond Resolution pursuant to the adoption of an Amended and Restated General Bond Resolution, adopted on October 2, 2015, entitled "A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COASTAL CAROLINA UNIVERSITY REVENUE BONDS TO FINANCE OR REFINANCE THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF BUILDINGS AND OTHER PROJECTS OF COASTAL CAROLINA UNIVERSITY, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF

REVENUE BONDS ISSUED HEREUNDER; COVENANTING AS TO THE REVENUES AND THE FIXING, ESTABLISHMENT, AND COLLECTION OF RENTALS, FEES, AND CHARGES; PLEDGING THE REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING” (the “2015 Amended and Restated General Bond Resolution,” as an amendment and restatement of the Original General Bond Resolution, the “General Bond Resolution”). Pursuant to the General Bond Resolution, the Board of Trustees previously issued and there remain Outstanding (a) \$525,000 of the originally issued \$3,885,000 Refunding Revenue Bond, Series 2004 of Coastal Carolina University, South Carolina, (b) \$8,475,000 of the originally issued \$13,175,000 Refunding Revenue Bonds, Series 2006 of Coastal Carolina University, South Carolina (the “Series 2006 Bonds”), (c) \$4,573,000 of the originally issued \$6,147,000 Refunding Revenue Bond, Series 2012 of Coastal Carolina University, South Carolina, (d) \$53,295,000 of the originally issued \$54,705,000 Higher Education Revenue Bonds, Series 2013 of Coastal Carolina University, (e) \$35,480,000 of the originally issued \$35,480,000 Higher Education Revenue Bonds, Series 2014 of Coastal Carolina University, (f) \$85,290,000 of the originally issued \$87,020,000 Higher Education Revenue Bonds, Series 2015 of Coastal Carolina University, and (g) \$22,415,000 of the originally issued \$22,415,000 Revenue Bonds, Series 2016 of Coastal Carolina University.

(c) On February 24, 2017, the Board of Trustees adopted a supplemental resolution entitled “A SUPPLEMENTAL RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF HIGHER EDUCATION REFUNDING REVENUE BONDS OF COASTAL CAROLINA UNIVERSITY, SOUTH CAROLINA, TO BE ISSUED IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING SEVEN MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$7,250,000), AND OTHER MATTERS RELATING THERETO” (the “2017 Supplemental Resolution”) authorizing the issuance of Higher Education Refunding Revenue Bonds, Series 2017 (the “Series 2017 Bonds”) to effect a current refunding of the Outstanding Series 2006 Bonds maturing on and after June 1, 2018 (the “Refunded Bonds”). The Refunded Bonds are currently Outstanding in the principal amount of \$7,770,000.

(d) The 2017 Supplemental Resolution authorizes the use of proceeds of the Series 2017 Bonds for the purposes of providing funds: (a) to defray the costs of refunding the Refunded Bonds; (b) to fund the 2017 Debt Service Reserve Fund Requirement, if any; and (c) to pay certain costs and expenses related to the issuance of the Series 2017 Bonds. The 2017 Supplemental Resolution also authorizes the application of the 2006 Debt Service Fund to defease the June 1, 2017 maturity of the Series 2006 Bonds, and the application of the 2006 Debt Service Reserve Fund to the redemption price of the Refunded Bonds.

(e) The Board of Trustees has determined that prevailing market conditions indicate that substantial debt service savings will be achieved through the refunding of the Refunded Bonds and requests the State Authority to approve at this time the issuance by the University of the Series 2017 Bonds to effect a refunding of the Refunded Bonds, and other matters related thereto.

Section 1.02

The General Bond Resolution and the 2017 Supplemental Resolution, each in the form adopted by the Board of Trustees, have been presented to the State Authority.

Section 1.03

The Board of Trustees has determined that all conditions precedent to the issuance of the Series 2017 Bonds, including those required by the General Bond Resolution, the 2017 Supplemental Resolution, and the Enabling Act, will be met upon the issuance of the Series 2017 Bonds.

Section 1.04

All capitalized terms used in this Resolution, but not defined herein, shall have the meaning ascribed to such terms in the General Bond Resolution and the 2017 Supplemental Resolution.

ARTICLE II

APPROVAL TO ISSUE AND SELL THE SERIES 2017 BONDS

Section 2.01

The State Authority hereby approves the issuance and sale of not exceeding \$7,250,000 principal amount of Higher Education Revenue Bonds, Series 2017, of the University and to sell the same in the manner and under the conditions prescribed by the 2017 Supplemental Resolution.

Section 2.02

On the basis of the foregoing and after due consideration of the facts above recited and other matters appurtenant thereto, this Resolution has been adopted.

Dated: March 9, 2017.

OFFICE OF STATE TREASURER

New Debt Information Form (NDIF) - Initial Form

SFAA Approval Date: 03/09/17

Final Version Date: 00/00/00

1. AGENCY/ISSUER & FINANCING INFORMATION

Agency #: H17 Issuer: Coastal Carolina University Series: 2017

Borrower (if not Issuer): _____

Bond Caption: Higher Education Refunding Revenue Bond

Bond Resolution Amount: \$7,250,000.00 Est. Production/Par Amt: \$6,932,401.00

(* Used to calculate initial COI percentages; STO bond issues must use Par Amt. *)

Final Production/Par Amt: \$0.00

Submitted By:

ENTITY: Coastal Carolina University
 BY: Stacie Bowie
 ITS: Vice President, Finance and Administration
 Tel: 843-349-2227
 Email: sbowie@coastal.edu

Transaction Type/Method of Sale:

	Public Offering:	Competitive: _____	Negotiated: _____
<input checked="" type="checkbox"/>	Direct Placement:	Competitive: _____	Negotiated: _____
	Governmental Loan/Governmental Purchaser		
	Other:	_____	

MSRB (EMMA) Continuing Disclosure Requirement (Y/N): N

MSRB (EMMA) Continuing Disclosure Responsible Party: N/A

2. FINANCING (NEW PORTION)

Project #: N/A Project Name: N/A

Project Address/Location: N/A Amount: N/A

Project Type: N/A County: N/A

Projected Avg Interest Rate: N/A Final Maturity: N/A

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)
Series 2006	2018 - 2026	\$ 7,770,000.00	4.0 - 4.25%	2.10%	\$ 893,009.87	11.49%
		\$			\$	
		\$			\$	
		\$			\$	
	Total	\$ 7,770,000.00	*****	*****	\$ 893,009.87	

4. FINANCING WORKING GROUP

Financial Advisor: Stephens Inc. Disclosure Counsel: N/A

Bond Counsel: Pope Flynn, LLC Issuer's Counsel: Timothy Meacham, General Counsel

Underwriter: _____ Trustee: Office of State Treasurer

Paying Agent: U.S. Bank Other: _____

5. FINANCING/PROJECT DESCRIPTION

(Briefly, explain the financing/project, the anticipated costs, & the basis for these cost estimates. Use an attachment if needed)

See Attached.

6. FINANCING/PROJECT APPROVAL DATES

Financing Approvals		Notes:
Issuer/Borrower Approval:	<u>02/24/17</u>	<u>Proposed</u>
JBRC Approval:	<u>N/A</u>	
SFAA Approval:	<u>03/09/17</u>	<u>Proposed</u>

Project Approvals - Phase II (State Entities Only)		Notes:
Issuer/Borrower Approval:	<u>N/A</u>	
JBRC Approval:	<u>N/A</u>	
SFAA Approval:	<u>N/A</u>	

7. TAX AND ARBITRAGE MATTERS & SPEND DOWN SCHEDULE

	Yes	No
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)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. If yes to any of the above, please provide a square footage and cost estimate of the portion affected.	Sq. Footage -	<input type="text"/>
	Cost Estimate -	<input type="text" value="\$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
\$ 6,932,401.00	00/00/00	COI, Redemption, Escrow
\$	00/00/00	
\$	00/00/00	
\$	00/00/00	
\$	00/00/00	
\$	00/00/00	
\$ 6,932,401.00		

8. ESTIMATED/ACTUAL PROJECT SOURCES AND USES

Sources	Est. Project Budget (Sources)	Est. Project Budget (Uses)	Uses
(1) Bond Proceeds: (a) Par	\$ 6,932,401.00	\$	Project Fund
(b) Premium/Accr. Int.	\$	\$	Capitalized Interest Fund
(2) Issuer/Borrower Contr.	\$	\$	Debt Service Reserve Fund
(3) Debt Service Fund Trans.	\$	\$ 7,930,310.00	Redemption Price/Escrow Deposit
(4) Debt Service Reserve Fund Contribution	\$ 1,061,309.88	\$ 63,400.00	Cost of Issuance (Incl. UW Disc.)
(5) Other (Specify)		\$	Accrued Interest
Type -	\$	\$ 0.88	Other
Residual Project Sources		\$	Other
(6) Other		\$	Other
(a) GF -	\$	\$	Other
(a) FF -	\$	\$	Other
(c) OF -	\$	\$	Other
Total Project Sources	\$ 7,993,710.88	\$ 7,993,710.88	Total Project Uses
Surplus/Deficit		\$	-

9. ESTIMATED/ACTUAL BOND COI EXPENDITURES (Added COI entities beyond the following need an attached description **)**

COI Entity	Selected COI Vendor	Vendor #	Engagement Date (w/Engagement Ltr Attached)	Est. Fee For Services	Act. Fee For Services	(\$ Δ)
Financial Advisor	Stephens Inc			\$ 25,000.00	\$	\$ 25,000.00
Bond Counsel	Pope Flynn, LLC			\$ 18,750.00	\$	\$ 18,750.00
Disclosure Counsel				\$	\$	\$
Issuer's Counsel	Timothy Meacham, CCU			\$	\$	\$
Underwriter's Counsel				\$	\$	\$
Transaction Counsel				\$	\$	\$
Legal Expenses				\$	\$	\$
Bank Counsel (If Any)	TBD - Est. Fee			\$ 6,000.00	\$	\$ 6,000.00
Rating Agency - S&P				\$	\$	\$
Rating Agency - Moody's				\$	\$	\$
Rating Agency - Fitch				\$	\$	\$
Underwriter's Compensation				\$	\$	\$
Registrar / Paying Agent	US Bank			\$ 3,650.00	\$	\$ 3,650.00
Escrow Agent	BNY Mellon			\$ 2,000.00	\$	\$ 2,000.00
Accountant				\$	\$	\$
Verification Agent				\$	\$	\$
Printing				\$	\$	\$
Publishing				\$	\$	\$
Advertising				\$	\$	\$
Contingency	TBD			\$ 8,000.00	\$	\$ 8,000.00
Issuer's Fee	SC JEDA / SC SHFDA			\$	\$	\$
				\$ 63,400.00	\$	\$ 63,400.00

Est. / Actual COI Fees (% of Transaction):

Financial Advisor: % of Transaction
 Bond Counsel: % of Transaction
 Total Legal Costs: % of Transaction
 Rating Agencies: % of Transaction

0.36%	#DIV/0!
0.27%	#DIV/0!
0.36%	#DIV/0!
0.00%	#DIV/0!

UW Comp: % of Transaction
 Other COI: % of Transaction
 Total COI: % of Transaction

0.00%	#DIV/0!
0.20%	#DIV/0!
0.91%	#DIV/0!

STATE FISCAL ACCOUNTABILITY AUTHORITY
MEETING OF March 9, 2017

REGULAR SESSION
ITEM NUMBER 5

AGENCY: State Fiscal Accountability Authority

SUBJECT: Future Meeting

The next regular meeting of the State Fiscal Accountability Authority will be held at 9:30 a.m. on Tuesday, May 2, 2017, in Room 252, Edgar A. Brown Building.

State Fiscal Accountability Authority Meetings Remaining in 2017

June 13
August 8
October 17
December 12

AUTHORITY ACTION REQUESTED:

Agree to meet at 9:30 a.m. on Tuesday, May 2, 2017, in Room 252, Edgar A. Brown Building.

ATTACHMENTS: