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**SALUDA COUNTY, SOUTH CAROLINA**

**ORDINANCE NO. 08-19**

**PROVIDING FOR AN INSTALLMENT PLAN OF FINANCE FOR CERTAIN CAPITAL PROJECTS AND EQUIPMENT; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING, IN THE AGGREGATE, THE COUNTY'S CONSTITUTIONAL BONDED DEBT LIMIT IN GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, TO ACQUIRE UNDIVIDED INTERESTS IN SUCH CAPITAL PROJECTS AND EQUIPMENT; AND OTHER RELATED MATTERS.**

**ADOPTED: SEPTEMBER 23, 2019**

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## AN ORDINANCE

**PROVIDING FOR AN INSTALLMENT PLAN OF FINANCE FOR CERTAIN CAPITAL PROJECTS AND EQUIPMENT; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING, IN THE AGGREGATE, THE COUNTY'S CONSTITUTIONAL BONDED DEBT LIMIT IN GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, TO ACQUIRE UNDIVIDED INTERESTS IN SUCH CAPITAL PROJECTS AND EQUIPMENT; AND OTHER RELATED MATTERS.**

### **THE SALUDA COUNTY, SOUTH CAROLINA, COUNTY COUNCIL ORDAINS:**

**SECTION 1. Findings.** The County Council ("County Council") of Saluda County, South Carolina ("County"), finds and determines that:

(a) It is necessary and desirable to acquire, improve, design, construct, install and equip certain public facilities and equipment, including a detention center in the County in order for the County to carry out its governmental purpose and for the benefit and enjoyment of the citizens of the County ("Capital Projects");

(b) The County desires to utilize an installment plan of finance ("Installment Plan") to finance the Capital Projects, whereby the County and a South Carolina nonprofit corporation, the sole purpose of which is to support the governmental mission of the County ("Corporation"), would enter into certain agreements pursuant to which the County and the Corporation would agree as follows: (i) the County would lease certain real property as more particularly described in the Base Lease (as defined herein) and the Purchase and Use Agreement (as defined herein) ("2019 Real Property") and convey any improvements thereon ("Conveyed Improvements") to the Corporation, subject to the release provisions provided therein; (ii) the Corporation would acquire, improve, design, construct, install, and equip the Capital Projects; and (iii) the County would make installment payments ("Installment Payments") to the Corporation to acquire undivided interests in the Conveyed Improvements and the Capital Projects (together the Conveyed Improvements and the Capital Projects are the "2019 Facilities");

(c) The County may use any available revenue source to make the Installment Payments to the Corporation, including the proceeds of general obligation bonds issued by the County;

(d) To provide funds to pay for the costs of the Capital Projects, the Corporation would issue its installment purchase revenue bonds in an amount not expected to exceed \$14,000,000 ("IPRBs") pursuant to a Trust Agreement between the Corporation and Regions Bank, as trustee ("Trust Agreement");

(e) The Corporation would use the Installment Payments received from the County to make the debt service payments on the IPRBs and pledge its right to receive the Installment Payments as security for the IPRBs; and

(f) The County desires to authorize (a) the Installment Plan for the Capital Projects, and (b) the issuance of general obligation bonds, if necessary, to make Installment Payments to the Corporation in order to acquire undivided interest in the 2019 Facilities.

**SECTION 2. *Authorization of the Installment Plan and Execution of Documents.***

(a) The County is authorized to pursue the Installment Plan for the Capital Projects. The County affirms and ratifies that the Capital Projects are necessary and desirable for the County to carry out its governmental purpose and are for the benefit and well-being of the citizens of the County. The County is authorized to enter into and carry out its obligations under the Base Lease and the Purchase and Use Agreement, the forms of which are attached to this Ordinance as Exhibits A and B, respectively, and the form, terms and provisions of each are approved and authorized as if set forth in this Ordinance in their entirety, with such changes as may be approved by the Chair of the County Council (“Chair”), the County Director or their designees (collectively, the “Authorized Representative”):

(i) *Base Lease and Conveyance Agreement*: Pursuant to the Base Lease and Conveyance Agreement between the County and the Corporation (“Base Lease”), the County will (A) lease the 2019 Real Property to the Corporation for a term of not to exceed 30 years, and (B) convey to the Corporation the Conveyed Improvements. The Corporation will prepay the County rent for the 2019 Real Property to ensure, in an event of non-appropriation by the County, the Corporation’s right to occupy and use all or a portion of the 2019 Facilities for the entire term of the Base Lease.

(ii) *Installment Purchase and Use Agreement*. Pursuant to the Installment Purchase and Use Agreement between the Corporation and the County (“Purchase and Use Agreement”), the Corporation will agree, among other things, to (A) use the proceeds of its IPRBs for the acquisition, improvement, design, construction, installation and equipping of the Capital Projects, and (B) sell the 2019 Facilities to the County. The County will agree to (X) serve as the agent for the Corporation for the acquisition, design, construction, and equipping of the Capital Projects, (Y) make annual Installment Payments, subject to the County’s right to not appropriate funds therefor, to the Corporation for (I) the acquisition of undivided interests in the 2019 Facilities, and (II) the use and occupancy of the 2019 Facilities to the extent not owned by the County, and (Z) maintain and operate the 2019 Facilities, including purchasing and maintaining insurance thereon.

(b) The Authorized Representative is authorized, empowered and directed to execute, acknowledge and deliver the Base Lease and the Purchase and Use Agreement to the Corporation. The final terms of the Base Lease and the Purchase and Use Agreement shall accomplish the Installment Plan and shall not be inconsistent with or contrary to such purposes. The execution of the Base Lease and the Purchase and Use Agreement shall constitute conclusive evidence of the approval by the Authorized Representative of the final terms of the Base Lease and the Purchase and Use Agreement.

(c) The Authorized Representative is further authorized to take such actions and make such other determinations as may be necessary or appropriate to carry out the Installment Plan and is directed and empowered to consult with the County Attorney, Bond Counsel (as defined herein) or the Placement Agent (as defined herein) as the Authorized Representative determines, in his or her sole discretion, may be necessary or advisable regarding the Installment Plan.

**SECTION 3. *Approval of the Corporation and the Issuance and Sale of the Corporation’s IPRBs.*** County Council acknowledges and consents to:

(a) the organization of the Corporation for the purpose of supporting the governmental mission of the County and alleviating the burdens of the County in carrying out its governmental purposes and providing for the benefit and well-being of its citizens and the governance by the Corporation of a self-perpetuating board of directors;

(b) the Corporation's issuance, sale and delivery of its IPRBs in one or more series, taxable or tax-exempt, in an amount or amounts to be set pursuant to a resolution to be adopted by the board of directors of the Corporation, to provide funds for (i) the costs of the Capital Projects and (ii) the costs of issuing the IPRBs;

(c) the issuance of the IPRBs pursuant to the Trust Agreement and the pledge of, among other things, the Installment Payments, for the payment of the debt service on the IPRBs; and

(d) the hiring by the Corporation of certain professionals as may be necessary to facilitate the Installment Plan and the issuance of the IPRBs.

County Council acknowledges that the Corporation, in conjunction with the County, will or has requested proposals from certain banks and financial institutions (collectively, "Institutions") for the purchase of the IRPBs and acknowledges that such Institutions may request or have requested certain financial and operating data regarding the County in making their assessment of the IPRBs and determination to submit a proposal for the purchase of the IPRBs. The County is authorized to provide to such Institutions such financial and operating data regarding the County as may be requested and is further authorized to negotiate, execute, accept, or acknowledge the proposal from the Institution which provides the most advantageous offer (which will be based substantially on the lowest total financing cost) to the Corporation and the County with respect to the IPRBs and the fulfillment of the Installment Plan.

**SECTION 4. *Real Property Considerations.*** County Council authorizes the lease of the 2019 Real Property and the transfer of the Conveyed Improvements to the Corporation pursuant to the Base Lease. County Council further authorizes, subject to the County's right to not appropriate funds therefor, the acquisition of the 2019 Facilities from the Corporation pursuant to the Purchase and Use Agreement.

County Council acknowledges that the Corporation, as security for the IPRBs, may pledge and mortgage its interest in the 2019 Facilities and County Council consents to such pledge and mortgage and the preparation and filing of such documents and instruments as may be necessary to create, evidence and perfect the security interest in the 2019 Facilities. The County Council further acknowledges that a failure to appropriate funds or issue general obligations bonds to make the Installment Payments could result in a loss of the right to use or occupy the 2019 Facilities, as the case may be.

**SECTION 5. *Authorization and Details of the General Obligation Bonds of the County for Installment Payments.*** Pursuant to Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended ("Constitution"), and Title 4, Chapter 15 and Title 11, Chapter 27 of the Code of Laws of South Carolina, 1976, as amended (collectively, "Enabling Act"), the County is authorized to issue, without a referendum, general obligation bonds ("Bonds"), in an amount not exceeding eight percent of the assessed value of all taxable property of the County for the purposes of (i) making Installment Payments to the Corporation and (ii) paying the costs of the Capital Projects. The Bonds may be issued in one or more series, taxable or tax-exempt, from time to time with such further designation of each series to identify the year in which such Bonds are issued.

The Bonds may be issued as fully-registered bonds; dated the date of their delivery or such other date as may be selected by an Authorized Representative; may be in denominations of \$1,000 or any whole multiple thereof not exceeding the principal amount of the Bonds maturing in each year; shall be numbered from R-1 upward; shall bear interest, if any, from their date as may be accepted by an Authorized Representative; and shall mature as determined by an Authorized Representative.

**SECTION 6. *Delegation of Certain Details of the Bonds to the County Director.*** County Council expressly delegates to the County Director determinations regarding the Bonds as are necessary or appropriate to make Installment Payments or for any other lawful purpose, including the form of the Bonds (or BANs as defined herein). The County Director is further directed to consult with its bond counsel in making any such decisions.

**SECTION 7. *Registrar/Paying Agent.*** Both the principal installments of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. The County Treasurer's Office or a qualified financial institution shall serve as the registrar and paying agent for the Bonds ("Registrar/Paying Agent") and shall fulfill all functions of the Registrar/Paying Agent enumerated herein.

**SECTION 8. *Registration and Transfer.*** The County shall cause books (herein referred to as the "registry books") to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

The Bonds shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Bonds, the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee new fully registered Bonds, of the same aggregate principal amount, interest rate and maturity as the surrendered Bonds. Any Bond surrendered in exchange for a new registered bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name the fully registered Bonds shall be registered upon the registry books as the absolute owner of such Bonds, whether such Bonds shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bonds and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring the Bonds is exercised, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver the Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of the Bonds during the period beginning on a Record Date (as defined in Section 9 hereof) and ending on an interest payment date.

**SECTION 9. *Record Date.*** The County establishes a record date ("Record Date") for the payment of interest or for the giving of notice of any proposed redemption of the Bonds, and such Record Date shall be the 15th day of the calendar month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of the Bonds, such Record Date shall not be more than 15 days prior to the mailing of notice of redemption of the Bonds.

**SECTION 10. *Lost, Stolen, Destroyed or Defaced Bonds.*** In case the Bonds shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver at the principal office of the Registrar/Paying Agent, or send by registered mail to the owner thereof at his request, risk and expense, new bonds of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute bond shall furnish the County and the Registrar/Paying Agent evidence or proof satisfactory to the County and the Registrar/Paying Agent of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in such amount as may be required by the laws of the State of South Carolina (“State” or “South Carolina”) or such greater amount as may be required by the County and the Registrar/Paying Agent. Any duplicate bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such duplicate bond is issued.

All expenses necessary for the providing of any duplicate bond shall be borne by the applicant therefor.

**SECTION 11. *Book-Entry Only System.***

(a) Notwithstanding anything to the contrary herein, so long as the Bonds are being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bonds will be effected pursuant to rules and procedures established by such securities depository. The initial securities depository for the Bonds will be The Depository Trust Company (“DTC”), New York, New York. DTC and any successor securities depositories are hereinafter referred to as the “Securities Depository.” The Bonds shall be registered in the name of Cede & Co., as the initial securities depository nominee for the Bonds. Cede & Co. and successor securities depository nominees are hereinafter referred to as the “Securities Depository Nominee.”

(b) As long as a book-entry system is in effect for the Bonds, the Securities Depository Nominee will be recognized as the holder of the Bonds for the purposes of (i) paying the principal, interest and premium, if any, on such Bonds, (ii) if the Bonds are to be redeemed in part, selecting the portions of such Bonds to be redeemed, (iii) giving any notice permitted or required to be given to Bondholders under this Ordinance, (iv) registering the transfer of the Bonds, and (v) requesting any consent or other action to be taken by the holder of such Bonds, and for all other purposes whatsoever, and the County shall not be affected by any notice to the contrary.

(c) The County shall not have any responsibility or obligation to any participant, any beneficial owner or any other person claiming a beneficial ownership in the Bonds which is registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as holder of the Bonds.

(d) The County shall pay all principal, interest and premium, if any, on the Bonds issued under a book-entry system, only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal of and premium, if any, and interest on such Bonds.

(e) In the event that the County determines that it is in the best interest of the County to discontinue the book-entry system of transfer for the Bonds, or that the interests of the beneficial owners of the Bonds may be adversely affected if the book-entry system is continued, then the County shall notify the Securities Depository of such determination. In such event, the County shall appoint a Registrar/Paying Agent which shall authenticate, register and deliver physical certificates for the Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bonds discontinues providing its services, the County shall either engage the services of another Securities Depository or arrange with a Registrar/Paying Agent for the delivery of physical certificates in the manner described in (e) above.

(g) In connection with any notice or other communication to be provided to the holder of the Bonds by the County or by the Registrar/Paying Agent with respect to any consent or other action to be taken by the holder of the Bonds, the County or the Registrar/Paying Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

**SECTION 12. Execution of Bonds.** The Bonds shall be executed in the name of the County with the manual or facsimile signature of the Chair and attested by the manual or facsimile signature of the Clerk to County Council under the seal of the County which shall be impressed, imprinted or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Bonds shall bear a certificate of authentication manually executed by the Registrar/Paying Agent in substantially the form set forth herein.

**SECTION 13. Form of Bonds.** The Bonds shall be in the form as determined by the County Director under Section 6.

**SECTION 14. Security for Bonds.** The full faith, credit and taxing power of the County are irrevocably pledged for the payment of the principal of and interest on the Bonds as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

**SECTION 15. Exemption from Taxation.** Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the Code of Laws of South Carolina, 1976, as amended, from all State, County, municipal, school district and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest thereon may be includable in certain franchise fees or taxes.

**SECTION 16. Sale of Bonds, Form of Notice of Sale.** The Bonds may be sold at a public or private sale, as authorized by and in accordance with Section 11-27-40(4) of the Enabling Act, as the County Director may determine.

**SECTION 17. Deposit and Application of Proceeds.** The proceeds of the Bonds or of BANs (authorized under Section 19 of this Ordinance), when drawn, will be deposited in a bond account fund for the County and shall be expended and made use of as follows:

(a) accrued interest, if any, shall be applied to the payment of the first installment of interest to become due on the Bonds or BANs; and



(b) the remaining proceeds shall be expended and made use of to defray the cost of issuing the Bonds or BANs and to make Installment Payments. Pending the use of such proceeds, the same shall be invested and reinvested in such investments as are permitted under State law. Earnings on such investments shall be applied either to Installment Payments or, if not so required, to pay principal on the Bonds.

#### **SECTION 18. *Defeasance.***

(a) If a series of bonds issued pursuant to this Ordinance shall have been paid and discharged, then the obligations of the Ordinance hereunder, and all other rights granted thereby shall cease and determine with respect to such series of bonds. A series of bonds shall be deemed to have been paid and discharged within the meaning of this Section under any of the following circumstances:

(i) If the Registrar/Paying Agent (or, if the County is the Registrar/Paying Agent, a bank or other institution serving in a fiduciary capacity) (“Escrow Agent”) shall hold, at the stated maturities of the bonds, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or

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

(iii) If the County shall have deposited with the Escrow Agent, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America, which are not subject to redemption by the issuer prior to the date of maturity thereof, as the case may be, the principal of and interest on which, when due, and without reinvestment thereof, will provide moneys, which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium or premiums, if any, due and to become due on such series of bonds and prior to the maturity date or dates of such series of bonds, or, if the County shall elect to redeem such series of bonds prior to their stated maturities, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided in the form of the bonds, on and prior to the redemption date or dates of such series of bonds, as the case may be; or

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

(b) In addition to the above requirements of paragraphs (a) (i), (ii), (iii), and (iv), in order for this Ordinance to be discharged with respect to a series of bonds, all other fees, expenses and charges of the Escrow Agent have been paid in full at that time.

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

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

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

(f) In the event any bonds are not to be redeemed within the 60 days next succeeding the date the deposit required by Section 18(a)(iii) or (iv) is made, the County shall give the Escrow Agent irrevocable instructions to mail, as soon as practicable by registered or certified mail, a notice to the owners of the bonds at the addresses shown on the registry books that (i) the deposit required by subparagraph (a)(iii) or (a)(iv) of this Section 18 has been made with the Escrow Agent, (ii) the bonds are deemed to have been paid in accordance with this Section and stating the maturity or redemption dates upon which moneys are to be available for the payment of the principal of, and premium, if any, and interest on, the bonds, and (iii) stating whether the County has irrevocably waived any rights to redeem the bonds, or any of them, prior to the maturity or redemption dates set forth in the preceding clause (ii).

(g) The County covenants and agrees that any moneys which it shall deposit with the Escrow Agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Section, and whenever it shall have elected to redeem bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Escrow Agent to cause notice of redemption to be given in its name and on its behalf.

**SECTION 19. Authority to Issue Bond Anticipation Notes (“BANs”).** If the County Director should determine that issuance of BANs pursuant to Chapter 17 of Title 11 of the Code of Laws of South Carolina, 1976, as amended (“BAN Act”), rather than the Bonds would result in a substantial savings in interest under prevailing market conditions or for other reasons would be in the best interest of the County, the County Director is further requested and authorized to effect the issuance of one or more series of BANs pursuant to the BAN Act. If BANs are issued and if, upon the maturity thereof, the County Director should determine that further issuance of BANs rather than the Bonds would result in a substantial savings in interest under then prevailing market conditions or for other reasons would be in the best interest of the County, the County Director is authorized to continue the issuance of BANs until the County Director determines to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

**SECTION 20. Details of Bond Anticipation Notes.** Subject to changes in terms required for any particular issue of BANs, the BANs shall be subject to the following particulars:

(a) The BANs shall be dated and bear interest from the date of delivery thereof or, if the BAN is issued on a draw-down basis, from the date of each such advance, payable upon the stated maturity thereof, at the rate negotiated by the County Director and shall mature on such date, not to exceed one year from the issue date thereof, as shall be determined by the County Director.

(b) The BANs shall be numbered from one upwards for each issue and shall be in the denomination of \$1,000 or any whole multiple thereof requested by the purchaser thereof. The BANs shall be payable,

both as to principal and interest, in legal tender upon maturity, at the principal office of a bank designated by the County or, at the option of the County, by the purchaser thereof.

The BANs also may be issued as one or more fully registered “draw-down” style instruments in an aggregate face amount not exceeding the maximum amount permitted hereunder, to a lending institution under terms which permit the balance due under such note or notes to vary according to the actual cash needs of the County, as shall be determined by the County Director. In such event, the County may draw upon such note or notes as it needs funds so long as the maximum outstanding balance due under such note or notes does not exceed the aggregate face amount thereof.

(c) The County Director is authorized to negotiate or to arrange for a sale of the BANs and to determine the rate of interest to be borne thereby.

(d) The BANs shall be in the form as determined by the County Director under Section 3.

(e) The BANs shall be issued in fully registered or bearer certificated form or a book-entry-only form as specified by the County, or at the option of the County, by the purchaser thereof; provided that once issued, the BANs of any particular issue shall not be reissued in any other form and no exchange shall be made from one form to the other.

(f) In the event any BAN is mutilated, lost, stolen or destroyed, the County may execute a new BAN of like date and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated BAN, such mutilated BAN shall first be surrendered to the County, and in the case of any lost, stolen or destroyed BAN, there shall be first furnished to the County evidence of such loss, theft or destruction satisfactory to the County, together with indemnity satisfactory to it; provided that, in the case of a holder which is a bank or insurance company, the agreement of such bank or insurance company to indemnify shall be sufficient. In the event any such BAN shall have matured, instead of issuing a duplicate BAN, the County may pay the same without surrender thereof. The County may charge the holder of such BAN with its reasonable fees and expenses in this connection.

(g) Any BAN issued in fully-registered form shall be transferable only upon the books of registry of the County, which shall be kept for that purpose at the office of the County as note registrar (or its duly authorized designee), by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the County as note registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any BAN, the County shall issue, subject to the provisions of paragraph (h) below, in the name of the transferee, a new BAN or BANs of the same aggregate principal amount as the unpaid principal amount of the surrendered BAN. Any holder of a BAN in fully-registered form requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any BAN in fully-registered form, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal and interest of any BAN in fully-registered form shall be made only to or upon the order of the registered holder thereof, or his duly authorized attorney, and the County shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such BAN to the extent of the sum or sums so paid.

(h) BANs issued in fully registered form, upon surrender thereof at the office of the County (or at such office as may be designated by its designee) as note registrar, with a written instrument of transfer satisfactory to the County, duly executed by the holder of the BAN or his duly authorized attorney, may, at the option of the holder of the BAN, and upon payment by such holder of any charges which the

County may make as provided in paragraph (i), be exchanged for a principal amount of BANs in fully registered form of any other authorized denomination equal to the unpaid principal amount of surrendered BANs.

(i) In all cases in which the privilege of exchanging or transferring BANs in fully-registered form is exercised, the County shall execute and deliver BANs in accordance with the provisions of such Ordinance. All BANs in fully-registered form surrendered in any such exchanges or transfers shall forthwith be canceled by the County. There shall be no charge to the holder of such BAN for such exchange or transfer of BANs in fully-registered form except that the County may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer.

**SECTION 21. *Security for Bond Anticipation Notes.*** For the payment of the principal of and interest on the BANs as the same shall fall due, so much of the principal proceeds of the Bonds when issued shall and is directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the County covenants and agrees to effect the issuance of sufficient BANs or bonds in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

**SECTION 22. *Tax and Securities Laws Covenants.***

(a) The County covenants that no use of the proceeds of the sale of the Bonds or BANs authorized hereunder or the IPRBs shall be made which, if such use had been reasonably expected on the date of issue of such Bonds or BANs or the IPRBs would have caused the Bonds or BANs or the IPRBs to be “arbitrage bonds,” as defined in the Code, and to that end the County shall comply with all applicable regulations of the Treasury Department previously promulgated under Section 103 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated under the Code so long as the Bonds or BANs and the IPRBs are outstanding.

(b) The County further covenants to take all action necessary, including the payment of any rebate amount, to comply with Section 148(f) of the Code and any regulations promulgated thereunder.

(c) The County covenants to file IRS form 8038, if the Code so requires, at the time and in the place required therefore under the Code.

(d) To the extent the County and the Corporation do not issue more than \$10,000,000 of obligations, the interest on which is excludable from the gross income of the holders thereof under the Code (excluding private activity bonds (within the meaning of Section 141(a) of the Code) other than qualified 501(c)(3) bonds (within the meaning of Section 145 of the Code)) during any calendar year, the County designates such obligations, if issued as tax-exempt bonds, as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code.

**SECTION 23. *Reimbursement Provisions.*** The County is authorized and has paid or may pay for certain costs and expenditures relating to the Capital Projects from its general fund or capital project fund, in an amount not exceeding \$2,000,000, prior to the issuance of the IPRBs or the Bonds (collectively, “Initial Expenditures”). Such Initial Expenditures are (a) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of “placed in service” under Treasury Regulation §1-150-2) under general federal income tax principles; or (b) certain *de minimis* or preliminary expenditures satisfying the requirements of Treasury Regulation §1.150-2(f).

The County and the Corporation may agree for the Corporation to repay the County for these Initial Expenditures, the source of such repayment to be the proceeds of the IPRBs, or the County may reimburse itself from the proceeds of the Bonds for the Initial Expenditures. To the extent the Corporation repays the County for the Initial Expenditures from the proceeds of the IPRBs or the County reimburses itself from the proceeds of the Bonds, pursuant to Treasury Regulation §1.150-2, this Ordinance is an official declaration by the County of its intent with respect to the repayment of the Initial Expenditures incurred and paid on or after the date occurring 60 days prior to the date of adoption of this Ordinance, from the proceeds IPRBs.

**SECTION 24. *Further Authorization for Authorized Representatives; Ratification of Prior Acts.*** County Council authorizes each Authorized Representative to negotiate, execute and deliver such other documents, agreements, certificates and instruments and to take such further actions as may be necessary to effect the Installment Plan, the acquisition of the Capital Projects, including the modification thereof, the issuance of the IPRBs, and subject to non-appropriation, the payment of Installment Payments to the Corporation, including the issuance of the Bonds therefor. Any actions taken by the Authorized Representative prior to the date of this Ordinance with respect to the Installment Plan, including the expenditure of funds and the execution of documents, are hereby approved, ratified and confirmed in all respects.

**SECTION 25. *Publication of Notice of Adoption of Ordinance.*** Pursuant to the provisions of Section 11-27-40 of the Code of Laws of South Carolina, 1976, as amended, the County Director, at her option, is authorized to arrange to publish a notice of adoption of this Ordinance.

**SECTION 26. *Retention of Bond Counsel and Placement Agent.*** County Council authorizes and consents to the retention of the law firm of Parker Poe Adams & Bernstein LLP as bond counsel (“Bond Counsel”), and the firm of Stifel, Nicolaus & Company, Incorporated, as placement agent in connection with the Installment Plan.

County Council further authorizes the Authorized Representative or such other County staff as is normally charged with the hiring of the applicable professionals, to enter into such contractual arrangements, in accordance with the County’s procurement policy, with suppliers of goods and services necessary to effect the Installment Plan or the sale, execution and delivery of the Bonds as is necessary and desirable.

**SECTION 27. *State Law Continuing Disclosure Covenant.*** As provided under Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended, in connection with any obligation issued hereunder that triggers a continuing disclosure obligation, the County shall file with a central repository for availability in the secondary bond market when requested: (1) an annual independent audit, within thirty days of the issuer's receipt of the audit, and (2) event specific information, within thirty days of an event adversely affecting more than five percent of revenue or its tax base.

**SECTION 28. *General Repealer.*** All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bonds are, to the extent of such conflict, repealed and this Ordinance shall take effect and be in full force from and after its adoption.

SALUDA COUNTY, SOUTH CAROLINA

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Derrick W. Jones, Chair  
Saluda County Council

(SEAL)  
ATTEST:

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Karen T. Whittle  
Clerk to Council  
Saluda County, South Carolina

First Reading: August 19, 2019  
Second Reading: September 9, 2019  
Third Reading: September 23, 2019  
Public Hearing: September 9, 2019

**EXHIBIT A**  
**FORM OF BASE LEASE AND CONVEYANCE AGREEMENT**

**BASE LEASE AND CONVEYANCE AGREEMENT**

**between**

**SALUDA COUNTY, SOUTH CAROLINA**

**as lessor**

**and**

**SALUDA FACILITIES CORPORATION**

**as lessee**

**Dated as of: [] 1, 2019**

**ALL RIGHTS, TITLE AND INTEREST OF SALUDA FACILITIES CORPORATION IN THIS BASE LEASE AND CONVEYANCE AGREEMENT HAVE BEEN ASSIGNED TO [U.S. BANK NATIONAL ASSOCIATION], AS TRUSTEE (“TRUSTEE”), UNDER A TRUST AGREEMENT DATED OF EVEN DATE HERewith, AND ARE SUBJECT TO THE SECURITY INTEREST OF THE TRUSTEE.**



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## BASE LEASE AND CONVEYANCE AGREEMENT

**THIS BASE LEASE AND CONVEYANCE AGREEMENT**, dated as of [] 1, 2019 (“Base Lease”), is between Saluda County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina (“County”), as lessor, and Saluda Facilities Corporation, a nonprofit corporation duly organized under the laws of the State of South Carolina (“Corporation”), as lessee.

### WITNESSETH

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31 of Code of Laws of South Carolina 1976, as amended;

WHEREAS, the County is a body politic and corporate and a political subdivision of the State of South Carolina, and is authorized under the provisions of Title 4, Chapter 9, Code of Laws of South Carolina 1976, as amended (“Act”), to enter into this Base Lease;

WHEREAS, pursuant to the terms of this Base Lease and an Installment Purchase and Use Agreement dated of even date herewith (“Purchase and Use Agreement”), between the Corporation and the County, the County desires to lease the 2019 Real Property (as defined in the Purchase and Use Agreement) and convey the Conveyed Improvements (as defined herein) to the Corporation so that the Corporation may (i) provide funds for the acquisition, design and construction of the 2019 Projects and Ancillary Projects (each as defined in the Purchase and Use Agreement) and (ii) sell and convey the 2019 Facilities (as defined in the Purchase and Use Agreement) to the County;

WHEREAS, the payments to be made under the Purchase and Use Agreement and the rights of the Corporation thereto (except for certain reserved rights as provided therein) are to be assigned to [U.S. Bank National Association], as trustee (“Trustee”), pursuant to the terms of a Trust Agreement dated of even date herewith (“Trust Agreement”), between the Corporation and the Trustee, to secure and provide a source of payment for certain bonds, the proceeds of which are to be used to defray the costs of the 2019 Projects and the cost related to the issuance of bonds under the Trust Agreement; and

WHEREAS, the County desires to enter into this Base Lease to achieve the foregoing purposes.

NOW, THEREFORE, in consideration of the payment of the Base Lease Rent (as hereinafter defined) and the premises and the mutual covenants and agreements herein set forth, the County and the Corporation do hereby covenant and agree as follows:

### ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

**SECTION 1.1 Definitions of Words and Terms.** Capitalized terms not otherwise defined herein are used either with the meanings provided therefore in the Trust Agreement or the Purchase and Use Agreement or shall have the following meanings, unless some other meaning is plainly intended:

“Base Lease Rent” means those items referred to as such in Section 3.4 of this Base Lease.

“Base Lease Term” means the term of this Base Lease which ends on the earlier of (i) December 1, 20[], and (ii) the date on which the Series 2019 Bond is discharged within the meaning of Section 3.19(d) of the Trust Agreement.

“Board of Directors” means the Board of Directors for Saluda Facilities Corporation, as the governing body of the Corporation, and any successor body.

“Conveyed Improvements” means the improvements located on the 2019 Real Property and any Additional Real Property, all as described in Exhibit B.

“Corporation” means Saluda Facilities Corporation, a nonprofit corporation formed under the laws of the State of South Carolina, and its successors and assigns.

“Corporation Representative” means the person or persons at the time designated to act on behalf of the Corporation in matters relating to this Base Lease, the Purchase and Use Agreement and the Trust Agreement as evidenced by a written certificate furnished to the County and the Trustee containing the specimen signature of such person or persons and signed on behalf of the Corporation by its President or any Vice President. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Corporation Representative.

“Corporation Resolution” means the Resolution adopted by the Board of Directors on [], 2019, authorizing the Corporation’s issuance of the Series 2019 Bond and the execution and delivery of this Base Lease, the Purchase and Use Agreement and the Trust Agreement.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the County or the Corporation.

“County Council” means the County Council of Saluda County, South Carolina, as the governing body of the County, and any successor body.

“Event of Default” means (a) with respect to the Purchase and Use Agreement, any Event of Default as defined in Section 8.1 of the Purchase and Use Agreement, and (b) with respect to the Trust Agreement, any Event of Default as defined in Section 7.1 of the Trust Agreement.

“Fiscal Year” means the 12-month period adopted by the County as its fiscal year for financial reporting purposes. Currently, such Fiscal Year for the County begins on July 1 of each year.

“Installment Payments” means those payments required to be made by the County by Sections 4.1, 4.2 and 4.4 of the Purchase and Use Agreement.

“Ordinance” means the Ordinance adopted by the County Council on [September 23], 2019, authorizing the County’s execution and delivery of this Base Lease and the Purchase and Use Agreement and consenting to the Trust Agreement.

“Purchase and Use Agreement” shall mean the Installment Purchase and Use Agreement dated of even date herewith between the Corporation and the County.

“State” means the State of South Carolina.

“Trust Estate” means the Trust Estate described in the Granting Clauses of the Trust Agreement.

“Trustee” means [U.S. Bank National Association], a national banking association chartered under the laws of the United States of America, and its successor or successors and any other trustee which at any time may be substituted in its place pursuant to and at the time serving as trustee under the Trust Agreement.

**SECTION 1.2 Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

The table of contents hereto and the headings and captions herein are not a part of this document.

**SECTION 1.3 Accounting Terms.** Accounting terms used herein and not otherwise specifically defined shall have the meaning ascribed to such terms by accounting principles generally accepted in the United States as from time to time in effect.

## **ARTICLE II REPRESENTATIONS**

**SECTION 2.1 Representations by the County.** The County represents, warrants and covenants as follows:

(a) The County is a duly constituted body politic and corporate and a political subdivision of the State.

(b) The conveyance of title to the Conveyed Improvements and the demise and lease of the 2019 Real Property by the County to the Corporation, as provided in this Base Lease, to allow the Corporation to provide for the construction of the 2019 Projects and Ancillary Projects, and the sale of the 2019 Facilities to the County pursuant to the Purchase and Use Agreement has been undertaken to enable the County to provide suitable governmental, recreational and community facilities in the County.

(c) County Council has full power and authority to adopt the Ordinance and to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.

(d) Neither the execution and delivery of this Base Lease, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the County is now a party or by which the County is bound.

(e) The County has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the County's interests in the 2019 Real Property and the 2019 Facilities shall be or may be impaired, changed or encumbered in any manner whatsoever, except as permitted by this Base Lease or the Purchase and Use Agreement.

(f) The County is the fee owner of the 2019 Real Property existing on the date hereof. Prior to the conveyance of the Conveyed Improvements to the Corporation pursuant to Section 3.1 hereof, any improvements on the 2019 Real Property existing on the date hereof are free and clear of all liens, encumbrances and restrictions (including, without limitation, leases) other than Permitted Encumbrances.

**SECTION 2.2 Representations by the Corporation.** The Corporation represents, warrants and covenants as follows:

(a) The Corporation is a nonprofit corporation duly incorporated under the laws of the State and has corporate power to enter into this Base Lease, the Purchase and Use Agreement and the Trust Agreement. By proper corporate action the officers of the Corporation have been duly authorized to execute and deliver this Base Lease, the Purchase and Use Agreement and the Trust Agreement.

(b) The execution and delivery of this Base Lease, the Purchase and Use Agreement and the Trust Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.

(c) The Board of Directors of the Corporation has full power and authority to adopt the Corporation Resolution and the Corporation has full power and authority to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.

(d) To provide funds to defray the cost of the 2019 Projects, the Corporation will enter into the Trust Agreement pursuant to which it will issue the Series 2019 Bond payable from and secured by the Installment Payments under the Purchase and Use Agreement.

**ARTICLE III  
LEASE OF THE 2019 REAL PROPERTY  
AND CONVEYANCE OF IMPROVEMENTS**

**SECTION 3.1 Transfer of Conveyed Improvements and Lease of the 2019 Real Property.** The County hereby demises and leases to the Corporation and the Corporation hereby leases from the County the 2019 Real Property for the Base Lease Term for the rentals and other consideration set forth in Section 3.4 hereof and in accordance with the provisions of this Base Lease. The County hereby conveys the Conveyed Improvements to the Corporation and the Corporation hereby accepts such conveyance from the County. The parties hereto agree to amend Exhibit A to this Base Lease from time to time, as the County acquires new real property (“Additional Real Property”) which should become subject to this Base Lease.

**SECTION 3.2 Purchase of the 2019 Facilities.** Pursuant to the terms of the Purchase and Use Agreement, the Corporation will acquire and construct the 2019 Projects and Ancillary Projects and will convey title to the 2019 Facilities (including but not limited to the 2019 Projects) to the County, but subject to the terms of the Trust Agreement and the reservation of certain rights under this Base Lease.

**SECTION 3.3 Assignments, Subleases and Mortgages.** Except as contemplated by the Trust Agreement or permitted by the Purchase and Use Agreement, the Corporation may not (a) mortgage or otherwise encumber, or assign its rights in, the 2019 Real Property or the 2019 Facilities or any portion thereof under this Base Lease, (b) lease, assign, transfer or otherwise dispose of its interest in the 2019 Real Property or the 2019 Facilities or any portion thereof or (c) remove, modify or alter the 2019 Real Property or the 2019 Facilities or any portion thereof, without the consent of the County.

**SECTION 3.4 Rent and Other Consideration.** As and for rental hereunder and in consideration for the leasing of the 2019 Real Property to the Corporation hereunder, the Corporation agrees (i) to pay to the County from the sources identified in Section 5.1 of the Trust Agreement the sum of \$25.00 as a prepayment of the annual Base Lease Rent of One Dollar per year for periods beginning on each December 1 and ending on each November 30 with an initial period beginning [], 2019, and ending on November 30, 2019, and (ii) to fulfill its obligations with respect to the 2019 Facilities as provided in the Purchase and Use Agreement. The payments required hereunder shall be made as provided in Section 5.3(a) of the Trust Agreement.

**SECTION 3.5 Taxes and Insurance.** The County shall pay and have responsibility for all taxes on and insurance of the 2019 Real Property and the 2019 Facilities. All insurance shall provide that the proceeds shall be payable to the County, the Corporation or the Trustee as their interests may appear.

**SECTION 3.6 Granting of Easements, Rights of Way, Releases and Substitutions of Property.** From time to time during the term hereof and so long as there is not an existing Event of Default under the Purchase and Use Agreement and there has not occurred an Event of Nonappropriation that has not been waived by the Corporation or the Trustee, the Corporation, at the request of the County, may execute such instruments as are necessary to provide for the granting of easements or rights of way for road construction, utilities or in such other instances as the County certifies are not inconsistent or incompatible with the continued use of the balance of the 2019 Real Property for their intended purposes.

Such instruments may, with the prior written consent of the Trustee, include a termination of this Base Lease with respect to such portion of the 2019 Real Property as is affected thereby or an acceptance or acknowledgment of the right of the grantee of any such easement or right-of-way to continue to use such property notwithstanding the exercise of any rights or remedies afforded to the Corporation hereunder or under the Purchase and Use Agreement. Any request from the County hereunder shall be accompanied by copies of any instruments proposed to be executed together with a certificate from the County to the effect that (a) the continued use of the 2019 Real Property affected thereby will not be impaired or hampered thereby; (b) access to 2019 Real Property for ingress and egress will be adequate for the purposes for which the 2019 Real Property is intended to be used; and (c) the value of the 2019 Real Property to the County will not be significantly diminished thereby.

The Corporation may, with the prior written consent of the Trustee, if any, also terminate this Base Lease with respect to any portion of the 2019 Real Property deemed excessive or unneeded for the continued operation of the 2019 Facilities and the related facilities for the purposes for which they were designed or are then being used, and release its interest in such portion to the County, upon receipt by the Corporation of the following: (a) a plat showing the location of the 2019 Facilities and related facilities and the portion of the 2019 Real Property deemed excessive or unneeded; (b) an amendment to Exhibit A hereto revising the description of the affected parcel of property; (c) a certificate from an engineer or architect stating that the remaining 2019 Real Property will be adequate for the continued operation of the 2019 Facilities and related facilities for the purpose for which they were designed or are then being used, including a certification that there will be adequate access to the remaining 2019 Real Property for ingress and egress; and (d) a certification from the County that the portion of the 2019 Real Property being released from the provisions hereof is in excess to or unneeded for the continued operation of the 2019 Facilities and related facilities for the purposes for which they were designed or are then being used.

The County and the Corporation agree to amend Exhibit A to this Base Lease to substitute or release parcels of 2019 Real Property or portions thereof in accordance with the provisions of this Section 3.6.

With respect to any particular item of 2019 Real Property, the County may, with the prior written consent of the Trustee, if any, substitute another item of 2019 Real Property under the conditions set forth in Section 5.1(c) of the Purchase and Use Agreement.

The County shall not be obligated to compensate the Corporation for the removal of any property or for any conveyance or grant of an easement or right-of-way under the provisions hereof and any consideration paid in connection therewith by a third party shall be turned over to the County so long as there is not an existing Event of Default under the Purchase and Use Agreement and no Event of Nonappropriation has occurred that has not been waived by the Trustee. The Corporation shall have no obligation or responsibility to prepare or record any instrument authorized hereunder.

## **ARTICLE IV TERMINATION**

### **SECTION 4.1 Termination.**

(a) This Base Lease shall terminate upon the completion of the Base Lease Term; provided, however, in the event the County exercises the option to purchase the 2019 Facilities as provided in Section 9.1(a) of the Purchase and Use Agreement and satisfies the conditions thereof, then this Base Lease shall be considered terminated through merger of the leasehold interest with the interest of the County and, provided further, that upon any partition of the 2019 Facilities pursuant to Section 2.4 of the Purchase and Use Agreement, this Base Lease shall be terminated with respect to that portion of the 2019 Real Property (“County Real Property”) relating to any County Facilities (as defined in the Purchase and



Use Agreement) and the County Real Property shall no longer be subject to this Base Lease and the Corporation shall have no interest therein. Notwithstanding the termination of the Purchase and Use Agreement as a consequence of an Event of Default or Event of Nonappropriation, the County may thereafter purchase the 2019 Facilities not previously purchased by it upon payment of the applicable Purchase Option Price and the satisfaction of all other terms and conditions set forth in Section 9.1(a) of the Purchase and Use Agreement

(b) The Corporation agrees, upon any termination or completion of the Base Lease Term or the exercise by the County of its option to purchase as provided in Section 9.1(a) of the Purchase and Use Agreement, to quit and surrender the 2019 Real Property and that all title and interest in the 2019 Facilities and the 2019 Real Property shall vest in the County free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances. The Corporation agrees, upon any partition of the 2019 Facilities provided for in Section 2.4 of the Purchase and Use Agreement, to quit and surrender the County Real Property and that all title and interest in the County Facilities and the County Real Property shall vest in the County free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances.

If an Event of Default under the Purchase and Use Agreement occurs or if the County fails to continue the Purchase and Use Agreement for the entire term thereof for any reason, the Corporation shall have the right of possession of the portion of the 2019 Real Property (“Corporation Real Property”) relating to the Corporation Facilities (as defined in the Purchase and Use Agreement) as the result of a partition as provided for in Section 2.4 of the Purchase and Use Agreement for the remainder of the Base Lease Term and shall have the right to sublease the Corporation Facilities or transfer its leasehold interest in the Corporation Real Property and in this Base Lease upon whatever terms and conditions it deems prudent; provided that the Corporation Facilities shall always be operated for a civic or public purpose to the extent such requirement continues to be applicable under State law and in compliance with all applicable governmental rules, regulations and orders. Both parties acknowledge that the County has an insurable interest in the Corporation Facilities but not in any additions, alterations, furnishings and fixtures provided in connection with the use of the Corporation Facilities by the Corporation or any person to whom the Corporation enters into a lease, license or other such agreement providing for occupancy temporary or long-term. Therefore, the County’s obligation to provide insurance and pay taxes under the provisions of Section 3.5 hereof shall be limited to the 2019 Real Property and the 2019 Facilities as they existed as of the Partition Date (as defined in the Purchase and Use Agreement) and the Corporation shall provide the County with adequate public liability and comprehensive risk insurance covering any use of the Corporation Facilities, and shall pay all taxes relating to any additions, alterations, furnishings and fixtures located therein for the remainder of the Base Lease Term and will furnish the County with evidence thereof. In the event that the Corporation shall receive a payment for the transfer of its leasehold interest or total rental payments for subleasing that are, after the payment of the Corporation’s expenses in connection therewith, including fees and expenses of the Trustee, in excess of the Outstanding principal amount of the Series 2019 Bond at the time of termination or default and the interest and premium, if any, due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the County by the Corporation, its assigns or its lessee.

**SECTION 4.2 Default by the Corporation.** The County shall not have the right to exclude the Corporation from the 2019 Real Property or the 2019 Facilities or to take possession of the 2019 Real Property or the 2019 Facilities (except pursuant to the Purchase and Use Agreement) or to terminate this Base Lease prior to the termination of the Base Lease Term notwithstanding any default by the Corporation hereunder; except that if, upon exercise of the option to purchase the Corporation’s entire interest in the 2019 Facilities granted to the County in Article IX of the Purchase and Use Agreement and after the payment of the purchase price specified therein and the other sums payable under the Purchase and Use Agreement, the Corporation fails to convey its interest in the 2019 Facilities to the County



pursuant to said option, then the County shall have the right to terminate this Base Lease, such termination to be effective 30 days after delivery of written notice of such termination to the Corporation. However, in the event of any default by the Corporation hereunder, the County may maintain an action, if permitted in equity, for specific performance.

**SECTION 4.3 Quiet Enjoyment.** Subject to the Purchase and Use Agreement, the Corporation at all times during the term of this Base Lease shall peaceably and quietly have and enjoy the 2019 Real Property and the 2019 Facilities.

**SECTION 4.4 No Merger.** Except as expressly provided herein, no union of the interests of the County and the Corporation herein or in the Purchase and Use Agreement shall result in a merger of this Base Lease and the title to the 2019 Facilities. The Corporation and the County confirm that the 2019 Facilities shall be property of the Corporation and title thereto shall remain vested in the Corporation as 2019 Facilities are renovated, expanded or constructed and shall not merge into the leasehold estate of the Corporation in the 2019 Real Property subject to the provisions of this Base Lease and the Purchase and Use Agreement; except that title to a portion of the 2019 Facilities shall revert to and be vested in the County upon an Event of Nonappropriation or Event of Default under the Purchase and Use Agreement. The Corporation shall have the power to convey undivided interests in the 2019 Facilities to the County from time to time as Installment Payments are made as contemplated by the Purchase and Use Agreement.

**SECTION 4.5 Waiver of Personal Liability.** All liabilities under this Base Lease on the part of the Corporation are fully corporate liabilities of the Corporation in its capacity as corporate entity, and, to the extent permitted by law, the County hereby releases each and every incorporator, member, director and officer of the Corporation of and from any personal or individual liability under this Base Lease, including without limitation the obligation to make payment of the Base Rent. No incorporator, member, director or officer of the Corporation shall at any time or under any circumstances be individually or personally liable under this Base Lease for anything done or omitted to be done by the Corporation hereunder.

**SECTION 4.6 Maintenance of Premises.** Subject to the provisions of the Purchase and Use Agreement, the Corporation covenants that it will maintain or cause to be maintained the 2019 Real Property, and will not cause, permit or suffer to be caused or permitted waste thereto. At the conclusion of the term hereof, the 2019 Real Property shall be returned to the County, together with the 2019 Facilities and any other improvements thereto, in substantially the condition thereof as of the date hereof or the date the Additional Real Property is added hereto, subject to normal wear and tear. Except as contemplated under the Purchase and Use Agreement, the Corporation shall not make or consent to any other improvements, modifications or alterations to the 2019 Real Property or the 2019 Facilities or any portion thereof, or remove any part thereof without the written consent of the County. Prior to an Event of Nonappropriation that has not been waived in the event of any damage, destruction or condemnation of any of the 2019 Real Property, the provisions of Article VII of the Purchase and Use Agreement shall be deemed to apply with respect to the 2019 Real Property in like manner as provided therein with respect to 2019 Facilities, and the net proceeds from any insurance policies, performance bonds or condemnation awards shall be applied in the same manner for the benefit of 2019 Real Property as are Net Proceeds under Section 7.2 of the Purchase and Use Agreement. After an Event of Nonappropriation that has not been waived in the event of any damage, destruction or condemnation of any of the 2019 Real Property, the proceeds of any insurance policies, performance bonds or condemnation awards allocable to the Corporation's interest in the 2019 Real Property shall be applied as directed by the Trustee either in the manner provided in Section 7.2 of the Purchase and Use Agreement or to the retirement of the Series 2019 Bond and the balance, if any, remaining thereafter to such use as the County may direct.

**ARTICLE V  
CONTROL OF 2019 REAL PROPERTY AND 2019 FACILITIES  
DURING BASE LEASE TERM**

**SECTION 5.1 Control of 2019 Real Property and 2019 Facilities During Base Lease Term.** Subject to the Purchase and Use Agreement and Section 4.6 hereof, during the Base Lease Term the Corporation shall have complete control over the 2019 Real Property and the 2019 Facilities and their operation.

**ARTICLE VI  
MISCELLANEOUS**

**SECTION 6.1 Civic or Public Purpose.** Notwithstanding anything in this Base Lease to the contrary, during the term of this Base Lease, neither the Corporation nor any assignee of the Corporation's interest hereunder nor any sublessee of the Corporation shall operate the 2019 Facilities for any purpose which is not a civic or public purpose and in compliance with all applicable governmental rules, regulations and orders.

**SECTION 6.2 Covenants Running with the 2019 Real Property.** All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the 2019 Real Property and shall attach and bind and inure to the benefit of the County and the Corporation and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein.

**SECTION 6.3 Binding Effect.** This Base Lease shall inure to the benefit of and shall be binding upon the County, the Corporation and their respective successors and assigns. The Trustee, if any, is a third-party beneficiary to this Base Lease.

**SECTION 6.4 Severability.** In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

**SECTION 6.5 Amendment, Changes and Modifications.** This Base Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee except to the extent anticipated in Section 3.1 hereof to reference any after-acquired property which shall be included in the 2019 Real Property or to make any Additional Real Property subject to this Base Lease, and Section 3.6 hereof in connection with the granting of easements, releases and substitutions. The Base Lease may not be amended without the prior written consent of the Trustee, if any.

**SECTION 6.6 Supplemental Base Leases.** The County and the Corporation may, with notice to and the prior consent of the Trustee, if any, enter into supplemental base leases from time to time to provide for the lease by the County to the Corporation of Additional Real Property and the conveyance by the County to the Corporation of Additional Facilities which, together with any Additional New Facilities, will be acquired, constructed, renovated and expanded by the Corporation with the proceeds of Additional Bonds and sold to the County pursuant to the Purchase and Use Agreement, as supplemented by a supplemental installment purchase and use agreement. Such supplemental base lease shall provide for the extension of the term of this Base Lease as necessary and for the payment of Base Lease Rent by the Corporation to the County.

**SECTION 6.7 Execution in Counterparts.** This Base Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

**SECTION 6.8 Applicable Law.** This Base Lease shall be governed by and construed in accordance with the laws of the State.

**SECTION 6.9 Captions.** The Section and Article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

**SECTION 6.10 Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Base Lease to be given to or filed with the County, the Corporation, or the Trustee if the same is given or filed in the manner and at the addresses specified in the Trust Agreement.

**SECTION 6.11 Memorandum.** The County and the Corporation shall, upon the request of either party, execute a memorandum of this Base Lease for recording in the records of Saluda County, South Carolina.

**SECTION 6.12 Successors and Assigns.** All covenants, promises and agreements contained in this Base Lease by or on behalf of or for the benefit of the County or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

[SIGNATURE PAGES FOLLOW]  
[REMAINDER OF PAGE INTENTIONALLY BLANK]

WITNESS the due execution of this Base Lease, effective as of the date first above written.

(SEAL)

LESSOR:  
SALUDA COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Derrick W. Jones, Chairman of County Council  
Saluda County, South Carolina

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
Karen T. Whittle, Clerk to County Council  
Saluda County, South Carolina

(SEAL)

LESSEE:  
SALUDA FACILITIES CORPORATION

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[], President

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
[], Secretary

STATE OF SOUTH CAROLINA        )  
  )  
COUNTY OF SALUDA                )        ACKNOWLEDGMENT

I, \_\_\_\_\_, Notary Public for the State of South Carolina, do hereby certify that Derrick W. Jones, Chairman of the County Council of Saluda County, South Carolina, and Karen T. Whittle, Clerk to County Council of Saluda County, South Carolina, each personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of [] 2019.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF SALUDA            )

ACKNOWLEDGMENT

I, \_\_\_\_\_, Notary Public for the State of South Carolina, do hereby certify that [], President of the Saluda Facilities Corporation, and [], Secretary of the Saluda Facilities Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of [] 2019.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE 2019 REAL PROPERTY AND ANY ADDITIONAL REAL PROPERTY  
(AS MAY BE AMENDED ACCORDING TO SECTION 3.1 OF THIS BASE LEASE)**

[To be Inserted]

**EXHIBIT B**

**CONVEYED IMPROVEMENTS**

All existing improvements located on the 2019 Real Property and any Additional Real Property.



**EXHIBIT B**  
**FORM OF INSTALLMENT PURCHASE AND USE AGREEMENT**

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**INSTALLMENT PURCHASE AND USE AGREEMENT**

**between**

**SALUDA FACILITIES CORPORATION**

**as Seller**

**and**

**SALUDA COUNTY, SOUTH CAROLINA**

**as Buyer**

---

**\$[]**  
**Saluda Facilities Corporation**  
**Installment Purchase Revenue Bonds**  
**(Detention Center Project)**  
**Series 2019**

---

**Dated as of: [] 1, 2019**

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**ALL RIGHTS, TITLE AND INTEREST OF SALUDA FACILITIES CORPORATION IN THIS  
INSTALLMENT PURCHASE AND USE AGREEMENT (WITH CERTAIN EXCEPTIONS) HAVE  
BEEN ASSIGNED TO [U.S. BANK NATIONAL ASSOCIATION], AS TRUSTEE (“TRUSTEE”)  
UNDER A TRUST AGREEMENT DATED OF EVEN DATE HERewith, AND ARE SUBJECT  
TO THE SECURITY INTEREST OF THE TRUSTEE.**

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## **INSTALLMENT PURCHASE AND USE AGREEMENT**

This **INSTALLMENT PURCHASE AND USE AGREEMENT**, dated as of [] 1, 2019 (“Purchase and Use Agreement”), is between Saluda Facilities Corporation (together with its successors and assigns, “Corporation”), a nonprofit corporation formed under the laws of the State of South Carolina (“State”), as seller, and Saluda County, South Carolina (“County”), a body politic and corporate and a political subdivision organized under the laws of the State, as buyer.

### **WITNESSETH**

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31, Code of Laws of South Carolina 1976, as amended;

WHEREAS, the County is a body politic and corporate and a political subdivision of the State and is authorized under the provisions of Title 4, Chapter 9, Code of Laws of South Carolina 1976, as amended (“Act”), to enter into this Purchase and Use Agreement;

WHEREAS, the Corporation and the County have entered into a Base Lease and Conveyance Agreement dated of even date herewith (“Base Lease”), pursuant to which the County has leased the 2019 Real Property and conveyed the Conveyed Improvements (as such terms are defined herein), to the Corporation so that the Corporation may provide for the acquisition, construction, installation and equipping of certain public facilities and equipment, which facilities and equipment are more particularly defined and described herein as the 2019 Projects and the Ancillary Projects (as such terms are defined herein);

WHEREAS, to defray the costs of the 2019 Projects and the Ancillary Project, the Corporation will provide for the issuance of \$[] of its Installment Purchase Revenue Bond (Detention Center Project) Series 2019 (“Series 2019 Bonds”), under and by the terms of a Trust Agreement dated of even date herewith (“Trust Agreement”) by and between the Corporation and [U.S. Bank National Association], as trustee (“Trustee”);

WHEREAS, the County has agreed to make certain payments (“Installment Payments”) for the acquisition of the 2019 Facilities (as defined herein) and, pending such acquisition thereof, shall be entitled to the use and occupancy of the 2019 Facilities and certain other rights; and

WHEREAS, the rights to receive Installment Payments are being assigned by the Corporation to the Trustee under the Trust Agreement as security and the source of payment for the Series 2019 Bonds;

NOW, THEREFORE, for and in consideration of the undertaking of the Corporation to acquire, design, construct and equip the 2019 Projects and the Ancillary Projects, the undertaking of the County to pay the Installment Payments hereunder, the mutual covenants and agreements of the parties, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Corporation and the County, intending to be legally bound, do hereby agree as follows:

## ARTICLE I DEFINITIONS

**SECTION 1.1 Definitions.** Capitalized terms not otherwise defined herein shall have the meanings provided therefor in the Trust Agreement or as set forth below:

*“2019 Facilities” means: (a) the Conveyed Improvements, (b) the 2019 Projects, (c) any fixtures and future additions, modifications and substitutions to any facilities located on the 2019 Real Property, and (d) any facility related personal property, but only to the extent such items have been acquired with proceeds of the Series 2019 Bonds. The 2019 Facilities do not include the Ancillary Projects.*

*“2019 Projects” means the acquisition, design, construction, and equipping of a detention center in the County using proceeds of the Series 2019 Bonds, all as described on Exhibit A hereof, as the same may be amended from time to time. The 2019 Projects do not include the Ancillary Projects.*

“2019 Real Property” means the respective parcels of real property upon which the Conveyed Improvements are located, situated in the County and the legal description of which is shown in Exhibit B hereof, as the same may be amended from time to time.

“Acquisition and Construction Contracts” means any acquisition, design or construction contract between the County, on behalf of the Corporation, and any contractor or other person and between any contractor or subcontractor with respect to any of the 2019 Projects or the Ancillary Projects.

“Additional Bonds” shall have the meaning set forth in the Trust Agreement.

“Additional Facilities” means any facilities of the County in addition to the 2019 Facilities, proposed to be acquired, improved, refinanced, renovated or constructed by the Corporation and made subject to this Purchase and Use Agreement.

“Additional Payments” means that portion of the Installment Payments specified in Sections 4.1, 4.2 and 4.4 hereof as Additional Payments.

“Additional Real Property” means any real property in addition to the 2019 Real Property that is or will become the site of Additional Facilities.

“Ancillary Projects” means the acquisition, construction, and equipping of certain new or existing facilities using proceeds of the Bonds, all as described on Exhibit A hereof, as the same may be amended from time to time. The Ancillary Projects do not include the 2019 Projects. Neither the improvements comprising the Ancillary Projects nor the real property on which the Ancillary Projects are situated are included in the Trust Estate or subject to the Base Lease and the security and partition provisions of this Purchase and Use Agreement.

“Base Lease” means the Base Lease and Conveyance Agreement dated of even date herewith, between the County and the Corporation, as it may be amended or modified from time to time.

“Base Payments” means that portion of the Installment Payments specified in Section 4.1 hereof as Base Payments.

“Bond Fund” means the fund of such name established pursuant to Section 5.5 of the Trust Agreement.

“Bond Proceeds” means the gross proceeds received from the issuance and sale of the Bonds.

“Bonds” means the Series 2019 Bonds and any Additional Bonds issued and secured under the terms of the Trust Agreement.

“Certificate of Acceptance” means the Certificate of Acceptance filed with the Trustee in accordance with Section 3.4 hereof.

“County Council” means the County Council of Saluda County, South Carolina, as the governing body of the County and any successor body.

“County Facilities” means that portion of the 2019 Facilities allocated to the County as the result of a partition under the provisions of Section 2.4 hereof.

“Code” means the Internal Revenue Code of 1986.

“Completion Date” means the date on which the County provides a Certificate of Acceptance.

“Conveyed Improvements” means those certain improvements presently existing on the 2019 Real Property and any Additional Real Property, all as described in Exhibit B-1.

“Corporation Facilities” means that portion of the 2019 Facilities allocated to the Corporation as the result of a partition under the provisions of Section 2.4 hereof.

“Environmental Laws” means all federal, state and local laws, rules, regulations, ordinances, programs, permits, guidances, orders and consent decrees relating to health, safety and environmental matters, including, but not limited to, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, state and federal superfund and environmental cleanup programs and laws and U.S. Department of Transportation regulations.

“Event of Default” means any of the events set forth in Section 8.1 of this Purchase and Use Agreement.

“Event of Nonappropriation” means the County’s failure, for any reason, or notice from the County of its intention not, to specifically budget and appropriate moneys to pay or adopt an ordinance authorizing the issuance of general obligation bonds for the purpose of paying the Installment Payments coming due under this Purchase and Use Agreement during an applicable Fiscal Year. The existence or nonexistence of an Event of Nonappropriation shall be deemed to occur on the earlier of (a) any date on which the County gives official, specific written notice to the Corporation and the Trustee that the County will not appropriate funds for payment of Installment Payments for the next succeeding Fiscal Year, or (b) July 1 of a year in which no such budget or ordinance shall have been adopted appropriating funds for the current Fiscal Year for payment of Installment Payments; provided, however, that an Event of Nonappropriation may be waived as provided for in Section 4.7 herein.

“Facilities Component” means an entire portion of the 2019 Projects or an entire facility, including the main building or buildings and any related auxiliary buildings (and any furnishings and equipment located therein), comprising the the Conveyed Improvements together with the portion of the 2019 Real Property on which such facility is located.

“Fiscal Year” means the fiscal year of the County, currently beginning on each July 1 and ending on the succeeding June 30.



“Force Majeure” means, without limitation, the following: act of God; strikes, lockouts or other industrial disturbances; acts of public enemies or terrorism; orders or restraints of any kind of the government of the United States of America or of the state or any of their departments, agencies or officials of any civil or military authority; insurrection; riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

“Hazardous Material” means and includes any pollutant, contaminant, or hazardous, toxic or dangerous waste, substance or material (including without limitation petroleum products, asbestos-containing materials and lead), the generation, handling, storage, transportation, disposal, treatment, release, discharge or emission of which is subject to any Environmental Law.

“Installment Payments” means the payments to be paid by the County pursuant to Sections 4.1, 4.2 and 4.4 hereof, including Base Payments and Additional Payments.

“Net Proceeds” when used with respect to any proceeds from policies of insurance required hereby or any condemnation award, or any proceeds resulting from default under, or recovery under performance and payment bonds related to, any Acquisition or Construction Contract relating to the 2019 Projects, or proceeds from any liquidation of any part of the 2019 Facilities, means the amount remaining after deducting from the gross proceeds thereof all expenses, including, without limitation, reasonable attorney’s fees and costs, incurred in the collection of such proceeds or award.

“Partition Consultant” means a person, firm or corporation selected by the Trustee, who or which is experienced in public finance and in the valuation of public county facilities and is not a full-time employee of the Trustee, the County or the Corporation.

“Partition Date” shall have the meaning given such term in Section 2.4 hereof.

“Permitted Encumbrances” means, as of any particular time, (i) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of Sections 4.1 and 4.2, respectively, of this Purchase and Use Agreement; (ii) the Security Documents; (iii) utility, access and other easements and rights-of-way, restrictions and exceptions which do not interfere with or impair the use of the 2019 Facilities, including rights or privileges in the nature of easements; (iv) any financing statements filed to perfect security interests pursuant to this Purchase and Use Agreement or the Trust Agreement; and (v) the matters described on Exhibit C.

“Project Fund” means the fund of such name established pursuant to Section 5.2 of the Trust Agreement.

“Purchase Option Price” means an amount equal to the amount required to defease or otherwise discharge the Bonds under the Trust Agreement plus the amount of any Additional Payments which are due or accrued hereunder at the time which any purchase option hereunder is exercised.

“Purchase Price” means the sum of all Base Payments to be made hereunder, which Purchase Price may be recalculated in the event of any prepayment of Base Payments provided for in Section 9.1 hereof.

“Security Documents” means this Purchase and Use Agreement, the Base Lease, the Trust Agreement, financing statements, if any, and any other instruments or documents providing security for the Holders of the Bonds.

“Series 2019 Bonds” means the Corporation’s \$[] Installment Purchase Revenue Bonds (Detention Center Project) Series 2019 issued under and by the terms of the Trust Agreement.

“State” means the State of South Carolina.

“Waiver Period” means the period of time commencing on the date an Event of Nonappropriation is deemed to occur and ending and including the date on the later of (i) the next following November 15 or (ii) the date on which the 2019 Reserve Account becomes fully depleted by the Trustee pursuant to the provisions of Section 5.5 of the Trust Agreement (provided, however, that such 2019 Reserve Account is deemed to be fully depleted when insufficient funds remain therein to make the payments required to be made to the Holders of the applicable Bonds on the subsequent Bond Payment Date); provided, however, that the Waiver Period shall in no event extend beyond the November 15 next following the date of the occurrence of an Event of Nonappropriation.

**SECTION 1.2 Terms Defined in the Trust Agreement.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Trust Agreement unless the context clearly indicates to the contrary.

**SECTION 1.3 County Representations, Warranties and Covenants.** The County makes the following representations, warranties and covenants:

(a) The County is a body politic and corporate, and a political subdivision of the State and has full power and legal right to enter into this Purchase and Use Agreement and the Base Lease and to perform its obligations hereunder and thereunder. The County’s actions in making and performing its obligations under this Purchase and Use Agreement and the Base Lease have been duly authorized by all necessary governmental action and will not violate or conflict with any law or governmental rule or regulation, or any mortgage, agreement, instrument or other document by which the County or its properties are bound.

(b) The County is a political subdivision within the meaning of Section 103(c)(1) of the Code.

(c) The County will take such action as is necessary to assure that the 2019 Projects are acquired, designed, constructed, and equipped and the Ancillary Projects are acquired, constructed, improved and equipped. In the event the amounts available from proceeds from the Series 2019 Bonds appear to be insufficient for such purpose, the County will use its best efforts to take one or more of the following steps: (i) cooperate with the Corporation to make such modifications or changes in the 2019 Projects as will allow the cost thereof to be funded within the amount available from such Bond Proceeds, provided that the prior written consent of the Trustee shall be required to substantially reduce or alter the scope of the 2019 Projects; (ii) make arrangements with the Corporation for the sale of Additional Bonds, with the consent of the Holder of the Series 2019 Bonds; or (iii) provide for the payment of such costs from other sources legally available to the County.

(d) The County will take such action as is necessary to ensure that proceeds of the Bonds, other than amounts set aside in the Trust Agreement for payment of costs of issuance, funding of reserves or payment of interest, are applied solely for the payment of the costs of the 2019 Projects and the Ancillary Projects.

(e) Except as provided in the last paragraph under Section 2.1 hereof, no portion of the 2019 Facilities will be used in the trade or business of a person who is not a “political subdivision” within the meaning of Section 103(c)(1) of the Code, without the written approval of Bond Counsel.

(f) The amounts, if any, spent by the County from its own funds to pay costs of the acquisition, renovation, improvement and construction of the 2019 Projects and the Ancillary Projects for which the Corporation will repay the County from Bond Proceeds were not expended more than 60 days prior to the

date of adoption by the County Council of the ordinance authorizing the financing of the 2019 Projects, enacted [September 23], 2019 (“Ordinance”), and expressing the intent to enter into this Purchase and Use Agreement, except with respect to certain preliminary expenditures for architectural, engineering, surveying, soil testing and similar costs.

(g) There is no fact that has not been disclosed to the Initial Purchaser or the Corporation which will materially and adversely affect the properties, activities, operations, revenues, prospects or condition (financial or otherwise) of the County, its status as a political subdivision of the State within the meaning of Section 103(c)(1) of the Code, its ability to own and operate its property in the manner such property is currently operated or its ability to perform its obligations under this Purchase and Use Agreement or the Base Lease.

(h) There are no proceedings pending or, to the knowledge of the County, threatened against or affecting the County, except as disclosed to the Initial Purchaser and the Corporation, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the properties, operations, prospects or condition (financial or otherwise) of the County, or the corporate existence or powers or ability of the County to enter into and perform its obligations under this Purchase and Use Agreement or the Base Lease.

(i) The execution and delivery of this Purchase and Use Agreement and the Base Lease (collectively, the “County Agreements”), and the consummation of the transactions provided for herein and therein, and compliance by the County with the provisions of the County Agreements:

(1) are within the governmental powers and have been duly and validly authorized by all necessary governmental and other action on the part of the County;

(2) do not and will not conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture, loan agreement or other agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the County other than this Purchase and Use Agreement or any governmental restriction to which the County is a party or by which the County, its properties or operations may be bound or with the giving of notice or the passage of time or both would constitute such a breach or default or result in the creation or imposition of any such lien, charge or encumbrance, which breach, default, lien, charge or encumbrance could materially and adversely affect the validity or the enforceability of the County Agreements or the County’s ability to perform fully its obligations under the County Agreements; nor will such action result in any violation of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the County, its properties or operations are subject.

(j) No event has occurred and no condition exists that constitutes an Event of Default or which, upon the execution and delivery of this Purchase and Use Agreement, and/or the passage of time or giving of notice or both, would constitute an Event of Default. The County is not in violation in any material respect, and has not received notice of any claimed material violation (except such violations as do not, and shall not, have any material adverse effect on the transactions herein contemplated and the compliance by the County with the terms hereof, or the Security Documents), of any terms of any court order, statute, regulation, ordinance, agreement, or other instrument to which it is a party or by which it, its properties or its operations may be bound.

(k) This Purchase and Use Agreement is a legal, valid and binding obligation and agreement of the County, enforceable against the County in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity; anything herein to the contrary notwithstanding, this Purchase and

Use Agreement is subject in its entirety to the right of the County to terminate this Purchase and Use Agreement and all the terms and provisions hereof by failing to budget and appropriate moneys specifically to pay Installment Payments, as provided in Sections 2.2, 4.6 and 4.7 hereof.

(l) The use and the operation of the 2019 Facilities in the manner contemplated will not conflict in any material respect with any zoning, water or air pollution or other ordinance, order, law, rule, or regulation applicable to the 2019 Facilities including, without limitation, Environmental Laws. The County has caused or will cause the 2019 Facilities to be designed in accordance with all applicable federal, State and local laws or ordinances (including rules and regulations) relating to zoning, planning, building, safety and environmental quality. The County will operate or will cause the 2019 Facilities to be operated in compliance with the requirements of all such laws, ordinances, rules and regulations, including, without limitation, Environmental Laws. The County further covenants and agrees to comply in all material respects with, or use its reasonable efforts to cause other persons whose obligations it is to so comply by contract or pursuant to law to comply in all material respects with and materially conform to all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and every applicable governmental authority, including Environmental Laws applicable to the 2019 Facilities, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the 2019 Facilities, including building and zoning codes and ordinances (collectively, the "Legal Requirements"), provided that the County shall not be in default hereunder so long as the County promptly after receiving an actual written notice of any noncompliance, files a copy thereof with the Trustee and the County commences and uses its diligent efforts to cause compliance with such Legal Requirements, so long as the failure to comply does not subject the 2019 Facilities to any material danger of being forfeited or lost as a result thereof. The County possesses or will possess, and the County hereby agrees to maintain and obtain in the future, all necessary licenses and permits, or rights thereto, to operate the 2019 Facilities as proposed to be operated, and all such licenses, permits or other approvals required in connection with the operation of the 2019 Facilities have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals that are not yet required and that will be duly obtained not later than the time required or the failure to obtain which will not materially and adversely affect the operation of the 2019 Facilities. The County covenants and agrees to do all things necessary to preserve and keep in full force and effect its franchises, rights, powers and privileges as the same relate to the 2019 Facilities.

(m) The County has approved the Corporation and the issuance by the Corporation of the Bonds.

(n) The County has not terminated any lease, lease-purchase agreement or installment purchase agreement by nonappropriation.

(o) The officer of the County at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the County Council in any Fiscal Year in which this Purchase and Use Agreement shall be in effect, budget items sufficient to pay all Installment Payments required for such Fiscal Year under this Purchase and Use Agreement.

(p) Reserved.

(q) The County agrees that it will furnish to the Trustee and the Holder of the Series 2019 Bonds (a) current audited financial statements in reasonable detail, with supporting schedules (the "Audit"), which may be in electronic .PDF format, as soon as practicable after the County's acceptance thereof and in any case within 270 days after the end of each Fiscal Year, and (b) the County's annual budget as submitted or approved. In the event the Audit is filed on the Municipal Securities Rulemaking Board's "EMMA" website, the County may email a link to the posted Audit to the Holder within such 270-day period to satisfy this requirements with respect to the Audit as set forth in this subsection. So long as the Initial

Purchaser is the Bondholder, the electronic Audit or EMMA link may be sent to the following email address (or such other address as the Initial Purchaser supplies to the County in writing): Public\_Finance\_Servicing@snbcloud.onmicrosoft.com. The County shall furnish to the Holder of the Series 2019 Bonds such other financial information as it may reasonably request. In the event that the Audit is not available within 270 days of fiscal year end, the County will furnish unaudited financial statements to the Trustee and the Holder of the Series 2019 Bonds in the manner described in this paragraph within such period, and will then supply the Audit immediately upon the availability thereof.

(r) The Trustee shall have the right to receive such additional information as it may reasonably request.

(s) The County will allow the Trustee to discuss the affairs, finances and accounts of the County or any information which the Trustee may reasonably request regarding the security for the Bonds with appropriate officers of the County, and will grant the Trustee access to the facilities, books and records of the County on any business day upon reasonable prior notice.

(t) The Trustee shall have the right, if the Trustee has a reasonable basis to believe that the financial position of the County has materially deteriorated or financial irregularities have occurred since the date of the most recently provided annual audit, or that such audit fails to accurately set forth the financial position of the County, to direct the County to cause to be prepared a financial report at the County's expense in form and content acceptable to the Trustee, and the County shall comply with such direction within 30 days after written notice of such direction from the Trustee; provided, however, that if compliance cannot occur within such period, then such period will be extended with the prior consent of the Trustee so long as compliance is begun within such period and diligently pursued.

**SECTION 1.4 Corporation Representations, Warranties and Covenants.** The Corporation makes the following representations, warranties and covenants:

(a) *The Corporation is a duly organized and validly existing nonprofit corporation created under the laws of the State, has the requisite power to carry on its present and proposed activities, and has full power, right and authority to enter into this Purchase and Use Agreement, the Trust Agreement and the Base Lease and to perform each and all of the obligations of the Corporation provided therein.*

(b) *The Corporation has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Purchase and Use Agreement, the Base Lease, the Trust Agreement and each of the Acquisition and Construction Contracts to which it is or will be a party.*

(c) *By proper corporate action, the officers of the Corporation have been duly authorized to execute and deliver this Purchase and Use Agreement, the Base Lease and the Trust Agreement.*

(d) *The execution and delivery by the Corporation of this Purchase and Use Agreement, the Base Lease and the Trust Agreement and the consummation by the Corporation of the transactions contemplated hereby and thereby have not and will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.*

(e) *Each of this Purchase and Use Agreement, the Base Lease, the Trust Agreement and each Acquisition and Construction Contract to which the Corporation is or will be a party has been or will be duly executed and delivered by the Corporation and constitutes or will constitute a legal and valid obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except as*

enforcement may be limited by laws affecting creditors' rights generally and except as equitable remedies may be limited by judicial discretion.

(f) Other than as disclosed to the Initial Purchaser and the County, there is no litigation pending and served on the Corporation that challenges the Corporation's authority to execute, deliver or perform its obligations under this Purchase and Use Agreement and the Corporation has disclosed any threatened litigation with respect to such matters of which the Corporation is aware.

(g) The Corporation is in material compliance with all applicable laws, regulations and ordinances, including but not limited to those applicable to the Corporation's activities in connection with this Purchase and Use Agreement.

(h) The Corporation is a South Carolina nonprofit, public benefit corporation, no part of the net income of which inures to the benefit of any private individual or organization.

(i) To finance the 2019 Projects and the Ancillary Projects, the Corporation will enter into the Trust Agreement, pursuant to which it will issue the Series 2019 Bonds payable from and secured by the Installment Payments under this Purchase and Use Agreement.

(j) The Corporation covenants that it will not alter its Articles of Incorporation or its By-Laws in any manner without first providing the County and the Trustee an opinion of nationally-recognized bond counsel that such alteration will not cause the Bonds to become subject to registration under the Securities Act of 1933.

## **ARTICLE II INSTALLMENT SALE AND USE OF 2019 FACILITIES AND TERM HEREOF**

**SECTION 2.1 Installment Sale and Use of 2019 Facilities; Term.** The Corporation hereby *agrees to sell the 2019 Facilities to the County in accordance with the provisions hereof. On the date hereof, the Corporation has a valid leasehold interest in the 2019 Real Property and holds fee title, or will hold fee title upon the acquisition and construction thereof, to the 2019 Facilities. Upon each payment of Base Payments title to an undivided interest in the 2019 Facilities equal to that percentage of the Purchase Price represented by such payment will transfer from the Corporation to the County without further action by either party.*

*In conjunction therewith, the Corporation hereby conveys and grants to the County an undivided interest in the 2019 Facilities, which undivided interest shall increase pro rata based on the percentage of the Purchase Price represented by each Base Payment. At the request of the County, the Corporation agrees to execute such quitclaim or special warranty deed(s) or bills of sale to the County indicating the undivided interest so acquired by the County.*

*Any prepayment of Base Payments which is used to redeem the Bonds will result in a recalculation of the Purchase Price to take account of such prepayment and, upon the making of such prepayment, the County shall be credited with an undivided interest in the 2019 Facilities equal to that percentage of the total Purchase Price, as adjusted, represented by the total of all Base Payments made, including the prepayment on such date.*

*Subject to the provisions of Article VIII hereof, the County shall have the exclusive right to occupy and use the 2019 Facilities during the term hereof. Subject to the provisions of Sections 2.2 and 2.3 hereof, this Purchase and Use Agreement shall be for a term beginning with the date of execution and delivery hereof, and ending on December 1, 2011.*

During the term hereof, the County may permit other civic or charitable organizations or agencies of the State or any political subdivision thereof to use portions of the 2019 Facilities subject to the following limitations: (i) no agreement may be for a term in excess of one year; (ii) the 2019 Facilities shall not be used in any manner that interferes with the use of such property by the County for the purposes for which it was designed or is then being used; (iii) any such agreement shall expressly terminate upon the occurrence of an Event of Default or an Event of Nonappropriation hereunder; and (iv) the County shall monitor all such use to ensure continued compliance with the provisions of the Tax Certificate and Section 5.3 hereof.

**SECTION 2.2 Termination.** The term of this Purchase and Use Agreement shall terminate upon the earliest of any of the following events:

*(a) The occurrence of an Event of Nonappropriation, such occurrence to be determined in accordance with the definition of such term given in this Purchase and Use Agreement, which Event of Nonappropriation is not thereafter duly waived or cured within the Waiver Period;*

*(b) The purchase by the County of the 2019 Facilities as provided in Article IX of this Purchase and Use Agreement;*

*(c) The occurrence of an Event of Default under and termination of this Purchase and Use Agreement by the Corporation or Trustee under Article VIII of this Purchase and Use Agreement; or*

*(d) December 1, 20[]], which date constitutes the last day of the term hereof, or such later date as all Installment Payments due hereunder shall be paid.*

*Termination of this Purchase and Use Agreement shall terminate all obligations of the County under this Purchase and Use Agreement, including its obligations to pay future Installment Payments and other amounts that have not been appropriated (excluding, however, amounts payable under Section 2.3 hereof and other amounts specifically provided for herein), subject to identification as provided in Section 2.4 hereof, shall terminate the County's rights of possession under this Purchase and Use Agreement of the Corporation Facilities (except to the extent of any conveyance pursuant to Article IX of this Purchase and Use Agreement); but all other provisions of this Purchase and Use Agreement, including all obligations of the Corporation with respect to the Holders of the Bonds and the receipt and disbursement of funds and all rights and remedies of the Corporation specifically provided herein, shall be continuing until the Trust Agreement is discharged as provided therein. Notwithstanding the foregoing, termination of the term of this Purchase and Use Agreement shall not impair the County's rights as landlord or the Corporation's rights as tenant under the Base Lease, except as provided in the Base Lease.*

**SECTION 2.3 Holdover Terms.** In the event the County fails to deliver possession to the Corporation of the Corporation Facilities or any part thereof pursuant to Section 2.4 hereof, the County shall be unconditionally liable for the payment of all Installment Payments, including Additional Payments, for successive six month periods commencing on the Bond Payment Date following the last due date of Base Payments hereunder until the County delivers possession of the Corporation Facilities to the Corporation. The obligations of the County under this Section 2.3 shall not in any manner constitute a pledge of the full faith, credit or taxing power of the County within the meaning of any State constitutional or statutory provision.

**SECTION 2.4 Surrender of Possession Upon Termination; Partition of Undivided Interests.** Upon the occurrence of an Event of Default or an Event of Nonappropriation which results in termination hereof or upon termination of all rights of the County hereunder and at the written direction of the Trustee, the County and the Corporation shall proceed to partition the 2019 Facilities so that the percentage of undivided interests in the title to the 2019 Facilities will be converted, to the extent feasible, into like percentages of title to entire Facilities Components in accordance with Exhibit E hereof and the

following provisions. The date upon which the Trustee gives such written direction shall be the “Partition Date.”

Division of 2019 Facilities. Within a reasonable time after the Partition Date, the Trustee shall propose the division of the 2019 Facilities. The Trustee may in its sole discretion select a Partition Consultant to assist, consult with and make recommendations to the Trustee in the division of the 2019 Facilities. The Trustee may rely conclusively on the recommendation of the Partition Consultant. The Trustee and the Partition Consultant, if selected, shall endeavor, to the extent practicable, to allocate 2019 Facilities between the County and the Corporation in a fair and equitable fashion taking into account the following factors: (1) entire Facilities Components, if possible, will be assigned to each of the County and the Corporation; and (2) if portions of the 2019 Facilities and Facilities Components will be assigned to each of the Corporation and the County, the Trustee and the Partition Consultant, if selected, shall propose such partition as will, in the aggregate, best protect the interests of the Holders (subject to the provisions of this Section 2.4).

Valuation of Facilities Components and 2019 Facilities. For purposes of any partition, the 2019 Facilities are valued in the respective amounts as set forth on Exhibit E and the percentage of the 2019 Facilities being purchased on an annual basis are also set forth on Exhibit E hereof, each subject to adjustment as stated on Exhibit E. In allocating the 2019 Facilities to the percentage of undivided interests in the entire 2019 Facilities to be conveyed to the County or retained by the Corporation, such values and percentages shall be used rather than the current market or other valuation of Facilities Components associated therewith.

Partial Divisions. In the event that the Trustee and the Partition Consultant, if selected, are unable to devise a partition that results in complete Facilities Components being assigned to the County or the Corporation, then such partition shall be made so as to provide the County’s and the Corporation’s respective interests to be allocated to Facilities Components in a manner consistent with other provisions of this Section 2.4. The portion of a Facilities Component which is property allocated to the County but is not a complete Facilities Component shall be designated as a “County Partial Facilities Component.” With respect to a County Partial Facilities Component, the County may (i) continue to occupy the entire Facilities Component which includes a County Partial Facilities Component if it agrees to make payments (as specified in Section 2.3) in amounts to be determined by the Trustee and the Partition Consultant, if selected, as the proper charge for use of the Corporation’s interest in such Facilities Component (“Corporation Partial Facilities Component”); (ii) purchase the Corporation’s interest in such Corporation Partial Facilities Component by the payment of the amount determined by the Trustee and Partition Consultant, if selected; or (iii) cede occupancy rights in the County Partial Facilities Component to the Corporation for the duration of the term of the Base Lease. In determining the purchase price if the County elects to purchase the Corporation’s interest in a Corporation Partial Facilities Component, the Trustee and Partition Consultant, if selected, shall determine the prepayment amount that would be required under the second paragraph of Section 2.1 to result in a complete allocation of such Facilities Component to the County. In setting the payments to be made by the County if it chooses to continue to occupy the entire Facilities Component the Trustee and Partition Consultant, if selected, shall set a payment that is not less than the amount of total Base Payments allocable to such Facilities Component that would have been payable from and after the Partition Date if this Purchase and Use Agreement or the rights of the County hereunder had not been terminated.

Partition Report; Finality. The Trustee, and Partition Consultant, if selected, shall make a report regarding the division of the 2019 Facilities as soon as practicable after the Partition Date. In the discretion of the Trustee, the partition report shall be final and binding on all parties.

Instruments of Conveyance. Within a reasonable time (but in no event sooner than 30 or later than 60 days) after the partition report becomes final, the County and the Corporation shall exchange deeds or



other instruments vesting title to such of the 2019 Facilities as is required to effect such partition; provided, however, that any conveyance deed or other instrument made by the Corporation shall be made in the manner and subject to the conditions set forth in Section 9.2 hereof. Immediately thereafter, the County shall deliver up or cause to be delivered up peaceable possession of the Corporation Facilities to the Corporation, together with the related portion of the 2019 Real Property, without delay, in good repair and operating condition, excepting reasonable wear and tear; provided, however, that in the event of a partial division, the terms relating to County Partial Facilities Components described above shall control. Any Facilities Component delivered to the Corporation in connection with such partition shall remain, at all times, subject to the terms of the Base Lease.

### **ARTICLE III THE 2019 PROJECTS; FINANCING**

**SECTION 3.1 Purchase and Installation or Construction of the 2019 Projects.** *The Corporation and the County acknowledge that the County will be responsible for any and all Acquisition and Construction Contracts necessary or appropriate for the purchase and installation, or for any renovation, construction, installation, restoration, and reconstruction, to be performed in connection with the completion of the 2019 Projects and the Ancillary Projects and the County shall be the agent of the Corporation for all such purposes. The County may install machinery, equipment and other tangible personal property in the 2019 Facilities and all such machinery, equipment and other tangible personal property not acquired nor financed from Bond Proceeds will remain the sole property of the County.*

**SECTION 3.2 Administration of Acquisition and Construction Contracts.** The County shall be responsible for preparing, administering, amending and enforcing the Acquisition and Construction Contracts to be entered into with respect to the 2019 Projects and for litigating or settling all claims thereunder. The County and the Corporation, as their interests may appear, will be entitled to the benefit of all warranties, guaranties and indemnities provided under the Acquisition and Construction Contracts and by law.

**SECTION 3.3 Notices and Permits.** The Corporation shall cooperate with the County to give or cause to be given all notices and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of public authorities applying to or affecting the conduct of any work relating to the 2019 Projects. The County will defend and save the Corporation, the Trustee and their respective members, directors, officers, agents and employees harmless from all liabilities, damages or fines due to failure to comply therewith.

**SECTION 3.4 Disbursements from the Project Fund.**

(a) The Bond Proceeds shall be deposited by the Trustee into the Project Fund in accordance with Section 5.1 of the Trust Agreement. Thereafter, disbursements from the Project Fund shall be made for costs of the 2019 Projects and the Ancillary Projects and for such other purposes contemplated by Section 5.3 of the Trust Agreement.

(b) As provided in Section 5.3(c) of the Trust Agreement, the final requisition from the Project Fund shall contain, among other things, a Certificate of Acceptance of the County stating that the 2019 Projects and the Ancillary Projects have been substantially completed in accordance with the applicable Acquisition and Construction Contracts and other terms and conditions of this Purchase and Use Agreement and the 2019 Projects and Ancillary Projects comply in all material respects with all applicable governmental regulations. Upon receipt of such Certificate of Acceptance, the Trustee shall apply any balance then remaining in the Project Fund in the manner provided in Section 5.4 of the Trust Agreement.

**SECTION 3.5 Defaults Under Acquisition and Construction Contracts.** In the event of any material default by a supplier, contractor or subcontractor under any of the Acquisition and Construction Contracts, or in the event of a material breach of warranty with respect to any property, fixtures, materials, workmanship or performance under any Acquisition and Construction Contract, the County and the Corporation shall promptly proceed, and may do so in conjunction with others, to pursue diligently such remedies as are available against the applicable supplier, contractor or subcontractor and/or against any surety of any bond securing the performance of the Acquisition and Construction Contracts. The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the County or the Corporation of any amounts theretofore paid by either of them, and not previously reimbursed, for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid into the Project Fund if received before the Completion Date, or if received thereafter, shall be deposited as otherwise provided in Section 7.2 of this Purchase and Use Agreement or otherwise applied as provided in Section 7.3 of this Purchase and Use Agreement.

**SECTION 3.6 Worker's Compensation Insurance.** The County and the Corporation shall take such steps as are necessary to ensure that worker's compensation insurance is in force with respect to any Acquisition and Construction Contracts.

**SECTION 3.7 Contractor's Performance and Payment Bonds.** The County and the Corporation shall take such steps as are necessary to ensure that performance and payment bonds regarding contractor's performance and payment are provided in the same manner as would be applicable to any contracts of the County.

The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the performance and payment bonds remaining after deduction of expenses incurred in such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the County and the Corporation of any amounts theretofore paid by either of them, and not previously reimbursed, for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid into the Project Fund if received before the Completion Date, or if received thereafter, shall be deposited as otherwise provided in Section 7.2 of this Purchase and Use Agreement or otherwise applied as provided in Section 7.3 of this Purchase and Use Agreement.

**SECTION 3.8 Contractor's General Public Liability and Property Damage Insurance.** The County and the Corporation shall take such steps as are necessary to ensure that comprehensive general public and property damage liability insurance with respect to the 2019 Projects are provided in the same manner as would be applicable to any contracts of the County.

**SECTION 3.9 Proceeds of Insurance Policies.** The Net Proceeds of any insurance policies required by Section 3.8 hereof or any amounts recovered by way of damages, refunds, adjustments, proceeds or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the County or the Corporation of any amounts not to exceed \$100,000 theretofore paid by the County or the Corporation and not previously reimbursed to the County or the Corporation for actions taken by the County or the Corporation to restore damaged portions of the 2019 Facilities to a condition necessary to secure the 2019 Facilities and prevent further loss shall be paid into the Project Fund before the Completion Date or, if received thereafter, shall either be deposited as provided in Section 7.2 of this Purchase and Use Agreement or otherwise applied as provided in Section 7.3 of this Purchase and Use Agreement; provided, however, such deposit shall not exceed the amount necessary to fulfill the obligations of the County under this Purchase and Use Agreement as determined by the Trustee.

**SECTION 3.10 No Merger of 2019 Facilities.** The Corporation and the County confirm that the 2019 Facilities shall be property of the Corporation and title thereto shall remain vested in the Corporation and shall not merge into the leasehold estate of the Corporation in the 2019 Real Property, except that title to said 2019 Facilities shall revert to and be vested in the County upon termination of the Base Lease. Undivided interests in the 2019 Facilities shall be conveyed to the County from time to time as Base Payments are made as contemplated hereby in accordance with Section 2.1 hereof, or following termination hereof pursuant to Section 2.4 hereof.

**ARTICLE IV  
INSTALLMENT PAYMENTS; ASSIGNMENT TO TRUSTEE**

**SECTION 4.1 Installment Payments.**

(a) Installment Payments to Constitute a Current Expense of County. The Corporation and the County understand and intend that the obligation of the County to pay Installment Payments hereunder shall constitute a current expense of the County and is dependent upon lawful appropriations of funds being made by the County Council to pay Installment Payments due in each fiscal year hereunder, and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the County.

(b) Payment of Base Payments. Subject to an Event of Nonappropriation as described in Section 4.7 hereof, on or before the 15th day prior to each Bond Payment Date during the period this Purchase and Use Agreement is in effect, the County shall pay to the Trustee as assignee of the Corporation, Base Payments exclusively from moneys specifically budgeted and appropriated for such purpose, including proceeds of any general obligation bonds issued by the County for such purpose, in lawful money of the United States of America, which payments shall be made to the Trustee as assignee of this Purchase and Use Agreement, in the amounts set forth on Exhibit D. Each payment of Base Payments shall be in consideration for the conveyance of title to an undivided interest in the 2019 Facilities as and to the extent provided in Section 2.1 hereof. As further consideration for the receipt of Base Payments, the County shall be entitled to the use and occupancy of all of the 2019 Facilities for annual period commencing on the day such Base Payments are due.

(c) Payment of Additional Payments. The County agrees to pay, subject to the provisions of Section 4.7 hereof, the following amounts as Additional Payments together with such other sums as are provided for herein:

(i) The amounts provided for in Sections 4.2 and 4.4 hereof to the parties referred to therein;

(ii) Upon receipt of written notice from the Trustee pursuant to Section 5.5(e) of the Trust Agreement of a transfer from a subaccount of the Reserve Account established for a particular series of Bonds (as defined in the Trust Agreement) to the applicable subaccount of the Facilities Purchase Account, within the period of time specified in Section 5.5(e) of the Trust Agreement, or payment by the Trustee on the Reserve Policy, an amount equal to the amount so transferred from the applicable subaccount of the Reserve Account to the applicable subaccount of the Facilities Purchase Account;

(iii) Within the period of time specified in Sections 5.5(e) and 5.7(i) of the Trust Agreement, the amount of moneys necessary to re-establish a subaccount of the Reserve Account established for a particular series of Bonds at the applicable Reserve Requirement as may be required pursuant to said Sections 5.5(e) and 5.7(i);

(iv) All reasonable costs and expenses incurred or to be paid by the Corporation or the Trustee, as the case may be, under the terms of this Purchase and Use Agreement or the Trust Agreement, including without limitation the amounts specified in Section 4.4 hereof and amounts payable by the Corporation pursuant to or contemplated by repurchase, forward delivery or other investment agreements which are Eligible Investments under the Trust Agreement; and

(v) Amounts owed to the Trustee as provided for in the Trust Agreement.

The Corporation may, but shall be under no obligation to, advance moneys (i) to pay taxes, assessments and other governmental charges with respect to the 2019 Facilities, (ii) for the discharge of mechanic's and other liens relating to the 2019 Facilities, (iii) to obtain and maintain insurance for the 2019 Facilities and pay premiums therefor, and (iv) generally, to make payments and incur expenses in the event that the County fails to do so as required by this Purchase and Use Agreement or the Base Lease. As provided in Section 6.11 of the Trust Agreement, the Trustee may take any such action. Any such advances shall continue to be due as Additional Payments hereunder.

(d) Credits. The County shall be entitled to a credit against payments of Base Payments in the amount of any deposits in the Bond Fund provided for in the Trust Agreement. In addition to the credit provided in the preceding sentence, the amount payable by the County as Base Payments will be reduced by the amount of money in the applicable subaccount of the Facilities Purchase Account to be credited against those payments and representing Base Payments, including without limitation accrued interest on the Bonds to the extent such amounts will be used to make payments on the Bonds. In this connection, if applicable, when amounts remaining in a subaccount of the Reserve Account equal or exceed the remainder of the applicable Base Payments due, such amounts shall be transferred to the applicable subaccount of the Facilities Purchase Account as and when needed for payment of such Base Payments, and, pursuant to Section 5.5(f) of the Trust Agreement, when amounts remaining in a Reserve Sub-account exceed the applicable Reserve Requirement, such excess amounts shall be transferred to the applicable Facilities Purchase Sub-account as and when needed for payment of such Base Payments.

(e) Continuation of Term by County. The County has no reason to believe, as of the date hereof, that it will not continue making Installment Payments through the entire term of this Purchase and Use Agreement, and reasonably believes that (1) it will pay the Installment Payments due or coming due hereunder to continue to use the 2019 Facilities and (2) it presently has legal authority to budget and appropriate such amounts in its annual budget, as limited by applicable law, and it presently has, and will have, adequate capacity to issue general obligation debt that does not require voter approval in amounts sufficient and at times to pay Base Payments when due. The County further represents that it presently intends to maintain its capacity to issue general obligation debt that does not require voter approval, in amounts and at times sufficient to make Base Payments when due; provided, however, that nothing herein shall be construed to limit the County from providing funds from other sources to pay Base Payments. The representations contained herein are subject to the ability of the County to terminate this Purchase and Use Agreement and all obligations hereunder as provided in Section 4.7 hereof.

#### **SECTION 4.2      Installment Payments Not Subject to Reduction, Offset or Other Credits.**

(a) The County and the Corporation intend that this Purchase and Use Agreement shall yield, net, the Base Payments specified in Section 4.1 hereof during the term of this Purchase and Use Agreement, and that all costs, expenses, liabilities and obligations of any kind and nature whatsoever including, without limitation, any ad valorem taxes or other taxes levied against holders of real or personal property, insurance premiums, utility charges and assessments and all operation, maintenance, repair and upkeep expenses relating to the 2019 Facilities and the use of the 2019 Facilities which do not constitute Base

Payments, or other obligations relating to the 2019 Facilities which may arise or become due during the term of this Purchase and Use Agreement and which the Corporation, except for this Purchase and Use Agreement or the terms of the Base Lease, would ordinarily be required to pay as owner of the 2019 Facilities (regardless of whether the County as owner would be so required to pay) shall either be paid under the provisions of the Base Lease or be included in the Installment Payments and paid by the County as Additional Payments. The County acknowledges that, under the provisions of the Base Lease, it has retained responsibility for the payment of taxes and insurance on the 2019 Facilities and the property associated therewith and the obligations of the County under the Base Lease are not subject to the limitations of Section 4.6 hereof.

(b) All payments of Additional Payments referred to in Section 4.2(a) above shall be made by the County in immediately available funds on a timely basis directly to the person or entity to which such payments are owed; provided, however, subject to the terms of the Security Documents, that the County shall not be required to pay, discharge or remove any tax, lien, or assessment, or any mechanic's, laborer's or materialman's lien or encumbrance, or any other imposition or charge against the 2019 Facilities or any part thereof, or comply with any law, ordinance, order, rule, regulation or requirement, as long as the County shall, after prior written notice to the Corporation and the Trustee, at the County's expense, contest the same or the validity thereof in good faith, by action or inaction which shall operate to prevent the collection of the tax, lien, assessment, encumbrance, imposition or charge so contested, or the enforcement of such law, ordinance, order, rule, regulation or requirement, as the case may be, and the sale of the 2019 Facilities or any part thereof to satisfy the same or to enforce such compliance; provided further, that the County shall have given reasonable security as may be demanded by the Corporation, the Trustee, or both, to insure such payment and prevent any sale or forfeiture of the 2019 Facilities or any part thereof by reason of such nonpayment or noncompliance.

(c) To the extent permitted by law, the County hereby agrees to indemnify, defend and hold the Corporation harmless from the payment of Additional Payments which may be deemed the obligation of the Corporation.

**SECTION 4.3 Prepayment of Installment Payments.** The County may prepay Installment Payments in whole or in part as provided and under the conditions prescribed in Sections 7.3 and 9.1(b) hereof, or at any time that the County so determines for the purpose of providing for the redemption of Bonds as provided in Section 4.1 of the Trust Agreement. The County shall notify the Trustee in writing of the dates on which the Bonds corresponding to any prepayment hereunder are to be redeemed and the amount to be redeemed on each such date, all in accordance with the provisions of the Trust Agreement. The Trustee may request such reasonable information and reports as may be necessary to establish the sufficiency of the payments to be made at the time of such prepayment.

**SECTION 4.4 Administrative Expenses.** Subject to the provisions of Section 4.7 hereof, the County shall pay as Additional Payments (i) the periodic fees and reasonable expenses from time to time of the Trustee and any Paying Agent incurred in administering the Trust Agreement and the Bonds, and (ii) any reasonable expenses, including reasonable attorneys' fees, incurred by the Corporation, the Trustee or the Holder of the Series 2019 Bonds to compel full and punctual performance of this Purchase and Use Agreement in accordance with the terms hereof.

**SECTION 4.5 Assignment of Purchase and Use Agreement, Manner of Payment.** As security for and the source of payment of the Bonds, pursuant to the Trust Agreement, the Corporation has assigned to the Trustee all of its right, title and interest in and to this Purchase and Use Agreement, except for the right of the Corporation to receive indemnity against claims and payment of its fees and expenses pursuant to Sections 4.2, 4.4 and 5.5 hereof. The County consents and agrees to the assignment of this Purchase and Use Agreement as provided herein. The County covenants to fully perform, in timely fashion, all of its covenants, agreements and obligations under this Purchase and Use Agreement, and to

make all payments required by the County under this Purchase and Use Agreement (other than payment for indemnity and fees and expenses of the Corporation) directly to the Trustee, all without set-off, defense or counterclaim by reason of any dispute which the County may have with the Corporation or the Trustee.

**SECTION 4.6 Limited and Special Obligation of County.** UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION, THIS PURCHASE AND USE AGREEMENT MAY BE TERMINATED AS OF THE END OF THE LAST FISCAL YEAR WHICH IS NOT AFFECTED BY SUCH EVENT OF NONAPPROPRIATION, AND THE COUNTY SHALL NOT BE OBLIGATED TO MAKE PAYMENT OF THE INSTALLMENT PAYMENTS PROVIDED FOR IN THIS PURCHASE AND USE AGREEMENT BEYOND THE END OF SUCH FISCAL YEAR (EXCEPT AS OTHERWISE PROVIDED HEREIN). If this Purchase and Use Agreement is terminated under this Section 4.6 or as provided in Section 4.7 or Section 2.2, the County agrees to peaceful delivery of that portion of the 2019 Facilities to be retained by the Corporation or its assigns as provided in Section 2.4 hereof.

THE OBLIGATIONS OF THE COUNTY TO MAKE INSTALLMENT PAYMENTS REQUIRED UNDER THIS ARTICLE IV AND OTHER SECTIONS HEREOF, AND TO PERFORM AND OBSERVE THE COVENANTS AND AGREEMENTS CONTAINED HEREIN, SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS, EXCEPT AS EXPRESSLY PROVIDED UNDER THIS PURCHASE AND USE AGREEMENT. Notwithstanding any dispute involving the County and any of the Corporation, contractor, subcontractor, or supplier of materials or labor, or any other person, the County shall make all Installment Payments when due and shall not withhold any Installment Payments pending final resolution of such dispute, nor shall the County assert any defense or right of set-off, recoupment, or counterclaim against its obligation to make such payments required under this Purchase and Use Agreement. The County's obligation to make Installment Payments during the term of this Purchase and Use Agreement shall not be abated through accident or unforeseen circumstances. The County agrees not to suspend, reduce, abrogate, diminish, postpone, modify, discontinue, withhold, or abate any portion of the payments required pursuant to this Purchase and Use Agreement by reason of any defects, malfunctions, breakdowns, or infirmities of the 2019 Facilities, failure of the Corporation to complete the acquisition, construction, or installation of the 2019 Projects, failure of the County to occupy or to use the 2019 Facilities as contemplated in this Purchase and Use Agreement or otherwise, any change or delay in the time of availability of the 2019 Facilities, any acts or circumstances which may impair or preclude the use or possession of the 2019 Facilities, any defect in the title, design, operation, merchantability, fitness, or condition of the 2019 Facilities or in the suitability of the 2019 Facilities for the County's purposes or needs, failure of consideration, the invalidity of any provision of this Purchase and Use Agreement, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the 2019 Facilities, the taking by eminent domain of title to or the use of all or any part of the 2019 Facilities, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or in the rules or regulations of any governmental authority, or any failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Purchase and Use Agreement. Nothing contained in this paragraph shall be construed to release the Corporation from the performance of any of the agreements on its part herein contained. In the event the Corporation should fail to perform any such agreement on its part, the County may institute such action against the Corporation as the County may deem necessary to compel performance so long as such action does not abrogate the County's obligations under this Purchase and Use Agreement. The County may, however, at its own cost and expense and in its own name or in the name of the Corporation, prosecute or defend any action or proceeding or take any other action involving third persons which the County deems reasonably necessary to secure or protect its right of possession, occupancy, and use under this Purchase and Use Agreement, and in such event the Corporation hereby agrees to cooperate fully

with the County and to take all action necessary to effect the substitution of the County for the Corporation in any such action or proceeding if the County shall so request. It is the intention of the parties that the payments required by this Purchase and Use Agreement will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the County's obligation to pay installment payments hereunder as set forth above.

THE OBLIGATIONS OF THE COUNTY UNDER THIS PURCHASE AND USE AGREEMENT SHALL NOT CONSTITUTE A PLEDGE OF THE FULL FAITH, CREDIT OR TAXING POWER OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL OR STATUTORY PROVISION.

**SECTION 4.7 Event of Nonappropriation.** Upon the occurrence of an Event of Nonappropriation, the following provisions shall apply:

*(a) If an Event of Nonappropriation occurs and is not waived, the County shall not be deemed to be in default under this Purchase and Use Agreement and shall not be obligated to make payment of any future Installment Payments due hereunder or any other payments provided for herein which accrue after the beginning of the Fiscal Year with respect to which there has occurred an Event of Nonappropriation; provided, however, that, subject to the limitations of Section 4.6 hereof and this Section 4.7, the County shall continue to be liable for Installment Payments (a) accrued prior to the beginning of such Fiscal Year, and due hereunder, and (b) allocable to any period during which the County shall continue to occupy the Corporation Facilities as provided in Section 2.3 hereof.*

*(b) If the County delivers official, specific written notice to the Corporation and the Trustee that it will not appropriate funds in the next succeeding Fiscal Year for payment of Installment Payments, the Trustee shall promptly give written notice to the County, the Corporation and the Holder of the Series 2019 Bonds stating that an Event of Nonappropriation has occurred; but any failure of the Trustee to give such written notice shall not prevent the Trustee from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Trustee.*

*(c) Subject to Article VIII hereof and the provisions of subsections (d) and (e) hereof, this Purchase and Use Agreement will be terminated pursuant to Section 2.2 hereof.*

*(d) Subject to Article VIII hereof and the provisions of subsection (e) hereof, the Corporation or the Trustee, with the prior written consent of the Holder of the Series 2019 Bonds, may waive any Event of Nonappropriation which is cured by the County within a reasonable time if the Waiver Period has not expired and in the Trustee's judgment such waiver is in the best interest of the Holders of the Bonds.*

*(e) Subject to Article VIII hereof and notwithstanding the provisions of subsection (d) hereof, the Trustee, with the prior written consent of the Holder of the Series 2019 Bonds, shall waive any Event of Nonappropriation (but only an Event of Nonappropriation which occurs pursuant to clause (a) of the second sentence of the definition thereof) which is cured by the County's specifically budgeting and appropriating, prior to expiration of the Waiver Period, moneys sufficient to pay Installment Payments coming due hereunder for such Fiscal Year.*

*The County, in all events, shall cooperate with the Corporation and the Trustee in making the partition required under Section 2.4 hereof and shall vacate and deliver over to the Trustee the Corporation Facilities by the later of (a) the end of the Waiver Period, or (b) when required by the last paragraph of Section 2.4 hereof.*

*The Trustee shall, upon receipt of notice of the occurrence of an Event of Nonappropriation, be entitled to all moneys then on hand and being held in all funds created under the Trust Agreement for the benefit of the Holders of the Bonds. After the expiration of the Waiver Period, the Trustee may or shall,*

as the case may be, proceed to exercise its remedies, liquidate its interest in this Purchase and Use Agreement or lease the 2019 Facilities as provided in Section 8.2 of this Purchase and Use Agreement, provided, however, that the 2019 Facilities shall always be operated for a civic or a public purpose as provided in Section 4.1 of the Base Lease to the extent such requirement continues to be applicable under State law. All property, funds and rights acquired by the Trustee by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Trustee for services performed as Trustee, shall be held by the Trustee for the benefit of the Holders of the Bonds as set forth in the Trust Agreement.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, in the event that the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement, or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including attorneys' and other fees and expenses of the Trustee, and all other amounts which are payable hereunder, in excess of the principal amount of the Outstanding Bonds at the time of the Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the County by the Trustee, its assigns or its lessee.

## **ARTICLE V COVENANTS OF THE COUNTY**

### **SECTION 5.1 Maintenance and Operation of 2019 Facilities; Transfers.**

(a) Subject to Sections 4.6 and 4.7 herein, the County covenants and represents that during the term of this Purchase and Use Agreement, it shall, at its own cost or expense, operate the 2019 Facilities in a sound and economical manner, in compliance with all present and future laws and governmental regulations applicable thereto, and maintain, preserve and keep the 2019 Facilities in good repair, working order and condition, and that it shall from time to time make or cause to be made all necessary and proper repairs and renewals so that at all times the operation of the 2019 Facilities may be properly and advantageously conducted. This covenant shall not prevent the County from discontinuing operation of the 2019 Facilities at any time.

(b) Except as otherwise provided in this Section 5.1 and Section 2.1 hereof, prior to payment of the Bonds in full, the County shall not sell, transfer, lease, sublease or otherwise dispose of all or any portion of the 2019 Facilities, or its interests under this Purchase and Use Agreement, except to another governmental entity, as defined under the laws of the State, which assumes in writing all obligations of the County under this Purchase and Use Agreement and shall enter into no such transaction without the written consent of the Trustee.

(c) Notwithstanding any other provision hereof to the contrary, the County may provide for the exchange of any asset comprising the 2019 Facilities ("Released Facility") for another County facility and the real estate on which such facility ("Exchange Facility") is located if: (i) the County provides the Trustee and the Holder of the Series 2019 Bonds an appraisal showing that the proposed Exchange Facility has a value equal to or greater than the proposed Released Facility; (ii) the County certifies to the Trustee and the Holder of the Series 2019 Bonds that Exchange Facility is necessary or desirable to the operations of the County and that the remaining useful life of the Exchange Facility is not less than the remaining useful life of the Released Facility; (iii) the County certifies to the Trustee and the Holder of the Series 2019 Bonds that the exchange is necessary to facilitate either the sale or other disposition of the Released Facility or the conversion of its use to another purpose other than use by the County as a county facility; (iv) the Trustee and the Holder of the Series 2019 Bonds receive an opinion of Bond Counsel to the effect that the proposed exchange will not adversely affect the federal income tax treatment of interest



paid to the Holders of the Bonds; and (v) the Trustee and the Holder of the Series 2019 Bonds consent in writing thereto.

**SECTION 5.2 Liens on 2019 Facilities.** The County shall not create, incur or suffer to exist any *lien, charge or encumbrance on the 2019 Real Property or the 2019 Facilities or its rights under this Purchase and Use Agreement other than any Permitted Encumbrance.*

**SECTION 5.3 Representations and Covenants Regarding Tax-Exempt Status of the Series 2019 Bonds.**

(a) Neither the Corporation nor the County shall take any action (including but not limited to any use of the 2019 Facilities or the Ancillary Projects) or permit any action to be taken on its behalf, or cause or permit any circumstance within its control to arise or continue, if such action or circumstance, or its expectation on the date of this Purchase and Use Agreement would cause the interest paid on the Series 2019 Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes.

(b) The County covenants to the Corporation, the Trustee and the Holder of the Series 2019 Bonds that, notwithstanding any other provision of this Purchase and Use Agreement or any other instrument, it will neither make nor cause to be made any investment or other use of proceeds of the Series 2019 Bonds or amounts on deposit in any of the funds or accounts held under the Trust Agreement or under any other document related to the Series 2019 Bonds which would cause them to be “arbitrage bonds” under Section 148 of the Code and the regulations thereunder, and that it will comply with the requirements of such Section and regulations throughout the term of the Series 2019 Bonds.

(c) The County shall take all actions necessary on its part to enable compliance with the rebate provisions of Section 148(f) of the Code to preserve the federal income tax status of payments of interest with respect to the Series 2019 Bonds and or any other tax-exempt bonds related to the 2019 Facilities. The County shall ensure that the Corporation retains a consultant experienced in the calculation and determination of rebate payments and liability under Section 148(f) of the Code to provide the reports required under the Tax Certificate.

(d) The County will accept title to the 2019 Facilities upon the discharge of the Series 2019 Bonds and any Additional Bonds.

**SECTION 5.4 Reports and Opinions; Inspections.**

(a) The County shall deliver to the Trustee and the Corporation, within 90 days after the end of each Fiscal Year, a certificate stating that no Event of Default under this Purchase and Use Agreement has occurred and is continuing and that the 2019 Facilities are being used in accordance with the terms of this Purchase and Use Agreement.

(b) The County shall permit the Corporation and the Trustee to examine, visit and inspect, at any reasonable time, the 2019 Facilities, and any accounts, books and records, including its receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and to supply such reports and information as the Trustee may reasonably require.

**SECTION 5.5 Immunity of Corporation and Trustee; Indemnification.** In the exercise of the powers of the Corporation and the Trustee and their members, directors, officers, employees and agents under the Trust Agreement or this Purchase and Use Agreement including (without limiting the foregoing) the application of moneys and the investment of funds, neither the Corporation nor the Trustee shall be accountable to the County for any action taken or omitted with respect to the 2019 Facilities or the Ancillary Projects or this Purchase and Use Agreement by either of them or their members, directors,

officers, employees and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred under this Purchase and Use Agreement. The Corporation and the Trustee and their members, officers, employees and agents shall be protected in its or their acting upon any paper or documents believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the County for any claims based on the Trust Agreement or this Purchase and Use Agreement against any member, director, officer, employee or agent of the Corporation or the Trustee alleging personal liability on the part of such person. To the extent permitted by law, the County shall defend the Corporation and any of its members, directors, officers, employees or agents and save them harmless against any liability, including expenses and legal or other fees, intended to be precluded by this Section 5.5 resulting from acts or omissions of the County or from acts or omissions of the Corporation or any of their members, directors, officers, employees or agents in connection with any acts taken pursuant to this Purchase and Use Agreement, except for fraud, deceit, or acts taken in bad faith or which are negligent.

**SECTION 5.6 Compliance with Laws; Consolidation or Merger.**

(a) With respect to the 2019 Facilities and any additions, alterations, or improvements thereto, the County will at all times comply with all applicable requirements of federal and state laws and with all applicable lawful requirements of any agency, board, or commission created under the laws of the State or of any other duly constituted public authority; provided, however, that the County shall be deemed in compliance with this Section 5.6 so long as it is contesting in good faith any such requirement by appropriate legal proceedings.

(b) Nothing in this Purchase and Use Agreement shall be construed to prevent the County from combining with one or more counties (as defined under the laws of the State) not parties to this Purchase and Use Agreement to form a consolidated or a merged county, provided that the consolidation or merged county enters into a written supplement, joined in by the Corporation, whereunder the consolidated or merged county assumes payment of Installment Payments and all other obligations of the County hereunder, thereupon such consolidated or merged county shall replace and become the County for all purposes of this Purchase and Use Agreement.

**SECTION 5.7 Insurance and Condemnation Proceeds.** The County shall not make any disposition nor direct the disposition of insurance or condemnation payments with respect to the 2019 Facilities in excess of \$250,000 without the written consent of the Trustee except as may be required by the terms of the Security Documents or of any Permitted Encumbrances existing on the date hereof.

**SECTION 5.8 Filing of Budget with Trustee.** During the term of this Purchase and Use Agreement, the County shall file with the Trustee, within 15 days after the beginning of each Fiscal Year, a copy of the annual budget of the County for that Fiscal Year and, within fifteen days of adoption thereof, a copy of any bond ordinance, proceeds of which are to be used to pay Installment Payments. The Trustee shall have no duty to review or analyze any such Annual Budget and shall hold such Annual Budget solely as a repository for the benefit of the Bondholders. The Trustee shall not be deemed to have notice of any information contained therein or even of default which may be disclosed in any manner.

**SECTION 5.9 Alterations of the 2019 Facilities; Removals.** The County, in its discretion and at its expense, may remodel or make such additions, modifications and improvements to the 2019 Facilities as it may deem to be desirable; provided, that no such additions, modifications or improvements shall adversely affect the structural integrity or strength of, or materially interfere with the use and operations of, the 2019 Facilities. Any such changes shall not become and shall not be deemed to constitute part of the 2019 Real Property or the 2019 Facilities as the case may be.

In this connection, the County may remove any items of personal property constituting a part of the 2019 Facilities financed by a source of funds other than Bond Proceeds, provided that such removal of the personal property shall not materially diminish the value of the 2019 Facilities.

In the case of any removal as provided above or any removal of County property not constituting 2019 Facilities, the County shall repair any damage resulting from such removal.

**SECTION 5.10 Reserved.**

*ARTICLE VI  
INSURANCE*

**SECTION 6.1 Types of Insurance and Coverage Requirements.**

(a) The County shall, commencing with the date that any items of personal property comprising the 2019 Facilities are delivered, or in the event that progress payments are to be made to the manufacturer thereof prior to the date of such delivery, commencing with the date of this Purchase and Use Agreement, and upon completion of any construction, reconstruction, renovation or remodeling incidental to the completion and installation of the 2019 Facilities, on all such improvements to the 2019 Facilities, maintain, as applicable, all-risk fire, extended coverage, vandalism, and malicious mischief insurance on the 2019 Facilities, with such deductible provisions as are acceptable to the Holder of the Series 2019 Bonds. Such insurance shall name the Corporation and the Trustee as additional insureds or loss payees, as their interests may appear, be maintained for the term of this Purchase and Use Agreement and each policy shall be in an amount equal to the replacement value of the 2019 Facilities; provided that, on the third anniversary of the execution of this Purchase and Use Agreement and every three years thereafter, the County shall cause the preparation and pay for the expense of a certification of the maximum full insurable value of the 2019 Facilities by an independent insurance agent or a person or company knowledgeable in such matters and shall deliver such certification to the Trustee.

(b) The County shall, to the extent required by law or good business practice, maintain for the term of this Purchase and Use Agreement, general liability insurance, worker's compensation insurance, disability insurance, and any other form of insurance, covering loss resulting from injury, sickness, disability or death of employees in amounts at least equal to those carried by institutions of similar size and nature.

(c) The County shall maintain, for the term of this Purchase and Use Agreement, general liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from the death or bodily injury of persons or damage to the property of others caused by accident or occurrence (including contractual liability endorsement), with limits of not less than \$800,000 per occurrence and not less than \$1,000,000 in the aggregate for claims made in any one year on account of injury of any one person, and \$250,000 for property damage per occurrence with an aggregate property damage limitation of not less than \$500,000, excluding liability imposed upon the County by any applicable worker's compensation law. Such insurance shall name the Corporation and the Trustee as additional insureds or loss payees, as their interests may appear.

(d) All policies of insurance required hereunder shall be written by the South Carolina Municipal Insurance and Risk Financing Fund, companies rated not lower than "A" by A. M. Best Company or in one of the three highest rating categories by S&P or Moody's Investors Service, Inc. ("Moody's"), or by companies acceptable to the Holder of the Series 2019 Bonds, in each case qualified to do business in the State and each policy shall provide at least 30 days prior written notice to the Corporation and the Holder of the Series 2019 Bonds before such policy is canceled. The County may provide any part or all of the insurance required hereby under the terms of a policy insuring other facilities or risks or any "blanket"

policy. The County covenants that it will take all action, or cause the same to be taken, which may be necessary to enable recovery under the aforesaid insurance policies.

(e) All policies of insurance required hereby shall be open to inspection by the Corporation, the Trustee and the Holder of the Series 2019 Bonds at all reasonable times. Certificates of insurance describing such policies shall be furnished by the County to the Corporation and the Holder of the Series 2019 Bonds when such policies are required to be obtained by this Section 6.1 and at least 10 days prior to the expiration of each of such policies. The County shall certify that it is in compliance with the provisions hereof at or prior to the execution and delivery of this Purchase and Use Agreement. If any change shall be made in such insurance as to either amount or type of coverage, a description and notice of such change shall be furnished immediately to the Corporation and the Holder of the Series 2019 Bonds by the County or it shall cause the same to be so furnished. In the event that the County fails to maintain any insurance as provided in this Section 6.1, the Trustee may, upon such notice to the County as is reasonable under the circumstances, procure and maintain such insurance at the expense of the County (reimbursable as provided hereinbefore), but the Trustee shall not be under an obligation to do so.

**SECTION 6.2 Self-Insurance Approval.** *If, at the time of execution of this Purchase and Use Agreement, the County self-insures or at any time hereafter desires to self-insure to the extent permitted by law, the entry into such self-insurance program shall require the written approval of the Corporation and the Holder of the Series 2019 Bonds.*

## **ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**SECTION 7.1 Damage, Destruction and Condemnation.** If, during the term of this Purchase and Use Agreement, (i) the 2019 Facilities or any portion thereof shall be destroyed (in whole or in part), or be damaged by fire or other casualty, or (ii) title to, or the temporary or permanent use of, the 2019 Facilities or any portion thereof or the estate of the County or the Corporation (as applicable) in the 2019 Facilities or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or (iii) a material defect in construction or installation of the 2019 Facilities or any portion thereof shall become apparent, or (iv) title to or the use of all or any portion of the 2019 Facilities shall be lost by reason of a defect in title thereto, then the County shall be obligated, subject to the option provided in Section 7.3 hereof and the provisions of Sections 4.6 and 4.7 hereof, to continue to pay the amounts specified as Installment Payments under this Purchase and Use Agreement.

**SECTION 7.2 Obligation to Repair or Replace the 2019 Facilities.** Subject to the provisions of Section 7.3 hereof, the County, the Corporation and the Trustee shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards made available by reason of any occurrence described in Section 7.1 hereof, to be deposited as provided in Sections 3.5, 3.7 or 3.8, as the case may be, hereof prior to the Completion Date or, after the Completion Date, in a separate trust fund designated as the "Net Proceeds Fund" which the Trustee is hereby directed to establish in such event. Except as set forth in Section 7.3 hereof, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the 2019 Facilities by the County upon receipt of requisitions acceptable to the Trustee signed by an authorized official of the County stating with respect to each payment to be made: (i) the requisition number; (ii) the name and address of the person, firm or corporation to whom payment is due; (iii) the amount to be paid; and (iv) that each obligation mentioned therein has been properly incurred, is properly payable from the Net Proceeds held in the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation;

provided, that the Trustee is provided with an opinion of Bond Counsel to the effect that such other application of Net Proceeds will not adversely affect the tax-exempt status of the Series 2019 Bonds. In carrying out any of the provisions of this Section 7.2, the County shall have all power and authority granted under Article III of this Purchase and Use Agreement; and the Trustee shall cooperate with the County in the administration of such fund and shall not unreasonably withhold its approval of requisitions required by this Section 7.2. The balance of any such Net Proceeds remaining after such repair, restoration, modification, improvement or replacement has been completed shall be applied to any lawful and authorized purpose of the County as directed in writing by the County; provided, there is delivered to the Trustee an opinion of Bond Counsel to the effect that such application of Net Proceeds will not adversely affect the tax-exempt status of the Series 2019 Bonds or any tax-exempt Additional Bonds. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be included as part of the 2019 Facilities under this Purchase and Use Agreement and the Trust Agreement.

If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the 2019 Facilities referred to above, the County shall be responsible, subject to the option contained in Section 7.3 hereof, for the completion of the work and the payment of any cost in excess of the amount of the Net Proceeds. In this connection, the County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to the provisions of this paragraph, the County shall not be entitled to any reimbursement therefor from the Trustee or the Holders of the Bonds, nor shall the County be entitled to any diminution of any Installment Payments payable under this Purchase and Use Agreement.

**SECTION 7.3 Discharge of Obligation to Repair or Replace the 2019 Facilities.** If, as a result of the occurrence of an event described in Section 7.1 hereof, (a) any part of the 2019 Facilities is totally destroyed or is damaged to such an extent that the rebuilding or repairing of such part of the 2019 Facilities would be impracticable, (b) there is discovered a material defect in the construction of the 2019 Facilities or any portion thereof that renders the 2019 Facilities or such portion unusable by the County for its intended purposes, (c) all or substantially all of the 2019 Facilities relating to a particular building is taken by eminent domain or (d) the County is deprived of the use of any part of the 2019 Facilities by reason of a defect in title thereto, the County may elect to apply the Net Proceeds of applicable insurance policies, performance bonds or condemnation awards as a prepayment of Installment Payments and the discharge of its obligations with respect to Sections 7.1 and 7.2 hereof; provided, however, that there shall be delivered to the Trustee, as a condition to any such prepayment, an opinion of Bond Counsel to the effect that such prepayment would not adversely affect the tax-exempt status of the Series 2019 Bonds. Such an election may be made by written notice to the Corporation and the Trustee within 90 days of the occurrence of an event described in (a) through (d) above. Upon any such prepayment, the amount thereof shall be applied to redeem the Series 2019 Bonds at the earliest practicable date pursuant to Section 4.1(b) of the Trust Agreement and the Purchase Price shall be recalculated to take account of such prepayment. Upon any such prepayment of the Series 2019 Bonds, title to the affected part of the 2019 Facilities shall be deemed transferred to the County and in the event of any future partition under Section 2.4 hereof, such affected part of the 2019 Facilities shall be automatically assigned to the County. If at any time the amount to be applied as a prepayment hereunder shall exceed the redemption price of the Series 2019 Bonds, the Series 2019 Bonds shall be redeemed, title to all the 2019 Facilities shall be transferred to the County and any amounts not required for the redemption of the Series 2019 Bonds and payment of other expenses and amounts under the Trust Agreement shall be paid to the County.

**SECTION 7.4 Cooperation of the Parties.** The Corporation, the County and the Trustee shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 7.1 of this Purchase and Use Agreement, in

making the Net Proceeds available in accordance with Section 7.2 or 7.3 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the 2019 Facilities or any portion thereof and in the enforcement of all warranties relating to the 2019 Facilities. The Corporation hereby designates the County as its agent for the purpose of making collections under such policies, such amounts to be held in trust and applied in accordance herewith. In no event shall the Corporation voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding with respect to the 2019 Facilities or any portion thereof without the written consent of the County and the Trustee.

## **ARTICLE VIII DEFAULTS AND REMEDIES**

**SECTION 8.1 Events of Default.** Each of the following events is hereby defined as, and declared to be and shall constitute, an "Event of Default":

(a) failure by the County to make any payment required to be made pursuant to Section 4.1(b) hereof within five days after the same is due (provided, however, that an Event of Nonappropriation shall not result in an Event of Default under this provision);

(b) failure by the County to timely comply with the provisions of Section 2.4 hereof relating to partition and vacating of 2019 Facilities at the times required;

(c) failure by the County to make any payment required to be made pursuant to Section 4.1(c), 4.2 or 4.4 hereof or under the provisions of the Base Lease within 10 days after the same is due;

(d) failure by the County to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Purchase and Use Agreement for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the County by the Trustee;

(e) if any of the representations and warranties of the County hereunder shall prove to be false or misleading in any material respect as of the date such representations and warranties were made;

(f) failure by the County promptly to stay or lift any execution, garnishment or attachment of such consequence as will, in the reasonable judgment of the Trustee, materially impair its ability to carry out its obligations under this Purchase and Use Agreement (provided that the County shall not be in default so long as it is diligently prosecuting a bona fide appeal from any such execution, garnishment or attachment);

(g) if the County shall (i) apply for or consent to the appointment of a receiver, trustee, or the like of the County or of property of the County, or (ii) admit in writing the inability of the County to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated as bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code or file a voluntary petition seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code; or

(h) if there shall have occurred an event of default under any Supplemental Purchase and Use Agreement or with respect to any series of Additional Bonds.

The foregoing provisions of this Section 8.1 are subject to the following provision: If, by reason of

Force Majeure, the County shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the County contain in Articles IV and VI of this Purchase and Use Agreement, the County shall not be deemed in default during the continuance of such inability. The County agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the County from carrying out its agreements, provided that the settlement of strikes, lookouts or other industrial disturbances shall be entirely within the discretion of the County.

**SECTION 8.2 Remedies.** Subject at all times to the rights of the County under Section 2.1 hereof as to portions of the 2019 Facilities it has so acquired, whenever any Event of Default referred to in Section 8.1 of this Purchase and Use Agreement shall have happened and be continuing, the Corporation (with written notice promptly given to the Trustee) and the Trustee may terminate the term of this Purchase and Use Agreement and shall give notice to the County to vacate the Corporation Facilities within 30 days from the date of such notice. Whenever an Event of Nonappropriation shall be deemed to occur, the term of this Purchase and Use Agreement shall terminate pursuant to Section 2.2(a) hereof and the County shall vacate and deliver over to the Trustee possession of the Corporation Facilities by the time specified in the third paragraph of Section 4.7 hereof.

The Trustee may also (i) take whatever action at law or in equity which may appear necessary or desirable to enforce its rights in and to the 2019 Facilities under the Security Documents, subject, however, to the limitations set forth herein, and (ii) exercise all the rights and remedies of a secured party under the South Carolina Uniform Commercial Code.

In addition, the Trustee may, or at the direction of the Holder of the Outstanding Bonds shall, without any further demand or notice, and subject to the terms of the Base Lease, including without limitation, the provisions in Section 4.1 of the Base Lease which provide that the Corporation Facilities shall always be operated for a civic or public purpose to the extent such requirement continues to be applicable under State law, take one or both of the following additional remedial steps:

(i) The Trustee may liquidate its interest in this Purchase and Use Agreement or sell or assign its interest in the Base Lease; or

(ii) The Trustee may relet or assign its rights to the Corporation Facilities under such terms and conditions as it deems appropriate for the benefit of the Holders of the Bonds.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, (1) in the event of termination of the County's interest in any portion of the 2019 Facilities and subsequent thereto the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including fees and expenses of the Trustee, and the payment in full of amounts owed to the Trustee, in excess of the principal amount of the Outstanding Bonds at the time of the Event of Default or Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the County by the Trustee, its assigns or its lessee and (2) the Trustee shall not be permitted to sell, lease or otherwise dispose of any interest in the Corporation Facilities following an Event of Nonappropriation until the Waiver Period has expired, unless such action is expressly subject to the rights of the Corporation, Trustee or the County, as the case may be, to waive such Event of Nonappropriation.

**SECTION 8.3 Limitations on Remedies.** A judgment requiring a payment of money may be entered against the County by reason of an Event of Default or Event of Nonappropriation only as to the County's liabilities described in Section 10.1 of this Purchase and Use Agreement.

**SECTION 8.4 Cumulative Rights.** No remedy conferred upon or reserved to the Corporation or the Trustee by this Purchase and Use Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Purchase and Use Agreement or now or hereafter existing at law or in equity or by statute. No waiver by the Corporation or the Trustee of any breach by the County of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or failure by the Corporation or the Trustee to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised by the Corporation or the Trustee from time to time and as often as may be deemed expedient.

**SECTION 8.5 Discontinuance of Proceedings.** In case the Corporation or the Trustee shall have proceeded to enforce any right under this Purchase and Use Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Corporation or the Trustee, then and in every such case the County, the Corporation and the Trustee shall be restored respectively to their several positions and rights hereunder and all rights, remedies and powers of the County, the Corporation and the Trustee shall continue as though no such proceeding had been taken.

## ARTICLE IX CONVEYANCE OF THE 2019 FACILITIES

### **SECTION 9.1 Optional Purchase of the 2019 Facilities.**

(a) Purchase in Full. The County is hereby granted the option to terminate this Purchase and Use Agreement and to purchase the Corporation's interest in the 2019 Facilities not theretofore acquired by the County at any time upon payment by the County of the then applicable Purchase Option Price; provided, however, that no such termination shall relieve the County from its obligation to pay Administrative Expenses as provided in Section 4.4 hereof until the Bonds have been fully discharged and the Trust Agreement terminated. The County shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such purchase or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such purchase, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee. Upon the payment of the Purchase Option Price, the Corporation shall transfer and convey all of its remaining interest in the 2019 Facilities to the County in the manner provided in Section 9.2 hereof.

(b) Prepayment of Installment Payments and Purchase. The County is also granted the option to prepay Installment Payments on any date that the Series 2019 Bonds may be prepaid, and subject to the terms and restrictions for prepayment, under the provisions of the Trust Agreement for the purpose of having such prepayments credited towards the purchase price of the 2019 Facilities. The County shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such prepayment or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such prepayment, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee and the Holder of the Series 2019 Bonds.

### **SECTION 9.2 Manner of Conveyance.**

(a) Complete Conveyance. At the closing of any purchase or other conveyance of all of the 2019 Facilities pursuant to Section 9.1 (a) of this Purchase and Use Agreement, or at the conclusion of the term hereof by the payment of all amounts due hereunder, the Corporation and the Trustee shall execute and



deliver to the County all necessary documents assigning, transferring and conveying all interest to the 2019 Facilities by an instrument terminating the Base Lease and this Purchase and Use Agreement and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the County, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the County.

(b) Partial Conveyance Resulting from Partition. Upon any conveyance under Section 2.4 hereof, the Corporation and the Trustee shall execute and deliver to the County all necessary documents assigning, transferring and conveying all interest in the County Facilities by an instrument terminating the Base Lease and this Purchase and Use Agreement with respect to the County Facilities and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the County, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the County.

(c) Partial Conveyance Resulting from Prepayment. Any conveyance resulting from a partial prepayment under Section 9.1(b) hereof shall be made in the manner as all other conveyances with respect to payments on each Bond Payment Date.

Neither the Trustee nor the Corporation shall be responsible for the recordation of any deed or other instrument for such purposes.

## ARTICLE X MISCELLANEOUS

**SECTION 10.1 Limitation of Liability of the Corporation and the County.** Notwithstanding any other provision of this Purchase and Use Agreement, in the event of any default by either the Corporation or the County hereunder or under the Trust Agreement, any liability of the Corporation or the County shall be enforceable only out of its interest in the Base Lease and under this Purchase and Use Agreement and the moneys to be paid by the County through the later of the end of the Fiscal Year as to which Base Payments have been appropriated for or the conclusion of any holdover term as provided in Section 2.3 hereof, and there shall be no recourse for any claim based on this Purchase and Use Agreement, the Trust Agreement or the Bonds, against any other property of the Corporation or the County or against any officer or employee, past, present or future, of the Corporation or the County or any successor body as such, either directly or through the Corporation or the County or any such

successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, and the liability of the Corporation and the County shall be limited to its interests in the Base Lease and interests under this Purchase and Use Agreement and the moneys to be paid by the County hereunder through the later of the end of the Fiscal Year as to which Base Payments have been appropriated therefor or the conclusion of any holdover term as provided in Section 2.3 hereof, and the lien of any judgment shall be restricted thereto, and there shall be no other recourse by the County against the Corporation or the Corporation against the County or any of the property now or hereafter owned by it or either of them.

**SECTION 10.2 Surrender of Possession Upon Termination.** Upon termination hereof or upon *termination of all rights of the County hereunder, either by reason of an Event of Default or an Event of Nonappropriation, the County covenants that it will deliver up or cause to be delivered up peaceable possession of such of the 2019 Facilities as are determined under Section 2.4 hereof to be Corporation Facilities together with the related portion of the 2019 Real Property without delay, upon demand made by the Corporation or the Trustee, in good repair and operating condition, excepting reasonable wear and tear and damage, injury or destruction by fire or other casualty which, under the terms hereof, shall not have been repaired, reconstructed or replaced.*

**SECTION 10.3 Notices.** Notices hereunder shall be given to the addresses shown below or to such other address as shall be filed in writing with the parties as follows:

**If to the County:**

Saluda County, South Carolina  
ATTN: County Director  
400 West Highland Street  
Saluda, South Carolina 29138

(with a copy to, which does not constitute notice)

□

**If to the Corporation:**

Saluda Facilities Corporation  
Attention: President  
c/o Registered Agent  
1221 Main Street, Suite 1100  
Columbia, South Carolina 29201

(with a copy to, which does not constitute notice)

Ray E. Jones  
Parker Poe Adams & Bernstein LLP  
1221 Main Street, Suite 1100  
Columbia, South Carolina 29201

(with an additional copy to the County as described above)

**If to the Trustee:**

[U.S. Bank National Association]  
Attention: Global Corporate Trust  
1441 Main Street, Suite 775  
Columbia, South Carolina 29201

**If to the Holder of the Series 2019 Bonds:**

To the address for such Holder as shown in the Register maintained by the Trustee.

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Corporation, or the County to one or more of the others also shall be given to the others. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent.

The Trustee and the Holder of the Series 2019 Bonds are entitled to written notice of an Event of Default, no more than five Business Days after either the County or the Corporation has actual knowledge of the Event of Default. The Trustee is not deemed to have notice of any default or Event of Default (other than an Event of Default described in Section 8.1(a) hereof) unless it has received specific written notice of the same.

The Holder of the Series 2019 Bonds shall also be provided with the following information by the County or the Corporation, as the case may be:

- (i) Immediate notice of any Event of Nonappropriation;
- (ii) Notice of the resignation or removal of the Trustee and the appointment of, and acceptance of duties by, any successor thereto;
- (iii) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to this Purchase and Use Agreement or the Base Lease; and
- (iv) All reports, notices and correspondence to be delivered to the Trustee under the terms of this Purchase and Use Agreement and the Base Lease.

**SECTION 10.4 Assignments.** Except as expressly provided in the Trust Agreement, this *Purchase and Use Agreement may not be assigned by either of the parties without the written consent of the other party and the written consent of the Trustee. Except as provided in Section 8.2 hereof and the provisions of Articles VI and VII of the Trust Agreement, the Trustee shall not be permitted to further assign its interest in this Purchase and Use Agreement. Any assignment in contravention hereof shall be void.*

**SECTION 10.5 Severability.** In case any provision of this Purchase and Use Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, by any court or administrative body of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and this Purchase and Use Agreement shall be construed as if such provision had never been contained herein.

**SECTION 10.6 Amendments.** The County and the Corporation may, with the prior consent of the Trustee, but without the consent of the Holder of any Bond (except as provided below), enter into any amendments at any time for any of the following purposes:

- (a) To cure any ambiguity, defect or omission herein or in any amendment; or
- (b) To grant to or confer upon the Corporation any additional rights, remedies, powers, authority or security that lawfully may be granted to or conferred upon it; or
- (c) To add to the covenants and agreements of the County herein contained, or to surrender any right or power herein reserved to or conferred upon the County; or

(d) With the prior written consent of the Holder of the Series 2019 Bonds, to increase the Base Payments hereunder to enable the County to proceed to acquire and install additional assets in addition to the 2019 Facilities or modify the Base Payments hereunder in connection with the issuance of Additional Bonds under the Trust Agreement or the redemption, refunding or defeasance of a series of Bonds; or

(e) To reflect a change in applicable law; or

(f) To make any amendments required by Moody's or S&P as a condition to rating the Bonds.

The County and the Corporation may, with notice to but without the prior consent of the Trustee, and without notice to or the consent of the Holder of any Bond (except for the Holder of the Series 2019 Bonds, whose consent is required), enter into any amendments at any time and from time to time (i) amend the Ancillary Projects in Exhibit A, (ii) to add Additional Real Property to the description in Exhibit B, consistent with amendments made pursuant to Section 3.1 of the Base Lease, (iii) under the conditions specified in Section 5.1(c) hereof, to delete 2019 Real Property in connection with a substitution of other 2019 Real Property, (iv) to release property from the description of the 2019 Real Property described in Exhibit B, consistent with a termination of the Base Lease pursuant to Section 3.6 of the Base Lease, or (v) to revise the description of Permitted Encumbrances specified in Exhibit C in connection with the foregoing amendments.

All other amendments must be approved by the Trustee and, if and to the extent required by the Trust Agreement, the consent of the Holders of the Bonds.

The Trustee shall receive prior written notice of all such amendments.

**SECTION 10.7 Successors and Assigns; Third-Party Beneficiaries.** All covenants, promises and agreements contained in this Purchase and Use Agreement by or on behalf of or for the benefit of the County or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not. To the extent that this Purchase and Use Agreement confers upon, gives or grants to the Trustee or to the Holder of the Series 2019 Bonds any right, remedy or claim under or by reason of this Purchase and Use Agreement, the Trustee and to the Holder of the Series 2019 Bonds is explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

**SECTION 10.8 Applicable Law.** This Purchase and Use Agreement shall be governed by, and interpreted under, the laws of the State of South Carolina.

**SECTION 10.9 Recordation.** At the option of the Corporation this Purchase and Use Agreement or a short form and summary hereof may be recorded in appropriate official records.

**SECTION 10.10 Execution in Counterparts.** This Purchase and Use Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

*[Signature pages follow]*

WITNESS the due execution of this Purchase and Use Agreement, effective, as of the day and the year first mentioned above.

(SEAL)

SALUDA COUNTY, SOUTH CAROLINA

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Derrick W. Jones, Chair of County Council  
Saluda County, South Carolina

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
Karen T. Whittle, Clerk to County Council  
Saluda County, South Carolina

(SEAL)

SALUDA FACILITIES CORPORATION

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[], President

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
[], Secretary





**EXHIBIT A**

**2019 PROJECTS AND ANCILLARY PROJECTS**

2019 Projects

[Construction, designing, and equipping of a Detention Center in the County]

Ancillary Projects

[]



**EXHIBIT B**

**LEGAL DESCRIPTION OF THE 2019 REAL PROPERTY AND ANY ADDITIONAL REAL PROPERTY  
(AS MAY BE AMENDED ACCORDING TO SECTION 10.6 OF THIS PURCHASE AND USE AGREEMENT)**

□

**EXHIBIT B-1**  
**CONVEYED IMPROVEMENTS**

All existing improvements located on the 2019 Real Property and any Additional Real Property.

**EXHIBIT C**  
**PERMITTED ENCUMBRANCES**

Any mortgages, liens, financing statements, security interests, easements, leases, restrictive covenants, agreements, options, claims, clouds, encroachments, rights, taxes, assessments, mechanic's or materialmen's liens (inchoate or perfected), and other encumbrances of any nature whatsoever, of record.

**EXHIBIT D**  
**BASE PAYMENTS SCHEDULE**

<u>Payment Date</u>	<u>Payment</u>
---------------------	----------------

\$

<b>Total</b>	<b>\$[]</b>
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**EXHIBIT E**  
**VALUATION OF 2019 FACILITIES\***

<u>Payment Date</u>	<u>% of 2019 Facilities Purchased</u> %	<u>Aggregate % of 2019 Facilities Purchased</u> %
		100.00%
<b>Total</b>	<b>100.00%</b>	

\*AFTER THE COMPLETION DATE AND THE FILING OF THE ACCEPTANCE CERTIFICATE IN ACCORDANCE WITH SECTION 3.04 HEREOF, THE ASSIGNED VALUES OF THE 2019 FACILITIES AND THE PERCENTAGES THEREOF BEING PURCHASED SHALL BE RECALCULATED BASED UPON FINAL CONSTRUCTION COSTS OF THE 2019 FACILITIES. NUMBERS MAY NOT ADD DUE TO ROUNDING.