

**ORDINANCE 2023-1874**

Be it ordained by the Council of Lancaster County, South Carolina:

The Lancaster County Council finds that:

(ii) the Corporation will agree to cause to be issued and sold not exceeding \$103,830,000 principal amount of its Installment Purchase Revenue Bonds (Lancaster County Project), in one or more series (the “New Bonds”) pursuant to a Trust Agreement between the Corporation and Regions Bank, as trustee (the “Trustee”);

(iii) the Corporation will use the proceeds from the sale of the New Bonds for the purposes of defraying the costs of the 2023 Projects (e.g., not exceeding \$76,000,000 of such proceeds would be available for the Detention Center and not exceeding \$26,730,000 of such proceeds would be available for the Regional Park) and for such other purposes as are provided in the Installment Purchase and Use Agreement and the Trust Agreement;

(iv) the County intends to use (a) approximately \$14,000,000 of surplus collections on hand from its recently completed capital projects sales tax ("Sales Tax #2") to defray a portion of the cost of the Detention Center, and (b) approximately \$8,000,000 of hospitality tax collections on hand to defray a portion of the costs of the Regional Park during the term of the New Bonds;

(v) the Corporation will sell to the County the 2023 Facilities (which are generally defined in the Installment Purchase and Use Agreement to mean the 2023 Projects and the Conveyed Improvements) and, upon payment by the County of Base Payments (as defined in the Installment Purchase and Use Agreement), title to an undivided interest in the 2023 Facilities equal to the percentage of the Purchase Price (as defined in the Installment Purchase and Use Agreement) represented by such payment will transfer from the Corporation to the County without further action by either party;

(vi) subject to an Event of Nonappropriation (as defined in the Installment Purchase and Use Agreement), the County will pay to the Trustee as assignee of the Corporation, Base Payments and Additional Payments (as defined in the Installment Purchase and Use Agreement) in such amounts and at such times as will be specified in the Installment Purchase and Use Agreement; and

(vii) the County intends to use a portion of the initial collections from its current capital projects sales tax ("Sales Tax #3") in an amount not to exceed \$30,133,800, to make a portion of the Base Payments under the Installment Purchase and Use Agreement (e.g., those allocable to the Detention Center) and, to the extent there are surplus collections from Sales Tax #3, the County may elect to use all or a portion of such surplus collections in connection with such Base Payments or otherwise with respect to the New Bonds allocable to the Detention Center.

(c) Pursuant to the Trust Agreement and the Assignment Agreement (as defined in Section 3 hereof), the Corporation's right to receive the Base Payments and certain other payments as provided in the Trust Agreement and the Installment Purchase and Use Agreement (with certain exceptions as provided therein), and rights in and to the 2023 Facilities, the Installment Purchase and Use Agreement, the Base Lease and Conveyance Agreement and the property rights evidenced thereby, the 2023 Real Property will be assigned to the Trustee.

(d) The Installment Purchase and Use Agreement and the Trust Agreement will grant certain rights to the Trustee upon the occurrence of an Event of Default (as defined in such agreements) or an Event of Nonappropriation under the Installment Purchase and Use Agreement, including the right of the Trustee to propose a division of the 2023 Facilities and the right to pursue or direct the Trustee to pursue (as applicable) any remedies granted under such agreements.

(e) The 2023 Projects are necessary in order for the County to provide adequate and appropriate public facilities to citizens and residents of the County. The Council has considered various financing alternatives with regard to the 2023 Projects and has concluded that the plan of finance authorized

and approved by this Ordinance is the most efficient and expeditious manner in which to finance the 2023 Projects. Administrative officials of the County in consultation with Bond Counsel and the Financial Advisor have thoroughly reviewed the plan of finance. In order to finance the cost of the 2023 Projects, the County has determined to approve the respective agreements described in this Ordinance and to enter into certain of such agreements.

(f) It is now in the best interest of the County for the Council to approve the issuance and sale by the Corporation of the New Bonds for the purposes of (i) defraying a portion of the costs associated with the acquisition and construction of the 2023 Projects (e.g., not exceeding \$76,000,000\* of the sale proceeds of the New Bonds would be available for the Detention Center and not exceeding \$26,730,000\* of the sale proceeds of the New Bonds would be available for the Regional Park); (ii) funding a debt service reserve fund (the "Reserve Fund"), if any, in an amount equal to the applicable reserve requirement; (iii) paying the premium of the Bond Insurance Policy, if any; and (iv) paying certain costs and expenses relating to the issuance of the New Bonds.

## **Section 2. Definitions.**

The terms defined in this Section for all purposes of this Ordinance shall have the respective meanings as set forth in this Section. The term:

"2023 Facilities" shall have the meaning ascribed in the Installment Purchase and Use Agreement, as described in the recitals hereof.

"2023 Projects" means the acquisition, improvement, construction and equipping of certain new county facilities all as described on Exhibit B hereof, as the same may be amended from time to time.

"2023 Real Property" means the respective parcels of real property upon which certain improvements (including the Conveyed Improvements and certain of the 2023 Projects), fixtures and personal property are located and comprising a portion of the 2023 Facilities, situated in the County and described in Exhibit C hereof, as the same may be amended from time to time.

"Assignment Agreement" means the Assignment Agreement from the Corporation to the Trustee dated as of a date as may be determined by the Chairman of the Council and the County Administrator, or either one of them acting alone, as amended or supplemented from time to time.

"Base Lease and Conveyance Agreement" means the Base Lease and Conveyance Agreement between the County and the Corporation dated as of a date as may be determined by the Chairman of the Council and the County Administrator, or either one of them acting alone, as amended and supplemented from time to time.

"Council" means the County Council of the County.

"Bond Counsel" means Burr & Forman LLP.

"Bond Insurance Policy" shall mean the municipal bond insurance policy or similar guarantee to be issued by the Bond Insurer, if any.

“Bond Insurer” means the municipal bond insurance company selected by the Corporation to insure the payment of the New Bonds, if any.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any successor internal revenue laws of the United States enacted by the Congress of the United States in replacement thereof. References to the Code and sections of the Code include relevant applicable regulations, temporary regulations and proposed regulations thereunder and any successor provisions to those sections, regulations, temporary regulations or proposed regulations.

“Conveyed Improvements” shall have the meaning set forth in the Installment Purchase and Use Agreement, as described in the recitals hereof.

“Corporation” means Lancaster County Public Facilities Corporation, a South Carolina non profit corporation, and its successors and assigns.

“County” means Lancaster County, South Carolina.

“Financial Advisor” means Compass Municipal Advisors, LLC.

“Installment Purchase and Use Agreement” means the Installment Purchase and Use Agreement between the County and the Corporation dated as of a date as may be determined by the Chairman of the Council and the County Administrator, or either one of them acting alone, as amended or supplemented from time to time.

“New Bonds” means the Lancaster County Public Facilities Corporation, Installment Purchase Revenue Bonds (Lancaster County Project), in one or more series, which are issued in a principal amount not exceeding \$103,830,000 principal amount.

“Ordinance” means this Ordinance No. 2023-1874 of the Council.

“Purchase Agreement” means the Bond Purchase Agreement relating to the New Bonds between the Underwriter/Purchaser and the Corporation dated as of a date as may be determined by the parties thereto.

“Trust Agreement” means the Trust Agreement between the Corporation and the Trustee dated as of a date as may be determined by the parties thereto pursuant to which the New Bonds will be issued.

“Trustee” means Regions Bank, its successors and assigns.

“Underwriter/Purchaser” means Piper Sandler & Co., or an affiliate related thereto.

### **Section 3.      Approval of Issuance of New Bonds and Plan of Finance.**

The County hereby approves the Corporation, its purposes and activities and the issuance and sale by the Corporation of its New Bonds in substantial conformance to the documents described herein and presented to the Council at the meeting of the Council at which this Ordinance was adopted.

For the purposes of the financing contemplated by the Installment Purchase and Use Agreement and the Trust Agreement, the Council does hereby approve (i) the County’s leasing the 2023 Real Property and

conveying the Conveyed Improvements to the Corporation pursuant to the Base Lease and Conveyance Agreement; (ii) the County's purchasing the 2023 Facilities from the Corporation pursuant to the Installment Purchase and Use Agreement; (iii) the Trust Agreement and the Assignment Agreement; (iv) the 2023 Projects; and (v) the Corporation's use of the proceeds of the New Bonds to fund, together with other available moneys of the County, the 2023 Projects, to fund the Reserve Fund, if any, which may be satisfied through the purchase of a municipal debt service reserve surety policy or similar guarantee that may be issued by the Bond Insurer (the "Reserve Surety"), and to pay certain costs of issuance of the New Bonds, including the premium for the Bond Insurance Policy and/or the Reserve Surety, if any; provided, that the references to "2023" in the definitions and capitalized terms included in this Ordinance and in the agreements authorized by this Ordinance may be modified to reflect the calendar year in which the New Bonds are issued, if other than 2023.

The County, for the purposes of the financing contemplated by the Base Lease and Conveyance Agreement, the Installment Purchase and Use Agreement and the Trust Agreement, represents that it currently owns the 2023 Real Property and all of such 2023 Real Property is or will be located within the geographic boundaries of the County.

Pursuant to the Base Lease and Conveyance Agreement, the County will lease the 2023 Real Property and will convey the Conveyed Improvements to the Corporation for the Base Lease Term. Pursuant to the Installment Purchase and Use Agreement, the Corporation will sell the 2023 Facilities to the County and upon payment by the County of Base Payments, title to an undivided interest in the 2023 Facilities equal to the percentage of the Purchase Price represented by such payment will transfer from the Corporation to the County without further action by either party.

Pursuant to the Trust Agreement, the Corporation's right to receive the Base Payments and rights to receive certain of the Additional Payments, as provided in the Trust Agreement and in the Installment Purchase and Use Agreement (with certain exceptions as provided in the Trust Agreement and the Installment Purchase and Use Agreement), will be assigned to the Trustee. The New Bonds will be authenticated and delivered by the Trustee pursuant to the Trust Agreement.

The net proceeds from the sale of the New Bonds to the Registered Owners of the New Bonds (the "Registered Owners") will be disbursed in accordance with the provisions of the Trust Agreement for the purposes set forth in Section 1(g) above.

The County will accept title to the property financed by the New Bonds, including any additions to such property, when the New Bonds are discharged.

#### **Section 4.      Approval of the Base Lease and Conveyance Agreement.**

The form, terms and provisions of the Base Lease and Conveyance Agreement, a copy of which has been presented to Council at the meeting during which this Ordinance was enacted and which is attached hereto as Exhibit D, be and hereby are approved. The Chairman of the Council and the County Administrator, or either of them acting alone, be and is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to the Council is hereby authorized, empowered and directed to attest the Base Lease and Conveyance Agreement in the name and on behalf of the County, and thereupon to cause the Base Lease and Conveyance Agreement to be delivered to the Corporation and to cause the Base Lease and Conveyance Agreement (or memoranda thereof) to be recorded in the office of the Register of Deeds for Lancaster County. The Chairman of the Council and the County Administrator, or either of them acting alone, with advice from the County's attorneys, are hereby delegated the authority to

approve such changes or revisions in the form, terms and provisions of the Base Lease and Conveyance Agreement as may be appropriate for the financing plan contemplated thereby. The execution thereof shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Base Lease and Conveyance Agreement now before this meeting. Any amendment to the Base Lease and Conveyance Agreement shall be executed in the same manner.

**Section 5.      Approval of the Installment Purchase and Use Agreement.**

The form, terms and provisions of the Installment Purchase and Use Agreement, a copy of which has been presented to Council at the meeting during which this Ordinance was enacted and which is attached hereto as Exhibit E, be and hereby are approved. The Chairman of the Council and the County Administrator, or either of them acting alone, be and is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to the Council is hereby authorized, empowered and directed to attest the Installment Purchase and Use Agreement in the name and on behalf of the County, and thereupon to cause the Installment Purchase and Use Agreement to be delivered to the Corporation and to cause the Installment Purchase and Use Agreement (or memoranda thereof) to be recorded in the office of the Registrar of Deeds for Lancaster County. The Chairman of the Council and the County Administrator, or either of them acting alone, with advice from the County's attorney, are delegated the authority to approve such changes or revisions in the form, terms and provisions of the Installment Purchase and Use Agreement as may be appropriate for the financing plan contemplated thereby. The execution thereof shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Installment Purchase and Use Agreement now before this meeting. Any amendment to the Installment Purchase and Use Agreement shall be executed in the same manner.

**Section 6.      Approval of the Trust Agreement.**

The form, terms and provisions of the Trust Agreement, a copy of which has been presented to Council at the meeting during which this Ordinance was enacted and which is attached hereto as Exhibit E, are hereby approved. The County does hereby approve and consent to the Trust Agreement with such changes in the form, terms and provisions thereof as the Chairman of the Council and the County Administrator, or either one of them acting alone, shall approve.

**Section 7.      Sale of the New Bonds.**

With the advice of the County's Financial Advisor and Bond Counsel, the New Bonds shall be sold by the Corporation in a public offering or in a private offering or private placement transaction, and such sale may be conducted to or with the assistance of the Underwriter/Purchaser. In connection therewith, the Chairman of the Council and the County Administrator, or either one of them acting alone, are hereby authorized and directed to take such actions in connection with the preparation, publication and/or distribution of information, offering documents (and to "deem final" preliminary versions of such offering documents for purposes of complying with the requirements set forth in Rule 15c2-12 of the Securities and Exchange Commission, promulgated under the Securities Exchange Act of 1934, as amended), private placement memoranda or requests for proposals (as applicable), to solicit interest and receive offers from financial institutions and institutional investors to purchase the New Bonds in a private offering, and to accept such offer which is in the best interest of the Corporation and the County.

**Section 8.      Approval of the Purchase Agreement.**

The form of the Purchase Agreement, a copy of which has been presented to Council at the meeting during which this Ordinance was enacted, is attached hereto as Exhibit G. The Chairman of the Council and the County Administrator, or either of them acting alone, is hereby authorized, empowered and directed to execute, acknowledge and deliver the Certificate of the County which is attached as an exhibit to the Purchase Agreement in the name of and on behalf of the County. The Chairman of the Council and the County Administrator, or either of them acting alone, with the advice from the County's attorneys, is hereby delegated the authority to approve such changes or revisions in the form, terms and provisions of the Certificate of the County as may be appropriate for the financing plan contemplated thereby. The execution thereof shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of the Certificate of the County now before this meeting.

**Section 9.      Trustee, Registrar and Paying Agent.**

The County hereby consents to the appointment by the Corporation of Regions Bank, as Trustee, Registrar and Paying Agent under the terms and conditions provided in the Trust Agreement.

**Section 10.      Exemption from Procurement Policy.**

Pursuant to Chapter 2, Article VI of the Lancaster County Code of Ordinances, the Council has adopted a procurement code (the "Procurement Code") which provides for the procedures to be followed in the procurement of certain services and the sale or lease of certain property. The Council hereby finds that the services to be provided in connection with the plan of finance and the contracts to be entered into including but not limited to the Base Lease and Conveyance Agreement and the Installment Purchase and Use Agreement, are outside of the scope of the Procurement Code and are not covered by the terms and conditions of the Procurement Code. The Council also finds that the lease and conveyance of County property as provided in the Base Lease and Conveyance Agreement and the purchase of ownership interests in the 2023 Facilities pursuant to the Installment Purchase and Use Agreement are outside the scope of the Procurement Code. To the extent that any one or more of the actions undertaken and contracts entered into as may be necessary to implement the plan of finance approved herein, would be within the scope of the Procurement Code, such actions and contracts are hereby exempted from compliance with the Procurement Code. To the extent necessary, if any, this exemption shall be an amendment to the Procurement Code.

**Section 11.      Authorization.**

The Chairman of the Council, the Vice Chairman of the Council, the Clerk to Council, the County Administrator and the Finance Director of the County, are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effect the execution and delivery of the Base Lease and Conveyance Agreement, the Installment Purchase and Use Agreement, the Trust Agreement, the Assignment Agreement and the Certificate of the County which is attached as an exhibit to the Purchase Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby. Additionally, the County Administrator is hereby authorized and empowered to execute any documents necessary for the purchase of real property upon which the Project is to be located and to negotiate and execute all other contracts and documents necessary to carry out and complete the Project. The actions of such officers in executing and delivering any of such documents, in such form as the Chairman and Vice Chairman of the Council and the County Administrator, or any of them acting alone, shall approve, is hereby fully authorized. The Chairman and Vice Chairman of the Council and the County Administrator, or any of them acting alone, is fully empowered and authorized to enter into any investment agreements, repurchase agreements or forward delivery agreements or other contracts with respect to funds to be deposited in the Reserve Fund or the

Project Fund (as defined in the Trust Agreement). The County Administrator is hereby authorized and empowered to execute and deliver any documents necessary for the Corporation to purchase the Bond Insurance Policy from the Bond Insurer, if any, with respect to the New Bonds. The authorization conferred herein shall extend to and include, but not be limited to, the documents and certificates reasonably expected to be necessary for the closing of the financing transaction, including, but not limited to, deeds or other instruments of conveyance, a general certificate of the County, a certificate as to the official statement, any designation of County representatives, and such other documents required to be executed in connection with the Bond Insurance Policy with respect to the New Bonds.

Pursuant to the exemptions set forth in the County's Procurement Policy relating to professional services normally obtained on a fee basis, the Council hereby approves Burr & Forman LLP, as bond counsel, disclosure counsel and counsel to the Corporation; Piper Sandler & Co., Inc., or an affiliate related thereto, as Underwriter/Purchaser, Regions Bank, as Trustee, and Compass Municipal Advisors, LLC, as Financial Advisor; each with respect to the New Bonds.

#### **Section 12.      Federal Tax Covenant.**

The County agrees and covenants that it will comply with all applicable portions of the Code as in effect or hereafter amended, including Sections 103 and 141 through 150 thereof, and the regulations of the Treasury Department thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest on the New Bonds, including without limitation the proper use and expenditure of proceeds of the New Bonds, the observation of the applicable investment limitations provided in the Code.

#### **Section 13.      Notice of Public Hearing.**

The Council hereby ratifies and approves the publication of a notice of public hearing, in the form attached hereto as Exhibit A, regarding the Base Lease and Conveyance Agreement the Installment Purchase and Use Agreement and this Ordinance, such notice having been published in *The Lancaster News* on September 20, 2023, and such hearing having been held on October 9, 2023.

#### **Section 14.      Severability.**

If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

#### **Section 15.      Conflicting Provisions**

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code of Ordinances or other County ordinances and resolutions, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

#### **Section 16.      Effective Date**

This ordinance is effective upon third reading.

[Signatures follow on next page]



**AND IT IS SO ORDAINED**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

**LANCASTER COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
Steve Harper, Chair, County Council

\_\_\_\_\_  
Billy Mosteller, Secretary, County Council

ATTEST:

\_\_\_\_\_  
Sherrie Simpson, Clerk to Council

First Reading: September 11, 2023 (Tentative)  
Second Reading: September 25, 2023 (Tentative)  
Third Reading: October 9, 2023 (Tentative)  
Public Hearing: October 9, 2023 (Tentative)

Approved as to form:

\_\_\_\_\_  
Virginia L. Merck-Dupont, County Attorney

## **EXHIBIT A**

### **FORM OF NOTICE OF PUBLIC HEARING**

Notice is hereby given that a public hearing will be held by the County Council of Lancaster County, South Carolina (the "County"), in County Council chambers located at 101 North Main Street, Lancaster, South Carolina 29720, at 6:00 p.m. on Monday, October 9, 2023, or at such other location within the County Administration building as proper notice on the main entrance to the said County Administration building might specify.

The purpose of the public hearing is to consider an ordinance authorizing the County to enter into a Base Lease and Conveyance Agreement (the "Base Lease") and an Installment Purchase and Use Agreement each between the County and Lancaster County Public Facilities Corporation (the "Corporation"); approving the form and terms of a Trust Agreement between the Corporation and Regions Bank, as trustee, in connection with the issuance of certain installment purchase revenue bonds (Lancaster County Project) in one or more series; consenting to the issuance of such installment purchase revenue bonds; approving the form of a preliminary official statement with respect to such installment purchase revenue bonds; providing for an exemption from the County's Procurement Code; delegating authority to the Chairman of County Council and the County Administrator, or either of them acting alone, to approve and determine certain matters; and other matters relating thereto.

Pursuant to the Ordinance referenced above, the County will lease certain real property owned by it and convey the improvements currently on or to be constructed on the property to the Corporation. The real property which is the subject of the Base Lease consists of the new Detention Center site, to be located at 1656 Pageland Highway, Lancaster, South Carolina 29720, and the new County Regional Park site, which is an 84.279 acre parcel (TMS# 0044-00-024.01) located on Roselyn Avenue, Lancaster, South Carolina 29720, which is within or adjacent to the proposed Roselyn residential development, and is located generally west of US. Highway 521 (Charlotte Highway), south of W. North Corner Road and east of Old Hickory Road. The Base Lease will be entered into in order to facilitate the issuance of the above-described bonds in an amount sufficient to finance not exceeding \$76,000,000 of the costs of acquisition, construction and equipping of a new detention center and not exceeding \$26,730,000 of the costs of acquisition, construction and equipping of a new regional park through the installment purchase of the described property.

At the public hearing all taxpayers and residents of the County and any other interested persons who appear will be given an opportunity to express their views for or against the Ordinance and the issuance of the Bonds.

**CHAIRMAN, COUNTY COUNCIL,  
LANCASTER COUNTY, SOUTH CAROLINA**

## **EXHIBIT B**

### **2023 Projects**

Acquisition, construction and equipping of a new detention center to be located at 1656 Pageland Highway, Lancaster, South Carolina 29720 (“Detention Center”), and a new regional park to be located on an 84.279 acre parcel (TMS# 0044-00-024.01) located on Roselyn Avenue, Lancaster, South Carolina 29720, which is within or adjacent to the proposed Roselyn residential development, and is located generally west of US. Highway 521 (Charlotte Highway), south of W. North Corner Road and east of Old Hickory Road (“Regional Park”). The County anticipates the Detention Center will cost approximately \$90,000,000 and the Regional Park will cost approximately \$34,730,000.

## **EXHIBIT C**

### **2023 Real Property**

Any one or more of those pieces, parcels or lots of land excluding all improvements located or to be located thereon and being more particularly described as follows:

[Insert legal descriptions for property at 1656 Pageland Highway, Lancaster, South Carolina 29720, on which the new detention center will be located, and an 84.279 acre parcel (TMS# 0044-00-024.01) located on Roselyn Avenue, Lancaster, South Carolina 29720, which is within or adjacent to the proposed Roselyn residential development, and is located generally west of US. Highway 521 (Charlotte Highway), south of W. North Corner Road and east of Old Hickory Road, on which the new Regional Park will be located.]

**EXHIBIT D**

**Form of Base Lease and Conveyance Agreement**

**EXHIBIT E**

**Form of Installment Purchase and Use Agreement**

**EXHIBIT F**

**Form of Trust Agreement**

**EXHIBIT G**

**Form of Purchase Agreement**