

**ORDINANCE NO. 21-22-785**

AUTHORIZING EDGEFIELD COUNTY, SOUTH CAROLINA, TO ENTER INTO A BASE LEASE AND CONVEYANCE AGREEMENT AND AN INSTALLMENT PURCHASE AND USE AGREEMENT EACH BETWEEN THE COUNTY AND THE EDGEFIELD COUNTY PUBLIC FACILITIES CORPORATION; APPROVING THE FORM AND TERMS OF A TRUST AGREEMENT BETWEEN EDGEFIELD COUNTY PUBLIC FACILITIES CORPORATION AND REGIONS BANK, AS TRUSTEE, IN CONNECTION WITH THE ISSUANCE OF NOT EXCEEDING \$32,000,000 PRINCIPAL AMOUNT OF CERTAIN INSTALLMENT PURCHASE REVENUE BONDS (EDGEFIELD 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; DELEGATING AUTHORITY TO THE CHAIR OF COUNTY COUNCIL AND THE INTERIM COUNTY ADMINISTRATOR, OR EITHER OF THEM ACTING ALONE, TO APPROVE AND DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO.

Enacted: \_\_\_\_\_

BE IT ORDAINED BY THE COUNTY COUNCIL OF EDGEFIELD COUNTY, SOUTH CAROLINA, AS FOLLOWS:

Section 1. 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:

“2022 Facilities” shall have the meaning ascribed in the Installment Purchase and Use Agreement.

“2022 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.

“2022 Real Property” means the parcels of real property upon which certain improvements (including the Conveyed Improvements and certain of the 2022 Projects), fixtures and personal property are located and comprising a portion of the 2022 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 Chair 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 Chair 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 Bonds, if any.

“Bonds” means the Edgefield County Public Facilities Corporation, Installment Purchase Revenue Bonds (Edgefield County Project), in one or more series.

“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.

“Corporation” means Edgefield County Public Facilities Corporation, a South Carolina nonprofit corporation, and its successors and assigns.

“County” means Edgefield 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 Chair of the Council and the County Administrator, or either one of them acting alone, as amended or supplemented from time to time.

“Ordinance” means this Ordinance No. 2022-\_\_\_\_ of the Council.

“Purchase Agreement” means the Bond Purchase Agreement relating to the Bonds between the Underwriter 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 Bonds will be issued.

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

“Underwriter” means \_\_\_\_\_.

Section 2. Findings and Determinations. The Council hereby finds and determines:

(a) Pursuant to Section 4-9-10 of the Code of Laws of South Carolina 1976, as amended (the “S. C. Code”), the Council form of government was selected and the Council constitutes the governing body of the County.

(b) Section 4-9-30(2) of the S. C. Code empowers the County to acquire, lease, sell, or otherwise dispose of real and personal property.

(c) In order to undertake the 2022 Projects, it is proposed that the County enter into the Base Lease and Conveyance Agreement and the Installment Purchase and Use Agreement under which:

(i) the County will lease the 2022 Real Property and will convey the Conveyed Improvements to the Corporation for the Base Lease Term (as defined in the Base Lease and Conveyance Agreement);

(ii) the Corporation will agree to cause to be issued and sold the Bonds;

(iii) the Corporation will use the proceeds from the sale of the Bonds for the purposes of defraying the costs of the 2022 Projects and for such other purposes as are provided in the Installment Purchase and Use Agreement and the Trust Agreement;

(iv) the Corporation will sell the 2022 Facilities to the County 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 2022 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; and

(v) 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.

(d) Pursuant to the Trust Agreement and the Assignment Agreement, 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 2022 Facilities, the Installment Purchase and Use Agreement, the Base Lease and Conveyance Agreement and the property rights evidenced thereby, the 2022 Real Property will be assigned to the Trustee.

(e) The Installment Purchase and Use Agreement and the Trust Agreement will grant certain rights to the Trustee (or the Bond Insurer, if any) 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 or the Bond Insurer (as applicable) to propose a division of the 2022 Facilities and the right to pursue or direct the Trustee to pursue (as applicable) any remedies granted under such agreements.

(f) The 2022 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 2022 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 2022 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 2022 Projects, the County has determined to approve the respective agreements described in this Ordinance and to enter into certain of such agreements.

(g) It is now in the best interest of the County for the Council to approve the issuance and sale by the Corporation of the Bonds in the principal amount of not exceeding \$32,000,000. The proceeds of the Bonds shall be used by the Corporation for the purposes of (i) defraying a portion of the costs associated with the acquisition and construction of the 2022 Projects; (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 Bonds.

Section 3. Approval of Issuance of 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 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 2022 Real

Property and conveying the Conveyed Improvements to the Corporation pursuant to the Base Lease and Conveyance Agreement; (ii) the County's purchasing the 2022 Facilities from the Corporation pursuant to the Installment Purchase and Use Agreement; (iii) the Trust Agreement and the Assignment Agreement; (iv) the 2022 Projects; and (v) the Corporation's use of the proceeds of the Bonds to fund the 2022 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 Bonds, including the premium for the Bond Insurance Policy and/or the Reserve Surety, if any; provided, that the references to "2022" in the definitions and capitalized terms included herein and in the agreements authorized by this Ordinance may be modified to reflect the calendar year in which the Bonds are issued, if other than 2022.

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 2022 Real Property and all of such 2022 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 2022 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 2022 Facilities to the County and upon payment by the County of Base Payments, title to an undivided interest in the 2022 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 Bonds will be authenticated and delivered by the Trustee pursuant to the Trust Agreement.

The net proceeds from the sale of the Bonds to the Registered Owners of the Bonds (the "Registered Owners") will be disbursed in accordance with the provisions of the Trust Agreement for the purposes set forth in Section 2(g) above.

The County will accept title to the property financed by the Bonds, including any additions to such property, when the 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 Chair 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 Edgefield County. The Chair 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 Chair 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 Edgefield County. The Chair 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 F, 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 Chair of the Council and the County Administrator, or either one of them acting alone, shall approve.

Section 7. Form of 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 Chair 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 Chair 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 8. Official Statement. The form and content of the Preliminary Official Statement to be dated as determined by the Underwriter, pertaining to the sale of the Bonds by the Underwriter, and the distribution of the same, is hereby approved in substantially the form presented to Council at the meeting during which this Ordinance was enacted and attached hereto as Exhibit H, together with such changes, modifications, additions or deletions as may be approved by the Chair of the Council and the County Administrator. The Chair of the Council and the County Administrator, or either of them acting alone, is hereby authorized to approve the form of the final Official Statement pertaining to the sale of

the Bonds by the Underwriter which may take the form of one or more documents and to execute and deliver the same (including any amendments or supplements thereto), and to deem said Preliminary Official Statement to be “final” as described in SEC Rule 15c2-12(b)(1) for the purposes of such Rule.

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. Authorization. The Chair of the Council, the Vice Chair 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 letter of representations to the Purchase Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby. The actions of such officers in executing and delivering any of such documents, in such form as the Chair and Vice Chair of the Council and the County Administrator, or any of them acting alone, shall approve, is hereby fully authorized. The Chair and Vice Chair 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 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 Bonds.

The Council hereby approves Burr & Forman LLP, as bond counsel and counsel to the Corporation; \_\_\_\_\_, as Underwriter, Regions Bank, as Trustee, and Compass Municipal Advisors, LLC, as Financial Advisor; each with respect to the Bonds.

Section 11. 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 Bonds, including without limitation the proper use and expenditure of proceeds of the Bonds, the observation of the applicable investment limitations provided in the Code.

Section 12. 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 Edgefield Advertiser* on June 15, 2022, and such hearing having been held on July 5, 2022.

Section 13. 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 14. Repeal of Conflicting Ordinances. All orders, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the execution and delivery of any of the agreements approved by this Ordinance are, to the extent of such conflict, hereby repealed.

Enacted this \_\_\_\_ day of \_\_\_\_\_, 2022.

EDGEFIELD COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chair, County Council

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk, County Council

First Reading:        June 7, 2022  
Second Reading:     July 5, 2022  
Public Hearing:        July 5, 2022  
Third Reading:        August 2, 2022