
GENERAL BOND ORDINANCE

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GREENVILLE COUNTY, SOUTH CAROLINA HOSPITALITY TAX REVENUE BONDS, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF BONDS ISSUED HEREUNDER; PLEDGING LOCAL HOSPITALITY TAXES TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING.

September 7, 2021

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

ARTICLE I

FINDINGS AND DETERMINATIONS

Section 1.01 Findings and Determinations. As an incident to the enactment of this ordinance (the “*Ordinance*”) and the issuance of the Bonds (as defined below) provided for herein, the County Council of Greenville County (the “*Council*”), the governing body of Greenville County, South Carolina (the “*County*”), finds that the facts set forth in this **Article I** exist, and the following statements are in all respects true and correct:

(a) The County, pursuant to Title 6, Chapter 1, Article 7 as enumerated under Section 6-1-530 of the Code of Laws of South Carolina, 1976, as amended, imposed a local hospitality tax (the “*Hospitality Tax*”) by Ordinance No. 4079 enacted on December 12, 2006, as amended.

(b) Article X, Section 14, of the Constitution of the State of South Carolina, 1895, as amended (the “*Constitution*”), provides that a political subdivision may incur indebtedness payable solely from a revenue-producing project which source does not involve revenues from any tax or license. Pursuant to Section 6-1-760 utilizing the procedures of Title 6, Chapter 17 of the Code of Laws of South Carolina, 1976, as amended (collectively, the “*Enabling Act*”), the County may issue revenue bonds (i) to defray the cost of tourist-related projects as enumerated in Title 6, Chapter 1, Article 7, which are consistent with the purposes enumerated in Section 6-1-530 of the Code of Laws of South Carolina, 1976, as amended, secured by a pledge of the Pledged Fee Revenues (as defined below) and (ii) to refund obligations issued for such purposes.

(c) On July 8, 2014, the County through the Greenville County Tourism Public Facilities Corporation issued its \$24,815,000 Refunding Certificates of Participation, Series 2014 (the “*Series 2014 Certificates*”) with Raymond James & Associates, Inc., as underwriter, for the purpose of advance refunding and defeasing certain outstanding Greenville County Tourism Public Facilities Corporation Certificates of Participation, Series 2008.

(d) On November 9, 2016, the County through the Greenville County Tourism Public Facilities Corporation issued its \$8,635,000 Refunding Certificates of Participation, Series 2016 (the “*Series 2016 Certificates*”) with Raymond James & Associates, Inc., as underwriter, for the purpose of advance refunding and defeasing certain outstanding Greenville County Tourism Public Facilities Corporation Certificates of Participation, Series 2010.

(e) The County now desires to issue a Series of Bonds to advance refund the outstanding principal amounts of the Series 2014 Certificates and the Series 2016 Certificates and to issue a Series of Bonds to defray the costs of the acquisition, construction, renovation, installation and equipping of certain tourism-related ~~projected~~ [projects](#) as described in the First Supplemented Ordinance enacted by the Council on the date hereof (the “*First Supplemental Ordinance*”).

(f) It is now in the best interest of the County for the Council to provide for the issuance and sale of Bonds of the County pursuant to the aforesaid provisions of the Constitution and laws of the State of South Carolina (the “*State*”).

[End of Article I]

Balloon Indebtedness, the full amount of principal payable at maturity shall be included in such calculation; (ii) the interest on Variable Rate Indebtedness shall be calculated at one hundred percent (100%) of the average rate borne by the Variable Rate Indebtedness during the preceding twelve (12) months, or if the Variable Rate Indebtedness is yet to be incurred, at one hundred percent (100%) of the average rate such Variable Rate Indebtedness would have borne during the preceding twelve (12) months based on the applicable index or other method of determining the interest rate under the terms of the Supplemental Ordinance providing for the incurrence of the Variable Rate Indebtedness; (iii) interest as used in this definition shall include interest on Capital Appreciation Bonds accruing, but not payable, during the period of time for which Principal and Interest Requirements are being calculated; and (iv) there shall be excluded from such calculation of interest due on any Bonds the amount of any interest rate subsidy receivable by the County from the United States Treasury or other governmental unit pursuant to Section 54AA, 1400U-2 or 6431 of the Code or any successor or similar interest rate subsidy program established under the Code.

“Project” or **“Projects”** shall mean, as applicable, a tourist-related project or projects allowed under Title 6, Chapter 1, Article 7 as enumerated under Section 6-1-530 of the Code of Laws of South Carolina, 1976, as amended.

“Project Costs” shall mean costs incurred in connection with a Project, the repayment to the County of any funds expended in the acquisition or construction of any Project, and shall include, without limiting the costs permitted under the Enabling Act and Title 6, Chapter 1, Article 7 as enumerated under Section 6-1-530 of the Code of Laws of South Carolina, 1976, as amended, the following items to the extent they relate to a Project: (i) all direct costs of such Project described in the plans and specifications for such Project; (ii) all costs of planning, designing, acquiring, constructing, financing and placing such Project in operation; (iii) the cost of any lands or interests therein and all of the properties deemed necessary or convenient for the maintenance and operation of such Project; (iv) all engineering, legal and financial costs and expenses; (v) all expenses for estimates of costs and of revenues; (vi) costs of obtaining governmental and regulatory permits, licenses and approvals; (vii) all fees of special advisors and consultants associated with one or more aspects of such Project; (viii) all amounts required to be paid by this Ordinance or any Supplemental Ordinance authorizing the issuance of Bonds into the Debt Service Fund or Debt Service Reserve Fund upon the issuance of any Series of Bonds; (ix) the payment of all principal, premium, if any, and interest, when due, of any Bonds of any Series or other evidences of indebtedness issued to finance a portion of the cost of such Project, whether at the maturity thereof or at the due date of interest or upon redemption thereof; (x) interest on Bonds of any Series prior to and during construction of such Project for which such Bonds were issued, and for such additional periods as the County may reasonably determine to be necessary for the placing of such Project in operation.

“Purchaser” shall mean, with respect to any Series of Bonds, the initial purchaser of that Series of Bonds.

“Record Date” shall mean, with respect to any Series of Bonds, (i) the fifteenth (15th) day (whether or not a business day) of the calendar month immediately preceding an interest payment date in the event that the interest payment date is the first day of a month, (ii) the last day (whether or not a business day) of the calendar month immediately preceding each interest payment date in the event that the interest payment date is the fifteenth (15th) day of a month, or (iii) any other day as may be provided in the Supplemental Ordinance authorizing the issuance of that Series; provided, however, that in the case of a default in the payment of interest due on a Series of Bonds, the Trustee shall establish a special record date for payment of the defaulted interest, notice thereof to be mailed by first-class mail, postage prepaid, by the Trustee to the Holder of that Series of Bonds not less than ten (10) days prior to the special record date.

specifically provided otherwise in this **Section 3.03**) in any principal amounts as may be determined by the Council.

(i) There shall be filed with the Trustee a certificate of the County Administrator stating (A) either (1) that no Default exists in the payment of the principal of, premium, if any, or interest on any Bonds or Junior Bonds, and all mandatory redemption requirements, if any, required to have been made or satisfied shall have been made or satisfied, or (2) that the application of the proceeds of the sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure the Default or permit the making or satisfaction of the redemption requirements; and (B) either (1) that to the knowledge of the County Administrator, the County is not in Default in the performance of any other of its covenants and agreements contained in the Ordinance, or (2) setting forth the circumstances of each Default known to him.

(b) If a certificate filed pursuant to **Section 3.03(a)(i)** should disclose a Default or Defaults hereunder, which have not been cured, there shall be filed with the Trustee an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to **Section 3.03(a)(i)**, no Default deprives the Bondholders of the security afforded by the Ordinance in any material respect.

(c) For the issuance of Bonds (other than all Series of Bonds ~~issued hereunder and pursuant to~~ authorized by the First Supplemental Ordinance and Junior Bonds) issued hereunder to finance the Costs of the Project there shall be delivered to the Trustee a certificate of an Authorized Representative, which is not required to be based upon an audit of the County, to the effect that Pledged Fee Revenues deposited into the Pledged Fee Revenue Fund for any consecutive twelve-month period out of the last eighteen-month consecutive period immediately preceding the issuance date of the proposed Bonds (the "**Test Period**") are not less than 150% of the maximum annual Principal and Interest Requirements for all Series of Bonds then Outstanding and the additional Bonds then proposed to be issued (with adjustments, if any, for any Bonds that will be discharged upon the issuance of such additional Bonds). If new establishments have become subject to the Hospitality Tax during the Test Period, the annualized revenues may be included as if they were collected during the Test Period.

(d) The Bonds may be issued to secure funds to defray Project Costs or to refund any Bonds, Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing Projects.

(e) There shall be on deposit in the Debt Service Reserve Fund, if such is required by any Supplemental Ordinance, cash and securities (including any insurance policy, surety bond or letter of credit permitted by Supplemental Ordinance) as provided in **Section 6.04** hereof (inclusive of any proceeds of Bonds to be deposited in the Debt Service Reserve Fund), having an aggregate value not less than the Debt Service Reserve Fund Requirement, if any, with respect to each Series of Bonds to be then Outstanding and the Bonds then proposed to be issued.

Section 3.04 Issuance of Refunding Bonds. Upon compliance with the provisions of paragraphs (a), (b), (c) and (e) of **Section 3.03** hereof, the County by means of a Supplemental Ordinance enacted in compliance with the Enabling Act and any other statutory provisions authorizing the issuance of revenue refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds for the purpose of refunding (including by purchase) Bonds or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects, including amounts to pay principal, redemption premium, and interest to the date of the redemption (or purchase) of the refunded Bonds or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects, and the Costs of Issuance of the refunding Bonds and to fund any necessary reserves or other accounts. In addition, the County by means of a Supplemental Ordinance may issue refunding Bonds for the purpose of refunding

Bonds or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects, without satisfying the conditions for the issuance of Bonds as contained in **Section 3.03(c)** hereof to the extent that the aggregate Principal and Interest Requirements with respect to the refunding Bonds is less than the aggregate Principal and Interest Requirements with respect to the Bonds to be refunded or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects to be refunded.

Section 3.05 Issuance of Junior Bonds The County may at any time issue Junior Bonds in any amount as it may from time to time determine, payable from the Pledged Fee Revenues; provided that (a) such Junior Bonds are issued to secure funds to defray Project Costs, including obligations issued in the form of Capital Leases, or to refund Bonds, Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing Projects; (b) the pledge of Pledged Fee Revenues securing Junior Bonds shall at all times be subordinate and inferior to the pledge of Pledged Fee Revenues securing the Bonds such that Junior Bonds shall be payable from Pledged Fee Revenues held in the Pledged Fee Revenue Fund after provision has been made for all payments (including all outstanding principal, interest and any redemption premium payable) required to be made hereunder with respect to the Bonds, and (c) there shall be delivered to the Trustee a certificate of an Authorized Representative to the effect that Pledged Fee Revenues for the Test Period are not less than 100% of the greatest sum for any Fiscal Year obtained by adding the Principal and Interest Requirements for each Fiscal Year for all Series of Bonds plus the principal and interest requirements for the Junior Bonds proposed to be issued. If new establishments have become subject to the Hospitality Tax during the Test Period, the annualized revenues may be included as if they were collected during the Test Period.

[End of Article III]

attorney, signatures guaranteed, may, at the option of the Bondholder thereof, and upon payment by the Bondholder of any charges which the Trustee may make as provided in **Section 4.08**, be exchanged for a principal amount of Bonds of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.08 Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the County shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of the Ordinance. All Bonds surrendered in any exchanges or transfers shall forthwith be cancelled by the Trustee. There shall be no charge to the Bondholder for the exchange or transfer of Bonds except that the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to the exchange or transfer. Neither the County nor the Trustee shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the next succeeding interest payment date or (ii) for a period of fifteen (15) days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.09 Temporary Bonds. Any Series of Bonds may be initially issued in temporary form, exchangeable for definitive Bonds to be delivered as soon as practicable and subject to the agreement of the County and the Purchaser. The temporary Bonds may be printed or typewritten, shall be of any denominations and may be numbered in any manner as may be determined by the County, and may contain reference to any of the provisions of the Ordinance as may be appropriate. Every temporary Bond shall be executed by the County upon the same conditions and in substantially the same manner as the definitive Bonds. If the County issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered for cancellation at the office of the Trustee, and the Trustee shall deliver and exchange for the temporary Bonds an equal, aggregate principal amount of definitive Bonds having the same aggregate principal amount and in authorized denominations of the same Series, maturity or maturities, and interest rate or rates. Until exchanged, the temporary Bonds shall be entitled to the same benefits under the Ordinance as definitive Bonds under the Ordinance.

Section 4.10 Co-Registrars. In the Supplemental Ordinance authorizing the issuance of any Series of Bonds, the County may appoint a co-registrar in addition to the Trustee. The co-registrar shall be authorized to perform the duties and responsibilities of the Trustee set forth in **Sections 4.02 4.03, 4.04, and 4.07** hereof with respect to the authentication, registration and exchange of Bonds of that Series, the same as [isif](#) the Trustee pursuant to those Sections. Any co-registrar shall be required to furnish to the Trustee the names and addresses of the transferors and transferees of any Bonds registered, transferred, or exchanged by it, and the numbers and other identifying symbols of any Bonds cancelled or exchanged by it, and shall comply with all reasonable instructions with respect to the performance of its duties and responsibilities that the Trustee shall give to it.

[End of Article IV]

ARTICLE V

REDEMPTION OF BONDS BEFORE MATURITY

Section 5.01 Redemption of Bonds. The Bonds of a Series shall be subject to redemption prior to their stated maturities upon the terms and conditions and at the dates and redemption price or prices or premium or premiums as shall be set forth or provided for in the Supplemental Ordinance pursuant to which that Series is issued, and upon the further terms and condition as are hereinafter set forth.

Section 5.02 Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in the order as is set forth or provided for in the Supplemental Ordinance providing for the issuance of that Series. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds having the same maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected as provided in the Supplemental Ordinance; provided, however, that the portion of any Bond of a denomination (or, in the case of Capital Appreciation Bonds, Accreted Value at maturity) of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of Bonds for redemption, the Trustee shall treat each Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount or Accreted Value at maturity of the Bond by \$5,000.

Section 5.03 Notice of Redemption. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing the issuance of the Bonds, the provisions of this **Section 5.03** apply to each Series of Bonds. In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the County, of the redemption of the Bonds to be redeemed, the redemption date, the principal amount of each Bond to be redeemed (if less than all), the redemption price, the place or places where amounts due upon redemption will be payable, and the numbers of the Bonds to be redeemed. The notice shall be given by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least thirty (30) days, but not more than sixty (60) days, prior to the date fixed for redemption to the Holder of each Bond or portion thereof to be redeemed at the address shown on the Books of Registry. Failure to ~~to~~ give notice by mailing, or any defect in the notice, to the Holder of any Bond designated for redemption shall not affect the validity of any proceedings for the redemption of any other Bonds. All Bonds or portions thereof called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit with the Trustee on or before such redemption date; and the Bonds shall not be deemed to be Outstanding under the provisions of the Ordinance. If on the date fixed for redemption there is not on deposit with the Trustee funds for redemption, the Trustee shall send a notice to all Holders in the same manner as the notice of redemption canceling such notice of redemption.

If at the time of mailing of the notice of redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all of the Bonds called for redemption, which moneys are or will be available for redemption of Bonds, such notice will state that it is conditional upon the deposit of the redemption moneys with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

Section 5.04 Partial Redemption of Bond. In the event that only part of the principal sum of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of the Bond to the Trustee. Upon surrender of the Bond, the County shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the office of the Trustee, or send to the Holder by registered mail at his request, risk, and expense, a new fully executed Bond or

other charge) not to exceed the redemption price then applicable upon the redemption of those Bonds from mandatory redemption requirements, plus accrued interest, in which event the principal amount of the Bonds required to be redeemed on the next ensuing mandatory redemption date shall be reduced by the principal amount of the Bonds purchased; provided, however, that no Bonds of the Series shall be purchased during the interval between the date on which notice of redemption of the Bonds from mandatory redemption requirements is given and the mandatory redemption date set forth in the notice, unless the Bonds so purchased are Bonds called for redemption in the notice or are purchased from moneys other than those credited to the Bond Redemption Account with respect to the mandatory redemption requirements.

In the event that moneys in the Bond Redemption Account, other than moneys credited thereto as mandatory redemption requirements, are to be applied to the retirement of one or more Series of Bonds, the County may direct the Trustee in writing within thirty (30) days of the deposit of the moneys to apply the moneys to the purchase of Bonds of that Series and may direct from which of the Series of Bonds purchases may be made and may elect that all purchases shall be made from only one Series or from more than one Series. The price payable on any purchase shall not exceed the highest redemption price applicable at the time or any time thereafter with respect to the Series of Bonds. Any moneys not applied to the purchase of Bonds shall be applied to the redemption of Bonds of any Series then subject to redemption from those moneys. In the event that the moneys may be applied to the redemption of more than one Series of Bonds, the moneys shall be applied by the Trustee to the redemption of Bonds of each Series in proportion to which the principal amount of Bonds of each Series then Outstanding and subject to redemption from the moneys bears to the total principal amount of Bonds of all Series then Outstanding and subject to redemption from the moneys. The purchase or redemption of Term Bonds pursuant to this paragraph shall be credited against the mandatory redemption requirement of the Term Bonds in any order of the mandatory redemption dates as determined by the County in writing. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph. Neither the County nor the Trustee shall be required to redeem Bonds pursuant to this paragraph if the moneys available for redemption are less than \$50,000. The Trustee, in the name and on behalf of the County, shall give notice of all redemptions in accordance with the provisions of **Article V** hereof. Any purchase of Bonds pursuant to this paragraph may be made with or without tenders of Bonds at public or private sale; provided, however, the County shall direct the Trustee in writing ~~in~~of any method to be followed in purchasing Bonds. The Except as provided below with respect to payments on the Bonds to be made from a Debt Service Reserve Fund, the accrued interest to be paid on the purchase or redemption of Bonds shall be paid from the Interest Account. All Bonds purchased or redeemed pursuant to this paragraph shall be cancelled and not reissued.

(iv) If, on any occasion when the payments required by paragraphs (i), (ii), and (iii), *supra*, are to be made, the sum total of the payments required by paragraphs (i), (ii), and (iii), *supra*, plus previous monthly payments and the remaining payments to be made prior to the next succeeding interest or principal and interest payment date, will not provide, together with any other funds in the Debt Service Fund to be applied to the payment of principal and interest, sufficient funds to meet the payment of the next succeeding installment of either principal (whether due at stated maturity or by mandatory redemption) or interest, or both, as the case may be, there shall be added to the payments to be made pursuant to paragraphs (i), (ii), and (iii), *supra*, with respect to any Series of Bonds, from the Pledged Fee Revenue Fund and the account, if any, in the Debt Service Reserve Fund established with respect to that Series of Bonds, in that order, a sum equal to the deficiency; the effect of this subparagraph (iv) being to ensure that moneys in the Debt Service Fund and the Pledged Fee Revenue Fund be applied equally and ratably to the payment of Bonds, without priority between Series, but that the moneys, if any, in

constitute “proceeds” within the meaning of Section 148(d) of the Code, they shall be transferred to the County for use by the County for any lawful purposes.

(h) Earnings on investment of moneys held in the Debt Service Reserve Fund account established with respect to any Series of Bonds, shall be credited to and become a part of such Debt Service Reserve Fund account but whenever the value of the cash and securities in the Debt Service Reserve Fund account exceeds the Debt Service Reserve Fund Requirement with respect to that Series of Bonds, the excess shall be transferred to the Debt Service Fund or at the written direction of an Authorized Representative and with an approving opinion of Bond Counsel addressed to the Trustee be used for any lawful purpose related to the Project; provided, however, that by Supplemental Ordinance authorizing the issuance of any Series of Bonds the County may provide that any excess may, during the construction period of any Project financed by that Series of Bonds, be transferred to the Construction Fund established for that Series of Bonds.

Section 6.05 Establishment of Construction Fund. There shall be created and established with the County or, at the County’s option, the Trustee a Construction Fund with respect to each Series of Bonds (other than for Bonds issued to refund any obligations of the County) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the Costs of the Project and Costs of Issuance with respect to the Projects financed.

Section 6.06 Deposits into Construction Fund. On the occasion of the delivery of any Series of Bonds, other than refunding Bonds, such proceeds, as specified in a Supplemental Ordinance, shall be paid into the Construction Fund established for that Series as set forth in a Supplemental Ordinance authorizing ~~their issue~~that Series.

Section 6.07 Withdrawals from Construction Fund. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing the Construction Fund.

Section 6.08 Transfer of Surplus Construction Fund Moneys. All funds remaining in any Construction Fund established under a Supplemental Ordinance upon completion of the Projects intended to be financed thereby shall be transferred to the Interest Account, Principal Account or Bond Redemption Account of the Debt Service Fund as directed in writing by an Authorized Representative and shall be used only to pay the principal of, premium, if any, and interest on the Bonds or Junior Bonds of the Series issued under the terms of the Supplemental Ordinance or to acquire Outstanding Bonds or Junior Bonds of that Series at a price (exclusive of accrued interest) not exceeding the face amount thereof, or other lawful purpose.

Section 6.09 Investment of Funds.

(a) Any moneys held as part of any fund or account created under the Ordinance shall, at the written direction of and as specified by an Authorized Representative, be invested and reinvested by the Trustee or the Custodian of the fund, as the case may be, in Investment Obligations to the extent practicable. Any investments shall be held by or under the control of the Trustee or the Custodian of the fund, as the case may be, and shall be deemed at all times a part of those funds and the interest accruing thereon and any profit realized from investments shall be credited to the fund, and any loss resulting from investments shall be charged to the fund. The Trustee or the Custodian of the fund, as the case may be, is directed to sell and reduce to cash funds a sufficient amount of investments whenever the cash balance in the fund is insufficient to make any necessary transfers or withdrawals from the fund.

ARTICLE VII

TRUSTEE AND CUSTODIANS

Section 7.01 **Appointment of Trustee.**

Upon the appointment of a Trustee, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by this Ordinance by executing and delivering to the County a written instrument of acceptance upon which the Trust Estate shall be vested in the Trustee.

The Trustee, including any successor Trustee shall, at the time of appointment, be a bank or trust company which is a member of the Federal Reserve System with a capital stock, surplus and undivided profits aggregating in excess of Five Hundred Million Dollars (\$500,000,000).

Section 7.02 **Duties and Obligations of the Trustee.** Prior to the occurrence of any Event of Default and after the curing of all such Events of Default that may have occurred, the Trustee shall perform such duties and only such duties of the Trustee as are specifically set forth in this Ordinance and no implied covenants or obligations shall be read into this Ordinance against the Trustee. Upon the occurrence and continuance of an Event of Default of which the Trustee is deemed to have knowledge, the Trustee shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The duties and obligations of the Trustee are further subject to the following terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay reasonable compensation to all attorneys, agents, receivers, and employees as may be reasonably employed in connection with the trusts hereof. The Trustee shall not be responsible for any misconduct or negligence of any agent or attorney appointed with due care by the Trustee. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the County) except that with respect to matters involving the exemption from federal income taxes of the interest on the Bonds, such attorneys shall be Bond Counsel. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon the opinion or advice.

(b) The Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the authentication certificate of the Trustee endorsed on the Bonds), or for the validity of the enactment by the Council of the Ordinance or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the County, except as herein expressly set forth; but the Trustee may require of the County full information and advice as to the performance of the covenants, conditions, and agreements aforesaid and as to the condition of the property conveyed hereby. The Trustee makes no representations as to the technical or financial feasibility of the Project, the compliance of the Project with the Enabling Act, or the tax-exempt status of the Bonds. The Trustee is not accountable for the use or application by the ~~Borrower~~ County of any of the Bonds or the proceeds of the Bonds, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Ordinance.

(c) The Trustee may become the owner of Bonds, secured hereby with the same rights which it would have were it not Trustee. The Trustee may also engage in or be interested in any financial or other transaction with the County.

(l) The Trustee is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Bondholders under any provision of this Ordinance relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Ordinance.

(m) Whenever in the administration of this Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of an Authorized Representative.

(n) The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any ordinance, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document.

(o) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken and shall have no liability with respect to any such action taken in the absence of bad faith.

(p) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Ordinance and final payment of the Bonds.

(q) Except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(r) No provision of the Ordinance shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(s) Whether or not expressly so provided, every provision of this Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this **Section 7.02**.

(t) The Trustee shall not be responsible for and makes not representation as to the legality, effectiveness or sufficiency of any security document or for the creation, perfection, priority or protection of any lien securing the Bonds. The Trustee shall not be responsible for filing any financing or continuation statement or recording any documents or instruments in any public office at any time or otherwise for perfecting or maintaining the perfection of any lien or security interest in the trust estate it being understood that the County shall be obligated to make such filings, if any, on behalf of the trustee.

Section 7.03 Fees, Charges, and Expenses of Trustee. The Trustee shall be entitled to payment or reimbursement for reasonable fees for its services rendered hereunder, and all advances, counsel fees, and other expenses reasonably and necessarily made or incurred by the Trustee in connection with its services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefor, and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided, that if extraordinary services or extraordinary expenses are occasioned by the willful neglect or default of the Trustee, it shall not be entitled to compensation or reimbursement therefor.

In the event the Trustee incurs expenses or renders services in any proceedings under the Bankruptcy Code relating to the County, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the Bankruptcy Code.

As security for the performance of the obligations of the County under this **Section 7.03**, the Trustee shall have a lien, which it may exercise through a right of set off, prior to the Bonds upon all property or funds held or collected by the Trustee pursuant to this Ordinance for the payment of principal of, redemption premium, if any, and interest on the Bonds. The obligations of the County to make the payments described in this **Section 7.03** shall survive discharge of this Ordinance and payment in full of the Bonds. [The Trustee's rights under this Ordinance shall survive its resignation or removal.](#)

Section 7.04 Notice to Bondholders if Default Occurs. If a Default occurs of which the Trustee is by **Section 7.02(g)** hereof required to take notice or if notice of Default be given as in **Section 7.02(g)** provided, then the Trustee shall give such notice to the County and the Trustee may give written notice thereof by first-class mail to the last known Holders of all Bonds then Outstanding shown on the Books of Registry.

Section 7.05 Intervention by Trustee. In any judicial proceeding to which the County is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondholders, the Trustee may intervene on behalf of the Bondholders and shall do so if requested in writing by the Holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding. The rights and obligations of the Trustee under this **Section 7.05** are subject to the approval of a court of competent jurisdiction.

Section 7.06 Merger or Consolidation of Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any conversion, sale, merger, consolidation, or transfer to which it is a party, *ipso facto*, subject to the approval of the County, shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed, or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 7.07 Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving sixty (60) days written notice to the County, and by first-class mail to each Holder of Bonds then Outstanding shown on the Books of Registry, and the resignation shall take effect upon the appointment of a successor Trustee or successor temporary Trustee by the Bondholders or by the County. The notice to the County may be served personally or sent by registered or certified mail.

ARTICLE VIII

COVENANTS

Section 8.01 Condition of County's Obligation; Payment of Principal and Interest.

(a) Each and every covenant herein made, including all covenants made in the various sections of this **Article VIII**, is predicated upon the condition that any obligation for the payment of money incurred by the County shall not create a pecuniary liability of the County or a charge upon its general credit, but shall be payable solely from the Pledged Fee Revenues which are required to be set apart and transferred to the Debt Service Fund and the Debt Service Reserve Fund, which Pledged Fee Revenues are hereby specifically pledged to the payment thereof in the manner and to the extent in the Ordinance specified and nothing in the Bonds or in the Ordinance shall be considered as pledging any other funds or assets of the County other than the Trust Estate.

(b) The Bonds, together with interest thereon, shall be limited obligations of the County payable solely from the Trust Estate which includes the Pledged Fee Revenues required to be set apart and transferred to the Pledged Fee Revenue Fund for deposit to the Debt Service Fund and the Debt Service Reserve Fund, if any, and shall be a valid claim of the respective Holders thereof only against the Trust Estate to the extent provided in paragraph (a) of this **Section 8.01**. The Trust Estate is hereby pledged and assigned for the equal and ratable payment of the Bonds and shall be used for no other purposes than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly authorized in the Ordinance. The Bonds do not now and shall never constitute an indebtedness of the County within the meaning of any ~~state~~State constitutional provision or statutory limitation (other than Article X, Section 14, Paragraph 10 of the Constitution authorizing obligations of political subdivisions payable solely from special sources not involving revenue from any tax or license), and shall never constitute nor give rise to a pecuniary liability of the County or a charge against the general credit or taxing powers of the County, the State or any of its agencies or political subdivisions. No recourse shall be had for the payment of the Bonds, or interest thereon, or any part thereof, against the several funds of the County, except from the Trust Estate in the manner and to the extent provided in the Ordinance. The Bonds, and interest thereon, shall not be a charge, lien, or encumbrance, legal or equitable, upon any property of the County or upon any income, receipts, or revenues of the County other than the Trust Estate that ~~have~~has been pledged to the payment thereof.

Section 8.02 Performance of Covenants; Authority of the County. The County covenants that it will faithfully perform at all times all covenants, undertakings, stipulations and provisions contained in the Enabling Act, in the Ordinance, in the Bonds executed, authenticated, and delivered hereunder, and in all proceedings pertaining thereto. The County covenants that it is duly authorized under the Constitution and laws of the State to issue the Bonds authorized hereby, to enact the Ordinance, and to pledge the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the enactment of the Ordinance has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the County according to the import thereof.

Section 8.03 Instruments of Further Assurance. The County covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all Ordinances supplemental hereto and all further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning, and confirming unto the Trustee all and singular the Trust Estate pledged hereby to the payment of the principal of and interest and premium, if any, on the Bonds.

Section 8.04 Inspection of Pledged Fee Revenues and Projects. The County covenants and agrees that all books and documents in its possession relating to the Trust Estate and Projects shall at all times be open to inspection during normal business hours by any accountants or other agents as the Trustee may from time to time designate.

Section 8.05 Fiscal Year. Until changed to a different twelve-month period by the Council or by law, the County shall be operated on the basis of a Fiscal Year, which commences on the first day of July of each year and ends on the 30th day of June of the following year.

Section 8.06 Annual Audited Financial Statements and Certificates. The County shall provide the Trustee within two hundred ten (210) days after the close of the Fiscal Year a copy of its audited financial statements during the Fiscal Year. The audited financial statements shall be accompanied by a certificate of an Authorized Representative stating that the County is not in Default hereunder or describing the nature of any Default.

The County shall provide on an annual basis with the audited financial statements required above a certificate as to an Authorized Representative of the County. The Trustee may rely conclusively on any opinions and certificates delivered pursuant to this **Section 8.06** and shall have no duty to examine such financial statements and shall not be deemed to have knowledge of any Default that may be reflected thereby.

[End of Article VIII]

ARTICLE IX

DEFEASANCE OF BONDS

Section 9.01 Defeasance of Bonds.

(a) If all of the Bonds issued pursuant to the Ordinance shall have been paid and discharged, then the obligations of the County under the Ordinance, the pledge of the Trust Estate made hereby, and all other rights granted hereby shall cease and determine. Bonds shall be deemed to have been paid and discharged within the meaning of this **Article IX** under each of the following circumstances:

(i) If the Trustee 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 the Bonds or the interest thereon shall have occurred, and thereafter tender of payment shall have been made, and the Trustee shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of the payment; or

(iii) If the County shall elect to redeem Bonds prior to their stated maturities, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided by **Section 5.03** hereof, and shall have deposited with an 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 or other Investment Obligations, which, are not subject to redemption by the issuer thereof prior to the date of redemption of the Bonds to be defeased, the principal of and interest on which, when due, as determined in a verification report provided by an independent nationally recognized certified public accountant affirming the amount of the deposit with the escrow agent, will provide moneys, which, together with the moneys, if any, deposited with the Trustee 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 and prior to the redemption date or dates, as the case may be; or

(iv) If there shall have been deposited with an 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, as determined in a verification report provided by an independent nationally recognized certified public accountant affirming the amount of the deposit with the escrow agent, will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on the Bonds on the maturity thereof.

(b) In addition to the above requirements of paragraphs (i), (ii), (iii), or (iv) of subsection (a), in order for this Ordinance to be discharged, all other fees, expenses, and charges of the Trustee shall have been paid in full at that time.

Section 9.02 Deposit of Moneys. Any moneys which at any time shall be deposited with the Trustee or escrow agent by or on behalf of the County for the purpose of paying and discharging any Bonds shall be and are hereby assigned, transferred, and set over to the Trustee or the escrow agent in trust for the respective Holders of the Bonds, and the moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the Holders of the Bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Trustee or escrow agent to deposit the funds in the Pledged Fee Revenue Fund.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Benefits of Ordinance Limited to the County, the Trustee, and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the County, the Trustee, and the Holders of the Bonds, any legal or equitable right, remedy, or claim under or by reason of or in respect to the Ordinance or any covenant, condition, stipulation, promise, agreement, or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the County, the Trustee, and the Holders from time to time of the Bonds as herein and therein provided.

Section 12.02 Ordinance Binding Upon Successors or Assigns of the County. All the terms, provisions, conditions, covenants, warranties, and agreements contained in the Ordinance shall be binding upon the successors and assigns of the County and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 12.03 No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the County contained in the Ordinance or the Bonds, against any member of the Council, any officer or employee, in his or her individual capacity, past, present, or future, of the County, either directly or through the County, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer, or employee, past, present, or future, of the County, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the County and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto; and that all personal liability of that character against every member, officer, and employee is, by the enactment of the Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the enactment of the Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers, and employees of the County under the provisions contained in this **Section 12.03** shall survive the completion of any Project and the termination of any Ordinance.

Section 12.04 Effect of Saturdays, Sundays and Legal Holidays. Whenever the Ordinance requires any action to be taken on a Saturday, Sunday, or legal holiday or bank holiday in the State or in any state where the corporate trust office of the Trustee is located, the action shall be taken on the first business day occurring thereafter. Whenever in the Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, or legal holiday or bank holiday in the State or in any state where the corporate trust office of the Trustee is located, the time shall continue to run until midnight on the next succeeding business day.

Section 12.05 Notice; Electronic Signatures.

(a) The County may send notices by electronic mail. The County agrees that the Trustee cannot determine the identity of the actual sender of such instructions and that the Trustee shall conclusively presume that instructions that purport to have been sent by an Authorized Representative have been sent by such Authorized Representative. The County shall be responsible for ensuring that only Authorized Representatives transmit such instructions to the Trustee, and the County and the Authorized Representative are responsible to safeguard the use and confidentiality of applicable user and

authorization codes, passwords and authentication keys provided by the Trustee. The Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The County agrees (i) to assume all risks arising out of the use of electronic mail to submit instructions and direction to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the County; (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) that it will notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

(b) All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any communication sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provider as specified in writing to Trustee by the Authorized Representative), in English. The County agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 12.05 Partial Invalidity.

(a) If any one or more of the covenants or agreements or portions thereof provided in the Ordinance on the part of the County, the Trustee, the Custodian or any paying agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then the covenant or covenants, or the agreement or agreements, or the portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in the Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of the Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

(b) If any provisions of the Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 12.06 Law and Place of Enforcement of the Ordinance. The Ordinance shall be construed and interpreted in accordance with the laws of the State and all suits and actions arising out of the Ordinance shall be instituted in a court of competent jurisdiction in the State.

Section 12.07 Effect of Article and Section Headings and Table of Contents. The heading or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of the Ordinance.