

CHESTER COUNTY, SOUTH CAROLINA

ORDINANCE NO. 2019-5

TO LEVY AND IMPOSE A ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM IN CHESTER COUNTY PURSUANT TO THE CPST ACT, SOUTH CAROLINA CODE ANNOTATED SECTION 4-10-300, ET SEQ.; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR THE IMPOSITION AND COLLECTION OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTION IN THE REFERENDUM; TO PROVIDE CONDITIONS PRECEDENT TO THE IMPOSITION OF THE TAX AND CONDITIONS OR RESTRICTIONS ON THE USE OF THE TAX REVENUE; TO ESTABLISH THE PRIORITY IN WHICH THE NET PROCEEDS OF THE TAX ARE TO BE EXPENDED FOR THE PURPOSES AND PROJECTS STATED; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE CHESTER COUNTY BOARD OF VOTER REGISTRATION AND ELECTIONS; TO PROVIDE FOR THE PAYMENT OF THE TAX; TO PROVIDE FOR THE ISSUANCE OF BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED THE AGGREGATE OF \$17,250,000; AUTHORIZING THE COUNTY SUPERVISOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND PLEDGE OF REVENUES RELATED TO THE BONDS; PROVIDING OTHERWISE FOR THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; PROVIDING FOR THE DISPOSITION OF PROPERTY RELATED TO THE BONDS; AND OTHER RELATED MATTERS.

ENACTED: JUNE 15, 2020

AN ORDINANCE

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W I T N E S S E T H

A. The South Carolina General Assembly has enacted the CPST Act, South Carolina Code Annotated section 4-10-300, *et seq.* (“CPST Act”), pursuant to which a county’s governing body may impose a one percent, capital project sales and use tax (“Sales Tax”) by ordinance, subject to a referendum, in the county for a specific purpose or purposes and for a limited time to collect money for those purposes;

B. The Chester County Council (“County Council”), as the governing body of Chester County, South Carolina (“County”), is authorized to create a commission subject to the provisions of the CPST Act to consider proposals for funding capital projects in the County area and the formulation of a referendum question that is to appear on the ballot. The County Council adopted a resolution on May 6, 2019, creating the Capital Project Sales and Use Tax Commission (“Commission”) and on October 21, 2019, appointing members to the Commission for the purpose of considering proposals for funding capital projects in the County and the formulation of a referendum question which is to appear on the ballot. Members of the were appointed by the County Council and the municipalities of the County according to the provisions of the CPST Act;

C. The Commission has considered requests for funding capital projects in the County and the Commission, by vote of the Commission in public meetings duly announced, has adopted the projects described in this Ordinance, identified the purpose for which the proceeds of the proposed Sales Tax shall be used, established the maximum time for which the Sales Tax may be imposed, established the estimated

cost of the projects to be funded from the proceeds of the tax, established conditions precedent to the imposition of the Sales Tax revenue collected pursuant to the CPST Act, established a method by which the net proceeds of the Sales Tax are to be distributed and expended for the purpose stated, and formulated the question that is to appear on the ballot all as required by the CPST Act;

D. The County Council finds that a one percent Sales Tax should be levied and imposed in the County for the purpose of various capital projects to support government services and functions in the County, more specifically identified in section 4 of this Ordinance (collectively, “projects” or “capital projects”) for the maximum period permitted by state law from the date of imposition of this tax, to fund capital projects from the net proceeds of Sales Tax imposed in the County pursuant to provisions of the CPST Act subject to approval of the County’s qualified electors voting in a referendum on the imposition of the Sales Tax in the County to be held on November 3, 2020, which is the next available general election in the County. The imposition of the Sales Tax and the use of Sales Tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of Sales Tax revenue as established by the CPST Act and the provisions of this Ordinance. Sales Tax revenues shall be used for the projects established in this Ordinance including payment of the sums as may be required in connection with the issuance of any bonds, the proceeds of which are applied to the capital projects;

E. The County Council finds that the imposition of a capital projects Sales Tax in the County for the projects and purposes defined in this Ordinance will serve a public purpose, provide funding for the projects outlined in this Ordinance and meet present and future needs of the County and its citizens;

F. Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended (“Constitution”), provides that each county may incur general obligation bonded indebtedness upon such terms and conditions as the General Assembly may prescribe by general law subject to the following limitations: (i) such debt must be incurred only for a purpose which is a public purpose and a corporate purpose for a county, and (ii) unless excepted therefrom, such debt may be issued in an amount not exceeding eight percent of the assessed value of all taxable property of such county (“Bonded Debt Limit”);

G. Article X, Section 14, subsection (6) of the Constitution provides that if general obligation indebtedness is authorized by a majority vote of the qualified electors of a county voting in a referendum authorized by law, there shall be no conditions or restrictions limiting the incurring of such indebtedness except (i) those restrictions and limitations imposed in the authorization to incur such indebtedness; (ii) such general obligation indebtedness shall be issued within five years of the date of such referendum; and (iii) general obligation indebtedness may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the county and such debt shall mature within 30 years from the time such indebtedness shall be incurred.

H. Pursuant to Title 4, Chapter 15, Code of Laws of South Carolina, 1976, as amended (“County Bond Act”), the county council of any county of the State may issue general obligation bonds for any corporate purpose of such county to any amount not exceeding such county’s Bonded Debt Limit;

I. The County Bond Act provides that as a condition precedent to the issuance of bonds an election be held and result favorably thereto. Chapter 27, Title 11, Code of Laws of South Carolina, 1976, as amended (“Article X Enabling Act”), provides that if an election be prescribed by the provisions of the County Bond Act, but is not required by the provisions of Article X, then in every such instance, no election need be held (notwithstanding the requirement therefor) and the remaining provisions of the County Bond Act shall constitute a full and complete authorization to issue bonds in accordance with such remaining provisions;

J. If the imposition of the Sales Tax and the use of Sales Tax revenue is approved in the referendum, then the County intends to issue bonds, in one or more series, tax-exempt or taxable, in an amount not to exceed the aggregate principal amount of \$17,250,000, expected to be repaid from the Sales Tax revenue;

K. To accomplish the purposes of this Ordinance, the County has determined that it may: (i) form and

use one or more entities, on the behalf and for the benefit of the County (collectively, “Entity”), including the issuance of bonds and the execution and delivery of various documents to effect the transfer of real and personal property interests in the projects to, or from (or both), the County and for other related purposes; (ii) enter a financing agreement, as described in section 11-27-110; (iii) issue general obligation, Sales Tax-backed bonds; or (iv) provide for any other financing method the County deems appropriate; and

L. The County Council has found it is in the best interest of the County for the County Council to provide for the issuance of one or more bonds of the County, pursuant to the provisions of the Constitution, laws of the State of South Carolina, and the referendum, or otherwise provide for financing as described in this Ordinance, in a principal amount not to exceed \$17,250,000 for the purpose of: (i) funding the projects; (ii) funding the acquisition of an interest in the projects, if held by the Entity; (iii) providing for capitalized interest, if any, on the Bonds or BANs (defined below); (iv) defraying additional costs of the projects; and (v) paying the costs of issuance related to the Bonds or BANs.

NOW THEREFORE BE IT ENACTED BY THE COUNTY COUNCIL THAT:

1. The County Council accepts and incorporates in this Ordinance the Commission’s Resolution, adopted May 7, 2020, attached as Exhibit A and as otherwise permitted by state law.

2. A Sales Tax, as authorized by the CPST Act, is imposed in the County, subject to a favorable vote of a majority of the qualified electors voting in a referendum on the imposition of the tax to be held in the County on November 3, 2020, which is the next available general election in the County.

3. The Sales Tax imposed shall be imposed only if a majority of the qualified electors voting in a referendum to be held in the County on November 3, 2020, vote in favor of imposing the tax for the stated purposes.

4. The Sales Tax authorized by this Ordinance shall be distributed and expended for the purposes stated on Exhibit A, and as otherwise permitted by State law.

5. The County intends to utilize the proceeds of the Sales Tax to pay the principal and interest due on one or more series, taxable or tax-exempt, of general obligation bonds, or special revenue bonds, for example, special source revenue bonds, limited obligation bonds, or other similarly designated bonds (collectively, “Bond” or “Bonds”) to be issued to fund the costs of the projects or to make any payments necessary to acquire an interest in the projects that may be owned or controlled by a third party, including the Entity. The aggregate principal amount of the Bonds will not exceed \$17,250,000.

6. If the imposition of the Sales Tax is approved by a majority of the qualified electors voting in a referendum to be held in the County on November 3, 2020, which is the next available general election in the County, then the new tax is to be imposed immediately following the: (a) Chester County Board of Voter Registration and Elections’ certifying the results to the County and the South Carolina Department of Revenue (“Department”); (b) the County Council’s adopting a resolution declaring the results of the referendum; and (c) the expiration of the County’s existing capital project sales and use tax to ensure no interruption in the imposition or collection of a capital project sales and use tax.

7. The Sales Tax imposed by this Ordinance, if approved in the referendum conducted on November 3, 2020, shall be imposed to collect all Sales Tax revenue for the maximum length permitted by law for which the tax may be imposed, which is a period ending on April thirtieth, not to exceed seven years, which the County understands to be May 1, 2021 – April 30, 2028.

8. Amounts of Sales Tax collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed including payment of the sums as may be required in connection with the issuance of bonds and other debt obligations, the proceeds of which are applied to the capital projects. If funds remain after first using the funds as provided above and a subsequent tax is not imposed, then the remaining funds must be used for the purposes set forth in section 4-10-330(A)(1). These remaining funds only may be expended for the purposes set forth in section 4-10-

330(A)(1) following adoption of an ordinance by the County Council specifying the authorized purposes or purposes for which the funds will be used. If funds remain after first using the funds as provided above and a subsequent tax is imposed, then the remaining funds must be used as permitted by state law.

9. The Sales Tax levied pursuant to this Ordinance must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The Department may prescribe amounts that may be added to the sales price because of the tax.

10. The tax authorized by this Ordinance is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of the Code of Laws of South Carolina, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of unprepared food items which may lawfully be purchased with United States Department of Agriculture food coupons are exempt from the tax imposed by this article. The tax imposed by this Ordinance also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina.

11. Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina must identify the county, municipality or both in which the personal property purchased at retail is stored, used or consumed in this State.

12. Utilities are required to report sales in the county, municipalities or both, in which the consumption of the tangible personal property occurs.

13. A taxpayer, who is subject to the tax imposed by section 12-36-920, and who owns or manages rental units in more than one county, municipality or combination thereof, must report separate in the sales tax return the total gross proceeds from business done in each county or municipality.

14. The gross proceeds of sales of tangible personal property delivered after the imposition date of the Sales Tax levied under this Ordinance, either under the terms of a construction contract executed before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax if a verified copy of the contract is filed with the Department in six months after the imposition date of the Sales Tax provided for in this Ordinance.

15. Notwithstanding the imposition date of the Sales Tax authorized pursuant to this Ordinance, with respect to services that are billed regularly on a monthly basis, the Sales Tax authorized pursuant to this Ordinance is imposed beginning on the first day of the billing period beginning on or after the imposition date.

16. The revenues of the tax collected under this Ordinance must be remitted to the Department and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the County Treasurer and the revenue must be used only for the purposes stated in this Ordinance. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these distributions must be made in the same fiscal year as the misallocation.

17. The Department shall furnish data to the State Treasurer and the County Treasurer for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties and municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability to taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of section 12-54-240. Any person violating the provisions of this section shall be subject to the penalties provided for in section 12-54-240.

18. The Chester County Board of Voter Registration and Elections shall conduct a referendum on the question of imposing the Sales Tax in the County on Tuesday, November 3, 2020, which is the next available general election in the County, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, *mutatis mutandi*. The Chester County Board of Voter Registration and Elections shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of capital projects and the estimated cost of projects, and shall publish the election and other notices as are required by law.

19. The referendum question to be on the ballot of the referendum to be held in the County on November 3, 2020, must read substantially as contained on Exhibit A.

20. In the referendum on the imposition of the Sales Tax in the County, all qualified electors desiring to vote in favor of imposing the tax for the stated purpose shall vote “yes” and all qualified electors opposed to levying the tax shall vote “no.” If a majority of the electors voting in the referendum shall vote in favor of imposing the tax, then the tax is imposed as provided in the CPST Act and this Ordinance. Expenses of the referendum must be paid by the governmental entity or entities that would receive the proceeds of the tax in the same proportion that those entities would receive the net proceeds of the tax.

21. Upon receipt of the returns of the referendum, the County Council shall, by resolution, declare the results. The results of the referendum, as declared by the resolution are not open to question, except by suit or proceeding instituted in thirty days from the date that the County Council adopts a resolution declaring the results of the referendum.

22. Pursuant to the Constitution and laws of the State of South Carolina, the CPST Act, and the referendum, if approved, the County is authorized to issue not exceeding \$17,250,000 in general obligation bonds of the County to be designated “Chester County, South Carolina, General Obligation Bonds” (“Bonds”) for the purposes set forth in this Ordinance. The County shall issue only so much bonds, or notes in anticipation of such bonds, as the County reasonably believes can be repaid solely from the Sales Tax revenue. The Bonds also may be issued in one or more series, taxable or tax-exempt, from time to time as may be determined in the manner provided below with such further designation of each series to identify the year in which such bonds are issued.

The Bonds may be issued as fully-registered bonds; dated the date of their delivery or such other date as may be selected by the County Supervisor; may be in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount of the Bonds maturing in each year; shall be numbered from R-1 upward; shall bear interest, if any, from their date as may be accepted by the County Supervisor; and shall mature as determined by the County Supervisor.

23. The County Council delegates to the County Supervisor determinations regarding the Bonds as are necessary or appropriate, including the form of the Bonds (or BANs) and whether to issue bonds as provided by any state or federal economic recovery or “stimulus” laws. The County Supervisor is further directed to consult with bond counsel in making any such decisions.

24. Both the principal installments of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. The County Treasurer’s Office or a qualified financial institution shall serve as the Registrar/Paying Agent for the Bonds (“Registrar/Paying Agent”) and shall fulfill all functions of the Registrar/Paying Agent enumerated in this Ordinance.

25. The County shall cause books (“registry books”) to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

The Bonds shall be transferable only upon the registry books of the County, which shall be kept for

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

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

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

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

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

(b) As long as a book-entry system is in effect for the Bond, the Securities Depository Nominee will be recognized as the holder of the Bond for the purposes of (i) paying the principal, interest and premium, if any, on such Bond, (ii) if the Bond is to be redeemed in part, selecting the portions of such Bond to be

redeemed, (iii) giving any notice permitted or required to be given to holder of such bonds under this ordinance, (iv) registering the transfer of the Bond, and (v) requesting any consent or other action to be taken by the holder of such Bond, and for all other purposes whatsoever, and the County shall not be affected by any notice to the contrary.

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

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

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

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

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

29. The Bonds shall be executed in the name of the County with the manual or facsimile signature of the Chairman of the County Council/County Supervisor and attested by the manual or facsimile signature of the Clerk to County Council under a manual or facsimile of the seal of the County which shall be impressed, imprinted or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Bonds shall bear a certificate of authentication manually executed by the Registrar/Paying Agent. The Bonds shall be in the form as determined by the County Supervisor.

30. The full faith, credit and taxing power of the County are irrevocably pledged for the payment of the principal and interest of the Bonds as they mature and to create a sinking fund to aid in the retirement and payment thereof. The County Auditor and the County Treasurer shall be notified as to the delivery of and payment for the Bonds and are hereby directed to levy and collect, respectively, a tax, without limit, on all taxable property in the County sufficient to pay the principal and interest of the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor, provided, however, this tax would be levied if, and only if, the Sales Tax revenue is insufficient to pay the principal and interest on the Bonds as they respectively mature. No bonds or notes can be issued hereunder unless the Sales Tax revenue is projected to be sufficient to repay such bonds or notes. Projects may be funded from a combination of Sales Tax revenues, bond proceeds, federal, state, and private grants, from other general fund money from any local government allocated funds, and from other third-party funds, for projects under this Ordinance all as more fully set forth in the attached Exhibit B.

Further, the completion of each project funded by the sales and use tax is subject to acquisition of property and right-of-way, design and engineering considerations, funding of projects from other sources,

bids in excess of project estimates, qualifications of bidders, cost overruns, financing costs, exhaustion of net sales and use tax revenues prior to the completion of each project in the order and priority stated on Exhibit A, other unforeseen circumstances and conditions, and other conditions as may be reasonably imposed by the County, which, if any of these circumstances occurs or is imposed, then the County may move to the next priority project and continue through the priority list until completed, then may return to any project passed over.

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

32. The Bonds may be sold at a public or private sale, as authorized by section 11-27-40(4) of the Code of Laws of South Carolina, 1976, as amended, as the County Supervisor may determine, using a Notice of Sale or other similar Notice, as the County Supervisor may determine. In the event of a private sale, the Bond or Bonds may be issued in (a) par amount(s) other than multiple of \$5,000.

33. It is expected that proceeds of the Bonds will be fully drawn at Closing. The proceeds of the Bonds or of BANs (authorized under this Ordinance), when drawn, will be deposited in a bond account fund for the County and shall be expended and made use of as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. Subject to changes in terms required for any particular issue of BANs, the BANs shall be subject to the following particulars:

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

(b) The BANs shall be numbered from one upwards for each issue and shall be in the denomination of \$5,000 or any integral multiple thereof requested by the purchaser thereof. The BANs shall be payable, both as to principal and interest, in legal tender upon maturity, at the principal office of a bank designated by the County or, at the option of the County, by the purchaser thereof.

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

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

(d) The BANs shall be in the form as determined by the County Supervisor under this Ordinance.

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

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

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

(h) BANs issued in fully-registered form, upon surrender thereof at the office of the County (or at such office as may be designated by its designee) as note registrar, with a written instrument of transfer satisfactory to the County, duly executed by the holder of the BAN or his duly authorized attorney, may, at the option of the holder of the BAN, and upon payment by such holder of any charges which the County may make as provided in paragraph (i), be exchanged for a principal amount of BANs in fully-registered form of any other authorized denomination equal to the unpaid principal amount of surrendered BANs.

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

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

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

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

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

(d) The County reasonably anticipates that it and the Entity will not issue more than \$10,000,000 of obligations, the interest on which is excludable from the gross income of the holders thereof under the Code (excluding private activity bonds (within the meaning of section 141(a) of the Code) other than qualified 501(c)(3) bonds (within the meaning of section 145 of the Code)) during any calendar year in which the County or the Entity, or both, issues obligations. If issued as tax-exempt bonds, the County Supervisor may determine whether to designate the Bonds as a "qualified tax-exempt obligation" within the meaning of section 265(b)(3) of the Code.

39. The County Council authorizes the Chairman/County Supervisor, Clerk to County Council and other County Officials to negotiate in good faith to purchase, sell and develop the real property and the personal property related to the projects, to appropriate funds from a capital projects, or other similar, fund for the purchase, sale and development of the projects; take all steps reasonably necessary and proper to purchase, sell and develop the projects.

40. To effect this Ordinance's intents, the County Council authorizes the Chairman/County Supervisor, Clerk to County Council and other County Officials to: (a) execute and consent to any documents and instruments, including, *e.g.*, intergovernmental agreements, financing agreements, purchase-sale agreements, option contracts, and other agreements, and (b) take any further actions, including issuing the Bonds, arranging for any financing method available under State law, pledging revenues, including, for example, use the Sales Tax proceeds as a repayment source for any financing, and entering any documents related to the projects transfer to, or acquisition from (or both), the Entity or other parties, and the issuance of bonds by the Entity.

41. The County Council authorizes the creation of the Entity and the undertakings by the Entity regarding the projects and the issuance by the Entity of bonds, including the form of those bonds. The County Council consents to and approves the issuance, sale, execution and delivery of bonds, by the Entity, in one or more series of taxable or tax-exempt obligations, in an amount or amounts to be set pursuant to a resolution to be adopted by the board of directors of the Entity to provide for the payment of the costs of the projects and the costs of issuance and all expenses in connection therewith. The County Council also agrees to accept the projects at such time as the bonds issued by the Entity are retired.

42. Pursuant to the provisions of section 11-27-40 of the Code of Laws of South Carolina, 1976, as amended, the County Supervisor, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

43. To effect the intent of this Ordinance, the County Council authorizes the County Supervisor to retain the law firm of Kozlarek Law LLC, as bond/special/disclosure/tax counsel, and the investment banking firm Stifel Nicolaus & Company, Incorporated, as underwriter/placement agent.

The County Council further authorizes the County Supervisor to enter into such contractual arrangements with printers and the suppliers of other goods and services necessary to the sale, execution and delivery of the Bond as is necessary and desirable. To the extent feasible, such arrangements shall be made with persons of sound reputation after obtaining two or more bids for such services; however, the County Supervisor is authorized to make such arrangements without obtaining bids or quotes where (i) the services to be provided are unique, (ii) it is impractical to obtain bids in order to comply with any time requirements with respect to the issuance and sale of the Bond or (iii) the County (or its advisors) has had previous experience with a supplier who has performed reliably and satisfactorily.

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

45. The imposition of the Sales Tax in the County and the issuance of the Bonds and BANs, is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing the Sales Tax in the County in a referendum to be conducted by the Chester County Registration and Election Commission on November 3, 2020.

46. This Ordinance shall take effect immediately upon adoption.

47. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end, the provisions of this Ordinance are severable.

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CHESTER COUNTY, SOUTH CAROLINA

Chairman, County Council/County Supervisor
Chester County, South Carolina

(SEAL)
ATTEST:

Clerk to County Council
Chester County, South Carolina

First Reading: May 6, 2019
Second Reading: May 20, 2019
Public Hearing: June 15, 2020
Third Reading:

EXHIBIT A
CHESTER COUNTY CAPITAL PROJECT SALES AND USE TAX COMMISSION
RESOLUTION, ADOPTED MAY 7, 2020

EXHIBIT B
INFORMATION ABOUT ADDITIONAL FUNDING FOR PROJECTS