

ORDINANCE No. 318.2018

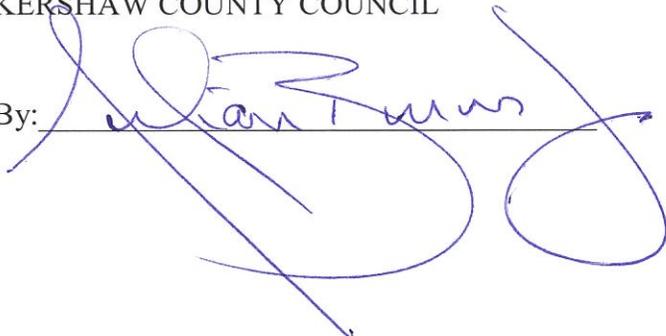
AN ORDINANCE BY KERSHAW COUNTY TO AUTHORIZE THE EXECUTION OF THE INTERGOVERNMENTAL AGREEMENT AS TO USE AND MAINTENANCE OF CENTRAL CAROLINA TECHNICAL COLLEGE FACILITIES

FILED FOR RECORD
2018 JUN -6 AM 11:29
JIMMY S. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

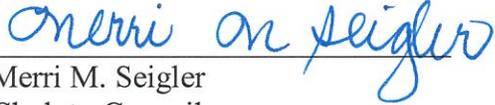
NOW, THEREFORE, BE IT ORDAINED BY THE KERSHAW COUNTY COUNCIL

1. Attached hereto as Exhibit A is the “Intergovernmental Agreement as to Use and Maintenance of Central Carolina Technical College Facilities” (Intergovernmental Agreement) by and between Kershaw County and Central Carolina Technical College.
2. That the Intergovernmental Agreement is approved and the execution of the Intergovernmental Agreement by Kershaw County is hereby authorized.
3. That the Intergovernmental Agreement by and between Kershaw County and Central Carolina Technical College is necessary and proper to effectuate the public purposes of Kershaw County and Central Carolina Technical College as an Intergovernmental Agreement all as referenced in the “Intergovernmental Agreement”.
4. The Memorandum of Understanding and the Operation Agreement and Lease dated January 26, 2010 is revoked and replaced by the Intergovernmental Agreement and Ordinance No. 151.2010 enacted on January 26, 2010 is repealed and replaced by this Ordinance.
5. This Ordinance will become effective upon third reading.

KERSHAW COUNTY COUNCIL

By: 

ATTEST:


Merri M. Seigler
Clerk to Council

First Reading: May 22, 2018
Second Reading: June 14, 2018
Public Hearing: June 26, 2018
Third Reading: June 26, 2018

STATE OF SOUTH CAROLINA) INTERGOVERNMENTAL AGREEMENT
) AS TO USE AND MAINTENANCE OF CENTRAL
COUNTY OF KERSHAW) CAROLINA TECHNICAL COLLEGE FACILITIES

This Intergovernmental Agreement as to Use and Maintenance of Central Carolina Technical College Facilities (this "Agreement") is entered into this 26th day of JUNE, 2018 (the "Effective Date"), by and between Kershaw County, a body politic of the State of South Carolina, herein after called the "County", and Central Carolina Technical College, hereinafter called "CCTC".

WITNESSETH:

WHEREAS, the County has constructed and provided for the construction of two buildings, one constructed in 2009 (the "2009 Building") and one constructed in 2017 (the New Building" and together with the 2009 Building, the "Buildings"). The Buildings are situated on property consisting of approximately 19.88 acres on Campus Drive (the "Property") as more particularly and generally shown on that plat by Robbie H. Lackey Surveying, Inc. dated September 27, 2017 and recorded in the Office of Register of Deeds for Kershaw County in Plat Book D23 at Page 9-B.

WHEREAS, the Property is encumbered by a Bond Agreement dated July 2, 2014, as supplemented by a Supplemental Bond Agreement dated December 17, 2015 (the "Bond Agreement"), each between Regions Bank and the Kershaw Public Facilities Corporation (the "Corporation").

WHEREAS, the County has heretofore entered into a Base Lease Agreement dated July 2, 2014, as amended by a Supplemental Base Lease Agreement dated December 17, 2015 (together, the "Base Lease") with the Corporation pursuant to which the County leased the Property to the Corporation.

WHEREAS, pursuant to an Installment Purchase and Use Agreement dated July 2, 2014, as amended by a Supplemental Installment Purchase and Use Agreement dated December 17, 2015 (together, the "Purchase Agreement"), each between the County and the Corporation, the County has agreed to make annual payments (subject to its right of appropriation) to the Corporation to acquire installment interests in the Facilities (as defined in the Purchase Agreement), which includes all or some of the Buildings.

WHEREAS, under the Purchase Agreement, the County shall have the exclusive right to occupy and use the Real Property (as defined in the Purchase Agreement), which includes the Property, and the Facilities.

WHEREAS, the Buildings were constructed to be used by the County and CCTC educational facilities and learning centers.

WHEREAS, the County and CCTC have determined that it is in their best interests to execute this Agreement in order to reflect the intentions of the parties with respect to the use, occupation and maintenance of the Buildings and surrounding improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained in this Agreement and the above recitals, which are incorporated herein by reference, the County and CCTC agree as follows:

TERM: It is acknowledged that CCTC has made substantial investments in the Buildings, and it is the current intent of the County to make the Buildings available to CCTC for educational purposes for a period of at least 30 years; however, due to limitations recited in Section 2.1 of the Purchase Agreement, the initial term of this Agreement shall be for a period of one year from the date hereof. Unless terminated in the sole discretion of CCTC by written notice provided to the County not less than 30 days prior to the expiration of the term, to include subsequent renewals, this Agreement shall automatically renew each year for a term of one year for the greater of (i) the term that the Base Lease is in effect, or (ii) 30 years from the date of this Agreement. After the initial term and four subsequent renewal periods, the County shall additionally have the right to terminate this Agreement by written notice to CCTC not less than 30 days prior to the expiration of the term, to include subsequent renewals. Additionally, this Agreement shall immediately terminate upon the occurrence of any Event of Default (as defined in the Purchase Agreement) or Event of Nonappropriation (as defined in the Purchase Agreement) under the terms of the Purchase Agreement.

USE PAYMENTS: During the term of the Agreement, CCTC shall pay no payments to the County for the use of the Buildings; however, the CCTC shall be responsible for certain costs of maintaining and using the Buildings as described in "Special Conditions" below.

USE OF PROPERTY: Except for the portion of the Buildings to be used by the County for its economic development office, the CCTC shall control, maintain and use the Buildings for the sole purpose of providing educational programs, including workforce skills training to members of the general public.

SPECIAL CONDITIONS: The 2009 Building shall be operated to conform to the Community Development Block Grant (CDBG) requirements (if applicable) outlined in the Memorandum of Understanding (MOU), which is attached to the Operation Agreement and Lease dated January 26, 2010 by and between the County and CCTC (the "Lease"). Notwithstanding any CDBG requirements to the contrary, this Agreement replaces the MOU and the Lease in their entirety. This Agreement shall be subject to the following covenants recited below by the parties:

County agrees to be responsible for the following:

To provide insurance on the Buildings and any contents owned by the County.

To provide maintenance for and to maintain the parking lots, sidewalks, landscaping, and road system upon the Property.

To provide the operating and maintenance and repair costs associated with the County's economic development office (the "County's Portion of the New Building") to be located in the New Building as defined in this Agreement.

CCTC agrees to be responsible for the following:

Provide educational programs in the Buildings.

Provide janitorial services for the Buildings, including the County's Portion of the New Building.

Provide for and to pay all operating costs of the Buildings to include utilities, to provide for and to pay for personnel as it relates to the CCTC's programs, to provide for and to pay for supplies as it relates to the CCTC's programs, and other costs; provided, however, the County agrees to be responsible for the cost of operating, maintaining, and administering the County's Portion of the New Building used as the County Economic Development office, including any utility costs; such costs shall applied to the County on a prorata basis.

Provide normal maintenance and repairs on the new building except that the County shall be responsible for maintenance of the interior of the County's portion of the New Building.

Maintenance or repairs on the New Building that involve structural matters including the roof system, and involve commonly used elements, including the HVAC system, would be on a prorata basis with County.

Prorata basis shall be determined as follows: the square footage of the County's Portion of the New Building (as the numerator) shall be divided by the aggregate square footage of the New Building (as the denominator) (the "County's Percentage"); the County's Percentage shall be used to prorate certain costs to the County for using the County's Portion of the New Building to include utility costs, and maintenance and repair costs in the manner agreed for herein.

Provide all repairs and all maintenance to the 2009 Building.

Provide maintenance of any CCTC furniture, fixtures, and equipment.

Provide insurance on contents and fixtures owned by CCTC.

Provide and maintain all CCTC signage, which must be approved by the planning commission or applicable licensing authority and comply with any zoning laws concerning signs.

SUBLEASE: CCTC shall not assign or sublet the Premises, or any part thereof, without the prior written consent of the County, but such consent shall not be withheld without reasonable cause.

PUBLIC LIABILITY INSURANCE: The County and CCTC shall each procure and maintain in force, public liability insurance in the amount of maximum liability set in state statute as to the use by the County and CCTC.

COMPLIANCE WITH APPLICABLE LAWS: CCTC shall comply with all laws, orders, and regulations of Federal, State, and municipal authorities, and with any direction of any public officer, pursuant to the law, which imposes any duty upon the County or CCTC with respect to the

Buildings. CCTC shall obtain all licenses or permits which may be required by the conduct of its business within the terms of this Agreement. CCTC shall comply with the requirements of all policies of public liability, fire, and all other types of insurance in force with respect to the buildings and other improvements on the leased property. CCTC further hereby covenants that the Buildings will not be used for any purpose which would adversely affect the exclusion from federal income taxation of any interest on indebtedness issued by the Corporation as tax-exempt obligations under the Bond Agreement, or which would violate the Constitution, statutes or laws of the State of South Carolina.

DESTRUCTION OF PREMISES: If all or any part of the Buildings is damaged or destroyed by fire or other casualty insured under the standard fire insurance policy with approved standard extended coverage endorsement applicable to the leased property, the County shall, except as otherwise provided herein and subject to the terms and covenants of the Purchase Agreement, repair and rebuild the Buildings with reasonable diligence, from funds available from insurance. The County's obligation to rebuild or repair shall be to the extent of insurance proceeds paid to the County.

DEFAULT: Each of the following shall be an event of default under this Agreement:

(i) Any party shall fail to observe and perform any agreement, term, or condition contained in this Agreement, and the continuation of the failure for a period of thirty (30) days after written notice thereof shall have been given to such party by any other party hereto; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected, but not within the applicable cure period, that failure shall not constitute an event of default so long as such party institutes curative action within the applicable period and diligently pursues that action to completion.

(ii) Any party shall (a) admit in writing its inability to pay its debts generally as they become due; (b) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect; (c) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization, or similar law, or have such a proceeding commenced against it and, in the case of an involuntary proceeding, either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days; (d) make an assignment for the benefit of creditors; or (e) have a receiver or trustee appointed for it or for the whole or any substantial part of its property.

REMEDIES: Whenever an event of default shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(i) Any of the parties hereto may have access to, inspect, examine, and make copies of the books, records, accounts, and financial data of the defaulting party pertaining to the Buildings.

(ii) Any party may avail itself of any other remedies available at law or in equity.

No waiver of a breach of any of the covenants, promises or provisions contained in this Agreement shall be construed as a waiver of any succeeding breach of the same covenant or promise, or of any other covenant, promise or obligation contained in this Agreement.

ASSIGNMENT: CCTC may not assign this Agreement without the written consent of the County.

WAIVER: Failure of any party to insist upon strict performance of any covenant or condition of this Agreement, in any or more instances, shall not be construed as a waiver for the future of any such covenant or condition, but the same shall be and remain in full force and effect.

IMPROVEMENTS TO PROPERTY: CCTC shall have the right, at its own expense, from time to time, to make such alterations and improvements to the Buildings as shall be reasonably necessary or appropriate in CCTC's judgment for CCTC to conduct its business; however, any material structural alterations shall be approved by the County which approval shall not reasonably be withheld. Any alteration, addition, or improvement made by CCTC (or any other party), and any fixtures installed as part thereof, shall at the expiration or sooner termination of this Agreement, at the option of the County become the property of the County provided, however, that all movable trade fixtures, equipment and personal property shall remain the property of CCTC, and it shall be granted reasonable time at the expiration of the Agreement, or any extension thereof, to remove said equipment, personal property, and movable trade fixtures.

NOTICES: Any notice under this agreement must be made in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is given as designated by such party in writing.

The County hereby designates its address as:

Kershaw County
515 Walnut Street
Camden, SC 29020
Attn: County Administrator

CCTC hereby designates its address as:

Central Carolina Technical College
506 North Guignard Drive
Sumter, SC 29150
Attn: VP for Business Affairs

ENTIRE AGREEMENT, MODIFICATION, SEVERABILITY: This Agreement contains the entire agreement between the parties, and shall not be modified in any manner except by an instrument in writing, executed by the parties. If any term or provision of this Agreement, or the application thereof, to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

BINDING EFFECT: The covenants, terms, conditions, provisions and undertakings in this Agreement or in any renewals thereof, shall extend to, and be binding upon, the successors and assigns of the respective parties hereto, as if they were in every case named and expressed, and, shall be construed as covenants running with the land, and, whenever reference is made to either of

the parties hereto, it shall be held to include and apply also to the successors and assigns of such party, as if in each case so expressed.

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IN WITNESS WHEREOF, KERSHAW COUNTY, SOUTH CAROLINA and CENTRAL CAROLINA TECHNICAL COLLEGE agree to the terms hereof as of the Effective Date.

KERSHAW COUNTY,
SOUTH CAROLINA

By: _____
Its: _____

[Handwritten signature]
Chairman

WITNESSES

Cheri on Seigler
Christy Denker

CENTRAL CAROLINA
TECHNICAL COLLEGE

By: _____
Its: President

[Handwritten signature]

WITNESSES

Dana Beard
[Signature]