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RHONDA D. McELVEEN  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

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**BARNWELL COUNTY, SOUTH CAROLINA**

**ORDINANCE No. 2024-07-406**

**TO LEVY AND IMPOSE A ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM IN BARNWELL COUNTY, SOUTH CAROLINA PURSUANT TO SOUTH CAROLINA CODE ANNOTATED SECTION 4-10-300, ET SEQ., FOR A SPECIFIC PURPOSE AND FOR A DESIGNATED AMOUNT OF TIME; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM BY THE BARNWELL COUNTY VOTER REGISTRATION AND ELECTION COMMISSION; 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 \$14,000,000; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND PLEDGE OF REVENUES RELATED TO THE BONDS AND 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.**

**ADOPTED: [JULY 16], 2024**

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## **AN ORDINANCE**

**TO LEVY AND IMPOSE A ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM IN BARNWELL COUNTY, SOUTH CAROLINA PURSUANT TO SOUTH CAROLINA CODE ANNOTATED SECTION 4-10-300, ET SEQ., FOR A SPECIFIC PURPOSE AND FOR A DESIGNATED AMOUNT OF TIME; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM BY THE BARNWELL COUNTY VOTER REGISTRATION AND ELECTION COMMISSION; 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 \$14,000,000; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND PLEDGE OF REVENUES RELATED TO THE BONDS AND 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.**

## **W I T N E S S E T H**

WHEREAS, the South Carolina General Assembly has enacted the Capital Project Sales Tax Act, South Carolina Code Annotated Section 4-10-300, *et seq.* ("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 the purposes;

WHEREAS, pursuant to the Act, the Barnwell County Council ("County Council"), as the governing body of Barnwell County, South Carolina ("County") adopted a resolution on December 12, 2023, creating a 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 ("Commission").

WHEREAS, the Commission has considered proposals for funding capital projects in the County, and the Commission adopted a resolution, a copy of which is attached as Exhibit A ("Commission Resolution") setting forth the question that is to appear on the ballot pursuant to Section 4-10-330(D) of the Act;

WHEREAS, the County Council hereby finds, subject to approval of the County's qualified electors voting in Referendum (as hereinafter defined), that a Sales Tax should be levied and imposed in the County for the purpose of funding various capital projects to support government services and functions in the County, each as more specifically identified in the Commission Resolution (collectively, "Projects" or "Capital Projects"), for the maximum period permitted by South Carolina law from the date of imposition of the Sales Tax to fund the cost of the Projects, the maximum cost of which is expected to be \$18,000,000;

WHEREAS, the County Council finds that the imposition of the Sales Tax in the County for the Projects and purposes set forth 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;

WHEREAS, pursuant to approval by referendum held on November 8, 2016 ("2016 Referendum"), the County imposed a special one cent capital project sales and use tax ("Prior Tax") for a period of seven years to achieve the purposes set forth in the 2016 Referendum ballot;

WHEREAS, if the imposition of the Sales Tax and the use of Sales Tax revenue is approved in the Referendum, the County intends to issue general obligation bonds, or special revenue bonds, special source revenue bonds, limited obligation bonds, or other similarly designated bonds in one or more series, tax-exempt or taxable, in an amount not to exceed the aggregate principal amount of \$14,000,000 (collectively, "Bonds"), to be repaid first from the Sales Tax revenue;

WHEREAS, 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 (8%) of the assessed value of all taxable property of such county ("Bonded Debt Limit");

WHEREAS, 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 (5) 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.

WHEREAS, 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 the Bonded Debt Limit;

WHEREAS, to accomplish the purposes of this Ordinance, the County has determined that it may: (i) form and/or utilize one or more nonprofit corporate 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 of the SC Code (defined below); (iii) issue Sales Tax-backed bonds to the extent provided by South Carolina law; or (iv) provide for any other financing method the County deems appropriate; and

WHEREAS, 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 series of 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 \$14,000,000 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 ORDAINED BY THE COUNTY COUNCIL AS FOLLOWS:

**Section 1. The Referendum.**

1.1 The Barnwell County Registration and Election Commission ("Election Commission") shall conduct a referendum on the question of imposing the Sales Tax in the County on Tuesday, November 5, 2024, 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 mutanda* ("Referendum").

1.2 The question to be on the ballot of the Referendum must read substantially as contained in the Commission Resolution ("Ballot Question"), which is attached hereto as Exhibit A and incorporated herein by reference as if the Commission Resolution was set forth herein in its entirety.

1.3 The County Council hereby instructs the Commission to publish in a newspaper of general circulation the Ballot Question, with the list of Capital Projects and the estimated cost of projects, each as set forth in the Commission Resolution and shall publish the election and other notices as are required by law.

1.4 In the Referendum, if a majority of the electors voting in the Referendum shall vote in favor of imposing the Sales Tax, then the Sales Tax is imposed as provided in the Act and this Ordinance.

1.5 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 within 30 days from the date that the County Council adopts a resolution declaring the results of the Referendum.

**Section 2. Approval of Sales Tax Subject to the Referendum.** Subject to a favorable vote of the qualified electors voting in the Referendum as set forth in Section 1 hereof, the Sales Tax is hereby authorized and imposed in accordance with the Act as follows:

2.1 The purposes for which the proceeds of the Sales Tax are to be used to fund the Capital Projects or debt service on the Bonds issued for the purpose of financing the Capital Projects.

2.2 The maximum time the Sales Tax may be implemented is seven (7) years, and the Sales Tax shall be imposed immediately following the termination of the Prior Tax.

2.3 The County intends to issue Bonds to provide for the payment of any costs of the Capital Projects in an amount not to exceed \$14,000,000, to be repaid first from the Sales Tax revenue and, in the event the capital project sales and use tax proceeds are inadequate for the payment of the Bonds, *ad valorem* property taxes levied on all property located in the County.

2.4 The maximum cost of the Capital Projects to be funded with the proceeds of the Sales Tax are set forth in the Commission Resolution, which projects may be paid in whole or in part through the issuance of Bonds.

2.5 The net proceeds of the Sales Tax may be expended for the Projects simultaneously. So that the construction of many of the Projects can be commenced as soon as possible and in order to achieve the most economic and efficient use of proceeds of the Tax, the Commission, with the approval of Council, has determined that the Bonds should be issued to defray Project costs. The Projects, except as provided below, shall be funded simultaneously with the proceeds of the Bonds. Council may consult bond counsel and financial advisory professionals prior to making such determination.

2.6 Amounts of Sales Tax collected in excess of the required net proceeds must first be applied, if necessary, to complete the Projects, 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) of the SC Code.

### **Section 3. Additional Restrictions on the Sales Tax.**

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

3.2 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.

3.3 The revenues of the Sales Tax collected under this Ordinance must be remitted to the Department of Revenue 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 Revenue of administering the Sales 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.

#### **Section 4. Issuance of Bonds and Bond Anticipation Notes.**

4.1 Pursuant to the Constitution and laws of the State of South Carolina, the Act, and the Referendum, if approved, the County is authorized to issue not exceeding \$14,000,000 in general obligation bonds of the County for the purposes set forth in this Ordinance. The County shall issue only so much Bonds, or notes in anticipation of such bonds ("BANs"), 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 Administrator; 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 Administrator; and shall mature as determined by the County Administrator.

4.2 The County Council expressly delegates to the County Administrator all determinations regarding the sale and issuance of 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 Administrator is further directed to consult with bond counsel in making any such decisions.

4.3 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 herein.

4.4 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.

4.5 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 4 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.

4.6 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.

4.7 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 his 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 4 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.

#### 4.8 Book-Entry System

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

Co., as the initial securities depository nominee for the Bonds. 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 Bonds, the Securities Depository Nominee will be recognized as the holder of the Bonds for the purposes of (i) paying the principal, interest and premium, if any, on such Bonds, (ii) if the Bonds are to be redeemed in part, selecting the portions of such Bonds to be redeemed, (iii) giving any notice permitted or required to be given to Bondholders under this Ordinance, (iv) registering the transfer of the Bonds, and (v) requesting any consent or other action to be taken by the holder of such Bonds, 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 Bonds which are 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 Bonds.

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

(e) In the event that the County Council determines it is in the County's best interest to discontinue the book-entry system of transfer for the Bonds, or that the interests of the beneficial owners of the Bonds 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 Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bonds discontinues providing its services, the County shall either engage the services of another Securities Depository or arrange with the 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 Bonds 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 Bonds, 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.

4.9 The Bonds shall be executed in the name of the County with the manual or facsimile signature of the Chairman of the County Council ("Chairman") 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 Administrator.

4.10 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, *this tax would be levied if, and only if, the Sales Tax revenue is anticipated to be 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.*

4.11 Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the SC Code, 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.

4.12 The Bonds may be sold at a public or private sale, as authorized by Section 11-27-40(4) of the SC Code, as the County Administrator may determine, using a Notice of Sale or other similar Notice, as the County Administrator may determine.

4.13 It is expected that proceeds of the Bonds (or BANs) will be fully drawn at Closing. The proceeds of the Bonds (or 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; and

(b) the remaining proceeds shall be expended and made use of to defray the cost of issuing the Bonds 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 South Carolina law. Earnings on such investments shall be applied either to defray Project costs or, if not so required, to pay principal on the Bonds or BANs.

4.14 Discharge of the Bonds.

(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.

4.15 If the County Administrator 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 Administrator 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 Administrator 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 Administrator is requested to continue the issuance of BANs until the County Administrator determines to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

4.16 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 Administrator and shall mature on such date, not to exceed one year from the issue date thereof, as shall be determined by the County Administrator.

(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 Administrator. 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 Administrator 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 Administrator 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 herein provided. 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 this 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.

4.17 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 Bonds 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.

#### 4.18 Tax Matters.

(a) The County covenants that no use of the proceeds of the sale of the Bonds or BANs authorized hereunder shall be made which, if such use had been reasonably expected on the date of issue of such Bonds or BANs would have caused the Bonds or BANs to be "arbitrage bonds," as defined in the Internal Revenue Code of 1986, as amended ("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 Bonds 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 or cause to be filed IRS form 8038, if the Code so requires, at the time and in the place required therefore under the Code.

(d) If Bonds or BANs are issued on a tax-exempt basis, the County Administrator may determine whether to designate the Bonds or BANs as a "qualified tax-exempt obligation" within the meaning of section 265(b)(3) of the Code.

## **Section 5. Further Actions.**

5.1 The County Council authorizes the Chairman, County Administrator, 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 fund, or other similar fund, for the purchase, sale and development of the Projects; and to take all steps reasonably necessary and desirable to purchase, sell and develop the Projects.

5.2 To effect the intent of this Ordinance, the County Council authorizes the Chairman, County Administrator, 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 South Carolina law, pledging revenues, including, for example, use of 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.

5.3 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.

5.4 Pursuant to the provisions of Section 11-27-40 of the SC Code, the County Administrator, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

5.5 To effect the intent of this Ordinance, the County Council authorizes the County Administrator to retain the law firm of Parker Poe Adams & Bernstein LLP, as legal counsel, and the financial advisory firm First Tryon Advisors.

5.6 The County Council further authorizes the County Administrator to enter into such contractual arrangements with printers and the suppliers of other goods and services necessary for the sale, execution and delivery of the Bonds 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 Administrator is authorized to make such arrangements without obtaining bids or quotes where (i) the services to be provided are unique or (ii) it is impractical to obtain bids in order to comply with any time requirements with respect to the issuance and sale of the Bonds or (iii) the County has had previous experience with a supplier who has performed reliably and satisfactorily.

**Section 6. Miscellaneous.**

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

6.2 The imposition of the Sales Tax in the County and the issuance of the Bonds or BANs, is subject in all respects to the favorable vote of a majority of qualified electors casting votes on the question of imposing the Sales Tax in the County in the Referendum.

6.3 This Ordinance shall take effect immediately upon adoption.

6.4 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.

BARNWELL COUNTY, SOUTH CAROLINA



ATTEST

Chairman, County Council  
Barnwell County, South Carolina

Clerk to County Council  
Barnwell County, South Carolina

First Reading:	May 14, 2024
Second Reading:	June 13, 2024
Public Hearing:	[July 16, 2024]
Third Reading:	[July 16, 2024]



**EXHIBIT A**

**BARNWELL COUNTY CAPITAL PROJECT SALES AND USE TAX COMMISSION  
RESOLUTION ADOPTED []. 2024**

**[ATTACHED]**

**BARNWELL COUNTY  
CAPITAL PROJECT SALES AND USE TAX COMMISSION**

**RESOLUTION**

**WHEREAS**, subject to a voter referendum, the Barnwell County Council ("County Council") may impose a Capital Project Sales and Use Tax ("Tax") for a limited time and to collect funds in Barnwell County, South Carolina ("County"), for one or more specific purposes;

**WHEREAS**, according to South Carolina Code Annotated section 4-10-320, the County Council created the Capital Project Sales and Use Tax Commission ("Commission") for the purpose of considering proposals for funding capital projects in the County;

**WHEREAS**, the Commission is charged with formulating the referendum question that is to appear on the ballot November 5, 2024, which must contain a listing of projects for which the proceeds of the Tax are to be used;

**WHEREAS**, the Commission has received various proposals for funding capital projects in the County; and

**WHEREAS**, the Commission intends for this resolution to supersede the resolution adopted on June, 3, 2024; and

**WHEREAS**, the Commission has reviewed and considered the proposals and desires to formulate the ballot question to appear on the November 5, 2024, referendum, and presents this Resolution to the County Council for consideration.

**NOW, THEREFORE BE IT RESOLVED**, by the Commission that following ballot question (as stated between the "\*\*\*\*\*") is presented to the County Council for the County Council's consideration of whether to present the question to the County's qualified electors on November 5, 2024:

\*\*\*\*\*

Shall a special, proportional, one penny per dollar capital project sales and use tax be reimposed in Barnwell County from May 1, 2025, through April 30, 2032, and shall Barnwell County be permitted to issue general obligation bonds, in one or more series, in an amount not to exceed the aggregate of \$14,000,000, which Barnwell County intends to repay from the sales and use tax, the proceeds of which shall be distributed proportionately, as received, among the following jurisdictions in the following percentages: Barnwell County (49.44%), the City of Barnwell (22.60%), the Town of Williston (13.98%), the Town of Blackville (9.34%), the Town of Hilda (2.03%), the Town of Snelling (1.21%), the Town of Kline (0.72%), and the Town of Elko (0.68%) to be used as follows:

A. To be used for Barnwell County projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

- |  |             |
|--|-------------|
| 1. Animal Shelter Acquisition and Construction Project | \$1,800,000 |
| 2. Landfill Equipment and Vehicle Acquisition Project  | \$900,000   |
| 3. Courthouse Improvements Project                     | \$1,095,000 |
| 4. Amphitheater Acquisition and Construction Project   | \$2,600,000 |
| 5. Agricultural Building Improvements Project          | \$100,000   |
| 6. Landfill Redesign and Improvement Project           | \$1,000,000 |

7. Water and Sewer Improvement Projects	\$1,295,463
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B. To be used for the City of Barnwell projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

1. Fire Station Construction Reimbursement Project	\$900,000
2. Police Vehicle Acquisition Project	\$350,000
3. Police Department Security Equipment Improvements Project	\$50,000
4. Public Works Vehicle and Equipment Acquisition Project	\$300,000
5. Parks and Downtown Revitalization Projects	\$350,000
6. Fire Department Vehicle Acquisition Project	\$700,000
7. Blight Remediation Project	\$200,000
8. Water System Improvements and Water Meter Project	\$600,000
9. Water Department Building Construction Project	\$568,294

C. To be used for the Town of Williston projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

1. Public Works and Maintenance Equipment Acquisition Project	\$250,000
2. Police Equipment Acquisition Project	\$150,000
3. Fire Equipment Acquisition Project	\$150,000
4. Recreation Facilities Improvements and Equipment Acquisition Project	\$50,000
5. Town Beautification and Enhancement Project	\$236,000
6. Water and Sewer System Improvements Project	\$1,649,652

D. To be used for the Town of Blackville projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

1. Water and Sewer System Improvements Project	\$400,000
2. Blight Remediation Project	\$400,000
3. Police Station Improvements Project	\$225,000
4. Recreational Facilities Acquisition and Construction Project	\$635,657

E. To be used for the Town of Hilda projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

1. Depot and Caboose Improvements Project	\$81,000
2. Storage and Multipurpose Building Construction Project	\$76,000
3. Recreational Facilities Improvements and Equipment Acquisition Project	\$78,000
4. Water System and Storage Improvements Project	\$125,935

F. To be used for the Town of Snelling projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

1. Recreational Facilities and Equipment Improvements Project	\$215,000
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G. To be used for the Town of Kline projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

1. Concession Building Improvements Project	\$55,430
2. Town Hall Facility and Equipment Improvement Project	\$37,378

- |  |          |
|--|----------|
| 3. Small Town Hall Improvements Project                  | \$6,800  |
| 4. Fire Station Improvements Project                     | \$11,800 |
| 5. Storage Building Acquisition and Construction Project | \$8,866  |
| 6. Public Works Equipment Acquisition Project            | \$7,742  |

H. To be used for the Town of Elko projects listed in the following priority with the estimated cost to be paid from the sales and use tax or bond proceeds:

- |  |          |
|--|----------|
| 1. Town Hall Parking Lot Pavement Repair and<br>Drainage Improvement Project | \$35,000 |
| 2. Parks and Recreation Equipment Acquisition Project                        | \$54,339 |

**CONDITIONS AND RESTRICTIONS ON THE USE OF THE SALES AND USE TAX REVENUE COLLECTED UNDER THE CAPITAL PROJECT SALES TAX ACT:**

The Capital Project Sales and use tax shall be used for the procurement, design, architectural, engineering, surveying, soil testing, construction, improvement, reimbursement, or similar type uses related to the projects listed above, or any combination related to the foregoing that are related to the acquisition, construction, or rehabilitation of a project. Net proceeds of the sales and use tax must be expended for the purposes stated, in the priority listed above. The completion of the each project funded by the sales and use tax is governed by the Capital Project Sales Tax Act (S.C. Code Ann. §4-10-300, *et seq.*) and 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 above and other unforeseen circumstances and conditions, which, if any of these circumstances are encountered, the governmental entity receiving funds may move to the next priority project and continue through the priority list until completed, then may return to any project passed over. In the event the Capital Project Sales and use tax proceeds are inadequate for the payment of the bonds, the source of payment of the bonds will be ad valorem property taxes levied on all property located in Barnwell County.

**INSTRUCTIONS TO VOTERS.**

All qualified electors desiring to vote in favor of reimposing the tax for the stated purposes shall vote "YES." All qualified electors opposed to levying the tax shall vote "NO."

YES \_\_\_\_\_

NO \_\_\_\_\_

\*\*\*\*\*

**[ONE SIGNATURE PAGE FOLLOWS]  
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ADOPTED: [], 2024

*Kirk E. Sargent*  
Chair

*Don A. Alexander*  
Vice-Chair

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*Mark B. D...*  
Secretary

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