

ORDINANCE #05-10-13

A ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF NEWBERRY COUNTY, SOUTH CAROLINA NOT EXCEEDING \$1,215,000 IN AGGREGATE PRINCIPAL AMOUNT, TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS OF SAID BONDS SHALL BE EXPENDED, TO PROVIDE FOR THE PAYMENT OF SAID BONDS, AND OTHER MATTERS RELATING THERETO.

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BE IT ORDAINED BY THE COUNTY COUNCIL OF NEWBERRY COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

**ARTICLE I**

**FINDINGS OF FACT**

Section 1.01 Findings.

As an incident to the adoption of this Ordinance, the Newberry County Council (the "Council"), the governing body of Newberry County, South Carolina (the "County"), finds that the facts set forth in this Article exist and the statements made with respect thereto are in all respects true and correct:

1. By virtue of Chapter 15, Title 4, Code of Laws of South Carolina, 1976, as amended and supplemented by Act No. 113 of the 1999 Acts of the South Carolina General Assembly (collectively, the "County Bond Act"), the County is empowered to issue general obligation bonds for any "authorized purpose" as therein defined.

The Council has heretofore determined that it is in the best interest of the County to provide for the acquisition of certain equipment for fire, rescue and ambulance functions within the County, such equipment to include fire trucks, ambulances and other vehicles (collectively, the "Equipment"). It is estimated that the cost of the Equipment, which is being acquired over a period of seven fiscal years, beginning in Fiscal Year 2010-11 will total \$4,446,000.

The Council has further determined that the cost of purchase of the Equipment will be defrayed in each year through the proceeds of a series of lease-purchase agreements to be entered into from year to year, subject to the decision by the Council to discontinue or modify such plan at any time. Lease-purchase agreements for items such as the Equipment are expressly exempt from the provisions of Section 11-27-110, Code of Laws of South Carolina, 1976, and, accordingly, are not chargeable against the constitutional debt limit of the County as described in Section 1.02 of this Ordinance. Subject to the right of the County reserved in each lease-purchase agreement now in effect and to become effective hereafter to not appropriate funds in any fiscal year for the payment due thereunder, the County will make annual payments payable under each lease purchase agreement (collectively, "Lease Payments) in order to enjoy the use of the equipment in each fiscal year.

The County has also as of April 30, 2013 entered into with Newberry County Public Facilities Corporation, a South Carolina non-profit corporation (the "Corporation") a Facilities Purchase and Occupancy Agreement (the "Facilities Agreement"). Pursuant to the Facilities Agreement, the Corporation has provided to the County permanent financing for the construction and equipping of the County's public works administration and animal control facility, and the County has agreed, for its use and acquisition of such facility over a term of years, to make annual "Acquisition Payments" to the Corporation. Amounts payable under the Facilities Agreement are not subject to the constitutional debt limit of the County as described in Section 1.02 of this Ordinance.

The Council further intends the Lease Payments and the Acquisition Payments (collectively, the "Annual Appropriation Payments") will be paid from the proceeds of general obligation bonds of the County to be issued annually, in sufficient time to allow for the timely funding of the Annual Appropriation Payments. The payment of Annual Appropriation Payments constitutes an authorized purpose for the issuance of general obligation bonds of the County within

the meaning of the County Bond Act. To date, the County has issued its general obligation bonds in Fiscal Years 2010-11, 2011-12, and 2012-13 in furtherance of this plan.

The Council has determined to presently authorize the issuance of two general obligation bonds of the County, one to be issued in Fiscal Year 2013-14 and the other to be issued in Fiscal Year 2014-15, in order to provide funds with which to pay Annual Appropriation Payments in such Fiscal Years. The total estimated cost of such Annual Appropriation Payments and, additionally, costs of issuance of the bonds, will not exceed \$1,215,000.

Section 1.02 Recital of Applicable Constitutional Provisions.

Section 14 of Article X of the Constitution of the State of South Carolina (the "Constitution") provides that the counties of the State may issue bonded indebtedness in an amount not exceeding eight percent (8%) of the assessed value of all taxable property therein, and provides further that no bonded indebtedness incurred on or prior to November 30, 1977, shall be charged against such eight percent (8%) debt limitation. Paragraph (6) of Section 14 of Article X of the Constitution further provides that general obligation debt authorized by a majority of the qualified electors of the issuer may be issued without consideration of the eight percent (8%) limit otherwise imposed by Section 14 of Article X. The assessed value of all taxable property located within the County (including merchants' inventory, but net of property subject to a fee in lieu of tax) as certified by the County Auditor for the year 2011, which is the last completed assessment thereof, is a sum of not less than \$118,648,940, and thus the eight percent (8%) debt limit of the County is not less than \$9,491,915. At the time of the issuance of the first bond authorized by this Ordinance in December, 2013, the County will have outstanding general obligation debt chargeable against the eight percent (8%) limit in the principal amount of not exceeding \$4,733,780. Thus, the Council may issue the sum of \$1,215,000 general obligation debt at the present time without the authorization required by Section 14(6) of the Constitution.

Section 1.03 Holding of Public Hearing and Notice Thereof.

Pursuant to the provisions of Section 4-9-130 of the Code of Laws of South Carolina, 1976, as amended, a public hearing, after giving reasonable notice, is required to be conducted prior to the third and final reading of this Ordinance by Council. In accordance with this provision, a public hearing shall be conducted and due notice shall be provided as required by said Section 4-9-130. The form of the notice to be published shall be substantially as set forth as **Exhibit A** attached hereto.

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## ARTICLE II

### DEFINITIONS AND AUTHORITY

#### Section 2.01 Definitions.

As used in this Ordinance, unless the context shall otherwise require, the following terms shall have the following respective meanings:

“Administrative Costs” means all amounts payable by the County to the Corporation under the Facilities Agreement as “Additional Payments”.

“Annual Appropriation Payments” shall have the meaning given thereto in Section 1.01 of this Ordinance.

“Authorized Investments” means any securities which are authorized legal investments for political subdivisions pursuant to the Code of Laws of South Carolina.

“Authorized Officer” means the Chairman or the Vice-Chairman of the Council and any other officer or employee of the Council designated from time to time as an Authorized Officer by resolution of the Council, and when used with reference to any act or document also means any other person authorized by resolution of the Council to perform such act or sign such document.

“Bond”, “a Bond” or “the Bond” means a Bond issued in accordance with the provisions of this Ordinance. “Bonds” means all Bonds issued hereunder.

“Bondholder” or “Holder” or “Holder of Bond” or “Owner” or similar term means, when used with respect to a Bond, any person who shall be registered as the owner of a Bond outstanding.

“Bond Payment” means the payment of principal of and interest on a Bond.

“Bond Payment Date” means each date on which a Bond Payment shall be payable.

“Code” means the Internal Revenue Code of 1986, as amended.

“Council” means the Newberry County Council, South Carolina, the governing body of said County or any successor governing body of said County.

“County” means Newberry County, South Carolina.

“County Bond Act” shall have the meaning given thereto in Section 1.01 of this Ordinance.

“Equipment” shall have the meaning given in Section 1.01 of this Ordinance.

“Facilities Agreement.” shall have the meaning given in Section 1.01 of this Ordinance.

“Government Obligations” means and includes direct general obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which is fully and unconditionally guaranteed by the United States of America.

“Holder” means the registered owner, from time to time, of a Bond as shown on the registration books of the County maintained by the Registrar.

“Ordinance” shall mean this ordinance of County Council authorizing the issuance of the Bond.

“Outstanding”, when used in this Ordinance with respect to a Bond, means as of any date, such Bond theretofore delivered pursuant to this Ordinance except:

(a) if such Bond shall have been cancelled or delivered to the Registrar for cancellation on or before such date;

(b) if such Bond deemed to have been paid in accordance with the provisions of Section 7.01 hereof; and

(c) any Bond in lieu of or in exchange for which another Bond shall have been authenticated and delivered pursuant to Section 3.11 of this Ordinance.

“Paying Agent” means the County Treasurer of Newberry County.

“Person” means an individual, a partnership, a corporation, a trust, a trustee, an unincorporated organization, or a government or an agency or political subdivision thereof.

“Record Date” means the 15<sup>th</sup> day of the month immediately preceding a Bond Payment Date.

“Registrar” means the County, acting through the Clerk to Council.

#### Section 2.02 Construction.

In this Ordinance, unless the context otherwise requires:

1. Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Ordinance.

2. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms refer to this Ordinance, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of adoption of this Ordinance.

3. Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

4. Any fiduciary shall be deemed to hold an Authorized Investment in which money is invested pursuant to the provisions of this Ordinance, even though such Authorized Investment is evidenced only by a book entry or similar record of investment.

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## ARTICLE III

### ISSUANCE OF BONDS

#### Section 3.01 Ordering the Issuance of Bonds.

Pursuant to the provisions of the County Bond Act, and for the purpose of obtaining funds with which to pay Annual Appropriation Payments, there shall be issued, as two separate Bonds, not exceeding One Million Two Hundred Five Thousand Dollars (\$1,215,000) aggregate principal amount general obligation bonds of the County. Each Bond issued hereunder shall bear a series designation which reflects the calendar year of issuance and sequence of issuance within such calendar year relative to other general obligation bonds, if any, of the County issued within such calendar year. The first Bond issued under the authorizations of this Ordinance shall be issued in Fiscal Year 2013-14 and in time sufficient to pay Annual Appropriation Payments due in such Fiscal Year. Likewise, the second Bond issued under the authorizations of this Ordinance shall be issued in Fiscal Year 2014-15 and in time sufficient to pay Annual Appropriation Payments due in such Fiscal Year. The principal amount of a Bond in a given year shall be adjusted, or the issuance thereof cancelled, as appropriate, in the event the Council determines not to appropriate Annual Appropriation Payments or portion thereof for such year.

#### Section 3.02 Maturity Schedule of Bonds.

A Bond shall be dated as of the date of its delivery and shall bear interest from its dated date. The principal amount of a Bond shall be sufficient to pay the Annual Appropriation Payment due in the Fiscal Year of such Bond's issuance, Administrative Costs, and the costs of issuance of such Bond, as determined by the County Administrator. A Bond shall mature no later than June 30 of the Fiscal Year of its issuance on such date, as determined by the County Administrator.

#### Section 3.03 Medium of Payment; Form and Denomination of Bonds; Place of Payment of Principal.

(a) A Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) A Bond shall be issued in the form of one (1) fully registered bond.

(c) A Bond Payment shall be payable to the Person appearing as the Holder of the applicable Bond on the Record Date on the registration books of the County, which books shall be held by the County as Registrar as provided in Section 3.06 hereof, upon the presentation and surrender for cancellation of the Bond at the office of the Paying Agent, provided, however, that the Paying Agent may, upon advice of the County Administrator, waive presentment prior to the delivery of the Bond Payment to the Holder as provided in this Section 3.03(c).

#### Section 3.04 Execution and Authentication.

(a) A Bond shall be executed in the name and on behalf of the County by the manual signature of an Authorized Officer or Officers, with its corporate seal impressed, imprinted or otherwise reproduced thereon, and attested by the manual signature of the Clerk to County Council or an Authorized Officer (other than the officer or officers executing such Bond). A Bond may bear the manual signature of any person who shall have been such an Authorized Officer authorized to sign such Bond at the time such Bond was so executed, and shall bind the County notwithstanding

the fact that his or her authorization may have ceased prior to the authentication and delivery of such Bond.

(b) A Bond shall not be valid or obligatory for any purpose nor shall it be entitled to any right or benefit hereunder unless there shall be endorsed on the Bond a certificate of authentication in the form set forth in this Ordinance, duly executed by the manual signature of the Registrar, and such certificate of authentication upon a Bond executed on behalf of the County shall be conclusive evidence that the Bond so authenticated has been duly issued hereunder and that the Holder thereof is entitled to the benefit of the terms and provisions of this Ordinance.

Section 3.05 Exchange of a Bond.

A Bond, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Holder or his duly authorized attorney, may, at the option of the registered Holder thereof, be exchanged for a new Bond of the same interest rate and maturity. So long as a Bond remains Outstanding, the County shall make all necessary provisions to permit the exchange of the Bond. Such new Bond shall reflect the principal amount thereof as then yet unpaid.

Section 3.06 Transferability and Registry.

A Bond shall at all times, when the same is Outstanding, be payable to a Person, and shall be transferable only in accordance with the provisions for registration and transfer contained in this Ordinance and in the Bond. So long as a Bond remains Outstanding, the Registrar shall maintain and keep, at its administrative office, books for the registration and transfer of the Bond, and, upon presentation thereof for such purpose at such office, the Registrar shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it may prescribe, such Bond. So long as the Bond remains Outstanding, the Registrar shall make all necessary provisions to permit the transfer of such Bond at its administrative office.

Section 3.07 Transfer of the Bond.

A Bond shall be transferable only upon the books of the Registrar, upon presentation and surrender thereof by the Holder of the Bond in person or by his attorney duly authorized in writing, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered Holder or his duly authorized attorney. Upon surrender for transfer of a Bond, the County shall execute, authenticate and deliver, in the name of the Person who is the transferee, a new Bond of the same principal amount and maturity and rate of interest as the surrendered Bond. Such new Bond shall reflect the principal amount thereof as then yet unpaid.

Section 3.08 Regulations with Respect to Exchanges and Transfers.

A Bond surrendered in any exchange or transfer shall forthwith be cancelled by the Registrar. For each such exchange or transfer of the Bond, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The County shall not be obligated to issue, exchange or transfer a Bond during the 15 days next preceding the Bond Payment Date applicable thereto.

Section 3.09 Mutilated, Destroyed, Lost and Stolen Bond.

(a) If the Holder surrenders a mutilated Bond to the Registrar or the Registrar receives evidence to its satisfaction of the destruction, loss, or theft of a Bond, and there is delivered to the Registrar such security or indemnity as may be required by it to save it harmless, then, in the absence of notice that such Bond has been acquired by a bona fide purchaser, the County shall execute and deliver, in exchange for the mutilated Bond or in lieu of any such destroyed, lost, or stolen Bond, a new Bond of like tenor, maturity, and interest rate bearing a number unlike that of such mutilated, destroyed, lost, or stolen Bond, and shall thereupon cancel any such mutilated Bond so surrendered.

(b) Upon the issuance of any new Bond under this Section 3.09, the County may require the payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees or other fees, of the County or the Registrar connected therewith.

(c) Each new Bond issued pursuant to this Section in lieu of any destroyed, lost, or stolen Bond, shall constitute an additional contractual obligation of the County, whether or not the destroyed, lost, or stolen Bond shall at any time be enforceable by anyone, and shall be entitled to all the benefits hereof equally and proportionately with the Bond duly issued pursuant to this Ordinance.

(d) A Bond shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of the mutilated, destroyed, lost, or stolen Bond and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement or payment of the mutilated, destroyed, lost, or stolen Bond or securities.

Section 3.10 Holder As Owner of Bond.

In its capacity as Registrar, the County may treat the Holder of a Bond as the absolute owner thereof, whether the Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the Bond Payment on the Bond and for all other purposes, and payment of the Bond Payment shall be made only to, or upon the order of, such Holder. All payments to such Holder shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid, and the County shall not be affected by any notice to the contrary.

Section 3.11 Cancellation of the Bond.

The Registrar shall destroy a Bond when the same shall be surrendered to it for cancellation. In such event, such Bond shall no longer be deemed Outstanding under this Ordinance and no Bond shall be issued in lieu thereof.

Section 3.12 Payments Due on Saturdays, Sundays and Holidays.

In any case where a Bond Payment Date shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the Bond Payment need not be made on such date but may be made on the next succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close, with the same force and effect as if made on the Bond Payment Date and no interest shall accrue for the period after such date.

Section 3.13 Tax Exemption in South Carolina.

Bond Payments shall be exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes.

Section 3.14 Order to Levy Ad Valorem Taxes to Pay Principal and Interest of Bond.

For the payment of principal of and interest on a Bond as the same become due and for the creation of such sinking fund as may be necessary therefor, the full faith, credit, and taxing power of the County are hereby irrevocably pledged, and there shall be levied an ad valorem tax upon all taxable property located within the County sufficient to pay the principal of and interest on the Bond as the same become due and to create such sinking fund as may be necessary therefor.

Section 3.15 Notice to Auditor and Treasurer.

The Auditor and Treasurer of Newberry County, South Carolina, shall be notified of the issuance of a Bond and directed to levy and collect annually upon all taxable property within the County ad valorem property taxes in an amount sufficient to pay the principal of and interest on such Bond as the same become due and to create such sinking fund as may be necessary therefor.

Section 3.16 Form of Bond.

The form of a Bond, and registration provisions to be endorsed thereon, shall be substantially as set forth in **Exhibit B** attached hereto and made a part of this Ordinance.

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**ARTICLE IV**

**REDEMPTION OF BONDS**

Section 4.01 Redemption of Bonds.

A Bond shall not be subject to redemption prior to maturity except as may be agreed to by the Holder thereof and the County.

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## ARTICLE V

### SALE OF BONDS

#### Section 5.01 Sale and Award of Bonds.

A Bond shall be sold at a price of not less than par. Bids for a Bond shall be solicited by the County Administrator from not less than three (3) financial institutions with at least seven (7) days advance notice to institutions so solicited.

Unless all bids are rejected, the County Administrator is authorized to award the Bond to the bidder offering the lowest net interest cost therefor; for purposes of this paragraph, net interest cost shall be determined by computing the total dollar interest cost from the date of the Bond to maturity and deducting therefrom the amount of the premium offered, if any, over and above the principal amount. In the case of a tie in net interest cost, the award of the Bond shall be based upon the flip of a coin. Notwithstanding the foregoing, no such award shall be effective without the approval of Council, by resolution duly adopted, if the net interest cost of such Bond exceeds 5.00% per annum.

Notwithstanding the foregoing, upon advice of Counsel, the sale of a Bond may be combined with the negotiation of a lease-purchase agreement for Equipment, and the Bond may be awarded together with such lease purchase agreement to the bidder offering to the County, in the sole discretion of the County Administrator, the best overall terms for the purchase of such items. No such award shall be effective without the approval of Council, by resolution duly adopted, if the net interest cost of such Bond exceeds 5.00% per annum.

There shall be published in a newspaper of general circulation in the County at least seven (7) days prior to the delivery of a Bond a Notice of Sale in form substantially similar to that appearing at **Exhibit C** hereto.

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**ARTICLE VI**

**DISPOSITION OF PROCEEDS OF SALE OF BONDS**

Section 6.01 Disposition of Bond Proceeds Including Temporary Investments.

The proceeds derived from the sale of a Bond shall be paid to the Treasurer of Newberry County, to be deposited in a separate Bond Account, and shall be expended and made use of by the Council to defray the cost of issuing the Bond and to pay Annual Appropriation Payments and Administrative Costs. Any premium shall be placed in the sinking fund held by the Treasurer of Newberry County for payment of principal and interest on the Bond and applied to the discharge of principal on such Bond.

Pending the use of Bond proceeds, the same shall be invested and reinvested by the Treasurer of Newberry County in Authorized Investments. All earnings from such investments shall be applied, at the direction of the Council, either (1) to defray the cost of the undertakings for which the Bond is issued and if not required for this purpose, then (2) to interest on the Bond from the proceeds of which such earnings were derived.

Neither the purchaser nor Holder of the Bond shall be liable for the proper application of the proceeds thereof.

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## ARTICLE VII

### DEFEASANCE OF BONDS

Section 7.01 Discharge of Ordinance - Where and How a Bond is Deemed to Have Been Paid and Defeased.

If a Bond and the interest thereon shall have been paid and discharged, then the obligations of the County under this Ordinance as to such Bond and all other rights granted hereby shall cease and determine. A Bond shall be deemed to have been paid and discharged within the meaning of this Article under each of the following circumstances, viz.:

(1) A third party fiduciary, which shall be any bank, trust company, or national banking association which is authorized to provide corporate trust services (the "Fiduciary"), shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment of the Bond Payment due thereunder; or

(2) If default in the payment when due of a Bond Payment shall have occurred, and thereafter tender of such payment shall have been made, and at such time the Fiduciary shall hold in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of such payment; or

(3) If the County shall elect to provide for the payment of a Bond prior to its stated maturity and shall have deposited with the Fiduciary, in an irrevocable trust, moneys which shall be sufficient, or Government Obligations, the principal of and interest on which when due will provide moneys, which together with moneys, if any, deposited with the Fiduciary at the same time, shall be sufficient to pay the Bond Payment when due.

Neither the Government Obligations nor moneys deposited with the Fiduciary pursuant to this Section nor the Bond Payments thereon shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Bond Payment on a Bond; provided that any cash received from such principal or interest payments on Government Obligations deposited with the Fiduciary, if not then needed for such purpose, shall to the extent practicable be invested and reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the Bond Payment to become due on a Bond on the Bond Payment Date thereof, and interest earned from such reinvestments not required for the payment of the Bond Payment may be paid over to the County, free and clear of any trust, lien or pledge.

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## **ARTICLE VIII**

### **CERTAIN TAX AND DISCLOSURE CONSIDERATIONS**

#### **Section 8.01 Covenants to Comply with Requirements of the Code.**

The County hereby represents and covenants that it will comply with all requirements of the Code, and that it will not take any action which will, or fail to take any action (including, without limitation, filing the required information reports with the Internal Revenue Service) which failure will, cause interest on a Bond to become includable in the gross income of the Holder thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of a Bond. Without limiting the generality of the foregoing, the County represents and covenants that:

1. All property provided by the net proceeds of a Bond will be owned by the County in accordance with the rules governing the ownership of property for federal income tax purposes.

2. The County shall not permit the proceeds of a Bond or any facility financed with the proceeds of the Bond to be used in any manner that would result in (a) ten percent (10%) or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any natural person or in any activity carried on by a person other than a natural person other than a governmental unit as provided in Section 141(b) of the Code, or (b) five percent (5%) or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit as provided in Section 141(c) of the Code.

3. The County is not a party to nor will it enter into any contracts with any person for the use or management of any facility provided with the proceeds of a Bond that do not conform to the guidelines set forth in Revenue Procedure 97-13.

4. The County will not sell or lease the Equipment or any property provided by a Bond to any person unless it obtains the opinion of nationally recognized bond counsel that such lease or sale will not affect the tax exemption of the Bond.

5. A Bond will not be federally guaranteed within the meaning of Section 149(b) of the Code. The County is not a party to any leases or sales or service contracts with any federal government agency with respect to the projects and will not enter into any such leases or contracts unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax exemption of a Bond.

Notwithstanding the foregoing, the County Administrator may determine that interest on a Bond shall be subject to federal income tax if so requested by the purchaser thereof, subject always to Section 5.01 of this Bond Ordinance. In such case, the foregoing covenants and the remainder of this Article VIII shall be inapplicable.

#### **Section 8.02 Qualified Tax-Exempt Obligation.**

The County expects that it and entities subordinate thereto will issue no tax-exempt obligations in each of calendar year 2013 and 2014 which, along with the Bond to be issued in such calendar years, would aggregate more than \$10,000,000 in such calendar year. Accordingly, each Bond is hereby designated as a “qualified tax-exempt obligation” within the meaning of Section

265(b)(3)(B) of the Code. The County Administrator may counter such designation if, at the time a Bond is issued, such expectation is inaccurate.

Section 8.03 Ability to Meet Arbitrage Requirements.

Careful consideration has been given to the time in which the expenditures of the proceeds of each Bond authorized hereby will be made, and it has been ascertained that all of the money received from the proceeds of each Bond will be expended within the limitations imposed by Section 148(c) of the Code, so that the Council will be able to certify upon reasonable grounds that each Bond is not an “arbitrage bond” within the meaning of Section 148(c) of the Code.

Section 8.04 Continuing Disclosure.

Pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended, the County covenants to file with a central repository for availability in the secondary bond market when requested:

- (a) An annual independent audit, within thirty days of the County’s receipt of the audit; and
- (b) Event specific information within thirty days of an event adversely affecting more than five percent of revenue or the County’s tax base.

The only remedy for failure by the County to comply with the covenant in this Section 8.04 shall be an action for specific performance of this covenant. The County specifically reserves the right to amend this covenant to reflect any change in Section 11-1-85, without the consent of any Bondholder.

Section 8.05 Taxable Obligation.

Any Bond may be issued as a taxable obligation if the County Administrator determines in his sole discretion that it is in the best interests of the County to do so.

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## ARTICLE IX

### MISCELLANEOUS

#### Section 9.01 Savings Clause.

If any one or more of the covenants or agreements provided in this Ordinance should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Ordinance.

#### Section 9.02 Successors.

Whenever in this Ordinance the County is named or referred to, it shall be deemed to include any entity, which may succeed to the principal functions and powers of the County, and all the covenants and agreements contained in this Ordinance or by or on behalf of the County shall bind and inure to the benefit of said successor whether so expressed or not.

#### Section 9.03 Ordinance to Constitute Contract.

In consideration of the purchase and acceptance of a Bond by those who shall purchase and hold the same from time to time, the provisions of this Ordinance shall be deemed to be and shall constitute a contract between the County and the Holder from time to time of the Bond, and such provisions are covenants and agreements with such Holder which the County hereby determined to be necessary and desirable for the security and payment thereof. The pledge hereof and the provisions, covenants, and agreements herein set forth to be performed on behalf of the County shall be for the benefit, protection, and security of the Holder of the Bond.

#### Section 9.04 Filing of Copies of Ordinance.

Copies of this Ordinance shall be filed in the offices of the Council and in the office of the Clerk of Court for Newberry County (as a part of the Transcript of Proceedings).

#### Section 9.05 Appropriation of Funds.

Notwithstanding Section 9.07 of this Ordinance, the adoption hereof shall not be construed as an appropriation of funds with which to make Annual Appropriation Payments or Administrative Costs in any Fiscal Year. Such appropriation shall be made, if ever, only in connection with the adoption of the County's annual operating budget for each Fiscal Year. The Bonds authorized hereby may be sold and delivered only to pay Annual Appropriation Payments and Administrative Costs when and to the extent so appropriated.

#### Section 9.06 Further Action by Officers of County.

The proper officers of the County are fully authorized and empowered to take the actions required to implement the provisions of this Ordinance and to furnish such certificates and other proofs as may be required of them, which includes but is not limited to providing the notice and conducting the public hearing described in Section 1.03 hereof. In the absence of any officer of the Council herein authorized to take any act or make any decision, the County Administrator is hereby authorized to take any such act or make any such decision.

Section 9.07 Effective Date of Ordinance.

This Ordinance shall take effect upon its third reading and shall be forthwith codified in the Code of County Ordinances and indexed under the general heading “An Ordinance To Provide For The Issuance And Sale Of General Obligation Bonds Of Newberry County, South Carolina Not Exceeding \$1,215,000 In Aggregate Principal Amount, To Prescribe The Purposes For Which The Proceeds Of Said Bonds Shall Be Expended, To Provide For The Payment Of Said Bonds, And Other Matters Relating Thereto.”

DONE IN MEETING DULY ASSEMBLED, this \_\_\_ of \_\_\_\_\_, 2013.

NEWBERRY COUNTY COUNCIL

(SEAL)

\_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Clerk

**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that the Newberry County Council, State of South Carolina will conduct the following public hearing(s) at its meeting on the \_\_\_\_ day of \_\_\_\_\_, 2012, to be held in the Newberry County Council Chamber, 1309 College Street, Newberry, South Carolina, at \_\_\_\_\_, 2013.

Ordinance No. \_\_\_\_: An Ordinance To Provide For The Issuance And Sale Of General Obligation Bonds Of Newberry County, South Carolina Not Exceeding \$1,215,000 In Aggregate Principal Amount, To Prescribe The Purposes For Which The Proceeds Of Said Bonds Shall Be Expended, To Provide For The Payment Of Said Bonds, And Other Matters Relating Thereto.

[OTHER ORDINANCES RECEIVING PUBLIC HEARINGS INSERTED HERE]

At the time and place fixed for said public hearing(s), all taxpayers, residents or other interested persons who appear will be given an opportunity to express their views for or against the adoption of the Ordinance. A copy of the proposed Ordinance(s) is available for inspection in the Clerk to Council's office located in the Courthouse Annex at 1309 College Street, Newberry, South Carolina, during its regular business hours. Assistance is available for those who are visually or hearing-impaired. For assistance, call Laurie Renwick, Clerk to Council, (803) 321-2100.

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Chairman, Newberry County Council

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY  
GENERAL OBLIGATION BOND, SERIES \_\_\_\_\_

No. 1

Registered Holder: \_\_\_\_\_

Principal Amount: \_\_\_\_\_

NEWBERRY COUNTY, SOUTH CAROLINA (the "County"), a public body corporate and politic and a political subdivision of the State of South Carolina (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Holder named above or registered assigns, the Principal Amount stated above and interest thereon on such date and in the manner provided herein

This bond ("Bond") is issued in the principal amount of \_\_\_\_\_ for purposes authorized by and pursuant to and in accordance with the Constitution and Statutes of the State of South Carolina, including particularly the provisions of Sections 4-15-10 through 4-15-180, Code of Laws of South Carolina, 1976, as amended, and an Ordinance duly adopted by the County Council of Newberry County (the "Ordinance"). This Bond is not subject to redemption prior to maturity except as may be agreed to by the County and the Holder hereof.

The principal and interest on this Bond shall be paid on \_\_\_\_\_, 20\_\_ upon the presentation and surrender for cancellation of this Bond at the office of the County Treasurer of Newberry County, as Paying Agent, to the person shown on the books of registration of the County as the Holder hereof on the Record Date. The Bond Payment is payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinance. Certified copies of the Ordinance are on file in the office of the Clerk of Court of Newberry County and in the office of the County Council of Newberry County.

This Bond is payable from a tax levied on all taxable property within the County. For the prompt payment of the Bond Payment as the same shall become due, the full faith, credit, and taxing power of the County are irrevocably pledged.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general

or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer, or certain franchise taxes.

The Bond is issued in the form of one (1) fully registered Bond and is transferable, as provided in the Ordinance, only upon the registration books of the County kept for that purpose at the offices of the County by the registered Holder in person or by his duly authorized attorney upon, (i) surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered holder or his duly authorized attorney, and (ii) payment of the charges, if any, prescribed in the Ordinance. Thereupon a new fully registered Bond of interest rate and like principal amount shall be issued to the transferee in exchange therefor as provided in the Ordinance. The County may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of the Bond Payment due hereon and for all other purposes.

For every exchange or transfer of the Bond, the County may make a charge sufficient to reimburse it for any tax, fee, or other governmental charge required to be paid with respect to such exchange or transfer.

It is hereby certified and recited that all acts, conditions, and things required to exist, happen, and to be performed precedent to and in the adoption of the Ordinance and in the issuance of the Bond in order to make the legal, valid, and binding general obligation of the County in accordance with its terms, do exist, have been done, have happened and have been performed in regular and due form as required by law; and that the issuance of the Bond does not exceed or violate any constitutional, statutory, or other limitation upon the amount of indebtedness prescribed by law.

IN WITNESS WHEREOF, NEWBERRY COUNTY, SOUTH CAROLINA, has caused this Bond to be signed by the manual signature of the Chairman of the Newberry County Council, attested by the manual signature of the Clerk to the Newberry County Council, and the seal of the County impressed hereon.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Chairman, Newberry County Council

ATTEST:

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

CERTIFICATE OF AUTHENTICATION

This Bond is the Bond of the issue described in the within mentioned Ordinance.

Registrar

By: \_\_\_\_\_  
Clerk to Council

Date of Authentication: \_\_\_\_\_, 20\_\_\_\_

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common

UNIF GIFT MIN ACT -

TEN ENT - as tenants by the entireties

\_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

JT TEN - as joint tenants with right of survivorship and not as tenants in common

under Uniform Gifts to Minors Act \_\_\_\_\_  
(state)

Additional abbreviations may also be used though not in above list.

**(FORM OF ASSIGNMENT)**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_  
the within bond and does hereby irrevocably constitute and appoint \_\_\_\_\_  
attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature Guaranteed

\_\_\_\_\_  
(Authorized Officer)

\_\_\_\_\_  
(Signature must be guaranteed by a participant in the Securities Transfer Agent Medallion Program (STAMP))

\_\_\_\_\_  
Notice: The signature to the assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

**NOTICE OF SALE**

Notice is hereby given that Newberry County, South Carolina shall deliver to (Purchaser) on (Date of Delivery) it's \$\_\_\_\_\_ principal amount General Obligation Bond, Series \_\_\_\_\_. The Bond has been sold to (Purchaser) at a price of \_\_\_\_\_ and an interest rate of \_\_\_\_%. The Bond matures on \_\_\_\_\_, 20\_\_, at which time the principal thereof and interest thereon in the amount of \$\_\_\_\_\_ shall be due and payable.

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Chairman, Newberry County Council

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned, Clerk to Council of Newberry County, South Carolina, DO HEREBY CERTIFY:

1. That the foregoing is a true, correct and verbatim copy of an Ordinance adopted by the County Council of Newberry County on \_\_\_\_\_, 2013, at which a majority/all members were present. It was first introduced at the regular meeting of County Council held on \_\_\_\_\_, 201\_. At that meeting, it was given first reading by the majority/unanimous vote of the County Council. Afterwards, at the regular meeting of the County Council held on \_\_\_\_\_, 2013, it was given its second reading and at the regular meeting of the County Council held on \_\_\_\_\_, 2013, it was give third and final reading by the unanimous vote of County Council. At each of said meetings, a quorum of County Council was present at all times during the proceedings pursuant to which the aforesaid Ordinance was adopted, the original of which is duly entered in the record of minutes of the aforesaid meetings of said County Council in my Custody as such Clerk.

2. As required by Title 30, Chapter 4 of the Code of Laws of South Carolina 1976, as amended, being the Freedom of Information Act, a copy of the agenda of meetings (showing the date, time and place of the meeting) of the County Council of the County is posted on a designated bulletin board in the administrative offices of the County and supplied to news media as requested at least 24 hours prior to regularly scheduled meetings of the County Council. An agenda was posted in accordance with the foregoing sentence for each meeting at which the attached Ordinance was voted upon, and each agenda as so posted contained as an item the consideration of the attached Ordinance by the County Council.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of the County, this \_\_\_ day of \_\_\_\_\_ 2013.

(SEAL)

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

First reading:            May 1, 2013  
Second reading:        \_\_\_\_\_  
Third reading:           \_\_\_\_\_  
Public Hearing:           \_\_\_\_\_