

ORDINANCE NO. 2013/1

AUTHORIZING THE ISSUANCE AND SALE OF A TAX INCREMENT REFUNDING REVENUE BOND, SERIES 2013, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, OF BEAUFORT COUNTY, SOUTH CAROLINA, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$6,000,000 FOR THE PURPOSE OF REFUNDING CERTAIN MATURITIES OF THE BLUFFTON AREA TAX INCREMENT BONDS; FIXING THE FORM AND DETAILS OF THE BOND; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS LAWFULLY-AUTHORIZED DESIGNEE TO DETERMINE CERTAIN MATTERS RELATING TO THE BOND; PROVIDING FOR THE PAYMENT OF THE BOND AND THE DISPOSITION OF THE PROCEEDS THEREOF; AUTHORIZING THE REDEMPTION OR DEFEASANCE OF CERTAIN MATURITIES OF OUTSTANDING BLUFFTON AREA TAX INCREMENT REVEUNE BONDS; AND OTHER MATTERS RELATING THERETO.

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

SECTION 1. Findings and Determinations. The County Council (the "Council"), of Beaufort County, South Carolina (the "County"), hereby finds and determines:

(a) The County is a body politic and corporate, a county and a political subdivision of the State of South Carolina (the "State"), and as such possesses all powers granted to counties by the Constitution and general laws o the State.

(b) Pursuant to Section 4-9-10, Code of Laws of South Carolina 1976, as amended (the "SC Code"), and the results of a referendum held in accordance therewith, the Council-Administrator form of government was adopted and the County Council constitutes the governing body of the County.

(c) Title 31, Chapter 7 of the SC Code (the "TIF Act"), authorizes counties of the State to finance Redevelopment Projects (as defined in the TIF Act) through the issuance of bonds payable from that portion of the ad valorem taxes levied on real property located in a redevelopment project area (as defined in the TIF Act) attributable to the increase in assessed valuation of such real property above the assessed value of such property determined at the time of the establishment of the redevelopment project area.

(d) Title 6, Chapter 1, Article 9 of the SC Code (the "Impact Fee Act"), authorizes counties of the State to impose development impact fees as a condition of the approval by a county of a development in order to pay a proportionate share of the cost of system improvements needed to serve the people utilizing the improvements.

(e) Article X, Section 12 of the Constitution of the State prohibits the enactment of laws permitting the incurring of bonded indebtedness by any county for any service or facility benefitting only a particular geographical section of the county unless a special assessment, tax or service charge in an amount designed to provide debt service on bonded indebtedness or revenue bonds incurred for such purposes shall be imposed upon the area or persons receiving the benefit therefrom.

(f) Pursuant to Ordinance No. 99/38 duly enacted by County Council on December 13, 1999, as amended by Ordinance No. 2000/21 duly enacted by County Council on April 24, 2000 (together, the Redevelopment Ordinance) adopted and approved a redevelopment plan for the redevelopment of the

“Bluffton Surface Transportation System for the East-West Highway Corridor District” and established the “Bluffton Redevelopment Project Area” (the “Project Area”).

(g) Pursuant to Ordinances duly enacted by County Council adopted in 1999 (Nos. 99/26, 99/27, 99/31, 99/32, 99/33), County Council has authorized the imposition of development impact fees (the “Impact Fees”) on developments in the Project Area.

(h) Pursuant to Ordinance No. 2003/8 duly enacted by County Council on March 24, 2003 (the “Bond Ordinance”), the County issued its Bluffton Area Redevelopment Project Tax Increment Revenue Bonds (Bluffton Area Projects), Series 2003 (the “2003 TIF Bonds”), the proceeds of which were used for the purposes of funding Redevelopment Projects (as defined in the Bond Ordinance).

(i) The 2003 TIF Bonds are currently outstanding in the amount of \$21,875,000 and are prepayable at the option of the County in whole or in part on or after February 1, 2013 without premium.

(j) The County intends from legally available funds to redeem a portion of the February 1, 2023, maturity and the entire February 1, 2028 maturity of the 2003 TIF Bonds.

(k) Based on current market conditions and projected savings, County Council finds that it is in the best interest of the County to refund the February 1, 2014 maturity, the February 1, 2015, maturity, and the remaining unredeemed portion of the February 1, 2023, maturity outstanding in the principal amount of \$6,840,000 because a savings can be effected through the refunding thereof.

(l) Pursuant to Section 31-6-40, Code of Laws of South Carolina 1976 as amended, the Council is authorized to issue the bond (hereinafter defined) for the purpose of refunding a portion of the 2003 TIF Bonds.

(m) It is now in the best interest of the County for the Council to provide for the issuance and sale of a not to exceed \$6,000,000 aggregate principal amount tax increment refunding revenue bond of the County to provide funds for the purposes of (i) refunding a portion of the 2003 TIF Bonds; and (ii) paying costs of issuance of the bond.

(n) Pursuant to Ordinance No. 2012/10 duly enacted by the County Council on August 13, 2012, the County adopted Written Procedures Related to Tax-Exempt Debt.

SECTION 2. Authorization and Details of the Bonds. Pursuant to the aforesaid provisions of the laws of the State of South Carolina, there is hereby authorized to be issued a not to exceed \$6,000,000 tax increment refunding revenue bond of the County (the “Bond”) for the purposes listed in Section 1(k) above.

The Bond shall be issued as a fully-registered bond in the name of the purchaser thereof; shall be dated as of its date of delivery; shall be in the principal amount of the Bond; shall be numbered R-1; shall bear interest at a rate to be determined at the time of sale; and shall mature in successive annual installments of principal and interest on such dates and in such amounts as agreed to by the Bank and the County Administrator.

Both the principal of and interest on the Bond 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 shall serve as the registrar and paying agent for the Bond.

SECTION 3. Delegation of Authority. The Council hereby delegates to the County Administrator the authority to determine (a) the principal payment amounts of the Bond and when they are paid; (b) the interest payment date of the Bond; and (c) redemption provisions, if any, for the Bond.

The Council hereby delegates to the County Administrator the authority to receive bids on behalf of the Council and the authority to award the sale of the Bond to the lowest bidder therefor, provided the net interest cost does not exceed 3%.

SECTION 4. ExecutionError! Bookmark not defined. of Bond. The Bond shall be executed in the name of the County with the manual or facsimile signature of the Chair or Vice-Chair of County Council attested by the manual or facsimile signature of the Clerk to County Council under the seal of the County impressed, imprinted or reproduced thereon. The Bond shall bear a certificate of registration authentication executed with the manual or facsimile of the Clerk to County Council

SECTION 5. Form of Bond. The form of the Bond shall be substantially as that set forth in Exhibit A hereto attached and incorporated herein by reference.

SECTION 6. Security for the Bond. The principal of and interest on the Bond shall be payable from and secured by a pledge of the Tax Revenue and the required amount of Impact Fees in and to be deposited in the Debt Service Fund (hereinafter defined) established herein. Such amounts are hereby irrevocably pledged for the payment of the principal and interest on the Bond. Notwithstanding any provision in the Ordinances imposing the Impact Fees, the purchaser of the Bond shall have a lien on so much of the Impact Fees as are pledged herein for the payment on the Bond and said pledged Impact Fees cannot be pledged or used for any other purpose.

The Bond, and the interest thereon, are special obligations of the County payable solely from the funds pledged therefor. The full faith, credit, and taxing powers of the County are not pledged for the payment of the Bond and the interest thereon.

SECTION 7. Creation of Special Tax Allocation Fund; Deposits Therein. (a) There is hereby created a special fund of the County to be designated as "Beaufort County - Special Tax Allocation Fund" (the "Special Tax Allocation Fund").

The Special Tax Allocation Fund shall contain accounts and sub-accounts as may be established by County Council.

All of the taxes ("Tax Revenues") which are attributable to the increase in the current equalized assessed valuation of all taxable real property in the Project Area over and above the total initial equalized assessed value of taxable real property in the Project Area must be allocated to and, when collected, must be deposited by the County Treasurer into the Special Tax Allocation Fund for the purpose of paying the principal of and interest on the Bond.

SECTION 8. Establishment of the TIF Debt Service Fund; Deposits Therein. There is hereby established a special fund of the County to be designated the TIF Debt Service Fund (the "Debt Service Fund") which shall be maintained on behalf of the County to be used solely to pay the principal of and debt service on the Bond.

At least five (5) days prior to the date of the upcoming payment to be made on the Bond, the County shall deposit into the Debt Service Fund Tax Revenues and Impact Fees sufficient to make such debt service payment on the Bond.

SECTION 9. Dissolution of Special Tax Allocation Fund. Upon the complete repayment of the Bond and the distribution of any surplus moneys pursuant to the Act, the County shall enact an ordinance dissolving the Special Tax Allocation Fund for the Project Area and terminating the designation of the Project Area as a “redevelopment project area” for purposes of the Act. Thereafter, the rates of the Taxing Districts must be extended and taxes levied, collected and distributed in the manner applicable in the absence of the adoption of the Redevelopment Plan and the issuance of the Bond under the Act.

SECTION 10. Investment Income. All investment income or interest earnings on the Debt Service Fund shall be applied as a credit against the next payment due on the Bond. The County shall account for all amounts earned on each of the Special Tax Allocation Fund and Debt Service Fund.

SECTION 11. Defeasance. The obligations of the County herein made or provided for, shall be fully discharged and satisfied as to the Bond, and shall no longer be deemed to be outstanding hereunder when:

(a) such Bond shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County and is canceled or subject to cancellation by the County; or

(b) payment of the principal of and interest on such Bond either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with a corporate trustee in trust and irrevocably set aside exclusively for such payment any combination of the following assets (1) moneys sufficient to make such payment or (2) Government Obligations (hereinafter defined) maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment. At such time as the Bond shall no longer be deemed to be outstanding hereunder, such Bond shall cease to draw interest from the due date thereof and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

“Government Obligations” shall mean any of the following:

- (a) direct obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which, in the opinion of the Attorney General of the United States, is fully and unconditionally guaranteed by the United States of America; and
- (b) non-callable, U. S. Treasury Securities - State and Local Government Series (“SLGS”).

SECTION 12. Exemption from State Taxes. Both the principal of and interest on the Bond shall be exempt, in accordance with the provisions of Section 12-2-50 of the Code of Laws of South Carolina, 1976, as amended, from all State, county, municipal, County and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

SECTION 13. Deposit and Use of Proceeds. The proceeds derived from the sale of the Bond necessary to refund the 2003 TIF Bonds shall be deposited with Wells Fargo Bank, N.A., the Registrar/Paying Agent for the 2003 TIF Bonds to be used to redeem the 2003 TIF Bonds on February 1, 2013. The remaining proceeds shall be deposited with the County Treasurer in a special fund and shall be applied solely to the purposes for which the Bonds have been issued, including payment of costs of issuance of the Bonds.

SECTION 14. Tax Covenants. The County hereby covenants and agrees with the holders of the Bonds that no use of the proceeds of the Bond shall be made which, if such use had been reasonably expected on the date of issue of the Bond would have caused the Bond to be an “arbitrage bond,” as defined in Section 148 of the Internal Revenue Code of 1986 (the “Code”), and to that end the County hereby shall:

(a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Bond is outstanding;

(b) establish such funds, make such calculations and pay such amounts, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States;

(c) make such reports of such information at the time and places required by the Code; and

(d) not take any action which will, or fail to take any action which failure will, cause interest on the Bonds to become includable in the gross income of the bondholders 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 the Bond.

SECTION 15. Miscellaneous. The County Council hereby authorizes the County Administrator, Chair and Vice-Chair of the County Council, the Clerk to the County Council and County Attorney to execute such documents and instruments as necessary to effect the issuance of the Bond. The County Council hereby retains McNair Law Firm, P.A., as bond counsel and First SouthWest, as financial advisor, in connection with the issuance of the Bond. The County Administrator and the County’s Chief Financial Officer, or either of them acting alone, is further authorized to execute such contracts, documents or engagement letters as may be necessary and appropriate to effectuate these engagements and to negotiate and execute such agreements and give such directions as shall be necessary to carry out the provisions of this Ordinance, including the termination, amendment or modification of any forward delivery, repurchase or other investment agreement related to the 2003 TIF Bond.

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

[Signature Page to Follow]

Enacted this 28th day of January, 2013.

BEAUFORT COUNTY, SOUTH CAROLINA



Vice-Chair, County Council

(SEAL)
ATTEST:



Clerk to County Council

First Reading:	December 10, 2012
Second Reading:	January 14, 2013
Public Hearing:	January 14, 2013
Third and Final Reading:	January 28, 2013

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
BEAUFORT COUNTY
TAX INCREMENT REFUNDING REVENUE BOND
SERIES 2013

KNOW ALL MEN BY THESE PRESENTS, that the County of Conway, South Carolina (the "County"), is justly indebted and, for value received, hereby promises to pay _____ in _____ (the "Bank"), its successors and assigns, the principal sum of _____ Dollars (\$) by the Bank. Interest shall accrue from the date of such payment at the rate of _____% per annum. Annual payments of principal and interest will be due on such dates and in such amounts as shown on Exhibit A attached hereto and incorporated herein by reference with a final maturity on _____.

The principal and any accrued but unpaid interest on this Bond may be prepaid prior to the stated maturity hereof in whole at any time or in part on any interest payment date without penalty or premium.

The principal and interest on this Bond are 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 and are payable at the principal office of _____ in _____.

This Bond is issued pursuant to and in accordance with the Constitution and laws of the State of South Carolina, including Title 31, Chapter 7, Code of Laws of South Carolina, 1976, as amended and as such may be further amended (the "Act"), Article X, Section 12, of the Constitution of the State of South Carolina, 1895, as amended; and an Ordinance adopted by the Beaufort County Council on January 28, 2013.

This Bond and the interest thereon are special obligations of the County payable solely from, and secured equally and ratably by a pledge of the funds in and to be deposited in a Special Tax Allocation Fund created pursuant to the Act and the required amount of Impact Fees deposited into the Debt Service Fund. **THE FULL FAITH, CREDIT AND TAXING POWERS OF THE COUNTY ARE NOT PLEDGED FOR THE PAYMENT OF THIS BOND AND THE INTEREST HEREON.**

The Ordinance contains provisions defining terms; sets forth the moneys, funds and revenues pledged for the payment of the principal of and interest on this Bond; sets forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the holder hereof with respect thereto; sets forth the terms and conditions upon which this Bond is issued and upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the County thereunder; and sets forth the terms and conditions upon which the pledge made in the Ordinance for the security of this Bond and upon which the covenants, agreements and other obligations of the County made therein may be discharged at or prior to the maturity or prepayment of this Bond with provision for the payment thereof in the manner set forth in the Ordinance. Reference is hereby made to the

Ordinance, to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents. The provisions of the Act and the Ordinance shall be a contract with the holder of this Bond.

Under the laws of the State of South Carolina, this Bond and the interest hereon are exempt from all State, county, municipal, school district and other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of South Carolina to exist, to happen and to be performed precedent to or in the issuance of this Bond exist, have happened and have been performed in regular and due time, form and manner as required by law; and that provision has been made for the payment of the principal of and interest on this Bond as provided in the Bond Ordinance.

IN WITNESS WHEREOF, BEAUFORT COUNTY, SOUTH CAROLINA, has caused this Bond to be signed with the manual or facsimile signature of the Chair of the County Council, attested by the signature of the Clerk to County Council, and the seal of the County impressed, imprinted or reproduced hereon, this ____ day of January, 2013.

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____
Chair, County Council

(SEAL)

ATTEST:

By: _____
Clerk to County Council

FORM OF REGISTRATION

This Bond has been registered in the name of _____ in _____, on the registration books kept by the Clerk to County Council, Beaufort County, South Carolina.

Dated this ____ day of _____, 2013.

Clerk, County of Conway, South Carolina