

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

FILED  
NEWBERRY COUNTY  
ORDINANCE NO. 09-01-2024  
2024 NOV -7 AM 9:34  
ELIZABETH P FOLK  
CLERK OF COURT

**AN ORDINANCE APPROVING THE TERMS OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN NEWBERRY COUNTY AND NEWBERRY COUNTY WATER AND SEWER AUTHORITY**

**WHEREAS**, Newberry County, South Carolina (the “County”), following a successful referendum held on November 3, 1998, imposed a Capital Project Sales Tax (“CPST”) within the County pursuant to the provisions of S.C. Code Ann. §4-10-300 *et seq.* (1976, as amended); and

**WHEREAS**, the CPST has been reimposed from time to time in the County following referendums successfully held in 2004, 2010, 2016, and 2022; and

**WHEREAS**, since its original imposition in the County, and continuing through the renewals thereof, the CPST has provided to both the County and the political subdivisions within the County funds to defray the cost of various capital improvements, thus avoiding the imposition of additional property taxes in the County and mitigating the need for increases in rates of public utilities in the County; and

**WHEREAS**, the Newberry County Water and Sewer Authority, a political subdivision and special purpose district of the State of South Carolina (the “Authority”) has been a beneficiary of the CPST in each iteration of its imposition; and

**WHEREAS**, in the most recent referendum for reimposition of the CPST, which was held on November 8, 2022 (the “2022 Referendum”), the capital projects approved therein (the “2022 Projects”) consist of 12 items with an aggregate cost, as shown on the 2022 Referendum ballot, of \$37,047,130; and

**WHEREAS**, the Council is advised that, as a consequence of inflation, the total estimated cost of all 2022 Projects has increased by \$9,687,751 since the 2022 Referendum, from \$37,047,130 to not less than \$46,734,881; and

**WHEREAS**, the 2022 Referendum ballot included the upgrade and expansion of the Authority’s Cannon’s Creek Wastewater Treatment Plant (the “WWTP”) at a cost of \$5,154,560; and

**WHEREAS**, the Council is advised by the Authority that estimated cost of the WWTP has increased by \$4,462,231 since the 2022 Referendum to \$9,616,791; and

**WHEREAS**, the County intends to proceed with the issuance of not exceeding \$35,250,000 general obligation bonds, as approved in the 2022 Referendum (the “CPST Bonds”) to defray a portion of the costs of the 2022 Projects; and

**WHEREAS**, the projected cost overrun on the WWTP shown above amounts to more than 50% of total projected overruns on the 2022 Projects; and

**WHEREAS**, if the actual cost overrun on the WWTP exceeds the present estimate thereof, the WWTP and other 2022 Projects may face delays and funding shortfalls; and

**WHEREAS**, the Authority desires to assist the County with its efforts to proceed with the issuance of the CPST Bonds and to facilitate the same such that construction of all 2022 Projects may be initiated, completed and their intended benefits made available to the citizens of the County; and


**WHEREAS**, the Authority has agreed, subject to agreement by the County, that it will initially seek cost overrun funding from CPST funds in the amount of \$3,055,766, which excludes estimated mobilization costs and contingencies; and

**WHEREAS**, the Authority has, by resolution duly adopted on October 24, 2024 (the “NCWSA Resolution”), determined that it will have no further need of cost overrun funding beyond that described above, and that it is committed to providing additional funding required for the WWTP, if any, from available funds of the Authority and from the proceeds of waterworks and sewer system revenue bonds or notes of the Authority, which it may issue on its motion and which it has a capacity to undertake within the constraints of its existing loan documents, and has provided the County Administrator of the County with a copy of the NCWSA Resolution, attached hereto as Exhibit A;

**WHEREAS**, the Authority has determined that it will seek CPST funding for additional cost overruns, including reimbursements for sums expended therefor by the Authority, only at such time as all other 2022 Projects have been fully funded, including all cost overruns of all other 2022 Projects;

**NOW, THEREFORE BE IT ORDAINED** by the County Council of the County of Newberry, in Council duly assembled this 6th day of November 2024 that Council hereby approves the terms of the NCWSA Resolution and agrees that such terms, hereby approved by this Ordinance, constitute an Intergovernmental Agreement between the County and the Authority.

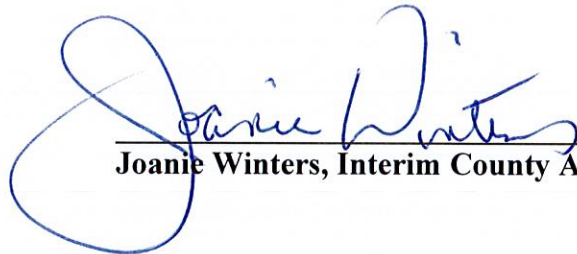
**NEWBERRY COUNTY COUNCIL**

BY:   
Todd Johnson, Chairman

(SEAL)

ATTEST:   
Andrew Wigger, Clerk to Council

Approved as to form:

  
Joanie Winters, Interim County Attorney

  
Jeff Shacker, County Administrator

1 <sup>st</sup> Reading:	September 18, 2024
2 <sup>nd</sup> Reading:	October 7, 2024
Public Hearing:	October 7, 2024
Public Hearing:	October 16, 2024
Public Hearing:	November 6, 2024
3 <sup>rd</sup> Reading:	November 6, 2024

## **A RESOLUTION**

**WHEREAS**, Newberry County, South Carolina (the “County”), following a successful referendum held on November 3, 1998, imposed a Capital Project Sales Tax (“CPST”) within the County pursuant to the provisions of S.C. Code Ann. §4-10-300 *et seq.* (1976, as amended); and

**WHEREAS**, the CPST has been reimposed from time to time in the County following referendums successfully held in 2004, 2010, 2016, and 2022; and

**WHEREAS**, since its original imposition in the County, and continuing through the renewals thereof, the CPST has provided to both the County and the political subdivisions within the County funds to defray the cost of various capital improvements, thus avoiding the imposition of additional property taxes in the County and mitigating the need for increases in rates of public utilities in the County; and

**WHEREAS**, the Newberry County Water and Sewer Authority, a political subdivision and special purpose district of the State of South Carolina (the “Authority”) has been a beneficiary of the CPST in each iteration of its imposition; and

**WHEREAS**, in the most recent referendum for reimposition of the CPST, which was held on November 8, 2022 (the “2022 Referendum”), the capital projects approved therein (the “2022 Projects”) consist of 12 items with an aggregate cost, as shown on the 2022 Referendum ballot, of \$37,047,130; and

**WHEREAS**, as a consequence of inflation, the total estimated cost of all 2022 Projects has increased by \$8,281,687 since the 2022 Referendum, from \$37,047,130 to not less than \$46,734,881; and

**WHEREAS**, the 2022 Referendum ballot included the upgrade and expansion of the Authority’s Cannon’s Creek Wastewater Treatment Plant (the “WWTP Project”) at a cost of \$5,154,560 (the “Ballot Cost”); and

**WHEREAS**, the estimated cost of the WWTP Project has increased by \$4,462,231 since the 2022 Referendum to \$9,616,791; and

**WHEREAS**, the County intends to proceed with the issuance of not exceeding \$35,250,000 general obligation bonds, as approved in the 2022 Referendum (the “CPST Bonds”) to defray a portion of the costs of the 2022 Projects, but faces challenges with funding cost overruns for all 2022 Projects; and

**WHEREAS**, the projected cost overrun on the WWTP shown above amounts to more than 50% of total projected overruns on the 2022 Projects; and

**WHEREAS**, if the actual cost overrun on the WWTP exceeds the present estimate thereof, the WWTP and other 2022 Projects may face delays and funding shortfalls; and

**WHEREAS**, the Authority desires to assist the County with its efforts to proceed with the issuance of the CPST Bonds and to facilitate the same such that construction of all 2022 Projects may be initiated, completed and their intended benefits made available to the citizens of the County; and

**WHEREAS**, after due consideration, the Authority has agreed, subject to agreement by the County, that it will initially seek cost overrun funding from CPST funds in the amount of \$3,055,766, which excludes estimated mobilization costs and contingencies;

**WHEREAS**, after due investigation and deliberation, the Authority has determined that it will have no further need of cost overrun funding from the CPST beyond that described in the next preceding recital, and that it is committed to providing additional funding required for the WWTP, if any, from available funds of the Authority and from the proceeds of waterworks and sewer system revenue bonds or notes of the Authority ("Authority Bonds"), which it may issue on its motion and which it has a capacity to undertake within the constraints of its existing loan documents; and

**WHEREAS**, the Authority has determined that it will seek CPST funding for additional cost overruns, including reimbursements for sums expended therefor by the Authority, only at such time as all other 2022 Projects have been fully funded, including all cost overruns of all other 2022 Projects;

**NOW, THEREFORE**, the Newberry County Water and Sewer Authority does hereby resolve as follows:

1. The Authority agrees that it will initially request from CPST funds, in addition to the Ballot Cost, cost overrun funding in an amount not to exceed \$3,055,766, for a total of \$8,210,326.
2. The Authority hereby commits to funding all costs of the upgrade and expansion of the WWTP, as described in the recitals hereto, in excess of \$8,210,326 from available funds of the Authority, including, but not limited to, the proceeds of Authority Bonds.
3. The Authority, except as provided in paragraph 4 below, and irrespective of such claims as may arise from the CPST Act or ordinances of Newberry County, waives any claims for funds in excess of \$8,210,326 from proceeds of the CPST, proceeds of the CPST Bonds, investment earnings derived from such amount and otherwise from Newberry County or any other beneficiary of the CPST.
4. Notwithstanding Paragraph 3, the Authority reserves the right to request from the County reimbursement of sums in excess of \$8,210,326 actually expended by the Authority, if any, from its own funds or the proceeds of Authority Bonds, on the WWTP Project (including, but not limited to, actual mobilization costs), but only from those CPST proceeds and CPST Bond proceeds, if any, which remain (or thereafter become) legally available after the costs, including all cost overruns, of all other CPST Projects have been paid. The County will have no obligation to make any payments from its own funds to defray the cost of the WWTP. In

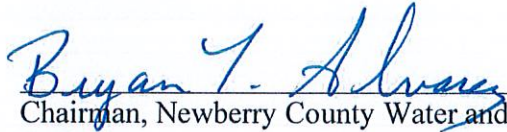


accordance with S.C. Code Ann. §4-10-340(C), the County will pay neither CPST proceeds arising from the 2022 Referendum nor proceeds of the CPST Bonds for any purpose other than the 2022 Projects, until such time as the costs of the 2022 Projects, including all cost overruns, have been paid.

5. A certified copy of this Resolution shall be transmitted to the County Administrator of Newberry County upon adoption. Upon approval of the provisions of this Resolution by the County Council of Newberry County, this Resolution will constitute a binding intergovernmental agreement between the Authority and Newberry County in accordance with Art. VIII, Sec. 13 of the South Carolina Constitution. This resolution repeals in all respects that resolution of the Authority adopted on June 20, 2024 regarding the funding of WWTP cost overruns.

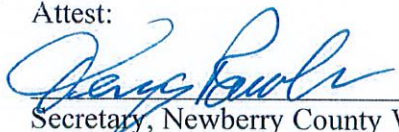
DONE THIS 24 DAY OF October 2024.

**NEWBERRY COUNTY WATER AND SEWER  
AUTHORITY**

  
\_\_\_\_\_  
Chairman, Newberry County Water and Sewer  
Authority

[SEAL]

Attest:

  
\_\_\_\_\_  
Secretary, Newberry County Water  
and Sewer Authority