

TOWN OF SEABROOK ISLAND

ORDINANCE NO. 2023-11

ADOPTED _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF A NOT TO EXCEED \$5,500,000 GENERAL OBLIGATION BOND, SERIES 2023, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, OF THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA OR ONE OR MORE NOTES ISSUED IN ANTICIPATION THEREOF TO PAY THE COSTS OF REPAIRS, REPLACEMENTS AND DEBRIS REMOVAL ARISING FROM A MAJOR OR CATASTROPHIC STORM EVENT OF NATURAL DISASTER AND THE COST OF ISSUANCE OF SUCH BOND OR NOTES; FIXING THE FORM AND DETAILS OF THE BOND; AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR, OR EITHER OF THEM ACTING ALONE, TO PRESCRIBE CERTAIN DETAILS RELATING TO THE BOND; PROVIDING FOR THE PAYMENT OF THE BOND AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

PURSUANT TO THE AUTHORITY GRANTED BY THE CONSTITUTION AND THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE TOWN OF SEABROOK ISLAND, S.C., AS FOLLOWS:

SECTION 1. The Town Council (the "Council") of the Town of Seabrook Island, South Carolina (the "Town"), hereby finds and determines:

- (a) The Town is an incorporated municipality located in Charleston County, South Carolina (the "County"), and as such possesses all powers granted to municipalities by the Constitution and general law of the State of South Carolina.
- (b) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended (the "Constitution"), provides that general obligation debt may be incurred by the governing body of each municipality of the State of South Carolina for any public and corporate purpose in an amount not exceeding eight (8%) percent of the assessed value of all taxable property of such municipality and upon such terms and conditions as the General Assembly may prescribe. Such Article further provides that if general obligation debt is authorized by a majority vote of the qualified electors of the municipality voting in a referendum authorized by law, there shall be no conditions or restrictions limiting the incurring of such indebtedness except as specified in such Article.
- (c) Title 5, Chapter 21, Article 5, Code of Laws of South Carolina, 1976, as amended (the "Municipal Bond Act"), provides that the municipal council of any municipality may issue general obligation bonds of such municipality for any corporate purpose of such municipality to any amount not exceeding the constitutional debt limitation applicable to such municipality.
- (d) The Municipal Bond Act provides that as a condition precedent to the issuance of Bond an election be held and the result be favorable thereto. Title 11, Chapter 27, Code of Laws of South Carolina 1976, as amended (generally, the "South Carolina Code"), provides that if an election be prescribed by the provisions of the Municipal Bond Act, but not be required by the provisions of Article X of the Constitution, then in every such instance, no election need be held (notwithstanding the requirement therefor) and the remaining provisions of the Municipal

Bond Act shall constitute a full and complete authorization to issue bonds in accordance with such remaining provisions.

- (e) The assessed value of all the taxable property in the Town for tax year 2022 (fiscal year ended June 30, 2023), the last completed assessment thereof, is approximately \$83,994,302. Eight percent of such sum is \$6,719,544.16. As of the date hereof, the Town has no outstanding bonded and general obligation indebtedness subject to the Constitutional debt limit and may presently incur \$6,719,544.16 of general obligation bonded indebtedness.
- (f) It is now in the best interest of the Town for the Council to provide for the issuance and sale of a not to exceed \$5,500,000 general obligation bond of the Town, the proceeds of which will be used: (i) to pay the costs of repairs, replacements and debris removal (including capital improvements) arising from a major or catastrophic storm event or natural disaster; and (ii) to pay costs of issuance of the Bond or, subject to Section 12 hereof, to pay at maturity or redeem prior to maturity any Notes (as defined herein) issued hereunder.

SECTION 2. Pursuant to the aforesaid provisions of the Constitution and laws of the State of South Carolina, there is hereby authorized to be issued a not to exceed \$5,500,000 general obligation bond(s) of the Town (the "Bond") for the purposes listed in Section 1(f) above. The Bond shall be designated "\$5,500,000 (or such other amount as may be issued) General Obligation Bond, Series 2023 (or such other appropriate series designation) of the Town of Seabrook Island, South Carolina."

The Bond shall be issued as a fully-registered Bond; shall be dated as of the date of its delivery; shall be numbered from R-1; shall bear interest at such time as hereafter designated by the Committee (as defined herein), at such rate or rates as may be determined at the time of the sale thereof; and shall mature serially on a date not to exceed five years from the issuance date thereof, and in successive annual installments and such amounts, all as determined by the Committee.

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.

SECTION 3. The Council hereby delegates to a committee, consisting of the Mayor and one Council member chosen by the Mayor (collectively, the "Committee"), the authority to determine (a) the maturity dates, the principal payment dates and principal amounts of the Bond and how such amounts are paid; (b) the interest rates and interest payment dates of the Bond; (c) redemption provisions, if any, for the Bond; (d) the date and time of sale of the Bond; and (e) whether the Bond is sold at private or public sale.

The Council hereby delegates to the Committee the authority to determine whether to negotiate with one or more banks or financial institutions or to prepare a Notice of Sale for the Bond and receive bids on behalf of the Council from one or more potential purchasers, and to award the sale of the Bond to a single bank or financial institution or to the bidder therefor whose bid the Committee determines to be the most advantageous to the Town in accordance with the Notice of Sale for the Bond, following the receipt of one or more bids, provided in all events the net interest cost does not exceed 6% per annum. After the sale of the Bond, the Mayor and the Town Administrator, or either of them acting alone, shall submit a written report to the Council setting forth the results of the sale of the Bond.

The Bond shall be executed in the name of the Town with the manual signature of the Mayor of the Town attested by the manual signature of the Town Clerk of the Town under the seal of the Town to be impressed or affixed thereon.

SECTION 4. The Bond shall be in substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 5. If the Bond is to be sold at private sale, not less than seven (7) days prior to the delivery of the Bond, then notice of intention to sell the Bond at private sale shall be given by publication in a newspaper of general circulation in the Town pursuant to Section 9 hereof. If the Bond is to be sold at public sale, then a summary of such Notice of Sale shall be published in a newspaper of general circulation in the State of South Carolina not less than seven (7) days prior to the date set for such sale.

SECTION 6. The full faith, credit and taxing power of the Town are hereby irrevocably pledged for the payment of the principal of and interest on the Bond as it matures, and for the creation of such sinking fund as may be necessary therefor. There shall be levied and collected annually by the Town Clerk of the Town a tax, without limit, on all taxable property in the Town sufficient to pay the principal of and interest on the Bond as it matures and to create such sinking fund as may be necessary therefor.

SECTION 7. Both the principal of and interest on the Bond shall be exempt from all State, county, municipal, town, 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 or transfer taxes.

SECTION 8. The proceeds derived from the sale of the Bond shall be deposited in a special fund, separate and distinct from all other funds, and applied solely to the purpose for which the Bond is issued except that the premium, if any, shall be placed in the sinking fund established pursuant to the Municipal Bond Act. If any surplus remains it shall be deposited in the sinking fund to be established for the payment of the Bond.

SECTION 9. The Town hereby delegates to the Mayor and the Town Administrator, or either of them acting alone, the authority to publish the notice prescribed under the provisions of Title 11, Chapter 27 of the South Carolina Code, relating to the Initiative and Referendum provisions contained in Title 5, Chapter 17 of the South Carolina Code and any and all other notices required by law, including, if the Bond is to be sold by private sale, the notice of intention required by Section 11-27-40 of the South Carolina Code. If any said notice is given, the Mayor and the Town Administrator, or either of them acting alone, is authorized to prescribe the form of the notice and cause such notice to be published in a newspaper of general circulation in the Town.

SECTION 10. The Town hereby covenants and agrees with the holders of the Bond that, if the Bond is issued as an obligation the interest on which is excluded from gross income of the holders thereof for federal tax purposes (a "Tax Exempt Bond"), then it will not take any action which will, or fail to take any action which failure will, cause interest on the Tax Exempt Bond to become includable in the gross income of the holders of the Tax Exempt Bond for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and regulations promulgated thereunder in effect on the date of original issuance of the Tax Exempt Bond. The Town further covenants and agrees with the holders of the Tax Exempt Bond (if issued) that no use of the proceeds of the Tax Exempt Bond shall be made which, if such use had been reasonably expected on the date of issue of the Tax Exempt Bond would have caused the Tax Exempt Bond to be an "arbitrage bond," as defined in Section 148 of the

Code, and to that end the Town hereby shall:

- (a) comply with the applicable provisions of Sections 103 and 141 through 150 of the Code and any regulations promulgated thereunder so long as the Tax Exempt 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 rebate of certain amounts to the United States; and
- (c) make such reports of such information at the time and places required by the Code.

The Mayor and the Town Administrator, or either of them acting alone, are hereby authorized and directed to adopt such written procedure related to tax-exempt debt, as may be necessary or desirable, with the advice of legal counsel.

SECTION 11. The obligations of the Town under this Ordinance and the pledges, covenants and agreements of the Town herein made or provided for, shall be fully discharged and satisfied as to any portion of the Bond, and such Bond shall no longer be deemed to be outstanding hereunder when:

- (a) such Bond shall have been purchased by the Town and surrendered to the Town for cancellation or otherwise surrendered to the Town or a bank or financial institution designated by the Town to act as its escrow agent (the "Escrow Agent") and is canceled or subject to cancellation by the Town or the Escrow Agent; 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 to be named in trust and irrevocably set aside exclusively for such payment (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 and all necessary and proper fees, compensation and expenses of the corporate trustee. 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 as set forth in (ii) above, shall no longer be secured by or entitled to the benefits of this Ordinance.

“Government Obligations” shall mean cash and, to the extent permitted by Section 6-5-10 of the South Carolina Code or any other authorization relating to the investment of funds of the Town, any of the following: (1) United States Treasury Obligations – State and Local Government Series; (2) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market; (3) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities; (4) obligations of any agencies or instrumentalities which are backed by the full faith and credit of the United States of America; (5) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; (6) obligations of the Federal National Mortgage Association; (7) general obligations of the State or any of its political units which, at the time of purchase, carry an AAA rating from Standard & Poor’s or an Aaa rating from Moody’s Investors Service; or (8) any legally permissible combination of any of the foregoing. Government Obligations must be redeemable only at the option of the holder thereof.

SECTION 12. Pursuant to Title 11, Chapter 17 of the South Carolina Code (the “BAN Act”), pending the issuance of the Bond, the Council hereby authorizes the issuance of general obligation bond anticipation notes in an amount not to exceed \$5,500,000 (the “Notes”) for the purposes set forth in Section 1(f) herein and for costs of issuance of the Notes. In the event Notes are issued, (a) for the payment of principal of and interest, if necessary, on the Notes as they respectfully mature, there is hereby pledged the proceeds of the Bond and the full faith, credit and taxing power of the Town and (b) pending the issuance of the sale of the Bond, the Council may determine it to be in the best interest of the Town to refund or renew the outstanding Notes and, therefore, (1) the Council may authorize the Notes to be refunded or renewed and such authorization to be effected by a resolution of Council incorporating the terms of this Ordinance and (2) the principal amount of such refunded or renewed Notes may be increased by an amount sufficient to reflect interest owed on such refunded or renewed Notes and costs of issuance.

The Town, at its option, may also utilize any other funds available therefor for the payment of the principal of and interest on the Notes. The Council hereby delegates to the Committee the authority (1) to determine: (a) the original issue date and aggregate principal amount of the Notes; (b) the date, time and method of sale (which may be by public sale or, as permitted by the BAN Act, negotiation with one or more purchasers) of the Notes; (c) the maturity date and redemption provisions (if any) of the Notes (provided, that the maximum redemption premium may not exceed 0.5%); (d) the form of the Notes; and (e) such other details of the Notes as may be deemed advisable; (2) if sold by public sale, to prepare a Notice of Sale for the Notes, to receive bids on behalf of the Town and to award the sale of the Notes to the bidder therefor whose bid the Committee determines to be the most advantageous to the Town in accordance with the Notice of Sale for the Notes, in accordance with the terms of the Notice of Sale for the Notes; and (3) to negotiate and execute all other contracts which may be necessary or required in connection with the issuance of the Notes. Unless the context requires otherwise, the authorizations provided in the Ordinance with respect to the Bond or the issuance, sale and delivery thereof shall also apply with respect to any Notes issued in anticipation thereof.

SECTION 13. The Council hereby authorizes the Mayor, the Town Administrator, the Town Clerk, and the Town Attorney to execute such documents and instruments as necessary to effect the issuance of the Notes and the Bond or make modifications in any documents, including the form of the Bond attached hereto. The Council hereby retains Burr & Forman LLP as bond counsel in connection with the issuance of the Bond.

SECTION 14. All orders, resolutions, ordinances 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 passage and approval.

SECTION 15. This Ordinance shall be forthwith codified in the Code of Town Ordinances in the manner required by law.

SECTION 16. This Ordinance shall be effective upon passage by the Council.

SECTION 17. This Ordinance is intended to replace the authorization provided for in Ordinance No. 2019-07 (the "Prior Ordinance") and not be additive thereto. Upon enactment of this Ordinance and passage of such time as the Mayor and the Town Administrator (or either of them acting alone) determine, upon advice of counsel, to be necessary to comply with the Initiative and Referendum provisions contained in Title 5, Chapter 17 of the South Carolina Code, the Prior Ordinance is repealed in its entirety.

SIGNED AND SEALED this ____ day of _____, 2023, having been duly adopted by the Town Council for the Town of Seabrook Island on the ____ day of _____, 2023.

First Reading:
Public Hearing:
Second Reading:

TOWN OF SEABROOK ISLAND

John Gregg, Mayor

ATTEST

Katharine E. Watkins, Town Clerk

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
TOWN OF SEABROOK ISLAND
GENERAL OBLIGATION BOND, SERIES 2023

R-1

\$

KNOW ALL MEN BY THESE PRESENTS, that the Town of Seabrook Island, South Carolina (the "Town"), is justly indebted and, for value received, hereby promises to _____ in _____, South Carolina, its successors or registered assigns, the principal sum of _____ (\$_____) with interest thereon at the rate of _____% per annum. This Bond is payable in _____ installments of principal and interest, commencing _____ and _____ thereafter until this Bond is paid. Both the principal of and interest on this Bond are payable at the principal office of _____ in _____, South Carolina, 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.

[Redemption provisions, if any, to be included]

For the payment hereof, both principal and interest, as they respectively mature; and for the creation of a sinking fund to aid in the retirement and payment thereof the full faith, credit and taxing power of the Town are irrevocably pledged, and there shall be levied and collected, annually upon all taxable property in the Town an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

This Bond is issued pursuant to and in accordance with the constitution of the laws of the state of South Carolina, including Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended; Title 5, Chapter 21, Article 5, Code of Laws of South Carolina, 1976 as amended; and Title 11, Chapter 27, Code of Laws of South Carolina 1976, as amended; and an Ordinance duly enacted on _____, 2023, by the Town Council of the Town for the purpose of authorizing the issuance and sale of a not to exceed \$_____ general obligation bond.

This Bond and the interest hereon are exempt from all State, county, municipal, town 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 or transfer taxes.

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; that the amount of this Bond, together with all other indebtedness of the Town does not exceed the applicable limitation of indebtedness under the laws of the State of South Carolina; and that provision has been made for the levy and collection annually upon all taxable property in the Town an ad valorem tax, without limitation as to rate or amount, sufficient to pay the principal and interest on this Bond as the same shall respectively mature and to create a sinking fund to aid in the retirement and payment thereof.

IN WITNESS WHEREOF, THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA, has caused this Bond to be executed in its name by the manual or facsimile signature of the Mayor of the Town and attested by the manual or facsimile signature of the Town Clerk of the Town under the seal of the Town impressed, imprinted or reproduced hereon and this Bond to be dated the ____ day of _____, 2023.

TOWN OF SEABROOK ISLAND, SOUTH CAROLINA

Mayor

(SEAL)

ATTEST:

Clerk

REGISTRATION

This Bond has been registered in the name of _____ in _____, South Carolina, on the registration books kept by the Town Clerk of the Town of Seabrook Island, South Carolina.

Dated this ____ day of _____, 2023.

Clerk, Town of Seabrook Island, South Carolina

ASSIGNMENT

For value received _____ hereby sells, assigns and transfers unto _____ the within-mentioned Bond and hereby irrevocably constitutes and appoints _____, Attorney, to transfer the same on the registration books kept by the Town Clerk of the Town of Seabrook Island, South Carolina, with full power of substitution in the premises.

Town of Seabrook Island, South Carolina

By _____

Dated: _____

Witness: _____

NOTE: The signature to this assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.