

ORDINANCE NO. 2020-11

STATE OF SOUTH CAROLINA    )  
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COUNTY OF CHARLESTON    )  
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  )  
TOWN OF MCCLELLANVILLE   )  
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AN ORDINANCE TO PROVIDE FOR THE  
SECURING OF A \$250,000.00 UNSECURED  
LOAN BY THE TOWN OF  
MCCLELLANVILLE, SOUTH CAROLINA, TO  
PRESCRIBE THE PURPOSES FOR WHICH  
THE PROCEEDS SHALL BE EXPENDED, TO  
PROVIDE FOR THE PAYMENT THEREOF,  
AND OTHER MATTERS RELATING  
THERE TO

BE IT ORDAINED BY THE TOWN COUNCIL OF TOWN OF MCCLELLANVILLE,  
SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

ARTICLE I

FINDINGS OF FACT

As an incident to the adoption of this Ordinance, and the securing of the loan provided for hereby, the Town Council of Town of McClellanville, South Carolina ("Council"), the governing body of the Town of McClellanville, South Carolina (the "Town"), finds that the following facts set forth in this Article exist, and the statements made with respect thereto are true and correct.

Section 1.01. Objectives of Borrowing

Council is authorized by the provisions of the Code of Laws of South Carolina 1976, as amended to secure an unsecured loan for a purpose which is a public and a corporate purpose of the Town.

Council has determined that it is appropriate to raise sufficient moneys by securing an unsecured loan in the amount of \$250,000.00 from Pinnacle Bank to defray the cost of designing, constructing, and expanding the Town dock and landing.

Section 1.02. Decision to Borrow

On the basis of the foregoing, Council has determined to receive an unsecured loan from Pinnacle Bank in the principal amount of \$250,000.00 (the "Loan"), the proceeds of which will be deposited in Town's Boat Landing Fund and used to fund the design, construction, and expansion of the Town dock and landing.

ARTICLE II

DEFINITIONS AND CONSTRUCTION

Section 2.01. Definitions

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

"Authorized Officer" means the Mayor, the Town Administrator, the Chief Financial Officer, the Clerk of Town Council and any other officer or employee of the Town designated from time to time as an Authorized Officer by ordinance or resolution of Council, and when used with reference to any act or document also means any other person authorized by ordinance or resolution of Council to perform such act or sign such document.

"Loan" means the Loan to the Town authorized by this Ordinance.

"Ordinance" means this Ordinance as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"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.

"Town" means the Town of McClellanville, South Carolina.

"Town Council" or "Council" means the Town Council of the Town of McClellanville, South Carolina, the governing body of the Town or any successor governing body of the Town.

"Town Request" means a written request of the Town signed by an Authorized Officer.

ARTICLE III

SECURING THE LOAN

Section 3.01. Ordering the Securing of the Loan

Pursuant to the above and for the purpose of obtaining funds to defray the cost of designing, constructing, and expanding the Town dock and landing the Town shall secure an unsecured loan in the principal amount of \$250,000.00, at an acceptable GO Bond rate of interest.

Section 3.02. Terms of the Loan

The loan shall be from Pinnacle Bank with a ten-year term at a GO Bond rate, unsecured, and with principal only payments through the design, rebuild, and construction of the new Town dock and boat landing.

Section 3.03. Medium of Payment: Form of the Loan

(a) The Loan shall be payable as to Principal Installments and interest 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) Form of the Loan: from Pinnacle Bank with a ten-year term at a GO Bond rate, unsecured, and with principal only payments through the design, rebuild, and construction of the new Town dock and boat landing substantially in the set forth in Exhibit A hereto with any omissions, insertions and variations which may be authorized or permitted by or consistent with this Ordinance.

Section 3.04. Execution

The Loan documents shall be executed in the name and on behalf of the Town by the manual signature of an Authorized Officer or Officers, with its corporate seal (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual signature of the Clerk of Council or other Authorized Officer (other than the officer or officers executing such Loan document).

ARTICLE IV

DISPOSITION OF PROCEEDS OF LOAN

Section 4.01. Disposition of Loan Proceeds including Temporary Investments

The proceeds derived from the Loan shall be deposited in a segregated Boat Landing Fund held by a custodian designated by the Town and shall be expended and made use of as follows:

- (a) the design, construction, demolition, and expansion of the Town dock and landing;
- (b) the cost of prepaying and retiring the outstanding principal balance of the Loan;
- (c) pending the use of Loan proceeds for the purposes authorized hereby, it shall be lawful for Council to cause such proceeds to be invested in Authorized Investments. Income earned from investments shall, in the discretion of Council, (1) be used to meet the debt service of the Loan, or (2) be retained by the Town and used for the purposes for which the Loan is to secured under this Ordinance.

ARTICLE V

DEFEASANCE

Section 5.01. Release of Ordinance

If the Loan shall have been paid and discharged, then the obligations of the Town under this Ordinance and all other rights granted thereby shall cease and determine. The Loan shall be deemed to have been paid and discharged within the meaning of this Article if there shall have been deposited with a bank or financial institution (the "Paying Agent"), in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on the Loan on and prior to the end of the term of the Loan.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Severability of Invalid Provisions

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 6.02. Successors

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

Section 6.03. No Personal Liability

No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Town contained in this Ordinance or the Loan, against any member of the Town Council, any officer or employee, as such, in his or her individual capacity, past, present or future, of the Town, either directly or through the Town, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Ordinance and the Loan is solely a corporate obligation, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such, past, present or future, of the Town, either directly or by reason of any of the

obligations, covenants, promises or agreements entered into between the Town and the Pinnacle Bank or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the securing of the Loan, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance, expressly waived and released. The immunity of member, officers and employees of the Town under the provisions contained in this Section shall survive the termination of this Ordinance.

Section 6.04. Effective Date

This Ordinance shall take effect immediately upon second reading of Town Council and shall supersede any prior inconsistent ordinances or resolutions.

Section 6.05. Direction to Publish

The Clerk of the Town Council of the Town is hereby directed to publish at the appropriate time notice to comply with the provisions of Paragraph 8 of Section 11-27-40, Code of Laws of South Carolina, 1976, as amended.

Section 6.06. Filing of Copies of Ordinance

Copies of this Ordinance shall be filed in the office of Council and at the office of the Clerk of Town Council as Registrar.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING.

SIGNED, SEALED AND DELIVERED THIS 4<sup>th</sup> DAY OF January 2021.

\_\_\_\_\_  
Rutledge B. Leland, III, Mayor  
Town of McClellanville

ATTEST:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_, 2020  
Date

First Reading: December 7, 2020  
Public Hearing: January 4, 2021  
Final Reading: January 4, 2021

APPROVED AS TO FORM:

\_\_\_\_\_  
James J. Hinchey Jr.  
Town Attorney

EXHIBIT A

(FORM OF LOAN)

ATTACH LOAN DOCUMENT

**ADDENDUM A**

**The attached commitment letter is contingent on approval of an ordinance by McClellanville Town Council after two readings.**



December 16, 2020

Town of McClellanville  
405 Pinckney Street  
McClellanville, SC 29458

Re: Municipal Boat Landing Improvements Request

Dear Honorable Mayor Leland, and Town Council Members

Pinnacle Bank ("Lender") has considered your request for financing of the above referenced property and is pleased to inform you that the Lender has agreed (the "Commitment") to make available to Borrower a loan (the "Loan") upon the terms and subject to the conditions hereinafter set forth.

**Borrower:** Town of McClellanville. ("Borrower").

**Amount:** Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00).

**Purpose:** Demolish old dock, and rebuild new floating dock located at the towns municipal boat landing.

**Commitment Fee:** There is no commitment fee associated with this loan.

**Interest Rate:** Loan will be on a fixed rate of 2.95%.

**Term/Repayment:** The loan will be interest only for the first six months allowing multiple draws to cover demolishing the old dock and building the new floating dock. Upon completion, the loan will then convert to principal and interest monthly for 120 months based on a straight ten amortization.

**Prepayment:** There is no prepayment penalty associated with this loan.

**Late Charge:** Any payment of principal or interest not received by Lender within ten (10) days after its due date, a late charge of five percent (5%) of such overdue amount or \$25.00, whichever is greater will, at Lender's option, be payable by Borrower.

**Default Interest:** Upon default, at Lender's option, and if permitted by applicable law, Lender may add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the rate provided in this Note. Upon default, the total sum due under this Note will continue to accrue interest at the interest rate under this Note, with the final interest rate described in this Note applying after maturity, or after maturity would have occurred had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

**Covenants:** In addition to such affirmative and negative covenants as are typically required by the Lender, the Loan documents will contain the following additional covenants:

- (a) **Deposit Accounts.** Borrower agrees to maintain deposit relationship with Pinnacle Bank during the life of the loan.

**Conditions Precedent:**

The provisions of this Commitment are subject to and conditioned upon Lender's receipt of the following, in each instance in form and substance satisfactory to Lender:

**Loan:**

This Commitment is subject to the execution of Lender's standard Loan documents containing such representations, warranties, affirmative and negative covenants, indemnities, waivers, closing conditions, defaults, events of default and remedies as are typically required by Lender and/or are customary in this type of transaction, including without limitation, waivers of jury trial. Borrower acknowledges that not every provision imposing duties, burdens or limitations on Borrower has been set forth in this Commitment Letter. The failure of Borrower and Lender to reach agreement on such provisions shall not be deemed a breach by Lender of this Commitment.

**Miscellaneous:**

**(a) Assignment.** Neither this Commitment nor the Loan proceeds are assignable by Borrower without the prior written consent of Lender, and any purported or attempted assignment without such consent shall be void and of no force or effect.

**(b) Integration.** This Commitment contains the entire understanding between Lender and Borrower, and supersedes in its entirety any prior understandings, agreements and correspondence between them respecting the subject matter hereof.

**(c) Governing Law.** This Commitment and the transactions described therein and herein will be governed by and construed according to the laws of the State of South Carolina, without reference to conflict of laws principles.

**(d) Modification.** No change or modification of this Commitment will be valid and binding unless acknowledged and confirmed in writing by an authorized officer of Lender.

**(f) Time of the Essence.** With respect to the performance of all obligations of Borrower under this Commitment Letter, time is agreed to be of the essence.

**(g) Liability of Lender.** By accepting or approving anything required to be observed, performed or fulfilled by Borrower or to be given to Lender pursuant to the terms of this Commitment, including without limitation, any certificate, financial statement, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation to any party with respect thereto by Lender.

**(h) Waiver of Jury Trial.** To the extent permitted by applicable law, Borrower and Lender knowingly, voluntarily and irrevocably waive any right they may have to trial by jury in any action or proceeding between Borrower and Lender in connection with or arising out of this Commitment and the transactions related hereto.

**(i) Waiver of Rights of Lender.** Neither the failure nor the delay by Lender to exercise any right, power or privilege under this Commitment shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of any other right, power or privilege.

**Closing:**

The closing of the Loan will take place at the offices of Borrower's attorney (if borrower requests an attorney) on a date, which shall be on or before 1/30/2021. If the Loan is not closed by such date this Commitment shall become null and void, any and all obligations set forth herein or in any other related documents will not be enforceable, and the Lender will have no commitment to lend, unless an extension from the Lender in writing is obtained by the Borrower.

**Acceptance:**

This Commitment is open for your acceptance until the close of business 30 days from the date of this letter. The loan shall be closed within 60 days of this Commitment; otherwise, this Commitment to lend shall be null and void.

This Commitment is intended for the benefit of Borrower and no other person is intended to be nor shall any other person be a beneficiary of this Commitment or entitled to rely upon this Commitment. This Commitment may not be assigned or otherwise transferred without the prior consent of Lender.

We appreciate the opportunity to present this commitment letter to you. To acknowledge your acceptance of this commitment, please sign where indicated below and return the original of this letter to my attention. Please do not hesitate to call me at (843) 216-3021 if I can be of further assistance.

Very truly yours,  
Pinnacle Bank



Kim Racine  
Vice President

**BORROWER:** The Town of McClellanville

By Ray B. L...  
Title Mayor

**ADDENDUM A**

**The attached commitment letter is contingent on approval of an ordinance by  
McClellanville Town Council after two readings.**

534 Johanie Dodds Boulevard  
Mount Pleasant, SC 29464

