

The Barnes County Commission met in regular session on Tuesday, July 18, 2023 with Cindy Schwehr, Vicky Lovell, Bill Carlblom, Pete Paulson, and Shawn Olauson present. Chairman Carlblom called the meeting to order at 8:00 a.m., roll-call was taken, the Pledge of Allegiance was recited, and the Agenda was reviewed.

Planning & Zoning – Variances

Jessica Jenrich, Planning & Zoning Coordinator, presented an application for a Variance – Setback from Brad W McKay (Grand Prairie Township, 26 & 27 – 142-57). Shawn Olauson moved to approve the application; Pete Paulson seconded the motion. Motion carried upon roll-call vote, with all members voting “yes”. Ms. Jenrich presented an application for a Variance – Structure from Bradley D Reed (Sibley Trail Township, 35-143-58). Cindy Schwehr moved to approve the application, contingent upon the purchase of approximately 200 square feet from Kingsley; Shawn Olauson seconded the motion. Motion carried upon roll-call vote, with Vicky Lovell and Pete Paulson voting “no”. Ms. Jenrich presented an application for a Variance – Setback 140- from center of township road from James L Westra (Noltimier Township, SE ¼ 22-141-57). Cindy Schwehr moved to approve the application; Vicky Lovell seconded the motion. Motion carried upon roll-call vote, with all members voting “yes”. Ms. Jenrich presented an application for a Variance – Setback from Derek E Bruns (Valley Township, 2 & 11 – 140-58). Pete Paulson moved to approve the application; Shawn Olauson seconded the motion. Motion carried upon roll-call vote, with all members voting “yes”.

Emergency Management - Memorandum of Understanding with VCSU

Cindy Schwehr moved to approve a Memorandum of Understanding (MOU) for Emergency Assistance between Barnes County and Valley City State University; Vicky Lovell seconded the motion. Motion carried upon roll-call vote, with all members voting “yes”.

Highway Dept – Permit Fees / Updates / Approach Application

Jamie Smith, Highway Superintendent, updated the Commission on summer projects. Ms Smith recommended adoption of an overweight load fee per mile schedule. Cindy Schwehr moved to approve the amended Overweight Load Fee schedule; Pete Paulson seconded the motion. Motion carried upon roll-call vote, with Vicky Lovell voting “no”.

Vicky Lovell moved to approve an Approach Application from Tyler Elston for approaches located in 26-140-61; Pete Paulson seconded the motion. Motion carried upon roll-call vote, with Cindy Schwehr voting “no”.

MIS – Funding for Tyler Conversion

Cindy Schwehr moved to pay this year’s costs for the conversion to Tyler software of \$123,228 from State & Local Fiscal Recovery Funds, and to pay next year’s costs of \$207,773 from SLFRF, as well; Shawn Olauson seconded the motion. Motion carried upon roll-call vote, with all members voting “yes”.

Weed Control – Building Blueprints

Jamen Windish, Weed Officer, discussed purchase of blueprints versus hiring an architect, in the interests of saving money. The Commission suggested checking locally, as well.

Auditor – Minutes

Vicky Lovell moved to approve the July 6, 2023 minutes; Shawn Olauson seconded the motion. Motion carried.

Resolution 2023-3 for Sale of General Obligation Bridge Bonds, Series 2023

Cindy Schwehr moved to approve Resolution 2023-3 for Sale of General Obligation Bridge Bonds, Series 2023; Shawn Olauson seconded the motion. Motion carried upon roll-call vote, with all members voting “yes”.

RESOLUTION 2023-3
BARNES COUNTY, NORTH DAKOTA

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF
\$500,000 GENERAL OBLIGATION BRIDGE BONDS, SERIES 2023**

**ARTICLE I
RECITALS**

Barnes County, North Dakota (the "County"), a political subdivision of the State of North Dakota duly formed and organized under the provisions of Title 11 of the North Dakota Century Code (the "N.D.C.C."), by this Resolution Authorizing the Issuance (the "Resolution") authorizes the issuance of its General Obligation Bridge Bonds, Series 2023 (the "Bonds") in the aggregate principal amount of \$500,000 for the purpose of providing funds for bridge repair and construction and work incidental thereto and to pay costs incidental to such work and bond issuance, all as detailed herein.

The County hereby makes the following recitals regarding the Bonds:

Section 1.01. Initial Resolution, Amount, and Purpose. On April 5, 2022, the governing body of the County adopted an Initial Resolution (the "Initial Resolution") for the purpose of instituting proceedings for the Bonds under the authority of NDCC Chapter 21-03 which Initial Resolution stated: (i) \$500,000 to be the maximum principal amount of the Bonds; (ii) the purpose of the Bonds is to provide funds to construct, enlarge or repair bridges and to pay costs of incidental to such construction, enlargement or repair and bond issuance (the "Project"); (iii) the assessed valuation of the County is \$796,475,744; (iv) the outstanding general obligation bonded indebtedness of the County is \$105,000; (v) the County has outstanding general obligation bonds issued for a similar purpose in the amount of \$105,000 and (vi) one percent (1%) of the assessed valuation of all taxable property in the County is \$7,964,757.

Section 1.02. Initial Resolution Adoption. Upon adoption of the Initial Resolution by the County's governing body, the governing body resolved that the question of approving the Initial Resolution be placed on the June 14, 2022, primary election ballot.

Section 1.03. Publication. The Notice of Primary Election was published on May 31 and June 7, 2022, in the *Valley City Times-Record*.

Section 1.04. Election Results and Authority to Issue Bonds. The governing body of the County caused Notice of Primary Election to be given according to law and, at the June 14, 2022, election, 1,436 votes were cast approving the adoption of the Initial Resolution by the County, allowing issuance of the Bonds, and 678 votes were cast against adoption. The approval (67.92%) of the issuance of the Bonds, by the adoption of the Initial Resolution, was by more than the sixty percent (60%) majority of the qualified voters voting upon the question as required by law.

Section 1.05. Issuance of Bonds will Not Exceed Constitutional Debt Limit. The issuance of the Bonds will not exceed any statutory or constitutional limit on indebtedness of the County.

Section 1.06. Project Purpose and Authority. The Project is a valid and authorized undertaking for which the County may incur general obligation indebtedness pursuant to the terms and provisions of N.D.C.C. Section 21-03-06(1)(b).

Section 1.07. Estimated Cost of Project. The cost of the Project is estimated at not less than \$500,000.

Section 1.08. Statutory and Procedural Compliance. The County has performed all statutorily required procedures preliminary to the issuance of the Bonds and asserts that as a condition of issuance all required acts, conditions and things prerequisite to the issue of the Bonds have been performed and do exist and have been performed by the governing body which is legally constituted and empowered to bind the County.-

Section 1.09. Contracts. The County has let or will let contracts for construction according to law.

NOW, THEREFORE, be it resolved by the governing body of the County as follows:

ARTICLE II

CONDITIONS AND AGREEMENTS

Section 2.01. Appropriation. All monies required to be deposited in any funds and accounts established by this Resolution are hereby dedicated and appropriated to the payment of outstanding obligations properly chargeable against such funds and accounts when due and payable without further authorization from the governing body of the County.

Section 2.02. Expenditure and Accounting. Expenditure of monies from any funds and accounts established pursuant to this Resolution shall be made and accounted for by the officer or officers of the County empowered to expend and required to account for the expenditure of the County's funds.

Section 2.03. Official Certifications. The County authorizes its officers and the officers of Barnes County, North Dakota to furnish certified copies of all proceedings had with regard to the Bonds by its governing body. The County agrees to furnish additional certifications of its officers as are necessary to establish the validity of the Bonds, the tax-exempt status of interest payable thereon, the absence of litigation materially affecting the Bonds and any other certifications or information reasonably necessary to insure marketability and compliance with the conditions of underwriting. The County hereby authorizes and directs the Chairman of its Board of Commissioners and/or its auditor, unless specifically designated otherwise herein, to execute and deliver all such certifications and documents and do all such things necessary or convenient in the exercise of the powers granted to the County by N.D.C.C. Chapter 21-03.

Section 2.04. Arbitrage Compliance. The County covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the County's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Internal Revenue Code, as amended (the "Code") and regulations prescribed under such Section, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 2.05. Bonds "Qualified Tax-Exempt Obligations". The County hereby designates the Bonds as "qualified tax-exempt obligations" under Section 265 of the Code relating to the deduction allowed financial institutions for interest expense allocable to tax-exempt interest. The County represents that: (i) the Bonds are not "private activity bonds" as defined in the Code; (ii) the reasonably anticipated amount of qualified tax-exempt obligations (other than "private activity bonds" except for "qualified 501(c)(3) bonds" as defined in the Code) which will be issued during calendar year 2023 does not exceed \$10,000,000; and (iii) not more than \$10,000,000 of "qualified tax-exempt obligations" will be designated by the County (including subordinate entities) for calendar year 2023.

Section 2.06. Filing With County Auditor. After final passage of this Resolution, the County Auditor will record it in the records and certify a copy and file the certified copy with the Barnes County Auditor and obtain from such officials certificates acknowledging filing of the Resolution and the year in which the tax levy for the Bonds will be first collected.

Section 2.07. Debt Limit Certification. The Bonds will be endorsed by the manual or facsimile signature of the County Auditor certifying that the Bonds are issued in accordance with law and are within the debt limit of the County.

Section 2.08. Custodian of Funds and Accounts. The County Auditor is hereby designated as the custodian of any funds and accounts established by this Resolution and is hereby authorized to take any action necessary to the levy and collection of taxes certified for collection by this Resolution.

Section 2.09. Tax Levies. A general tax direct, annual and irrepealable is hereby levied pursuant to the terms of NDCC Section 21-03-15 in sufficient amount, and in amounts of not less than nor for fewer years than shown on Attachment 1 hereto, when taken together with any other monies provided from sources committed by the County for the express purpose of paying the interest on such Bonds as it falls due, and also to pay and discharge the principal thereof at maturity.

The County shall be without power and shall continue without power to repeal such levy or levies or to obstruct a collection of any such tax until payments have been made or provided for, except that if the governing body in any year makes an irrevocable appropriation to the Sinking Fund Account of monies actually on hand, or if there is on hand in the Sinking Fund Account an excess amount, the governing body may authorize the County Auditor to reduce by the amount so certified the amount otherwise to be included in the tax rolls next thereafter prepared.

ARTICLE III FUND AND ACCOUNTS

Section 3.01. Establishment of Fund. There is hereby established the Barnes County, North Dakota, General Obligation Bridge Bonds, Series 2023 Fund (the "Fund") which shall be held separate and distinct from all other funds to be used for the purposes for which it was borrowed and for no other purpose, except temporary investment, and as otherwise permitted by law and shall be held by the County Auditor on deposit with a qualified depository of public funds as provided by law. The Fund may be maintained either as a separate and special bookkeeping account on the official books and records of the County or as a separate bank account.

Section 3.02. Establishment of Accounts. There are hereby established within the Fund the following accounts:

- A. Construction Account. The net proceeds (gross proceeds less the underwriter's discount) from the Bonds shall be deposited into the Construction Account, less any accrued or funded interest thereon which shall be deposited in the Sinking Fund Account, any additional monies pledged to defraying the construction cost and all administrative costs and fees incident to the construction and issuance, and any investment earnings on the Construction Account. Payable from the Construction Account shall be the costs incidental to the construction and equipping of the Project and costs incidental to the issuance of the Bonds.
- B. Sinking Fund Account. Into the Sinking Fund Account shall be deposited (i) any accrued interest and any funded interest on the Bonds when sold, (ii) any balances remaining in the Construction Account when it is determined unlikely that any additional cost properly payable from the Construction Account will arise, and (iii) all collections from the levy of the general taxes required by Section 2.09 of this Resolution and funds from any other source so appropriated by the governing body.

ARTICLE IV SALE OF BONDS

Section 4.01. Sale. The sale of the Bonds will be negotiated to Colliers Securities LLC, Minneapolis, Minnesota (the "Underwriter"), at a price of \$493,750 and a net interest cost of 4.1948%, the sale to be subject to all of the terms and conditions set forth herein and in the accepted bid presented to this governing body.

Section 4.02. Principal Amount. The total principal amount of the Bonds shall be Five Hundred Thousand Dollars (\$500,000).

Section 4.03. Denominations and Book Entry Registration. The Bonds shall be issued as book entry bonds as required by the Depository Trust Company ("DTC") in the aggregate principal amount equal to the principal amount of the Bonds. The Bonds shall be registered in the name of Cede & Co., as nominee of the Depository Trust Company, New York, New York, and the Paying Agent shall treat the record owner as the absolute owner of the Bonds. So long as Cede & Co. is the registered owner of the Bonds, references herein to the Bondholder, owner, etc. shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds. Sales by the purchaser of beneficial interest participations in the Bonds to beneficial owners will be limited to minimum denominations of \$5,000 or any integral multiple in excess thereof. The Blanket Issuer Letter of Representations has previously been executed by the County and filed with DTC. The County will secure the Paying Agent's representation that it will comply with the requirements of the DTC Operational Arrangements Memorandum, as it may be amended from time to time.

Section 4.04. Maturity. The Bonds shall be issued as a single term bond.

Section 4.05. Numbering. The Bonds shall be numbered in consecutive numerical order from R-1 upwards as issued.

Section 4.06. Dates. The Bonds shall be dated August 1, 2023.

Section 4.07. Principal Maturities. The Bonds shall mature on May 1 in the years, in the amounts, and subject to the mandatory redemptions set forth in the Schedule of Maturities and Interest Rates attached as

Attachment 2.

Section 4.08. Optional Redemption. The Bonds shall not be subject to optional redemption and prepayment prior to the stated maturities.

Section 4.09. Registrar, Authenticating and Paying Agent, and Place of Payment. Starion Bond Services, Bismarck, North Dakota is hereby appointed the sole Paying Agent for the Bonds. The place of payment of the principal or Redemption Price of and interest on the Bonds shall be the office of the Paying Agent. Interest on the Bonds and, upon presentation and surrender thereof, the principal thereof shall be payable in lawful money of the United States of America by wire transfer to DTC by Starion Bond Services, Bismarck, North Dakota, as Bond Registrar, Authenticating and Paying Agent (the "Bond Registrar" or "Paying Agent"), or its successor.

Section 4.10. Preparation, Execution and Delivery. The Bonds shall be prepared under the supervision and at the direction of the County Auditor, sealed with the original or a facsimile seal of the County, executed by the manual or facsimile signature of the President of the Board of County Commissioners and attested to by the manual or facsimile signature of the County Auditor and delivered to the Purchaser at closing upon receipt of the purchase price plus any accrued interest. The Bonds shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives. The Bonds shall be reproduced in substantially the form on file with the County Auditor.

Section 4.11. Interest. The Bonds shall bear interest at the rates set forth in the Schedule of Maturities and Interest Rates attached hereto as Attachment 2. Interest shall be payable on May 1 and November 1 in each year, commencing May 1, 2024, to the person in whose name each Bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month. Interest on the Bonds shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.

Section 4.12. Source of Payment/Security. The Bonds are payable as to principal and interest from the Sinking Fund Account created by this Resolution, which Sinking Fund Account shall derive its revenues from the levy of a general obligation ad valorem tax against all the taxable property located within the boundaries of the County.

Section 4.13. Assignment. The Bonds are transferable upon the books of the County at the principal office of the Bond Registrar, by the registered owner thereof in person or by the owner's attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or the owner's attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the County will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Bonds shall be required to be made during the fifteen days next preceding an interest payment date, nor during the forty-five (45) days next preceding the date fixed for redemption of Bonds.

Section 4.14. Discharge. When all of the Bonds have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this Resolution shall cease. The County may discharge all Bonds due on any date by depositing with the Paying Agent on or before that date a sum sufficient for the payment thereof in full; or if any Bond should not be paid when due, the same may nevertheless be discharged by depositing with the Paying Agent a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The County may also discharge all Bonds at any time by irrevocably depositing in escrow with a suitable bank, for the purpose of paying all principal and interest when due on such Bond, a sum of cash and securities of the types described in Section 21-03-06(7)(c), N.D.C.C., or deposits in the Bank of North Dakota which, as provided by Section 6-09-10, N.D.C.C., are guaranteed by the state, in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose.

Section 4.15. Certificates. The Chairman and County Auditor (each, an "Authorized Officer"), in consultation with bond counsel, are hereby authorized to deliver certificates which cure ambiguities, defects or omissions herein, correct, amend or supplement any provision herein, lessens the obligations of the County hereunder, adds to the rights or options of the County, or otherwise makes changes to the provisions hereof, which such Authorized Officer determines are in furtherance of the financing contemplated herein, which determination shall be evidenced conclusively by the execution of such certificate.

Dated: July 18, 2023.

BARNES COUNTY, NORTH DAKOTA

Chairman
Board of County Commissioners

(S E A L)

Attest:
County Auditor

The governing body of the County acted on the foregoing resolution at a properly noticed meeting held in Valley City, North Dakota, on July 18, 2023, with the motion for adoption made by Cindy Schwehr and seconded by Shawn Olauson, and the roll call vote on the motion was as follows:

"Aye" Bill Carlbom, Pete Paulson, Shawn Olauson, Cindy Schwehr, Vicky Lovell; "Nay" None; Absent None; Abstain None.

ATTACHMENT 1

TAX LEVY

<u>Year of Levy</u>	<u>Year of Collection</u>	<u>Levy*</u>
2023	2024	\$128,000
2024	2025	\$119,000
2025	2026	\$120,500
2026	2027	\$121,500
2027	2028	\$117,500

* Levy is approximately ten percent greater than the amount of principal and interest due to accommodate the five percent discount for taxes paid prior to February 15th of each tax year and late payments.

SCHEDULE MATURITIES AND INTEREST RATES

\$500,000 @ 3.750% Term Bond Maturing May 1, 2028	
<u>Date</u>	<u>Principal Amount</u>
May 1, 2024	\$95,000
May 1, 2025	\$95,000
May 1, 2026	\$100,000
May 1, 2027	\$105,000
May 1, 2028	\$105,000

Commission Discussion

Commission discussion included portfolio updates.

With no further business, Cindy Schwehr made a motion, seconded by Vicky Lovell, to adjourn the meeting. Motion carried unanimously, and the meeting was adjourned at 9:44 a.m.

Bill Carlbom, Chairman
Barnes County Commission

Beth M Didier
Barnes County Auditor