

**INTERGOVERNMENTAL AGREEMENT  
FOR CHARLESTON COUNTY  
MARK CLARK EXPRESSWAY EXTENSION/I-526 PROJECT  
IN CHARLESTON COUNTY, SOUTH CAROLINA**

This Intergovernmental Agreement is made and entered into as of June 8, 2007, by and among CHARLESTON COUNTY, SOUTH CAROLINA (the "County"), the SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (the "SCDOT"), and the SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK, a body corporate and politic and an instrumentality of the State of South Carolina (the "Bank"), concerning the funding and construction of the Charleston County Mark Clark Expressway Extension/I-526 Project (the "Extension Project") in Charleston County, South Carolina, which is described in more detail hereinbelow and in the Charleston County Application, as supplemented, submitted to the Bank (the "Application").

WITNESSETH

WHEREAS, the Bank was created for the purpose, among others, of selecting and assisting in financing major transportation projects by providing financial assistance to government units for constructing and improving highway facilities necessary for public purposes, including economic development, as is more fully set forth in the South Carolina Transportation Infrastructure Bank Act (South Carolina Code Ann. Sections 11-43-110, et seq., as amended);

WHEREAS, by an application submitted to the Bank on or about December 15, 2005, as supplemented by other submissions, the County requested financial assistance for three highway projects in Charleston County: the Extension Project; the Port Access Road; and the US17/Mark Clark Expressway Interchange.

WHEREAS, as part of the Application, the County identified a contribution in the amount of \$354 million to be spent on County road projects from the County's Sales Tax (as hereinafter defined) as its proposed local match contribution for all projects in the Application on which financial assistance was requested, and of that total proposed local match contribution, \$117 million is in the form expenditures by the County on roads to be constructed or improved

which directly relate to the Extension Project and as such constitutes the local match contribution for the Extension Project;

WHEREAS, at a meeting on December 15, 2005, the Board of Directors of the Bank (the "Board") found the Application met the criteria in Section 11-43-180(B) and that the Extension Project was an eligible and qualified Extension Project under the South Carolina Transportation Infrastructure Bank Act and referred the Application to the Bank's Evaluation Committee (the "Committee") for review and a recommendation;

WHEREAS, at its meeting of June 30, 2006, the Committee recommended and the Board approved financial assistance for the Extension Project, which has a total estimated cost of \$420 million, in the form of an initial grant of \$99 million for engineering and environmental work and acquisition of rights of way and a subsequent grant, or grants, not to exceed \$321 million for completion of the Extension Project from the next new funds available to the Bank after fully funding financial assistance for all existing obligations on all previously approved projects with all financial assistance from the Bank conditioned on the aforementioned local match contribution of \$117 million identified by County in the Application being made by the County and the execution of an intergovernmental agreement between the parties in a form acceptable to the Board;

WHEREAS, on August 1, 2006, the Capital Improvements Joint Bond Review Committee ("JBRC") of the South Carolina General Assembly approved the Extension Project, financial assistance from the Bank for the Extension Project in the form of a grant in the initial amount of \$99 million, and the issuance of revenue bonds by the Bank to provide that financial assistance to the Extension Project; and

WHEREAS, the County, SCDOT, and the Bank now desire to set forth the respective responsibilities of the parties for the Extension Project, including the funding and construction of the Extension Project;

NOW, THEREFORE, in consideration of the mutual benefits, promises and obligations set forth herein, the sufficiency of which are hereby acknowledged and accepted by each party hereto, the County, SCDOT, and the Bank hereby agree as follows:

## ARTICLE I

### 1. Definitions

For purpose of this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

“Account” means the account of the Bank maintained by the South Carolina State Treasurer into which is deposited monies to fund Disbursements for Eligible Costs of the Extension Project.

“Act” means the South Carolina Transportation Infrastructure Bank Act, which is codified as South Carolina Code Ann. Sections 11-43-110, et seq., as amended.

“Application” means the Application for Financial Assistance submitted by the County to the Bank on or about December 15, 2005, as supplemented by other materials submitted by the County up to the date of this Agreement.

“Budget” means the budget established by the Bank for the Extension Project;

“Contract” means any contracts entered into by the County or SCDOT with any other person or firm for engineering, design, construction, materials or similar purposes for the Extension Project.

“Disbursements” means the transfer or payment of monies to the County or SCDOT for Eligible Costs of the Extension Project or the payment of invoices approved by Bank and/or its designee for Eligible Costs of the Extension Project incurred pursuant to a Contract.

“Eligible Costs” has the same meaning as set forth in Section 11-43-130 (5) of the Act as applied to qualified projects to be funded from the state highway account of the Bank.

“Event of Default” means the uncured breach by the County or SCDOT of a provision or obligation in this Agreement.

“Extension Project” means the highway construction and improvement project in Charleston County consisting of extending the Mark Clark Expressway/Interstate 526 from U.S. Highway 17 to Folly Road as is more specifically identified and described in the Application, as supplemented, and in this Agreement.

“Local Match Contribution Event of Default” shall have the meaning assigned in Section 8.3 of this Agreement.

“Sales Tax” means the one-half percent sales and use tax established in Charleston County by approval of a referendum following the adoption of Charleston County Council Ordinance Number 1324 pursuant to South Carolina Code Ann. Sections 4-37-10, et seq., as amended, entitled “Optional Methods for Financing Transportation Facilities.”

“SCDOT” means the South Carolina Department of Transportation.

## ARTICLE II

### 2. Term of Agreement

This Agreement shall be effective as of June 8, 2007, and shall terminate, except for specific provisions which are expressly stated to survive the termination of this Agreement, on the date when the last of the following events occurs: (i) the last project of the local match contribution required from the County as set forth in Section 3.2 is completed; (ii) the Bank makes the final Disbursement on the Extension Project; (iii) the Bank certifies through a resolution adopted by its Board that it cannot provide any further financial assistance to the Extension Project as set forth in this Agreement; or (iv) the Extension Project is declared completed and accepted by the County, SCDOT, and the Bank.

## ARTICLE III

### 3. Funding Commitments of Parties

#### 3.1 Bank

The Bank shall establish a Budget for the Extension Project within the Account of the Bank and will, from time to time as it deems necessary at its discretion, deposit into the Account, or credit the Budget for, monies from one or more sources to fund Disbursements. The Bank will make Disbursements from the Account, pursuant to Section 6.1 of this Agreement, to pay for Eligible Costs of the Extension Project incurred directly by the SCDOT or incurred by the SCDOT on Contracts. The Bank may deposit into the Account, or credit the Budget, in such increments as it determines in its discretion, financial assistance in the form of grant(s) not to exceed \$99 million from its existing sources of revenues and any monetary contributions to the Extension Project from the County or any other source that is not expended in some other manner on the Project. This grant may be used only for Eligible Costs for engineering and environmental work and for right-of-way acquisitions for the Extension Project. If the portion of the Eligible Costs for engineering and environmental work and right-of-way acquisitions for the Extension Project to be funded from the Bank's initial grant of \$99 million are completed for less than that amount, the remainder thereof shall be combined with the grant of up to \$321 million described in the succeeding paragraph to pay for any Eligible Costs of the Extension Project.

From the next funds or proceeds of revenue bonds available to the Bank for the Extension Project after fully funding the financial assistance for all existing obligations of the Bank on projects previously approved by the Board and the JBRC, as determined by the Bank in its discretion, and subject further to the approval of such financial assistance by the JBRC as required by the Act, the Bank may deposit into the Account, or credit the Budget, in such increments as it determines in its discretion, financial assistance in the form of grant(s) not to

exceed an additional \$321 million for the remainder Extension Project. This grant may be used for any Eligible Costs of the Extension Project.

In no event at any time shall the Bank be required to increase its financial assistance, grants, credits, disbursements, or contributions to the Extension Project beyond \$420 million or to disburse, advance, transfer or pay from its own monies in excess of \$420 million for the Extension Project. However, subject to the provisions of Section 5.5 of this Agreement, the County is not precluded from submitting requests for additional financial assistance to the Bank for its consideration if needed to complete the Extension Project. Any savings in the total cost of the Extension Project shall be credited against and reduce the amount of the Bank's grants to the Extension Project. Furthermore, any state (other than the Bank's grant or grants set forth in this Section 3.1), County, municipal, regional government or private funds of any kind or any Federal funds (other than Federal funds earmarked, encumbered or received prior to the date of this Agreement, including, without limitation, the \$3 million earmarked in Public Law 109-59, Section 1709, No. 4891) of any kind provided or available for the Extension Project in any form shall offset and reduce the amount of the Bank's grants for the Extension Project on a dollar for dollar basis unless those funds are needed, as determined by the Bank, to complete the Extension Project in a manner consistent with the original scope of the Extension Project (i.e., the total project costs exceed \$420 million) or with an expanded or upgraded scope of the Extension Project. The County or SCDOT may seek this determination from the Bank prior to seeking such additional funds.

### 3.2 County

The County promises to, and shall, spend \$117 million from the proceeds of the Sales Tax for highway and road construction and improvements pursuant to the schedule attached hereto as Schedule A as the local match contribution to the Extension Project. That local match contribution also has been deemed by the Bank as the local match contribution for the U.S. 17/Mark Clark Expressway

Interchange Project which is the subject of a separate intergovernmental agreement between the Bank and the Town of Mount Pleasant. The County will provide the Bank quarterly reports on the status of the expenditures comprising the local match contribution, including a report on the status of each project funded thereby.

#### ARTICLE IV

#### 4. Additional Obligations of the County and SCDOT

##### 4.1 Additional Documents and Actions

At the request of the Bank, the County and SCDOT shall execute any other documents that the Bank determines are reasonably necessary to evidence or establish the County's or SCDOT's obligations to the Bank set forth in this Agreement. The County and SCDOT acknowledge that the Bank intends to raise funds for its commitment to the Extension Project and other qualified projects through the issuance of revenue bonds or other indebtedness as permitted under the Act. Accordingly, the County and SCDOT shall take such actions and enter into such other documents, including amendments to this Agreement or other agreements that are consistent with the substance hereof, as may be reasonably necessary to comply with South Carolina laws and regulations associated with such bonds or indebtedness and to satisfy requirements for documentation and information reasonably imposed by the Bank, prospective purchasers of such bonds, holders of such bonds, bond insurers, rating agencies, lenders or regulatory agencies and their attorneys, advisors, and representatives; provided, however, that such actions are legally permissible and that no such action or document shall create any additional material obligation or increase any material obligation of the County or SCDOT.

##### 4.2 Additional Warranties and Covenants of the County

The County warrants and covenants that:

- A. The County has full power and authority to execute, deliver and perform and to enter into and carry out the transactions contemplated by the provisions in this Agreement, and the execution and performance of these provisions and transactions by the County does not and will not violate any applicable law and does not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound, a violation of which would cause a material adverse effect to the Bank. This Agreement has, by proper action, been duly authorized, executed and delivered by the County.
- B. This Agreement is valid, binding and enforceable as to the County in accordance with its terms.
- C. No further authorizations, consents or approvals of governmental bodies or agencies are required in connection with the execution and delivery by the County of this Agreement and the performance of its obligations hereunder. However, the parties acknowledge that the Extension Project and the projects listed on Schedule A require permits and other approvals by governmental agencies other than the County.
- D. No litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving the County is pending or, to the knowledge of the County threatened, in which any judgment or order may be or has been rendered, or is sought, that may have a material and adverse effect upon the operations or assets of the County or would materially or adversely affect the validity of this Agreement, or the performance by the County of its obligations hereunder or the transactions contemplated hereby, including the obligation to make the local match contribution pursuant to Section 3.2. of this Agreement. The County will immediately notify the Bank in writing if any such litigation or proceeding is commenced or, to its knowledge, may be commenced at any time during the term of this Agreement.



- E. If requested by the Bank, the foregoing warranties and covenants shall be confirmed by a written opinion issued to the Bank by legal counsel for the County in a form and with conclusions satisfactory to the Bank.

#### 4.3 Reimbursement of Bank

If the Bank determines at any time that any Disbursements made by it on the Extension Project were for costs or expenses that were not Eligible Costs, were based on misstatements of fact by the County, SCDOT or the agents of either of them, or were for work, services, or materials which do not meet the design and construction specifications and standards of SCDOT and which have not been corrected to meet those specifications and standards, the Bank, at its option, may require the County or SCDOT, whichever is responsible as determined by the Bank, to reimburse the Bank or the Account for all or some portion of such Disbursements. In the event that the County or SCDOT does not pay the full amount of the reimbursement to the Bank within ninety (90) days of the date of the notification to the County or SCDOT that such reimbursement is due the Bank, or on such other terms as the Bank shall establish, the County's or SCDOT's obligation to reimburse the Bank shall be subject to the provisions of Section 11-43-210 of the Act and Article VIII of this Agreement. This Section 4.3 shall survive the termination of this Agreement.

#### 4.4 Extension Project Reporting

The County shall report to the Bank in writing at least quarterly on the status of the Extension Project, including, but not limited to, the status of design, right-of-way acquisition, environmental and related approvals, construction, scheduled and projected draw requests, project changes, project scope changes, and any other matters identified by the Bank. The County may authorize the SCDOT to provide these reports to the Bank.

#### 4.5 Assistance with Municipal Cooperation and Agreements

The County shall be responsible, with the assistance of the SCDOT, for obtaining from each municipality in which any portion of the Extension Project is to be constructed a properly and duly executed Municipal State Highway Extension Project Agreement, as required by South Carolina Code Ann. Section 57-5-820, in the form attached hereto as Exhibit I and delivering the original executed Municipal State Highway Project Agreement to SCDOT. The parties to this Agreement acknowledge that the failure of a municipality to cooperate in executing such an agreement may delay the Extension Project, increase the costs of the Extension Project, result in a modification of or reduction in the scope of the Extension Project, or otherwise impact the Extension Project.

### ARTICLE V

#### 5. Extension Project Administration

##### 5.1 Extension Project Administration

The SCDOT will administer the Extension Project for the County. The County Administrator shall appoint a designee to serve as the day-to-day contact for the County for the Extension Project. The SCDOT shall oversee all planning, design, engineering, right-of-way acquisition, contract administration, inspection, awarding of contracts, the review and approval of payment of contracts, construction for the Extension Project, and any related or necessary activities or functions of the Extension Project. Preconstruction and construction services shall be obtained from third-party consultants or contractors by or on behalf of the County through the procurement process authorized by law applicable to that contract. All Contracts with third-parties shall be entered into in the name of the SCDOT. However, should the SCDOT determine that it would be more efficient or cost effective or would result in more expeditious completion of the Extension Project, the SCDOT may perform any service to the Extension Project with its own forces. The County, subject to the terms of Article VI herein, authorizes SCDOT to submit draw requests directly to the Bank

and authorizes the Bank to make Disbursements directly to SCDOT or, if the Bank agrees therewith, directly to consultants or contractors.

The SCDOT shall be entitled to draw, and be paid hereunder, its normal and customary rates for its services that are Eligible Costs of the Extension Project subject to review and approval by the Bank or its designee as to the reasonableness of such rates and costs and the qualification of such costs as Eligible Costs. All work, services, construction and materials used on the Extension Project shall conform to the standards and specifications applied by SCDOT. The Extension Project shall be opened for public use upon completion subject to the terms of acceptance therefor set forth in Section 5.7 of this Agreement.

### 5.3 Contracting Methods

The SCDOT may solicit the contractor or consultant services needed to complete the Extension Project by the procurement method it deems will result in the selection of the best qualified firm, lowest contract price, or the best value for the Extension Project, so long as SCDOT is authorized by law to employ such method. Contract forms shall be design-bid-build, design-build, or any other form or combination of forms or project phases which are permissible by law that SCDOT determines will result in the most cost-effective, efficient and expeditious delivery of the Extension Project.

### 5.4 Scope of Extension Project

The scope of the Extension Project shall be as set forth in the definition of the Extension Project in Section 1 of this Agreement. Any material change from or in that scope of the Extension Project shall require an amendment to this Agreement.

## 5.5 Extension Project Delivery.

The SCDOT does not guarantee completion of the Extension Project within the scope of the Extension Project and within the Budget for the Extension Project. The SCDOT shall obtain the authorization of the County prior to awarding any construction contracts or project delivery contracts where the award would cause the total budget for the Extension Project to be exceeded. The County shall be responsible for obtaining or providing additional funding for the Extension Project if the available funds are not sufficient to complete the Extension Project within the scope of the Extension Project, reducing the scope of the Extension Project to conform to available funding, or some combination thereof.

## 5.7 Utility Relocations.

5.7.1 Utility relocations will be paid based on *prior rights*. Where a utility establishes a prior right of occupancy in its existing location, the County will be responsible for the cost of that relocation, including all real and actual costs associated (engineering, easements, construction, inspections, and similar costs), and those costs will be considered Eligible Costs under this Agreement if permissible under the Act. Prior rights may be established by the following means:

5.7.1.1 The utility holds a fee, and easement, or other real property interest, the taking of which is compensable in eminent domain.

5.7.1.2 The utility occupies a SCDOT right-of-way and under an existing agreement with SCDOT is not required to relocate at its own expense.

5.7.2 Where the utility cannot establish a prior right of occupancy, the utility will be required to relocate at its own expense.

5.7.3 If Federal funds are used for utility relocations, the SCDOT shall comply with applicable Federal regulations (23 C.F.R. 645 A and B).

#### 5.8 Acceptance

Upon the completion of the Extension Project, the State Highway Engineer will recommend to the SCDOT Commission the acceptance of the Extension Project into the State Highway System, as defined by South Carolina Code Ann. Section 57-5-10, as amended, for all purposes, including maintenance. Work performed by the SCDOT on roads owned by the County or any municipality incidental to work on the Extension Project shall not be construed as requiring SCDOT to accept such roads into the State Highway System.

#### 5.9 Right-of-Way Acquisition

All rights-of-way for the Extension Project shall be acquired in the name of the SCDOT, and the laws and procedures of the State of South Carolina for acquiring rights-of-way shall apply and be followed. Upon completion and acceptance into the State Highway System of the Extension Project, the County will convey all of its interests, if any, in the rights-of-way for the Extension Project to the SCDOT free of all encumbrances.

#### 5.10 Public Information

The County will work cooperatively with the SCDOT to respond to all communications or requests for information from the public or the media concerning the Extension Project.

## ARTICLE VI

### 6. Conditions Precedent to Bank's Disbursements

#### 6.1 Draw Requests

The Bank's obligation to make Disbursements arises only upon receipt of a draw request from SCDOT and the Bank's approval thereof, which draw request shall be in a form approved by the Bank, and is further conditioned upon all of the following being met or verified by the SCDOT or the County:

- 6.1.1 No lien or other interest shall have attached to a Contract, nor any rights-of-way, real property or improvements related thereto.
- 6.1.2 Construction of the completed portions of the Extension Project described in the relevant Contract shall have been carried out substantially in accordance with the applicable plans, standards and specifications.
- 6.1.3 No event of default exists under this Agreement or any Contract.
- 6.1.4 No event or condition shall have occurred or arisen which prevents the Bank from obtaining funds sufficient to complete its financial assistance to the Extension Project or from receiving the other contributions necessary to make the remaining Disbursements due under this Agreement or to complete the Extension Project.
- 6.1.5 The County shall have fulfilled all of the warranties, covenants and obligations set forth in this Agreement.
- 6.1.6 The SCDOT shall have approved the draw request and certified that the entire payment applied for in the draw request is for Eligible Costs of the Extension Project.

6.1.7 No action shall have been taken by the County or any other person, firm or entity to prevent the collection of the Sales Tax, the payment of the revenues from the Sales Tax to the County, the timely expenditure of the revenues from the Sales Tax for the local match contribution set forth in Section 3.2 of this Agreement, or the completion of the local match contribution set forth in Section 3.2 of this Agreement.

6.1.8 The draw request shall be reviewed and approved by the Program Manager assigned by SCDOT to the Extension Project.

## ARTICLE VII

### 7. Indemnification of Bank.

To the maximum extent permitted by law, the County and the SCDOT shall defend, indemnify and hold the Bank harmless from and against any and all liabilities, claims, actions, damages, judgments and attorneys' fees and related expenses and costs in any way arising out of or relating to the design, location, construction, modification, or operation of the Extension Project, or any portion or component thereof, or the selection, use or payment of persons or firms for design, construction, modification, or operation of the Extension Project, or any portion or component thereof. In the event the County or the SCDOT does not pay the full amount of any such indemnification owed by it to the Bank within ninety (90) days of the date of the notification to the County or the SCDOT that such indemnification is due the Bank, or such other time period established by the Bank, the County's or the SCDOT's obligation to pay the Bank for such indemnification shall be subject to the provisions of Section 11-43-210 of the Act. The SCDOT shall be responsible for all claims arising from its own wrongful acts arising from any services it performs on behalf of the County, and in the event of such a claim or claims, the SCDOT shall be subject to the provisions of this Section 7 thereby requiring it to indemnify and hold harmless the Bank to the maximum extent permitted by law. This Section 7 shall survive the termination of this Agreement.

## ARTICLE VIII

### 8. Bank's Rights and Remedies

#### 8.1 Events of Default and Remedies as to the SCDOT

In the event SCDOT shall violate or fail to comply with any provision or obligation under this Agreement (including other agreements and obligations incorporated herein), and if such failure continues for a period of thirty (30) days after receipt of a written notice of such default from the Bank, such failure shall constitute an Event of Default hereunder. Among other rights and remedies available to the Bank following an uncured Event of Default, the Bank shall have the right to cease making any further Disbursements under this Agreement with respect to the Extension Project until such Event of Default has been cured. The Bank shall also have and may pursue any other remedies available under this Agreement or South Carolina law, except as such remedies may be expressly limited by the specific provisions of this Agreement.

#### 8.2 Non-Payment Events of Default as to the County

In the event the County shall violate or fail to comply with any provision or obligation under this Agreement (including other agreements and obligations incorporated herein), other than an obligation concerning payment or completion of the local match contribution as required by Section 3.2 of this Agreement, and if such failure continues for a period of thirty (30) days after receipt of a written notice of such default from the Bank, such failure shall constitute a Non-Payment Event of Default hereunder.

#### 8.3 Local Match Contribution Events of Default as to the County

In the event the County shall fail to complete the local match contribution as required under Section 3.2 of this Agreement, then such failure shall be deemed a Local Match Contribution Event of Default.



#### 8.4 Remedies for Bank

Whenever any Event of Default occurs, any one or more of the following remedies may be pursued by and shall be available to the Bank against the County in addition to those provided in other sections of this Agreement:

- A. As to any Non-Payment Event of Default, any obligation the County failed to perform shall be deemed a ministerial act and subject to the remedies of mandamus and mandatory injunction requiring the County to perform the obligation, and the Bank shall be deemed to have no adequate remedy at law for such Event of Default.
- B. In the event of a Local Match Contribution Event of Default, the Bank shall have access to inspect, examine, copy and audit the books, records, accounts, and financial data of the County, or any records of the State Treasurer or South Carolina Department of Revenue pertaining to the County at a time and place agreed to among the parties and any other state agency involved.
- C. The County shall pay the Bank the reasonable attorneys' fees and expenses incurred by the Bank in pursuing any remedy for an Event of Default.
- D. In the event the County or the SCDOT fails to make any payment in full as required by this Agreement, each acknowledges the authority of the State Treasurer under Section 11-43-210 of the Act to withhold funds allotted or appropriated by the State to the County or SCDOT and to apply those funds to make or complete any such payment. The County and SCDOT agree that the current provisions of Section 11-43-210 are hereby incorporated into this Agreement verbatim as an independent and separate contractual obligation of the County and the SCDOT and shall be enforceable against the County and SCDOT and survive even if Section 11-43-210 is repealed or its application is reduced or amended by action of

the General Assembly, or it is otherwise abrogated or its application is reduced or modified by a court or court decision. The Bank will notify the County and the SCDOT prior to requesting that the State Treasurer withhold such funds.

#### 8.5 Remedies Cumulative; Nonwaiver

All rights and remedies of the Bank provided for in this Agreement or in any other related document as to any party are cumulative, shall survive the termination of this Agreement, and shall be in addition to any and all other related rights and remedies provided for or available to the Bank at law, including those contained in the Act, or in equity. The exercise of any right or remedy by the Bank shall not in any way constitute a cure or waiver of an Event of Default, nor invalidate any act done pursuant to any notice of the occurrence of an Event of Default.

### ARTICLE IX

#### 9. General Conditions

##### 9.1 Waivers

No waiver of any Event of Default by the County or SCDOT hereunder shall be implied from any delay or omission by the Bank to take action on account of such Event of Default, and no express waiver shall affect any event of default other than the Event of Default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenants, terms or conditions contained herein must be in writing and shall not be construed as a waiver of any subsequent or other breach of the same covenant, term or condition. The consent or approval by the Bank to or of any act by the County or SCDOT requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of the Bank hereunder shall

preclude any further exercise thereof or the exercise of any other or different right or remedy by the Bank.

## 9.2 Benefit and Rights of Third Parties

This Agreement is made and entered into for the sole protection and benefit of the Bank, the SCDOT and the County, and their successors and assigns. No other persons, firms, entities, or parties shall have any rights, or standing to assert any rights, under this Agreement in any manner, including, but not limited to, any right to any Disbursements at any time, any right to require the Bank to apply any portion of the amounts committed herein that have not been disbursed by the Bank to the payment of any such claim, or any right to require the Bank to exercise any right or power under this Agreement or arising from any Event of Default of any kind by the County or SCDOT. Nor shall the Bank owe any duty or have any obligation whatsoever to any claimant for labor or services performed or materials or supplies furnished in connection with the Extension Project. No other persons, firms, entities, or parties shall, under any circumstances, be deemed to be a beneficiary of any conditions or obligations set forth in this Agreement, any or all of which may be freely waived in whole or in part by the Bank at any time, if in its sole discretion, it deems it desirable to do so.

## 9.3 No Liability of Bank

The Bank makes no representations and assumes no obligations or duties as to any person, firm, entity, or party, including the parties to this Agreement, concerning the quality of the design, construction, modification, or operation of the Extension Project, or any portion or component thereof, or the absence therefrom of defects of any kind. The Bank shall not be liable in any manner to any person, firm, entity, or party, including the parties to this Agreement, for the design, location, construction, modification, or operation of the Extension Project, or the failure to design, locate, modify, operate, or construct the Extension Project

or any portion or component thereof, generally or in any particular manner. The Bank shall not be liable in any manner on any Contract to which it is not a named party, the execution of which has not been properly and duly authorized by the Board, or which has not been so executed by the Bank.

#### 9.4 Assignment

The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, neither the County nor SCDOT shall not assign or delegate this Agreement, any of its respective rights, interest, duties or obligations under this Agreement, or any Disbursements without the prior written consent of the Bank; and any such attempted assignment or delegation (whether voluntary or by operation by law) without said consent shall be void. In the event that a Non-Payment Event of Default or Local Match Contribution Event of Default as to the County occurs which is not cured by the County to the satisfaction of the Bank, the Bank may require the County to assign all Contracts, licenses, permits, approvals and authorizations for the Project or a Component Project, together with all plans, drawings, and specifications, to the SCDOT or some other entity which has the option of accepting or not accepting the assignment.

#### 9.5 Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent or meaning of any provision hereof.

#### 9.6 Notices

All notices required to be given hereunder, except as otherwise provided in this Agreement, shall be deemed effective when received by the other party, through certified mail, registered mail, personal delivery, or courier delivery. All such notices shall be addressed to the parties as follows:

Charleston County  
Attn: County Administrator  
4045 Bridge View Drive  
North Charleston, SC 29405

South Carolina Transportation Infrastructure Bank  
Chairman  
South Carolina Transportation Infrastructure Bank  
955 Park Street, Room 102  
Columbia, SC 29201

South Carolina Department of Transportation:  
Tony L. Chapman, State Highway Engineer  
P.O. Box 191  
Columbia, SC 29202-0191  
or  
955 Park Street, Room 314  
Columbia, SC 29201

#### 9.7 Amendments

Any amendment to this Agreement shall only be made through a written instrument duly authorized and signed by each party hereto.

#### 9.8 Savings Clause

Invalidation of any one or more of the provisions of this Agreement by any court of competent jurisdiction shall in no way affect any of the other provisions hereof, all of which shall remain, and is intended by the parties to remain, in full force and effect.

#### 9.9 Execution in Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement it shall not be necessary to produce or account for more than one such fully executed counterpart.

9.10 Authority to Execute

By executing this Agreement, the undersigned each affirms and certifies that he or she has authority to bind his or her principal thereto and that all necessary acts have been taken to duly authorize this Agreement under applicable law.

[SEPARATE SIGNATURE PAGES FOR EACH PARTY TO FOLLOW]

SIGNATURE PAGE FOR CHARLESTON COUNTY

IN WITNESS WHEREOF, Charleston County has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

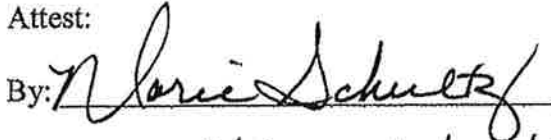
Charleston County, South Carolina

By: 

Printed Name: Tim Scott

Title: Chairman

Attest:

By: 

Printed Name: MARIE SCHULTZ

Title: Project Officer

(SEAL)

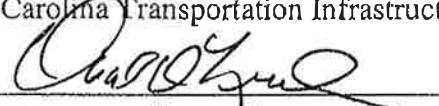
[Approved by action of Charleston County Council at its meeting held on 6/19/07 ]

SIGNATURE PAGE FOR BANK

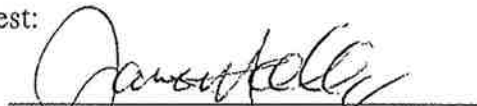
IN WITNESS WHEREOF, the South Carolina Transportation Infrastructure Bank has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

South Carolina Transportation Infrastructure Bank

By:

  
Donald D. Leonard,  
Chairman

Attest:

  
James M. Holly  
General Counsel

(SEAL)



SIGNATURE PAGE FOR SCDOT

IN WITNESS WHEREOF, South Carolina Department of Transportation has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

South Carolina Department of Transportation

By: H B Limehouse  
H. B. Limehouse, Jr.  
Executive Director

Recommended by:  
Reacham O. Brooker, Jr.

Printed Name: Reacham O. Brooker, Jr.

Title: Asst. Chief Counsel

(SEAL)

**DRUG-FREE WORKPLACE CERTIFICATION**

for  
SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK  
AGREEMENT  
CHARLESTON COUNTY I-526 EXTENSION PROJECT

In accordance with Section 44-107-30, South Carolina Code of Laws (1976), as amended, and as a condition precedent to the effectiveness of the Agreement, the undersigned, who is an authorized representative of Charleston County, certifies on behalf of Charleston County that Charleston County will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensations, possession, or use of a controlled substance is prohibited in the Charleston County I-526 Extension Project workplace and specifying the actions that will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
  - a. the dangers of drug abuse in a workplace;
  - b. the person's policy of maintaining a drug-free workplace;
  - c. any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. the penalties that may be imposed upon employees for drug violations;
3. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by Item 1 above;
4. Notifying the employee in the statement required by Item 1 above that, as a condition of employment of this Agreement, the employee will:
  - a. abide by the terms of the statement; and
  - b. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;
5. Notifying the South Carolina Transportation Infrastructure Bank within ten (10) days after receiving notice under Item 4.b. above from an employee or otherwise receiving actual notice of the conviction;
6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee convicted as required in Section 44-107-50; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Items 1, 2, 3, 4, 5, and 6 above.

Date: 6/19/07

Charleston County

By: 

Printed Name: Tim Scott

Title: Chairman

EXHIBIT I

MUNICIPAL STATE HIGHWAY PROJECT AGREEMENT

STATE OF SOUTH CAROLINA

COUNTY OF

)  
)  
)

RESOLUTION

Road/Route  
File  
Item  
Project  
PIN

WHEREAS, the South Carolina Department of Transportation ("SCDOT") proposes to construct, reconstruct, alter, or improve the certain segments of the highway(s) in the State Highway System referenced above which are located within the corporate limits of \_\_\_\_\_ (hereinafter, "the City"); and

WHEREAS, the City wishes to authorize the construction and improvements of the aforesaid highway(s) in accordance with plans prepared by the SCDOT ("the Project Plans");

NOW THEREFORE, BE IT RESOLVED that, pursuant to S.C. Code §57-5-820 (1976, as amended), the City does hereby consent to the construction or improvements of the aforesaid highway(s) within its corporate limits in accordance with the Project Plans, and further, the City, having reviewed the plans for said construction, does hereby approve said plans as provided for in Code §57-5-830.

BE IT FURTHER RESOLVED, that the foregoing consent and approval represents the sole approval necessary from the City for SCDOT to complete the project under the Project Plans and constitutes a waiver of any and all other requirements with regard to construction within the City's limits. The foregoing waiver and consent shall extend to the benefit of utility companies engaged in relocating utility lines on account of the project. Further, the City shall exempt all existing and new right-of-way and all other properties purchased in connection with right-of-way for the highway(s) from any general or special assessment against real property for municipal services.

BE IT FURTHER RESOLVED, that the City will assist SCDOT in causing all water, sewer and gas pipes, manholes, or fire hydrants, and all power or telephone lines or poles located within the existing right-of-way to be relocated under the plans at the utility company's expense. To the extent that City-owned utilities are to be relocated in accordance with the project plans, those utility pipes, lines, or hydrants may be replaced upon the new highway right-of-way at such locations as may be approved by SCDOT's project manager. The City agrees to indemnify and hold harmless SCDOT to the fullest extent allowed by law against any and all claims or actions brought against it arising out of the placing, maintenance, or removal of any utilities by the City or its contractors. Future utility installations by the City within the limits of the new right-of-way after project completion shall be pursuant to a standard utility encroachment permit obtained in the normal course and issued pursuant to SCDOT's "A Policy for Accommodating Utilities on Highway Rights-of-Way", August 2005, as revised.

BE IT FURTHER RESOLVED, that the City hereby signifies its intention to faithfully observe the provisions of Chapter 5, Title 56, Code of Laws of South Carolina, 1976, and all amendments thereto relating to the regulation of traffic on the street, or streets, to be constructed, reconstructed, altered or improved as hereinabove identified and further agrees to refrain from placing or maintaining any traffic control devices upon any section of said street, or streets, without having first obtained written approval of the South Carolina Department of Transportation as required in S.C. Code §56-5-930 (1976, as amended), nor enacting any traffic regulation ordinances inconsistent therewith.

IN WITNESS WHEREOF, This Resolution is adopted and made a part of the Municipal records this \_\_\_\_\_ day of \_\_\_\_\_, 20 , and the original of this Resolution will be filed with the South Carolina Department of Transportation at Columbia.

Dated: \_\_\_\_\_, South Carolina

Municipality

ATTEST:

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_

Clerk

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SCHEDULE A

Charleston County Local Match Contribution

\$117 million will be spent by Charleston County from the Sales Tax on the following road improvements which connect or relate to the Extension Project:

Highway	Improvement	Cost
Johnnie Dodds Blvd.	Widening and Intersection	\$70 million
Harborview Road	Widening and Intersection	\$18 million
Glenn McConnell/I-526	Intersection Upgrade	\$7.5 million
Maybank Widening	Widening	\$15 million
Folly Road Loop/I-526	Intersection Upgrade	\$6.5 million
<b>TOTAL</b>		<b>\$117 million</b>