

**FIRST AMENDED INTERGOVERNMENTAL AGREEMENT
FOR CHARLESTON COUNTY
MARK CLARK EXPRESSWAY EXTENSION PROJECT
IN CHARLESTON COUNTY, SOUTH CAROLINA**

This Intergovernmental Agreement, as hereby amended, is made and entered into as of January 10, 2019 (this "Agreement") by and among **CHARLESTON COUNTY, SOUTH CAROLINA** (the "County"), the **SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION** ("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 Project (the "Extension Project") in Charleston County, South Carolina, which is described in more detail herein below and in the Charleston County Application, as supplemented, submitted to the Bank (the "Application"). The County, SCDOT and Bank are also referred to individually hereinafter as "Party" or collectively, as all or some of the parties to this Agreement as the context establishes as the "Parties."

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); and

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; and

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; and

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, as defined in the Application, 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; and

WHEREAS, at its meeting of June 30, 2006, the Committee recommended and the Board approved financial assistance for the Extension Project, which had 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; and

WHEREAS, on August 1, 2006, the Capital Improvements Joint Bond Review Committee ("JBRC") of the South Carolina General Assembly approved the Extension Project, as defined in the Application, and financial assistance from the Bank for the Extension Project in the form of a grant in the initial amount of \$99 million, and subsequently approved a grant by the Bank for the Extension Project, as defined in the Application, not to exceed \$321 million, and the issuance of revenue bonds by the Bank to provide that financial assistance to the Extension Project; and

WHEREAS, after conducting public meetings as required by the federal environmental processes based on public input, SCDOT recommended that the Extension Project be changed from an interstate project to a four-lane parkway with a speed limit of 35 miles per hour to 45 miles per hour with two connector roads and other revisions known as "Alternative G," which removed the Extension Project's interstate designation, and which the Parties agree to implement, and which is the subject of this Agreement; and

WHEREAS, after receiving public input, SCDOT recommended the change in the Extension Project to “Alternative G,” which neither the County nor the Bank requested, and Alternative G is the current scope of the Extension Project; and

WHEREAS, in 2015, SCDOT has advised the Bank and County that the estimated cost of the Extension Project as set forth in Alternative G had increased to \$725 million; and

WHEREAS, on October 2, 2018, the Board and Charleston County Council adopted separate motions authorizing representatives of the Bank and the County to negotiate an amended intergovernmental agreement, which is subject to the final approval of the Parties, taking into account the changes to the Extension Project and cost of the Extension Project and related matters based on a Material Term Sheet that the County, SCDOT and Bank have agreed to use as the basis of those negotiations; and

WHEREAS, the Bank already has expended approximately \$40 million of its total contribution and the Bank has determined that the County has already expended and fulfilled its \$117 million local match contribution; and

WHEREAS, the Parties agree that the execution of this Agreement and the undertaking of the obligations and financial terms and requirements set forth below are valid exercises of the Parties’ respective business and proprietary powers; and

WHEREAS, Parties agree that all applicable and relevant laws must be followed and complied with pursuant to State law; 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, as amended to take into account the changes in the Extension Project and cost of the Extension Project and related matters;

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 SCDOT for Eligible Costs of the Extension Project or the payment of invoices or draw requests approved by Bank and/or its designee for Eligible Costs of the Extension Project incurred or to be 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, Bank 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 from the current terminus of I-526 at U.S. Highway 17 to Folly Road on James Island.

“Sales Tax” means the roads portion of 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” and the subsequent 2016 sales and use tax established in Charleston County by approval of a referendum following the adoption of Charleston County Ordinance Number 1907 pursuant to South Carolina Code Ann. Sections 4-37-10, *et seq.*, as amended.

“Transportation Sales Tax Bonds” means County’s general obligation bonds additionally secured by the Sales Tax or revenue bonds whether now outstanding or hereinafter issued by the County.

ARTICLE II

2. Term of Agreement

2.1 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 Bank makes its final Disbursement and the County makes its final payment on the Extension Project; or (ii) the Extension Project, in its full scope as defined in Article I of this Agreement, is declared completed by the SCDOT and accepted by the SCDOT.

2.2 Notwithstanding the foregoing provision, the County through a resolution adopted by its Council may petition the Bank Board to terminate this Agreement if the SCDOT cannot obtain any of the necessary approvals, authorizations, or permits from a Federal or State regulatory agency that is required to commence or complete construction of the Extension Project. The County’s resolution must be supported by documentation from the Federal or State of South Carolina regulatory agency that has not granted such approval, authorization, or permit that establishes it is not feasible to proceed with the Extension Project. Should such documentation not be provided, the Bank shall be authorized to recover from the County a percentage to be determined by the Board, not to exceed fifty percent (50%), of what the Bank has spent at the time of the termination; however, the termination shall not be subject to any further financial penalty or other remedies identified in this Agreement.

2.3 The Bank, through a resolution adopted by its Board, may terminate this Agreement if it cannot obtain any of the necessary approvals, authorizations, or permits from a Federal or State public body that is required for it to provide financial assistance to the Extension Project. The Bank’s resolution must be supported by documentation from the Federal or State public body that has not granted such approval, authorization, or permit that establishes that the Bank is unable to provide financial assistance to the Extension Project. Prior to the Bank taking up such a resolution, it agrees to work cooperatively and in good faith to consider alternatives. Such termination shall not be subject to any financial penalty or other remedies identified in this Agreement.

ARTICLE III

3. Funding Commitments of Parties

3.1 Bank

A. The Bank shall establish a Budget for the Extension Project within the Account of the Bank and will, from time to time, 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 Article VI of this Agreement, to pay for Eligible Costs of the Extension Project incurred, or to be incurred, directly by the SCDOT, or the County or incurred, or to be incurred, for the Extension Project.

B. In no event at any time shall the Bank be required to increase its financial assistance, payments, 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. The aforesaid amount of \$420 million includes all past Disbursements or payments by the Bank under the original Intergovernmental Agreement made and entered into among the Parties. After the Disbursement or payment of the aforesaid \$420 million, the Bank shall have no financial liability for the Extension Project.

3.2 County

A. The County has spent \$117 million from the proceeds of the Sales Tax for highway and road construction and improvements 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.

B. The County agrees to pay and shall pay from proceeds of the Sales Tax, or any lawful source, all of the costs incurred or to be incurred to complete the entire scope of the Extension Project in excess of the \$420 million in grants from the Bank (including past and future).

C. The County Council shall adopt a budget for each Fiscal Year appropriating revenues of the Sales Tax, or any federal or state grant proceeds, or any lawful source to fund the payment obligations of the County under this Agreement.

D. The payments by the County under Section 3.2.B shall be made pursuant to the provisions of Article VI of this Agreement.

3.3 Respective Allocations and Order of Payments

A. Except as provided in Section 3.3.B and 3.3.C of this Agreement, the County shall pay fifty percent (50%) of the remaining costs as of the date of this Agreement for preliminary engineering, right of way acquisitions (including right of way attorneys' fees), environmental mitigation, and related costs, and the Bank shall pay fifty percent (50%) remainder of all such costs. Each of the Bank's payments under this provision shall be due fifteen (15) business days after the County has completed its corresponding payment.

B. Except as provided in Sections 3.3.A, 3.3.C and 3.3.D of this Agreement, the County shall pay forty-five percent (45%) of the remaining costs of the Extension Project, and the Bank shall pay fifty-five percent (55%) of all the remaining Eligible Costs of the Extension Project until the Bank reaches its cap of \$420 million, after which the County shall pay all remaining costs to complete the full scope of the Extension Project. The SCDOT estimated cash flow projections of the Extension Project, including estimates of the Parties' respective annual contributions, as of the time of the execution of this Agreement, are reflected in Schedule A to this Agreement. Each of the Bank's payments under this provision shall be due fifteen (15) business days after the County has completed its corresponding payment. Provided however, at no time will the Bank's funding commitment for the Extension Project be less than \$420 million (i.e. if the 55-45 split cost share reduces the Bank's overall funding commitment for the Extension Project below \$420 million, the County's cost share shall be reduced to exhaust the Bank's funding commitment).

C. The County shall pay one hundred percent (100%) of the attorneys' fees, including those awarded to other parties, expenses and costs incurred for or associated with lawsuits, legal proceedings, inverse condemnation actions, and administrative proceedings relating to the Extension Project, or concerning permitting and approvals for the Extension Project by Federal and state agencies, including, , the Federal Highway Administration, U.S. Army Corps of Engineers, South Carolina Department of Health and Environmental Control, and South Carolina Department of Natural Resources. The County shall provide reports on such matters to the Bank and SCDOT upon the request of either of them.

The County may, in its sole discretion, choose to settle or resolve any dispute related to the above-described issues. However, any settlement or resolution that materially reduces the scope of the Extension Project will be subject to the approval of the Bank and SCDOT.

The Parties agree that if the County chooses to settle or resolve a dispute with any party (other than the Bank or SCDOT) as identified herein, said settlement or resolution shall not be a default under this Agreement unless it materially reduces the scope of Alternative G.

D. In no event shall the Bank's total grants, Disbursements, liabilities or payments under this Agreement at any time for any purpose exceed \$420 million, including all past and future grants, Disbursements and payments made by the Bank.

ARTICLE IV

4. Additional Obligations of the County and SCDOT

4.1 Additional Documents and Actions

A. 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 obligations to the Bank set forth in this Agreement.

B. The County and SCDOT acknowledge that the Bank intends to raise funds for some portion or all of 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 under this Section 4.1.B 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

The County and Bank warrant and covenant that:

A. Subject to section 4.2.C below, the Bank and County have 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 Bank or the County does not and will not violate any applicable law or constitutional provision and does not, and will not, conflict with or result in a default under any agreement or instrument to which the Bank or County is a party or by which it is bound or a violation of which would cause a material adverse effect to the Bank or the County's obligations under this Agreement. This Agreement has, by proper action, been duly authorized, executed and delivered by the Bank and County. Notwithstanding the foregoing, the Parties acknowledge they will comply with all applicable laws.

B. This Agreement is fully valid, binding and enforceable as to the Bank and County, including the current and future County Councils, in accordance with its terms and involves the exercise of the Bank and County's business and proprietary powers. Notwithstanding the foregoing, the Parties acknowledge they will comply with all applicable laws.

C. No further authorizations, consents or approvals of governmental bodies or agencies are required in connection with the execution and delivery by the Bank and County of this Agreement and the performance of its obligations thereunder; however, the Parties acknowledge that the Extension Project may require permits and other approvals by governmental agencies other than the County and Bank, and the Parties acknowledge they will comply with all applicable laws.

D. No litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving the Bank or County is pending or, to the knowledge of the Bank and 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 Bank and County or would materially or adversely affect the validity of this Agreement, or the performance by the Bank and County of its respective obligations thereunder or the transactions contemplated thereby, including the payments pursuant to Article III of this Agreement. The Bank and County will immediately notify

each other 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. The County will provide to the Bank an opinion of legal counsel that concludes the County has the authority to comply with and enforce this Agreement and its financial terms. Such opinion will be consistent with other opinions provided to the Bank by recipients of similar financial assistance from the Bank examples of which have been provided and reviewed by the County. Upon request, the Bank will provide the County a similar opinion of counsel for the Bank.

4.3 Reimbursement of Bank

If the Bank or SCDOT determines at any time that any Disbursements or payments made by the Bank 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, may disallow said Disbursements or payments, which shall not abrogate the Bank's funding commitment up to the cap. Any amounts paid that were not Eligible Costs shall be paid by the County's portion of the costs in excess of the Bank's funding commitment. To the extent payments were made by the SCDOT based on misstatements of fact by the SCDOT or its agent for work, services, or materials, which do not meet the design and construction specifications and standards, the County and the SCDOT will develop a process by separate MOU to resolve payment reimbursement.

4.4 Extension Project Reporting

The County and SCDOT 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, litigation, construction schedules and projected draw requests, project changes, project scope changes, and any other matters identified by 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, 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 SCDOT or 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 County. 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 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 5.6 of this Agreement.

5.2 Contracting Methods

The SCDOT or the County 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 or County 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 or County determines will result in the most cost-effective, efficient and expeditious delivery of the Extension Project. SCDOT shall require that any such contracts, including a design-build contract, be in the name of the County as the contracting party.

5.3 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 reduction in that scope of the Extension Project shall require the approval of SCDOT, the County, and the Bank and an amendment to this Agreement.

5.4 Extension Project Delivery.

The SCDOT does not guarantee completion of the Extension Project within the scope of the Extension Project and within the current estimated costs of the Extension Project. The County shall be solely responsible for obtaining or providing additional funding for the Extension Project if the available funds are not sufficient to complete the entire scope of the Extension Project.

5.5 Utility Relocations

5.5.1 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 project costs under this Agreement. Prior rights may be established by the following means:

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

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

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

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

5.6 Acceptance

Upon the completion of the Extension Project, the State Highway Engineer will recommend to the SCDOT Commission, subject to the normal mileage caps, 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.

5.7 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 its interests, if any, in the rights-of-way for the Extension Project to the SCDOT free of all encumbrances.

5.8 Public Information

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

ARTICLE VI

6. SCDOT Draw Requests

SCDOT may submit draw requests to the Bank and County in advance of incurring expenditures for the Extension Project based upon the most recent project cash flow projections for the Extension Project certified by SCDOT. Such advance draw requests shall not exceed a period of twelve (12) calendar months. The County and Bank must fund Disbursements and

payments on each draw request from SCDOT, subject first to the requirements and provisions of Article VI of this Agreement and the order of payments provisions in § 3.3.

6.1 Conditions Precedent to Bank's Disbursements

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

6.1.1 Preconstruction or construction activities of the Extension Project described in the relevant Contract and draw request shall have been or will be carried out substantially in accordance with the applicable plans, standards and specifications.

6.1.2 SCDOT approves the draw request and certifies that the entire payment applied for in the draw request is or will be for Eligible Costs of the Extension Project.

6.1.3 To the best of SCDOT's knowledge, no event of default or breach of the County or SCDOT exists under this Agreement, and no event of default or breach by the County, SCDOT or any third party of any Contract related to the Extension Project exists.

6.1.4 The County shall not be in breach of any representations, warranties, guarantees, covenants, payments or obligations set forth in this Agreement up to the date of the draw request.

6.1.5 Each of the Bank's payments shall be due fifteen (15) business days after it receives confirmation that the County has made its corresponding payment under Section 6.2 below.

6.2 Conditions Precedent to County's Payments

The County's obligation to make payments on the Extension Project arises only upon receipt of a draw request from SCDOT, which draw request shall be in a form approved by the County, and is further conditioned upon all of the following being verified by the SCDOT, where applicable:

6.2.1 Preconstruction or ~~C~~onstruction activities of the Extension Project described in the relevant Contract and draw request have been or will be carried

out substantially in accordance with the applicable plans, standards and specifications.

6.2.2 SCDOT approves the draw request and certifies that the entire payment applied for in the draw request is or will be for Eligible Costs of the Extension Project.

6.2.3 To the best of SCDOT's knowledge, no event of default or breach of the Bank or SCDOT exists under this Agreement, and no event of default or breach by the Bank, SCDOT, or any third party of any Contract related to the Extension Project exists.

6.2.4 The Bank shall not be in breach of any representations, warranties, guarantees, covenants, payments or obligations set forth in this Agreement up to the date of the draw request.

6.2.5 Each of the County's payments shall be due thirty (30) business days after receipt of a draw request from SCDOT.

ARTICLE VII

7. Indemnification of Bank.

To the maximum extent permitted by law, the County and 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 permitting, approvals, 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 permitting, approvals, 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 and the County shall be responsible for all claims arising from its own wrongful acts arising from any services they perform on or on behalf of the Extension Project, and in the event of such a claim or claims, the SCDOT and the County 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. Rights and Remedies

8.1 Events of Default

In the event the County, SCDOT or Bank (the “Defaulting Party”) 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 by the Defaulting Party of such default from the Party not in default (the “Non-Defaulting Party”), such failure shall constitute an Event of Default hereunder. Among other rights and remedies available to the Non-Defaulting Party under this Agreement following an uncured Event of Default, the Non-Defaulting Party shall have the right to cease making any further Disbursements or payments under this Agreement with respect to the Extension Project until such Event of Default has been cured to the satisfaction of the Non-Defaulting Party.

Further, if the County or Bank fails to fulfill its funding and payment commitments under this Agreement and fails to cure this default within thirty (30) days of written demand, the non-defaulting Party may adopt a resolution to terminate this Agreement due to the failure of the defaulting Party to meet its respective financial commitment and may proceed with other remedies allowed by law or equity or authorized by this Agreement.

8.2 Remedies for Bank and County

Whenever any Event of Default by the County or Bank relating to any payment obligation under this Agreement occurs, any one or more of the following remedies may be pursued by and shall be available to the Non-defaulting Party in addition to those provided in other sections of this Agreement:

A. In the event of an Event of Default of a payment obligation under this Agreement, the Non-defaulting Party shall have access to inspect, examine, copy and audit the books, records, accounts, and financial data of the Defaulting Party, or any records of the Charleston County Treasurer, the State Treasurer or South Carolina Department of Revenue pertaining to the Defaulting Party, at a time and place agreed to among the Parties and any other state agency involved.

B. In the event the County or SCDOT fails to make any payment or reimbursement in full as required by any provision of this Agreement—whether due to breach of this Agreement or due to any other reason—each acknowledges and agrees to 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 on the Extension Project or payment or reimbursement to the Bank. The County and SCDOT agree that the current provisions of South Carolina Code Ann. 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. If the County fails to make a timely payment due on the Extension Project under Sections 3.2, 3.3 (A) and (B), or 6.2 of this Agreement, that failure shall be deemed and constitute a failure to pay an amount due the Bank subject to the provisions of Section 11-43-210. The Bank will notify the County or SCDOT prior to requesting that the State Treasurer withhold such funds. Alternatively, upon the County’s or SCDOT’s failure to make a payment or reimbursement in full, the Bank may reduce its financial assistance to the Extension Project by the amount of such payment or reimbursement.

C. The Parties must apply any payments recovered or received pursuant to the rights and remedies provisions of this Agreement to complete the entire scope of the Extension Project.

8.3 Remedies Cumulative; Nonwaiver; Attorney’s Fees

All rights and remedies of the Parties 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 remedies provided for or available to the Parties at law, including those contained in the Act, or in equity. The exercise of any right or remedy by a Party 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. The Party that prevails in any litigation arising under this Article VIII shall be entitled to the payment of its reasonable attorneys’ fees and litigation costs by the Party found by the court to have caused the Event of Default.

ARTICLE IX

9. General Conditions

9.1 Waivers

No waiver of any Event of Default by a Party shall be implied from any delay or omission by the Party 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 Party to or of any act by another Party 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 Party hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy by the Party.

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 or payments 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 agencies 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 assign or delegate this Agreement, any of its respective rights, interest, duties or obligations under this Agreement, or any Disbursements or payments 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 an Event of Default by the County occurs which is not cured by the County to the satisfaction of the Bank and SCDOT, the Bank and SCDOT may require the County to assign all Contracts, licenses, permits, approvals and authorizations for the Extension Project, together with all plans, drawings, and specifications, to SCDOT 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 Parties, through certified

mail, registered mail, or by delivery by a nationally recognized service. 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 120 B
Columbia, SC 29201

South Carolina Department of Transportation:

Secretary
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 hereto the Party he or she represents and that all necessary acts have been taken to duly authorize this Agreement under applicable law.

9.11 Releases

Upon final approval of this Agreement by each of the Parties and the execution of this Agreement each of the Parties, each Party releases the other Parties from all prior acts and omissions concerning the Extension Project, including all alleged defaults or breaches of the terms and provisions of the Intergovernmental Agreement dated June 8, 2007 (“Original IGA”). Further, upon the execution of this Agreement by the Parties, the terms of the Original IGA remain in place, with the exception of the payment and financial provisions of the Amended IGA.

(SEPARATE SIGNATURE PAGES FOR EACH PARTY TO BE ADDED)

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: J. Elliott Summey

Printed Name: J. Elliott Summey

Title: Chairman



Attest:

By: Kristen L. Salisbury

Printed Name: Kristen L. Salisbury

Title: Clerk of Council

(SEAL)

[Approved by action of Charleston County Council at its meeting held on January 10, 2019]



Potential Cash Flow Scenario

PRELIMINARY - Jan 2019

Project Re-started

ACTIVITY	Estimate	2008-2016	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13
PE/Advanced ROW	\$42,000,000	\$40,000,000	\$500,000	\$850,000	\$250,000	\$250,000	\$150,000								
Additional Hardship ROW Acquisitions	\$4,000,000		\$4,000,000												
Environmental Mitigation	\$18,132,800		\$1,813,280	\$16,186,720											
Construction/CE&I	\$660,867,200							\$66,000,000	\$117,000,000	\$101,000,000	\$34,000,000	\$83,000,000	\$121,000,000	\$104,000,000	\$35,000,000
Total	725,000,000	\$40,000,000	\$6,313,280	\$17,036,720	\$250,000	\$250,000	\$150,000	\$66,000,000	\$117,000,000	\$101,000,000	\$34,000,000	\$83,000,000	\$121,000,000	\$104,000,000	\$35,000,000

	50-50 Split Share on Remaining Preliminary Work Approximately \$12M each by the SIB and County						55% SIB (up to \$420M Max) - 45% County Split on Remaining Costs							
	2008-2017	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13
SIB Share	\$40,000,000	\$3,156,640	\$8,518,360	\$125,000	\$125,000	\$75,000	\$37,000,000	\$65,000,000	\$56,000,000	\$19,000,000	\$46,000,000	\$67,000,000	\$58,000,000	\$20,000,000
County Share		\$3,156,640	\$8,518,360	\$125,000	\$125,000	\$75,000	\$29,000,000	\$52,000,000	\$45,000,000	\$15,000,000	\$37,000,000	\$54,000,000	\$46,000,000	\$15,000,000
	\$40,000,000	\$6,313,280	\$17,036,720	\$250,000	\$250,000	\$150,000	\$66,000,000	\$117,000,000	\$101,000,000	\$34,000,000	\$83,000,000	\$121,000,000	\$104,000,000	\$35,000,000

Cumulative Totals by Entity														
SIB	\$40,000,000	\$43,156,640	\$51,675,000	\$51,800,000	\$51,925,000	\$52,000,000	\$89,000,000	\$154,000,000	\$210,000,000	\$229,000,000	\$275,000,000	\$342,000,000	\$400,000,000	\$420,000,000
County		\$3,156,640	\$11,675,000	\$11,800,000	\$11,925,000	\$12,000,000	\$41,000,000	\$93,000,000	\$138,000,000	\$153,000,000	\$190,000,000	\$244,000,000	\$290,000,000	\$305,000,000
														\$725,000,000

* NOTE: All values rounded and based on preliminary estimates. Actual schedule of values to be determined upon award of contract(s).