

JOHANNA S. GARDNER  
ASSISTANT COUNTY ATTORNEY



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July 27, 2017

RECEIVED

JUL 27 2017

S.C. SUPREME COURT

Honorable Daniel E. Shearouse  
Clerk of Court  
The South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, South Carolina 29201

Re: Charleston County, South Carolina vs. South Carolina Transportation  
Infrastructure Bank and the South Carolina Department of Transportation

Dear Mr. Shearouse:

Enclosed please find for filing the original and eleven (11) copies of the Petition for Original Jurisdiction, Complaint, and Notice Advising Respondents of Twenty (20) Days to File a Return, along with the Proof of Service. I would appreciate your acknowledging receipt of these documents by date-stamping the five (5) extra copies of the enclosed and returning them to me in the enclosed envelope.

Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE

Johanna S. Gardner

JSG/  
Enclosures

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT JUL 27 2017

S.C. SUPREME COURT

Charleston County, South Carolina, ..... Petitioner,

vs.

South Carolina Transportation Infrastructure Bank  
and the South Carolina Department of Transportation, ..... Respondents.

PETITION FOR ORIGINAL JURISDICTION

Petitioner Charleston County, South Carolina (“County”), respectfully petitions the South Carolina Supreme Court to entertain a matter of significant public interest in the Court’s original jurisdiction pursuant to Rule 245 of the South Carolina Appellate Court Rules. This case involves a unilateral termination of a contract between the County and Respondent South Carolina Transportation Infrastructure Bank (“Bank”) regarding the Bank’s \$420 million funding commitment to fund the completion of I-526/Mark Clark, approximately ten miles of roadway (“Extension Project” or “Project”). On May 26, 2016, the Bank voted to terminate the Project and its funding commitment despite the fact that neither the County or the South Carolina Department of Transportation<sup>1</sup> (“SCDOT”) are in default and without either party’s consent.<sup>2</sup>

<sup>1</sup> The SCDOT is named as a defendant herein solely because it is a necessary party for the full adjudication of this matter.

<sup>2</sup> The Bank’s May 26, 2016 vote to terminate the Project is subject to an “unwind” or “workout” period, whereby the parties would have an opportunity to jointly agree how to resolve the Project’s termination. The County does not consent to the Bank’s vote to terminate or “unwind” the Project. Nevertheless, the Bank has suspended all funding for the Project and has voted to extend the workout period several times to include most recently on July 20, 2017.

This Court should invoke its original jurisdiction and decide the matters articulated in this Petition and presented in the Complaint because 1) the County will be materially prejudiced by the exponential increases in Project costs above the funding commitment of the Bank, for which the County is responsible, if this matter must be initiated in the lower courts; 2) the Extension Project is a matter of substantial public interest because it will promote mobility, public welfare, safe evacuations during natural disasters, and economic development in the region; and 3) grounds of emergency exist to grant the Petition because the parties have invested ten years and \$10 million in the Project's permitting process, which is 95 percent complete, and greater than \$40 million overall, but the County will likely irrevocably lose this work and the funds spent to this point if the Project is terminated.

### **FACTS**

By way of background, in 2007, the County, the SCDOT, and the Bank entered into the Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension/I-526 Project in Charleston County, South Carolina ("IGA" or "Agreement") (attached as Exhibit A to the Complaint filed concurrently herewith), whereby the parties agreed to take on three distinct roles and responsibilities for the Project, which begins at an uncompleted interchange with US 17/Savannah Highway and SC 7/Sam Rittenberg Boulevard in the West Ashley section of the City of Charleston and currently terminates in a partial flyover interchange onto US 17/Johnnie Dodds Boulevard in Mount Pleasant, South Carolina. The completion of the Project would involve the construction of ten miles of parkway from James Island to West Ashley. The Bank, pursuant to its corporate purpose of assisting with the financing of major qualified projects, agreed to provide up to \$420 million in the form of grants to be used to complete the Project. In 2007, \$420 million was sufficient to cover the costs of the Project.

Pursuant to the IGA, the SCDOT is charged with the administration of the Project. The IGA requires the SCDOT to 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 Project. See IGA Article V, Section 5.1, Extension Project Administration. The SCDOT has no direct financing responsibilities for the Project nor is it charged with guaranteeing its completion. See IGA Article V, Section 5.5, Extension Project Delivery. The County is the Project sponsor and as such it has two principal responsibilities, first to provide a local match of \$117 million in the form of road construction and improvements which directly relate to the Project. Secondly, if the Project's costs exceed the Bank's \$420 million funding commitment, the County is "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." See IGA Article V, Section 5.5, Extension Project Delivery.

To date, the County has fulfilled its local match obligation under the IGA by constructing or improving several pre-approved roads in the State Highway system that directly relate to the Project with County funds. On the other hand, the Bank has spent approximately \$40 million on right-of-way acquisition, permitting, and design work. However, since 2007, SCDOT's estimated cost to complete the Project has risen from \$420 million to \$558 million in 2012, and again to approximately \$758 million in 2015. As a result of the escalating construction costs, the Bank voted in 2012 to increase its funding commitment to \$558 million, subject to Joint Bond Review Committee ("JBRC") approval. To date, the JBRC has not considered this additional funding request. In response to the

Bank's additional funding approval, the County proposed to increase its local match to \$159 million for road improvements connected or related to the Project.

As a result of the SCDOT's Project cost estimate in 2015, the Bank began to raise concerns regarding the approximate \$330 million funding gap between the Bank's initial financial commitment of \$420 million in 2007 and the SCDOT's cost estimate for the Project in 2015. On December 15, 2015, the Bank approved a resolution ("Resolution") (attached as Exhibit B to the Complaint filed concurrently herewith) requiring the County to 1) adopt a binding resolution by March 30, 2016, to fund or secure funding for the shortfall; 2) to approve a resolution or ordinance by April 30, 2016, of a new or amended Agreement between the parties; and 3) to adopt an ordinance by December 16, 2016, to place the funding plan into effect. The Resolution provided that if the County failed to perform any of the aforementioned conditions, the Project would be terminated.<sup>3</sup> On May 26, 2016, the Bank voted to terminate the IGA because the County did not fulfill requirement (2) of the Resolution (May 26, 2016 resolution attached as Exhibit D to the Complaint filed concurrently herewith).<sup>4</sup>

The IGA does not authorize the Bank to terminate the Project based on the adoption of the Resolution. Furthermore, the IGA does not contain a unilateral termination for convenience clause or Project ending date. Rather, the Agreement provides that it would be effective as of June 8, 2007, and shall terminate . . . on the date when the last of the following events occur: (i) the last project of

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<sup>3</sup> Although the IGA does not require or compel the County to provide a "plan" as required in the Resolution, on April 7, 2016, the County in good faith and the spirit of cooperation identified several potential funding sources that could be utilized if the County elected to provide additional funding as provided in the IGA, notwithstanding its right to reduce the scope of the Project to conform to available funding or seeking additional funding from the Bank. See Charleston County Resolution Number 16-07, April 7, 2016 (attached as Exhibit C to the Complaint filed concurrently herewith). However, the County informed the Bank that it lacked the legal authority to bind future Councils through ordinances or resolutions as required by the Bank's Resolution; and therefore, it could not comply with the Resolution.

<sup>4</sup> As part of the Bank's vote to terminate, it also suspended all funding for the Project. Even though the County is not required to expend any funds until the Bank's funding commitment is exhausted, Charleston County Council appropriated \$500,000 to be used towards the completion of the permitting process for the Project.

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 Bank. See IGA Article II, Term of Agreement. The Bank has previously construed this provision to prohibit a unilateral termination of the Agreement.<sup>5</sup> Therefore, the events necessary to terminate the IGA pursuant to Article II have not been met, notwithstanding the County's fulfillment of its local match contribution of \$117 million.

Nevertheless, the Bank voted on May 26, 2016, to terminate the IGA because the County failed to adopt a binding ordinance to secure funding for the projected shortfall and amend the IGA.<sup>6</sup> The IGA does not require the County to provide the Bank with a funding plan or to prove how it will fund a shortfall to complete the Project; however, the Bank seeks to require the County demonstrate how, when, and from what specific sources the County will fund a projected shortfall. The County is not aware of the Bank ever requiring such information under penalty of termination. In fact, in 2002, the County and the Bank entered into a loan agreement titled Intergovernmental Loan Agreement Between SCTIB and Charleston County Relating to Replacement of Cooper River Bridges ("Loan Agreement"), dated July 2, 2001, whereby the County pledged to pay \$75 million towards the

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<sup>5</sup> In 2011, the County sought to end its participation in the Project by voting a "No Build" option for the Project due to objections over the Project's design and proposed route. In response, the Bank voted to hold the County in default and demanded the County repay the funds the Bank had spent on the Project, approximately \$11 million at the time. In fact, the Bank notified the County that the Bank planned to withhold the County's State Aid to Subdivision pursuant to S.C. Code Ann. § 11-43-210 if the County did not reimburse the Bank. Thereafter, the County rescinded its "No Build" vote, and the Bank reinstated the Project. See IGA Article IV, Section 4.3, Reimbursement of Bank and Article VIII, Section 8.4, Remedies for Bank.

<sup>6</sup> Although the Bank claims it is concerned with the County's ability to finance the potential cost overruns, it is important to note that the Bank has only borrowed \$99 million for the Project, and according to the IGA, it still must bond the balance of \$321 million funding commitment in the future. By comparison, the Bank seeks to require from the County a funding plan, which the Bank could not do if asked to produce a funding plan for its remaining funding commitment for the Project.

replacement of the Cooper River Bridges in Charleston. In that agreement, the Bank approved projects costs of \$650 million to complete the Arthur Ravenel Bridge over the Cooper River, and the County pledged \$75 million over twenty-five years to repay the Bank without having to prove how, when, and from what sources the funds would be appropriated.<sup>7</sup> Notwithstanding the Bank's construction of IGA Article II in 2011 prohibiting unilateral termination and the absence of a funding plan requirement in the IGA, the Bank has decided to end the Project.

Notwithstanding the County's position that the Bank lacks authority to compel the County to present a funding plan for the estimated shortfall, the County provided the Bank a funding plan in 2017 that includes Charleston County Ordinance Number 1926, adopted March 3, 2017 (attached as Exhibit E to the Complaint filed concurrently herewith), pledging to fund up to \$150 million for the Project.<sup>8</sup> In addition, the County obtained a funding commitment from the Charleston Area Transportation Study (CHATS), which adopted a resolution on February 13, 2017 (attached as Exhibit F to the Complaint filed concurrently herewith), stating it has available bonding capacity in excess of \$200 million and it commits to obligate a portion of its Federal Guideshare funds to the Project. Despite these funding assurances, the Bank has not agreed to rescind its vote to terminate the Project and reinstate its funding commitment. The Bank should not be permitted to terminate

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<sup>7</sup> Article II, Section 2.2(C) of the Loan Agreement states:

Charleston County shall make the annual payments to the Bank required by Section 2.2.A of this Article II solely from one or more of the following sources:

- i. Revenue derived from the collection of a transportation sales tax or fee or similar sales tax or fee;
- ii. Toll revenues from tolls imposed on use of the Project; or
- iii. Some other lawful source selected by the Charleston County Council.

At the time the Loan Agreement was executed, the voters of Charleston County had not approved a sales and use tax, and there was no toll on the bridge.

<sup>8</sup> In 2016, the County provided a resolution articulating several potential funding sources. See supra note 3.

the IGA and transfer the balance of the \$420 million to other State projects because it no longer wants to honor its contractual obligations.

### **JUSTIFICATION FOR ORIGINAL JURISDICTION**

Pursuant to Rule 245, SCACR, this Court should grant the County's Petition to proceed in its original jurisdiction because the status of the Project cannot be determined in the lower courts in the first instance without material prejudice to the rights of the parties. Petitioner believes there is a need for a prompt and definitive resolution on whether the Bank can terminate the Project if the case had to move through the circuit and appellate courts before reaching this Court. (Summey Aff. ¶ 7; Stavrinakis Aff. ¶ 7). During the time it would take to reach a decision with finality, Project costs would continue to escalate, which would be unduly burdensome to the County because it is the only party obligated to fund the costs in excess of \$420 million. (Summey Aff. ¶ 7). In particular, the IGA provides, in part, that 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. See IGA Article V, Section 5.5, Extension Project Delivery. Although the Bank initially agreed in 2012 to fund an additional \$138 million due to Project cost escalation, which brought the Project cost up to \$558 million, the recent inactions of the Bank resulted in continued cost escalation to approximately \$778 million in 2015, which disproportionately affects and materially prejudices the County. (Summey Aff. ¶ 7; Stavrinakis Aff. ¶ 7).

The Extension Project is an important matter of regional, if not statewide, public interest and promotes the health, safety, and welfare of the citizens of this County and State. (Tecklenburg Aff. ¶ 3; Summey Aff. ¶ 8; Stavrinakis Aff. ¶ 8; Lipuma Aff. ¶ 3). The Project will increase mobility by alleviating traffic congestion, promote safety and economic development, and improve the quality of



life for the citizens of the Charleston area. (Tecklenburg Aff. ¶ 3; Summey Aff. ¶ 11; Lipuma Aff. ¶ 3; Gilliard Aff. ¶ 4; Cohn Aff. ¶ 4; Davis Aff. ¶ 4; Green Aff. ¶ 4; Jones Aff. ¶ 4). To date, over 40 million of taxpayers' dollars have already been spent towards this end, and several hundred million tax dollars remain at stake towards the completion of the Project.

The Project has been reported on extensively by the South Carolina news media, and the public has often appeared at public meetings addressing the topic – both in favor of and against the completion of the Project. However, according to a survey conducted by the University of South Carolina Institute for Public Service and Policy Research in 2012, approximately 72% of the people who reside within the geographic scope of the Project support the Project. (Summey Aff. ¶ 8; Stavrinakis Aff. ¶ 8). Public hearings held as recently as during the summer of 2016 on the topic of the Charleston County transportation sales and use tax referendum, the Charleston County residents provided unsolicited written comments on the completion of the Project. Of 427 unsolicited comments received, 86% indicated support for the Project. (Summey Aff. ¶ 8). Therefore, the public is still interested in and supportive of the Project. Overall, the public is concerned with the significant road problems in Charleston, which are only exacerbated by continued growth in the area with insufficient road infrastructure to serve that growth. Accordingly, the Project would benefit the public interest by improving the capacity of, and accessibility to, arterial roads in Charleston County and linking the sea islands for immediate evacuation in times of emergency. (Summey Aff. ¶ 10; Stavrinakis Aff. ¶ 9; Gilliard Aff. ¶ 5; Cohn Aff. ¶ 5; Davis Aff. ¶ 5; Green Aff. ¶ 5; Jones Aff. ¶ 5).

Special grounds of emergency exist due to the substantial investment of time and taxpayers' dollars spent toward the completion of the permit. The parties have invested ten years and over \$40 million toward the completion of the Project. (Summey Aff. ¶ 9; Stavrinakis Aff. ¶

9). In particular, since 2007, the SCDOT has been acquiring right-of-way for the Project and applying for the necessary environmental, regulatory, and design permits through various state and federal agencies. (Summey Aff. ¶ 9). Permits for the Project are currently in the final stages of completion. It has taken approximately ten years and over \$10 million for the parties to reach this point in the design and permitting process. If the Agreement is terminated, the permitting process will likely end, and the County will irrevocably lose the work performed to complete the Project. (Summey Aff. ¶ 9; Stavrinakis Aff. ¶ 9). Therefore, this Court should entertain this case in its original jurisdiction.

There are additional special grounds of emergency for this Court to grant the County's Petition for this matter to be heard in the Court's original jurisdiction. Part of the area the Extension Project will serve currently has poor access and evacuation routes to arterial roads of Charleston County during emergencies and natural disasters. (Tecklenburg Aff. ¶ 5; Summey Aff. ¶ 10; Stavrinakis Aff. ¶ 9; Lipuma Aff. ¶ 4). For example, in October 2015, during the thousand-year flood in which the State experienced record-setting rains and unprecedented flooding, and more recently during and after Hurricane Matthew, the roads accessing large areas of Johns and Wadmalaw Islands were completely submerged under water and inaccessible. In fact, some areas were completely obliterated, preventing citizens who reside in those areas from evacuating to safer locations. The completion of the Project will mitigate that critical life threatening issue and provide an emergency access route for these citizens to evacuate their homes safely. (Tecklenburg Aff. ¶ 5; Summey Aff. ¶ 10; Stavrinakis Aff. ¶ 9; Lipuma Aff. ¶ 4; Gilliard Aff. ¶ 5; Cohn Aff. ¶ 5; Davis Aff. ¶ 5; Green Aff. ¶ 5; Jones Aff. ¶ 5).

The County further bases its request to proceed in this Court's original jurisdiction on the nature of the issue presented. It is anticipated that this matter will be substantially appellate in nature.

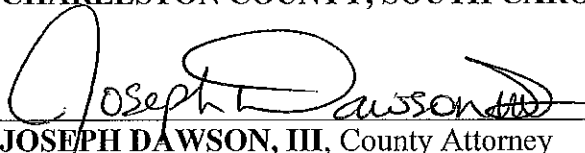
The material facts are not in dispute, and the County believes that it can be presented efficiently to the Court in an expedited manner. See Modern Finance Co. v. Hicks, 235 S.C. 212, 110 S.E.2d 859 (1959)(original jurisdiction most appropriate when issues will be predominantly appellate in nature).

### **CONCLUSION**

Petitioner Charleston County requests that this Honorable Court grant the Petition to entertain this matter in its original jurisdiction so that a determination may be made efficiently, expeditiously and with finality.

Respectfully submitted,

**CHARLESTON COUNTY, SOUTH CAROLINA**

A handwritten signature in black ink, appearing to read "Joseph Dawson, III", is written over a horizontal line.

**JOSEPH DAWSON, III**, County Attorney  
**BERNARD E. FERRARA, JR.**, Deputy County Attorney  
**JOHANNA S. GARDNER**, Assistant County Attorney  
CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

**ATTORNEYS FOR PETITIONER**

Charleston, South Carolina  
July 27, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF JOHN J. TECKLENBURG  
MAYOR OF THE  
CITY OF CHARLESTON**

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PERSONALLY APPEARED before me John J. Tecklenburg, who being duly sworn,  
deposes and says:

1. My name is John J. Tecklenburg, and I currently serve as the Mayor of the City of Charleston, having assumed office in January 2016.

2. This affidavit is given in support of the Petition of the County of Charleston (the “County”) for this Court to entertain this matter in its original jurisdiction.

3. In my position as Mayor, and prior to that as an involved citizen and businessman in the community, I am familiar with the history and progress of the construction of the I-526 highway, and in particular, the final segment that will complete the highway and run from the current terminus at U.S. Highway 17 and continue to Johns and James Islands (the final segment hereinafter being the “Project”). The Project is approximately 10 miles long and is located almost entirely within the jurisdiction of the City of Charleston. The completion of the Project is a matter of significant public interest and importance to the City, the County and the Lowcountry region

because it will provide relief from existing traffic congestion that is horrendous, add capacity for emergency evacuation, provide a hub route for future public transit and accommodate a regional link for pedestrian/bike facilities, all of which furthers the quality of life and a robust and healthy commerce in the Lowcountry. For these reasons, the City has an important and compelling interest in the determination of whether the South Carolina Transportation Infrastructure Bank (the “Bank”) has the unilateral authority to terminate funding for the Project.

4. It is not unusual on a typical workday during rushhour for traffic on Highway 17, from the Ashley River to Main Road, to move at a snail’s pace, well below the posted speed limits of 35 and 45 miles per hour. This same condition is repeated on Folly Road on James Island and Maybank Highway on Johns Island. This congestion is not just an inconvenience. It poses a threat to public safety because of the difficulty it poses to emergency responders who have to navigate through bumper to bumper traffic, reducing response times to less than the optimal. The Project will help ameliorate these conditions.

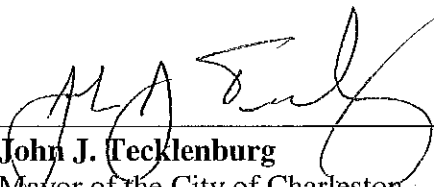
5. During and after the torrential downpour of rain and subsequent flooding that occurred throughout the State in October 2015 and Hurricane Matthew in 2016, the roads accessing Johns Island were impassable, thus preventing residents from safely evacuating and avoiding dangerous conditions. The Project will provide an additional emergency evacuation route that will help blunt the effects of natural disasters and other emergencies by allowing citizens to more quickly be moved out of harm’s way. The Project will enhance safe and efficient vehicular movement in times of emergencies, a matter of important interest to the public.

6. The rapid growth in population being experienced in Charleston County is still yet another matter of public interest that supports this Court accepting this matter in its original jurisdiction. The growth in population is outpacing current transportation infrastructure capacity.

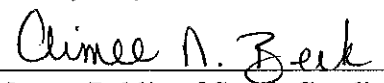
The Project will drastically reduce traffic, not just in the City of Charleston, but also in the Towns of James Island, Kiawah and Seabrook, and unincorporated areas of West Ashley and the sea islands. In truth, the need for the Project would persist even if no one else were to move to the area.

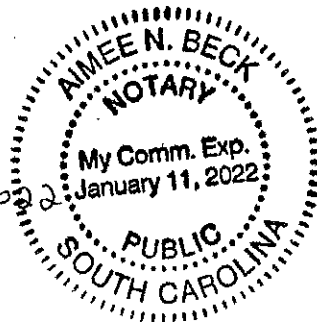
7. In 2007, the Bank signed an intergovernmental agreement with the County committing up to \$420 million for the Project, with the County being responsible for all other financial commitments for the Project. Over the last nine years, the costs of construction have escalated to the point where it is now estimated to cost approximately \$750 million to complete the Project. It is my understanding that the permitting process is 95% complete. If this matter has to wind its way through the lower courts, it can be expected that the current shortfall of \$330 million will only increase, thus jeopardizing the practical and fiscal feasibility for a county to complete the Project, even one as financially sound as Charleston. To avoid this material financial prejudice, it is in the public interest that the fate of the Project be determined as expeditiously as possible.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
John J. Tecklenburg  
Mayor of the City of Charleston

Sworn and subscribed before me  
this 4<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
Notary Public of South Carolina  
My Commission Expires: 1/11/2022



THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF CHARLES R. LIPUMA  
MAYOR OF THE  
TOWN OF KIAWAH ISLAND**

---

PERSONALLY APPEARED before me Charles R. Lipuma, who being duly sworn,  
deposes and says:

1. I currently serve as the Mayor of the Town of Kiawah Island (“Town”), having  
assumed office in December 2012.

2. I am in support of the Mark Clark Extension Project, and this affidavit is given in  
support of the Petition of the County of Charleston (the “County”) for this Court to entertain this  
matter in its original jurisdiction.

3. In my position as Mayor, and prior to that as the Town’s chairman of the  
planning commission from 1993 to 2003, Town councilman from 2003 to 2012, and having  
served as the Town’s representative to Johns Island Council and the Town’s representative on  
Charleston County’s 2001 Johns Island road study, I am familiar with the history and progress  
of the construction of the I-526 highway, and in particular, the final segment that will complete  
the highway and run from the current terminus at U.S. Highway 17 and continue to Johns and

James Islands (the final segment hereinafter being the “Project”). The Project is approximately 10 miles long and is located almost entirely within the jurisdiction of the City of Charleston, but which directly affects mobility to and from the Town. The completion of the Project is a matter of significant public interest and importance to the Town, the County and the Lowcountry region because it will provide relief from existing traffic congestion that is horrendous, add capacity for emergency evacuation, provide a hub route for future public transit and accommodate a regional link for pedestrian/bike facilities, all of which furthers the quality of life and a robust and healthy commerce in the Lowcountry. For these reasons, the Town has an important and compelling interest in the determination of whether the South Carolina Transportation Infrastructure Bank (the “Bank”) has the unilateral authority to terminate funding for the Project.

4. Part of the area that the Project will serve currently has problems connecting to evacuation routes in Charleston County, most notably there is little to no access to arterial roads of Charleston County during emergencies and natural disasters. For example, during and immediately after the thousand year flood involving record-setting rains and unprecedented flooding throughout the State in October 2015 and Hurricane Matthew in October 2016, the roads accessing large areas of Johns Island were completely under water and inaccessible, preventing citizens who reside in that area from evacuating their homes. The completion of the Project will provide an emergency access route for these citizens to evacuate their homes, which is a matter of great public interest.

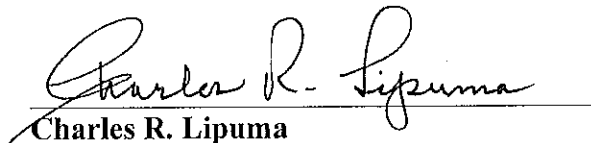
5. The rapid growth in population being experienced in Charleston County is still yet another matter of public interest that supports this Court accepting this matter in its original jurisdiction. The growth in population is outpacing current transportation infrastructure capacity. The Project will drastically reduce traffic, not just in the Town, but also in the Towns of James



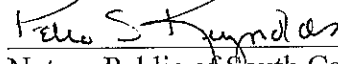
Island and Seabrook Island, and unincorporated areas of West Ashley and the sea islands. In truth, the need for the Project would persist even if no one else were to move to the area.

6. In 2007, the Bank signed an intergovernmental agreement with the County committing up to \$420 million for the Project, with the County being responsible for all other financial commitments for the Project. Over the last nine years, the costs of construction have escalated to the point where it is now estimated to cost approximately \$750 million to complete the Project. It is my understanding that the permitting process is 95% complete. If this matter has to wind its way through the lower courts, it can be expected that the current shortfall of \$330 million will only increase, thus jeopardizing the practical and fiscal feasibility for a county to complete the Project, even one as financially sound as Charleston. To avoid this material financial prejudice, it is in the public interest that the fate of the Project be determined as expeditiously as possible.

FURTHER AFFIANT SAYETH NOT.

  
Charles R. Lipuma  
Mayor of the Town of Kiawah Island

Sworn and subscribed before me  
this 8<sup>th</sup> day of November, 2016.

  
Notary Public of South Carolina  
My Commission Expires: 1-29-2023



THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF J. ELLIOTT SUMMEY,  
CHAIRMAN OF CHARLESTON COUNTY COUNCIL**

---

PERSONALLY APPEARED before me J. Elliott Summey, who being duly sworn,  
deposes and says:

1. I currently serve as the Chairman of Charleston County Council having assumed office in January 2015. I have served on Charleston County Council since 2009.

2. This affidavit is given in support of this Court entertaining this matter in its original jurisdiction. In my position as Chairman of Charleston County Council, I have been an integral part of the discussions and debates regarding the Project and am familiar with the history and progress of the I-526 Mark Clark Extension Project (Project).

3. In 2007, the County, SCDOT, and Bank entered into an Intergovernmental Agreement ("IGA"), whereby the Bank agreed to provide \$420 million in the form of grants to the County to be used to complete the I-526/Mark Clark. At the time, the Project was estimated to cost \$420 million. Since 2007, SCDOT's estimated cost to complete the Project has risen from \$558 million in 2012 to approximately \$778 million in 2015.

4. In December 2015, the Bank approved a resolution (Resolution) requiring the County to adopt a resolution by March 30, 2016, to fund or secure funding for the \$330 million shortfall and included a 60-day workout period. The Bank required that the County approve a resolution or ordinance by April 30, 2016, of a new or amended Agreement between the parties, and to adopt an ordinance by December 16, 2016, to place the funding plan into effect.

5. The County did not participate in the Bank's adoption of the Bank's Resolution, and there can be no amendment to the 2007 Agreement without the parties' mutual consent.

6. In May 2016, the Bank voted to end the Project and terminate the Agreement because it found the County did not meet the conditions of its Resolution. However, the SCDOT has taken no action to terminate or determine the County has failed to meet any of the conditions of the Agreement. The parties met again in August 2016, and the County and the SCDOT agreed conceptually to a proposal that would allow the Project to continue but end the Bank's participation in the Project. Notwithstanding this conceptual plan, the Bank intends to end the Project and transfer the balance of the \$420 million to other State projects.

7. The County would suffer material prejudice if the Bank's unilateral termination of the IGA must be adjudicated in a lower court first. If lower courts were to hear this matter, it is almost certain to make its way through the appellate process to the Supreme Court for a final determination. The estimated cost of the Project increased more than \$200 million dollars from 2007 to 2015; there is no doubt that the length of the appellate process would cause even further delay which would most certainly cause the estimated cost to escalate further. The Bank committed to provide \$420 million dollars towards the Project and the Bank has no contractual obligation to provide additional funding. The County's obligation to pay for costs in excess of the \$558 million in 2012 has escalated to approximately \$778 million in 2015. Therefore, because costs will escalate

exponentially if the Project is delayed due to the lengthy appellate process, and because the County is responsible for costs over \$420 million dollars, the County will suffer material prejudice if the Court does not accept this case in its original jurisdiction.

8. There is great public interest in this matter. The Project has been the subject of numerous local and state-wide news articles for years. It is no secret that the public is concerned about the significant road problems in the state. In Charleston County, the public's interest in the Project centers on improving the capacity of, and accessibility to, arterial roads in Charleston County. Additionally, a survey conducted by the University of South Carolina Institute for Public Service and Policy Research found that 72% of the people who reside within the geographic scope of the Project support the Project. As recent as public hearings held during the summer of 2016 on the Charleston County transportation sales and use tax referendum, Charleston County residents provided written comments unsolicited on the completion of the Project. Of 427 unsolicited comments received, 86 percent indicated support for the Project.

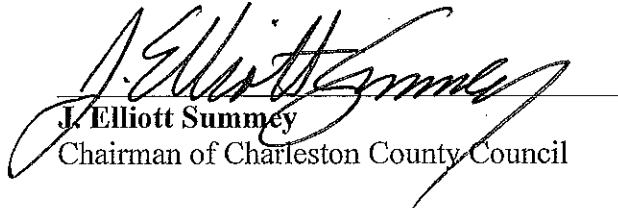
9. Special grounds of emergency exist as to why the original jurisdiction of the Supreme Court should be exercised. The parties have invested nine years and over \$50 million towards the completion of the Project. In particular, since 2007, \$10 million have been invested in the design and permitting process alone. If the IGA is terminated, the permitting process will end, and the County will irrevocably lose the work done to complete the permits.

10. Part of the area that the Project will serve currently has problems connecting to evacuation routes in Charleston County, most notably there is little to no access to arterial roads of Charleston County during emergencies and natural disasters. For example, during the thousand year flood involving record-setting rains and unprecedented flooding throughout the State in October 2015 and Hurricane Matthew in October 2016, the roads accessing large areas of Johns

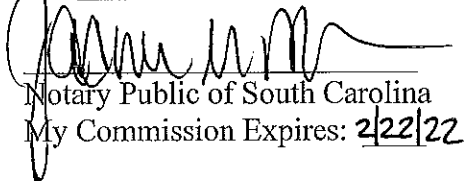
Island were completely under water and inaccessible, preventing citizens who reside in that area from evacuating their homes. The completion of the Project will provide an emergency access route for these citizens to evacuate their homes.

11. Other good reasons for this Court to entertain this matter includes the fact that this Project will increase mobility generally by alleviating traffic congestion and promote safety, economic development, and the quality of life for the citizens of the Charleston area.

FURTHER AFFIANT SAYETH NOT.

  
J. Elliott Summey  
Chairman of Charleston County Council

Sworn and subscribed before me  
this 4 day of November, 2016.

  
Notary Public of South Carolina  
My Commission Expires: 2/22/22

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

---

Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF LEONIDAS E. "LEON" STAVRINAKIS,  
SOUTH CAROLINA HOUSE OF REPRESENTATIVES DISTRICT 119**

---

PERSONALLY APPEARED before me Leonidas E. "Leon" Stavrinakis, who being duly sworn, deposes and says:

1. I am a member of the South Carolina House of Representatives (the House) representing District 119 located in Charleston, South Carolina. I was elected as a member of the House in 2006, and my term began in 2007 and continues through the present.

2. From 1999 through 2006, I was a councilman on Charleston County Council, serving as Chairman of Charleston County Council (County Council) from 2005 through 2006.

3. This affidavit is given in support of this Court entertaining this matter in its original jurisdiction. In my former position as a member of County Council, as Chairman of County Council and as a State representative, I have been an integral part of the discussions and debates regarding the I-526 Mark Clark Extension Project (Project), I am familiar with the history and progress of the Project and I am in support of its completion.

4. I have been in support of the Project since its inception. Charleston County's application to the South Carolina State Transportation Infrastructure Bank (Bank) for

Completion of Mark Clark Expressway (I-526) and Direct Access from I-526 to Seaport Terminal Facilities at the Navy Base Terminal (Application) was submitted on December 5, 2005, when I was a member of County Council. As further detailed in the application, the completion of I-526 would provide numerous benefits to Charleston County, the most significant of which would be the increase in mobility and safety for the Charleston area, particularly the islands and peninsula area.

5. My main objective during my tenure on County Council was to obtain all of the necessary approvals to begin and complete the Project. After a lengthy process, the County's Application was approved by the Bank.

6. In 2007, the County, SCDOT, and Bank entered into an Intergovernmental Agreement, whereby the Bank agreed to provide \$420 million in the form of grants to the County to be used to complete the I-526/Mark Clark. At the time, the Project was estimated to cost \$420 million. Since 2007, SCDOT's estimated cost to complete the Project has risen from \$558 million in 2012 to approximately \$758 million in 2015.

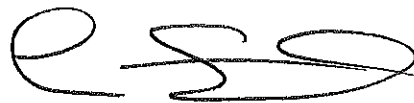
7. This matter cannot be determined in a lower court in the first instance without material prejudice to the rights of the parties. If lower courts were to hear this matter, it is almost certain to make its way through the appellate process to the Supreme Court for a final determination. The estimated cost of the Project increased more than \$138 million from 2007 to 2012 and almost \$200 million from 2012 to 2015; there is no doubt that the length of the normal legal process would cause the estimated cost to escalate further. Therefore, to avoid such material financial prejudice, it is vital that the fate of the Project be determined in the most expeditious time period as possible.

8. There is great public interest in this matter. The Project has been the subject of numerous local and state-wide news articles for years. It is no secret that the public is concerned about the significant road problems in the state. In Charleston County, the public's interest in the Project centers on improving the capacity of, and accessibility to, arterial roads in Charleston County. Additionally, a survey conducted by the University of South Carolina Institute for Public Service and Policy Research found that 72% of the people who reside within the geographic scope of the Project support the Project.

9. Special grounds of emergency exist, along with other good reasons, and the original jurisdiction of the Supreme Court should be exercised. Part of the area that the Project will serve currently has problems connecting to evacuation routes in Charleston County, most notably that there is little to no access to arterial roads of Charleston County during emergencies and natural disasters. For example, during and immediately after the record-setting rains and unprecedented flooding experienced throughout the State in October 2015 and Hurricane Matthew in 2016, the roads accessing large areas of Johns Island were completely under water and inaccessible, preventing citizens who reside in that area from leaving the area. The completion of the Project will provide an emergency access route for these citizens to evacuate their homes. In addition, the parties have invested nine years and over \$50 million towards the completion of the Project. In particular, since 2007, \$10 million have been invested in the design and permitting process alone. If the IGA is terminated, the permitting process will end, and the County will irrevocably lose the work done to complete the permits.



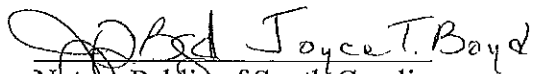
FURTHER AFFIANT SAYETH NOT.



---

Leonidas E. "Leon" Stavrinakis

Sworn and subscribed before me  
this 11 day of November, 2016.



Notary Public of South Carolina  
My Commission Expires: 3-30-25

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

---

Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF KATRINA GREEN**

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PERSONALLY APPEARED before me Katrina Green, who being duly sworn, deposes and says:

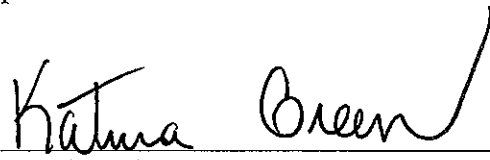
1. I am a resident of Johns Island, residing at 3391 Island Estate Dr., Johns Island, SC 29455. I have lived here since 2003.
2. I support the completion of the Mark Clark Extension Project.
3. As a Johns Island resident, I am familiar with the final segment that will complete the I-526 highway and run from U.S. Highway 17 and continue to Johns and James Islands ("Project"). The completion of the Project is a matter of significant public interest and importance to the residents of Johns Island because it will provide relief from existing traffic congestion that is horrendous, add capacity for emergency evacuation, provide a hub route for future public transit and accommodate a regional link for pedestrian/bike facilities, all of which further the quality of life and a robust and healthy commerce in the Lowcountry.
4. It is not unusual on a typical workday during rushhour for traffic on Highway 17, from the Ashley River to Main Road, to move at a snail's pace, well below the posted speed limits

of 35 and 45 miles per hour. This same condition is repeated on Folly Road on James Island and Maybank Highway on Johns Island. This congestion is not just an inconvenience. It poses a threat to public safety because of the difficulty it poses for emergency responders in having to navigate through bumper to bumper traffic, reducing response times to less than the optimal. The Project will help ameliorate these conditions.

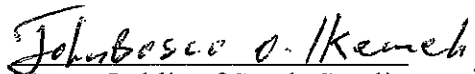
5. During and after the torrential downpour of rain and subsequent flooding that occurred throughout the State in October 2016 and Hurricane Matthew in 2016, the roads accessing Johns Island were impassable, which prevented residents from safely evacuating and avoiding dangerous conditions. The Project will provide an additional emergency evacuation route that will help lessen the effects of natural disasters and other emergencies by allowing citizens to more quickly be moved out of harm's way. The Project will enhance safe and efficient vehicular movement in times of emergencies, which is a matter of important interest to the public.

6. The rapid growth in population being experienced in Charleston County is another matter of public interest. The growth in population is outpacing current transportation infrastructure capacity. The Project will drastically reduce traffic, not just in the City of Charleston, but also in the Towns of James Island, Kiawah and Seabrook, and unincorporated areas of West Ashley and the sea islands. In truth, the need for the Project would persist even if no one else were to move to the area.

FURTHER AFFIANT SAYETH NOT.

  
Katrina Green

Sworn and subscribed before me  
this 7<sup>th</sup> day of November, 2016.

  
Notary Public of South Carolina  
My Commission Expires: 11/17/2016

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

---

Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF Leroy Davis**

---

PERSONALLY APPEARED before me Leroy Davis, who being duly sworn, deposes  
and says:

1. I am a resident of James Island, residing at 978 Honeyhill Road. I have lived here  
since 1950.

2. I support the completion of the Mark Clark Extension Project.

3. As a James Island resident, I am familiar with the final segment that will complete  
the I-526 highway and run from U.S. Highway 17 and continue to Johns and James Islands  
("Project"). The completion of the Project is a matter of significant public interest and importance  
to the residents of James Island because it will provide relief from existing traffic congestion that is  
horrendous, add capacity for emergency evacuation, provide a hub route for future public transit and  
accommodate a regional link for pedestrian/bike facilities, all of which further the quality of life and  
a robust and healthy commerce in the Lowcountry.

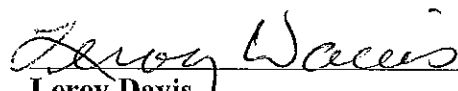
4. It is not unusual on a typical workday during rushhour for traffic on Highway 17,  
from the Ashley River to Main Road, to move at a snail's pace, well below the posted speed limits

of 35 and 45 miles per hour. This same condition is repeated on Folly Road on James Island and Maybank Highway on Johns Island. This congestion is not just an inconvenience. It poses a threat to public safety because of the difficulty it poses for emergency responders in having to navigate through bumper to bumper traffic, reducing response times to less than the optimal. The Project will help ameliorate these conditions.


5. During and after the torrential downpour of rain and subsequent flooding that occurred throughout the State in October 2016 and Hurricane Matthew in 2016, the roads accessing Johns Island were impassable, which prevented residents from safely evacuating and avoiding dangerous conditions. The Project will provide an additional emergency evacuation route that will help lessen the effects of natural disasters and other emergencies by allowing citizens to more quickly be moved out of harm's way. The Project will enhance safe and efficient vehicular movement in times of emergencies, which is a matter of important interest to the public.

6. The rapid growth in population being experienced in Charleston County is another matter of public interest. The growth in population is outpacing current transportation infrastructure capacity. The Project will drastically reduce traffic, not just in the City of Charleston, but also in the Towns of James Island, Kiawah and Seabrook, and unincorporated areas of West Ashley and the Sea Islands. In truth, the need for the Project would persist even if no one else were to move to the area.

FURTHER AFFIANT SAYETH NOT.

  
Leroy Davis

Sworn and subscribed before me  
this 8<sup>th</sup> day of November, 2016.

  
Notary Public of South Carolina  
My Commission Expires: 02/22/22

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

---

Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF Barbara Cohn**

---

PERSONALLY APPEARED before me Barbara Cohn, who being duly sworn, deposes and says:

1. I am a resident of Johns Island, residing at 710 Sunny Boy Lane. I have lived here since 2010.

2. I support the completion of the Mark Clark Extension Project.

3. As a Johns Island resident, I am familiar with the final segment that will complete the I-526 highway and run from U.S. Highway 17 and continue to Johns and James Islands ("Project"). The completion of the Project is a matter of significant public interest and importance to the residents of Johns Island because it will provide relief from existing traffic congestion that is horrendous, add capacity for emergency evacuation, provide a hub route for future public transit and accommodate a regional link for pedestrian/bike facilities, all of which further the quality of life and a robust and healthy commerce in the Lowcountry.

4. It is not unusual on a typical workday during rushhour for traffic on Highway 17, from the Ashley River to Main Road, to move at a snail's pace, well below the posted speed limits

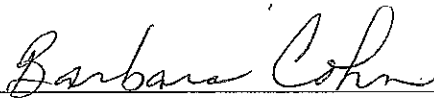
of 35 and 45 miles per hour. This same condition is repeated on Folly Road on James Island and Maybank Highway on Johns Island. This congestion is not just an inconvenience. It poses a threat to public safety because of the difficulty it poses for emergency responders in having to navigate through bumper to bumper traffic, reducing response times to less than the optimal. The Project will help ameliorate these conditions.

5. During and after the torrential downpour of rain and subsequent flooding that occurred throughout the State in October 2016 and Hurricane Matthew in 2016, the roads accessing Johns Island were impassable, which prevented residents from safely evacuating and or avoiding dangerous conditions. Without completion of the Project, continual flooding on Main Road will put the residents of Johns Island in very dangerous situations over and over again. Once flooding begins, the residents only have one exit off of the island. The Project will provide an additional emergency evacuation route that will help lessen the effects of continual flooding, natural disasters, and other emergencies by allowing citizens to more quickly be moved out of harm's way. The Project will enhance safe and efficient vehicular movement in times of emergencies, which is a matter of important interest to the public.

6. The rapid growth in population being experienced in Charleston County is another matter of public interest. The growth in population is outpacing current transportation infrastructure capacity. The Project will drastically reduce traffic, not just in the City of Charleston, but also in the Towns of James Island, Kiawah and Seabrook, and unincorporated areas of West Ashley and the Sea Islands. In truth, the need for the Project would persist even if no one else were to move to the area.

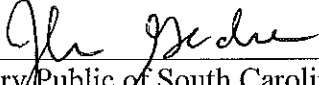
FURTHER AFFIANT SAYETH NOT.





**Barbara Cohn**

Sworn and subscribed before me  
this 8<sup>th</sup> day of November, 2016.



Notary Public of South Carolina

My Commission Expires: 02/22/22

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

---

Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF Wilburn Gilliard**

---

PERSONALLY APPEARED before me Wilburn Gilliard, who being duly sworn,  
deposes and says:

1. I am a resident of James Island, residing at 1530 Battery Island Drive, Charleston,  
SC 29412. I have lived here since 1978.

2. I support the completion of the Mark Clark Extension Project.

3. As a James Island resident, I am familiar with the final segment that will complete  
the I-526 highway and run from U.S. Highway 17 and continue to Johns and James Islands  
("Project"). The completion of the Project is a matter of significant public interest and importance  
to the residents of James Island because it will provide relief from existing traffic congestion that is  
horrendous, add capacity for emergency evacuation, provide a hub route for future public transit and  
accommodate a regional link for pedestrian/bike facilities, all of which further the quality of life and  
a robust and healthy commerce in the Lowcountry.

4. It is not unusual on a typical workday during rushhour for traffic on Highway 17,  
from the Ashley River to Main Road, to move at a snail's pace, well below the posted speed limits

of 35 and 45 miles per hour. This same condition is repeated on Folly Road on James Island and Maybank Highway on Johns Island. This congestion is not just an inconvenience. It poses a threat to public safety because of the difficulty it poses for emergency responders in having to navigate through bumper to bumper traffic, reducing response times to less than the optimal. The Project will help ameliorate these conditions.

5. During and after the torrential downpour of rain and subsequent flooding that occurred throughout the State in October 2016 and Hurricane Matthew in 2016, the roads accessing Johns Island were impassable, which prevented residents from safely evacuating and avoiding dangerous conditions. The Project will provide an additional emergency evacuation route that will help lessen the effects of natural disasters and other emergencies by allowing citizens to more quickly be moved out of harm's way. The Project will enhance safe and efficient vehicular movement in times of emergencies, which is a matter of important interest to the public.

6. The rapid growth in population being experienced in Charleston County is another matter of public interest. The growth in population is outpacing current transportation infrastructure capacity. The Project will drastically reduce traffic, not just in the City of Charleston, but also in the Towns of James Island, Kiawah and Seabrook, and unincorporated areas of West Ashley and the Sea Islands. In truth, the need for the Project would persist even if no one else were to move to the area.

FURTHER AFFIANT SAYETH NOT.

Wilburn Gilliard  
**Wilburn Gilliard**

Sworn and subscribed before me  
this 8<sup>th</sup> day of November, 2016.

Jh Gordon  
Notary Public of South Carolina  
My Commission Expires: 02/22/22

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

---

Charleston County, South Carolina, .....Petitioner,

vs.

South Carolina Transportation Infrastructure Bank, .....Respondent.

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**AFFIDAVIT OF William Jones**

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PERSONALLY APPEARED before me William Jones, who being duly sworn, deposes and says:

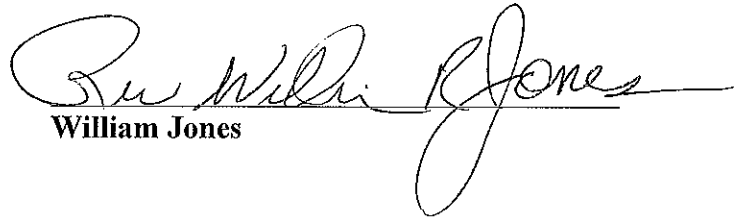
1. I am a resident of Wadmalaw Island, residing at 6403 Arman Road. I have lived here since 1981.
2. I support the completion of the Mark Clark Extension Project.
3. As a Wadmalaw Island resident, I am familiar with the final segment that will complete the I-526 highway and run from U.S. Highway 17 and continue to Johns and James Islands ("Project"). The completion of the Project is a matter of significant public interest and importance to the residents of Wadmalaw Island because it will provide relief from existing traffic congestion that is horrendous, add capacity for emergency evacuation, provide a hub route for future public transit and accommodate a regional link for pedestrian/bike facilities, all of which further the quality of life and a robust and healthy commerce in the Lowcountry.
4. It is not unusual on a typical workday during rushhour for traffic on Highway 17, from the Ashley River to Main Road, to move at a snail's pace, well below the posted speed limits

of 35 and 45 miles per hour. This same condition is repeated on Folly Road on James Island and Maybank Highway on Johns Island. This congestion is not just an inconvenience. It poses a threat to public safety because of the difficulty it poses for emergency responders in having to navigate through bumper to bumper traffic, reducing response times to less than the optimal. The Project will help ameliorate these conditions.

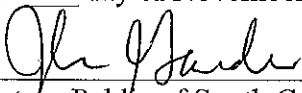
5. During and after the torrential downpour of rain and subsequent flooding that occurred throughout the State in October 2016 and Hurricane Matthew in 2016, the roads accessing Johns Island and Wadmalaw were impassable, which prevented residents from safely evacuating and or avoiding dangerous conditions. Without completion of the Project, continual flooding on Main Road will put the residents in very dangerous situations over and over again. Once flooding begins, the residents only have one exit off of the island. The Project will provide an additional emergency evacuation route that will help lessen the effects of continual flooding, natural disasters, and other emergencies by allowing citizens to more quickly be moved out of harm's way. The Project will enhance safe and efficient vehicular movement in times of emergencies, which is a matter of important interest to the public.

6. The rapid growth in population being experienced in Charleston County is another matter of public interest. The growth in population is outpacing current transportation infrastructure capacity. The Project will drastically reduce traffic, not just in the City of Charleston, but also in the Towns of James Island, Kiawah and Seabrook, and unincorporated areas of West Ashley and the Sea Islands. In truth, the need for the Project would persist even if no one else were to move to the area.

FURTHER AFFIANT SAYETH NOT.

  
William Jones

Sworn and subscribed before me  
this 8<sup>th</sup> day of November, 2016.

  
Notary Public of South Carolina  
My Commission Expires: 02/22/22

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

---

Charleston County, South Carolina, ..... Petitioner,

vs.

South Carolina Transportation Infrastructure Bank  
and the South Carolina Department of Transportation, ..... Respondents.

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**NOTICE ADVISING RESPONDENTS OF  
TWENTY (20) DAYS TO FILE A RETURN**

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Please take notice that, pursuant to Rule 245(c), SCACR, Respondents have twenty (20) days from the date of service hereof to file an original and six (6) copies of its return with the Clerk of the Supreme Court and on all parties a copy of the return. Failure of a party to timely file a return may be deemed a consent by that party to the matter being heard in the original jurisdiction.

**CHARLESTON COUNTY, SOUTH CAROLINA**



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**JOSEPH DAWSON, III**, County Attorney  
**BERNARD E. FERRARA, JR.**, Deputy County Attorney  
**JOHANNA S. GARDNER**, Assistant County Attorney  
CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

**ATTORNEYS FOR PETITIONER**

Charleston, South Carolina  
July 27, 2017



RECEIVED

JUL 27 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT S.C. SUPREME COURT

Charleston County, South Carolina, ..... Plaintiff,

vs.

South Carolina Transportation Infrastructure Bank  
and the South Carolina Department of Transportation, ..... Defendants.

COMPLAINT

The Plaintiff Charleston County, South Carolina (“Charleston County” or “County”),  
complaining of the Defendant South Carolina Transportation Infrastructure Bank (“Bank”), alleges  
and will show unto this Honorable Court as follows:

1. The County is a body corporate and politic and a political subdivision of the State of  
South Carolina.

2. The Bank is a body corporate and politic and an instrumentality of the State of South  
Carolina, established pursuant to S.C. Code Ann. § 11-43-110, et seq., the South Carolina  
Transportation Infrastructure Bank Act (“Act”). The corporate purpose of the Bank is to select and  
assist in financing major qualified projects by providing loans and other financial assistance to  
government units and private entities for constructing and improving highway and transportation  
facilities necessary for public purposes including economic development.

3. The South Carolina Department of Transportation (“SCDOT”) is a political  
subdivision of the State of South Carolina. The SCDOT is identified herein by virtue of an

intergovernmental agreement with the County, the Bank and SCDOT, and therefore, the SCDOT is a necessary party and named solely for that purpose.

4. This Court has jurisdiction over the parties and subject matter hereto.

### **FACTS**

5. The planning of the Mark Clark/I-526 ("Mark Clark") freeway began in 1960, and construction of the first section began in 1979. The Mark Clark begins at an uncompleted interchange with US 17/Savannah Highway and SC 7/Sam Rittenberg Boulevard in the West Ashley section of the City of Charleston and terminates in a partial flyover interchange onto US 17/Johnnie Dodds Boulevard in Mount Pleasant, South Carolina.

6. In 1993, the bridge section identified as SC 30, or the Robert B. Scarborough Bridge, opened connecting the downtown portion of the City of Charleston with James Island. The SC 30 connector terminates at Folly Road.

7. Approximately ten miles separates the Mark Clark from its termini at Highway 17 West Ashley to Folly Road on James Island. The Mark Clark Extension Project is the highway construction and improvement project in Charleston County consisting of extending the Mark Clark Expressway/Interstate 26 from U.S. Highway 17 to Folly Road ("Extension Project" or "Project").

8. The uncompleted portion of the Mark Clark is the subject matter of this lawsuit.

9. On June 8, 2007, the County, the Bank, and the SCDOT entered into an Intergovernmental Agreement ("IGA" or "Agreement") (attached as Exhibit A), whereby the Bank agreed to provide \$420 million in the form of grants to the County to be used to complete the Project. In 2007, the Extension Project was estimated to cost \$420 million. The IGA required the Bank to fund an initial grant of up to \$99 million to fund engineering, environmental work, and right-of-way

acquisition for the Project. The balance of funding for the Project (i.e., \$321 million) would be funded through revenue bonds available to the Bank at a future date.

10. As consideration for the Bank's \$420 million commitment, the County is required to provide a local match contribution of \$117 million on roads to be constructed or improved which directly relate to the Extension Project.

11. In addition, the IGA required the SCDOT to 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. See IGA Article V, Section 5.1, Extension Project Administration.

12. The IGA does not contain a termination date. Rather, the IGA provides that the agreement would be effective as of June 8, 2007, and "shall terminate . . . on the date when the last of the following events occur: (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." See IGA Article II, Section 2, Term of Agreement.

13. To date, the events necessary to terminate the IGA pursuant to Article II have not been met, notwithstanding the County's local match contribution of \$117 million.

14. Since the parties entered into the IGA in 2007, the SCDOT's estimated cost for the Extension Projects has escalated from \$558 million in 2012 to approximately \$750 million in 2015.

See Summey Aff. ¶ 3.

15. The IGA provides, in part, that 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. See IGA Article V, Section 5.5, Extension Project Delivery.

16. On August 17, 2012, due to the Extension Project's cost escalation and the County's responsibility to fund or provide additional funding or reduce the scope of the Extension Project, the County requested and the Bank voted unanimously to approve funding of the 2012 estimated shortfall of \$130-\$150 million. This brought the Bank's financial commitment for the Extension Project from \$420 million to \$550-\$570 million.

17. The funds would come from future financial capacity of the Bank, and the additional funds would be subject to Joint Bond Review Committee approval, pursuant to the Act. The Bank's approval was with the stipulation that prior to providing any additional funding for the Extension Project, the Bank will first fully fund the completion of the Florence County Projects estimated to be \$80-\$90 million.

18. To date, the Joint Bond Review Committee has not voted upon, or even considered, the Bank's approval of the \$130-\$150 million pursuant to the Act.

19. On or about December 2013, the County and the SCDOT negotiated and jointly proposed amendments to the Bank due to the increased estimated Project costs and a proposed increase in local match. The Bank rejected the amendments and proposed additional amendments and revisions, which imposed additional material and unlimited financial obligations and/or liability upon the County beyond those agreed to in the IGA and that were inconsistent with State law (e.g.,

the definition of eligible cost project costs pursuant to S.C. Code Ann. § 11-43-130(5)). See IGA Article IV, Section 4.1, Additional Documents and Actions.

20. On or about December 15, 2015, the Bank approved a resolution (“Resolution”) (attached as Exhibit B) requiring the County to 1) adopt a binding resolution by March 30, 2016, to fund or secure funding for the shortfall; 2) to approve a resolution or ordinance by April 30, 2016, of a new or amended Agreement between the parties; and 3) to adopt an ordinance by December 16, 2016, to place the funding plan into effect.

21. The County objected to the Bank’s December 15, 2015, Resolution because it unilaterally purports to direct the County to perform certain actions that the County is without the legal authority to do. Additionally, the IGA prohibits the Bank from imposing additional obligations and duties on the County, subject to additional penalty for failure to meet the demands of the Bank.

22. Although the IGA does not require or compel the County to provide a “plan” as required in the Resolution, on April 7, 2016, the County in good faith and the spirit of cooperation identified several potential funding sources that could be utilized if the County elected to provide additional funding as provided in the IGA, notwithstanding its right to reduce the scope of the Project to conform to available funding or seeking additional funding from the Bank. See Charleston County Resolution Number 16-07, April 7, 2016 (attached as Exhibit C).

23. The Bank’s Resolution required that if the County failed to meet any condition of the Resolution, the Project would terminate and the parties would have 60 days to develop, approve, and implement a plan to the end the Project.

24. On May 26, 2016, the Bank voted to terminate the IGA because it found that the County did not meet the conditions of the Resolution, and subsequently, the Bank initiated its 60-day workout period pursuant to the Resolution (May 26, 2016, resolution attached as Exhibit D).

25. Upon information and belief, although the County is not in default of any provisions of the IGA, the Bank has suspended funding for the Extension Project, voted to terminate the IGA, and intends to transfer/release its funding commitment for the Extension Project so that it can be used for other projects without the consent of the County and/or the SCDOT.

26. The Bank's Resolution states that "[i]n the event such a plan is not approved and implemented by those three parties within that sixty (60) day period, the Bank shall implement the plan it determines is appropriate to end its participation in the Project. In either event, the aforementioned reserved financial assistance will be released to be used on other projects approved by the Bank and JBRC." See Bank Resolution Section 4, December 15, 2015.

27. The parties met in June and July 2016, but did not reach an agreement regarding a Plan that would end the Project. On or about July 26, 2016, the Bank voted to extend its 60-day workout period.

28. The parties met again in August 2016, and the County and the SCDOT agreed conceptually to a proposal that would end the Bank's participation in the Project but allow the Project to continue. See Summey Aff. ¶ 6.

29. The Bank has not agreed to the joint plan, and to date has not rescinded its May 26, 2016, vote to terminate the IGA. Although the Bank voted on December 14, 2016, to extend the workout period, seeking financial assurances from the County that it will fund cost overruns, Charleston County has provided those assurances in the form of a plan that includes Charleston County Ordinance Number 1926, adopted March 3, 2017 (attached as Exhibit E), pledging to fund up to \$150 million for the Project and the Charleston Area Transportation Study (CHATS) resolution, adopted February 13, 2017 (attached as Exhibit F), stating it has available bonding capacity in excess of \$200 million and its commitment to obligate a portion of its Federal

Guideshare funds to the Project. Notwithstanding this funding plan, the Bank has not agreed to reinstate the Project and its funding commitment.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment Action - S.C. Code Ann. § 15-53-10 et seq. /**  
**Breach of Contract)**

30. The County re-alleges each and every allegation of the Complaint, where consistent herewith, as fully as if set forth herein.

31. The IGA provides in part that 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. See IGA Article V, Section 5.5, Extension Project Delivery.

32. Notwithstanding this contractual provision, the Bank has determined that since the County has not provided a plan to fully fund the estimated Project shortfall, it has suspended funding, terminated the IGA and released the funding commitment for other projects.

33. The County contends that the Bank is without authority under the IGA to unilaterally terminate the IGA and release the funding commitment for other projects if neither party has breached the IGA and without the consent of the SCDOT and the County; therefore, a justiciable controversy exists between the parties.

34. The County contends that this Court should declare the rights, status, and other legal relationships of the parties as provided in the IGA because the Bank's actions exceed its rights and its authority under the IGA for the reasons to include, but not limited to, the following:

- (A) the Bank has no authority to terminate the Agreement before all of the conditions in IGA Article II, Section 2, Term of Agreement, have occurred;

- (B) the Bank has no authority to unilaterally mandate new terms and conditions of the IGA by resolution, requiring the County to set forth a plan to fund, or secure funding for shortfalls for the Project that are subject to approval by the Bank and requiring the County by resolution or ordinance to amend the IGA in a form and with contents the Bank determines are needed to protect the Bank's interest;
- (C) the Bank has no authority to compel material changes to terms and conditions of the IGA and to terminate the Agreement if it does not agree to the proposed changes;
- (D) the Bank cannot unilaterally change the definition of "Eligible Costs" in the Agreement, which refers to State law, and refuse to pay costs it deems are not "Eligible Costs" according to the Bank's definition of the term;
- (E) the Bank cannot unilaterally transfer and apply the Bank's funding commitment of \$420 million for the Extension Project to another state project;
- (F) the Bank's May 26, 2016, vote to terminate the IGA without an event of default is a breach of the IGA; and
- (G) notwithstanding the Bank's funding commitment, the County may construct the Project in phases.

35. The County is entitled to declaratory judgment by this Court, wherein the Court declares that the Bank is without authority to take the actions as stated herein and that its actions are a breach of the IGA.

36. Furthermore, this Court should find that as a direct result of the Bank's breach of the IGA and its unreasonable delays by withholding funding to advance the Extension Project, the County is entitled to damages in the amount \$750 million which is the estimated cost to complete the Extension Project.



**SECOND CAUSE OF ACTION  
(Restitution)**

38. The County re-alleges each and every allegation of the Complaint, where consistent herewith, as fully as if set forth herein.

39. The County conferred a non-gratuitous benefit on the Bank when it completed State road projects valued at \$117 million as the County's local match. See IGA Article III, Section 3.2, Term of Agreement.

40. The Bank realized some value from the benefit in light of its corporate purpose to select and assist in financing major qualified projects by providing loans and other financial assistance to government units and private entities for constructing and improving highway and transportation facilities necessary for public purposes including economic development. See S.C. Code Ann. § 11-43-120(c).

41. It would be inequitable for the Bank to retain the benefit without paying the County its value. Therefore, this Court should award the County restitution of \$117 million.

**THIRD CAUSE OF ACTION  
(Preliminary and Permanent Injunction)**

42. The County re-alleges each and every allegation of the Complaint, where consistent herewith, as fully as if set forth herein.

43. Since 2007, the SCDOT has been acquiring right of way for the Extension Project and applying for the necessary environmental, regulatory, and design permits through various state and federal agencies. Permits for the Extension Project are currently in the final stages of completion.

44. It has taken approximately nine years for the parties to reach this point in the design and permitting process.

45. Since the Bank has voted to stop funding the Project and terminate the IGA, the permitting process will end, and the County will irrevocably lose the work done to complete the Project. Therefore, the County has no adequate remedy at law and will suffer irreparable harm if the actions of the Bank are not enjoined.

46. The Extension Project is an important matter of public interest and promotes the health, safety, and welfare of Charleston County residents. The public will suffer irreparable harm if the Extension Project's permitting has to be reinitiated.

47. The County contends that there is a likelihood of success on the merits; therefore, the County is entitled to preliminary and permanent injunctive relief against the Bank enjoining it from terminating the Extension Project and/or suspending funding of the Project. Furthermore, the Bank should be enjoined from directing, using, or applying the Bank's funding commitment of \$420 million for the Extension Project for other state projects.

#### **FOURTH CAUSE OF ACTION (Specific Performance)**

48. The County re-alleges each and every allegation of the Complaint, where consistent herewith, as fully as if set forth herein.

49. The IGA is a binding agreement between the Bank, County and SCDOT.

50. The County and SCDOT have complied with and performed the terms and conditions of the IGA.

51. The Bank has breached the IGA and unjustifiably failed to perform its obligations thereunder including, but not limited to, unilaterally terminating the IGA.

52. The Bank's breach of and failure to perform under the IGA has caused harm and damage to the County, and the Bank must comply with and abide by its duties and obligations under

the IGA and must specifically perform the same. There is no adequate remedy at law for the performance of such duties and obligations. Additionally, the County is entitled to recover all monetary damages permitted by law.

**FIFTH CAUSE OF ACTION  
(Anticipatory Breach)**

53. The County re-alleges each and every allegation of the Complaint, where consistent herewith, as fully as if set forth herein.

54. The Bank has not put the County on notice of any default of the IGA.

55. The Bank has unequivocally repudiated the IGA by its failure to rescind its May 26, 2016, resolution terminating the IGA and failure to reinstate the Bank's funding commitment.

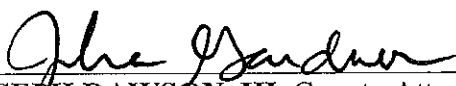
56. The Bank's repudiation of the IGA is a final and absolute declaration that the Agreement must be regarded as altogether off, unconditional, and does not rest on a partial breach and, in fact, goes to the whole consideration of the Agreement, relates to the very essence of the Agreement, and defeats the object of the parties in making the Agreement.

57. The Bank's December 15, 2015, Resolution and subsequent votes and resolutions evince an intention to refuse performance of the IGA in the future, and the Bank has refused to perform by failing to fund the costs necessary to obtain the permits required to complete the Project and has stated the reserved financial assistance for the Project will be released to be used on other projects. Therefore, this Court should find that the Bank repudiated the IGA and the County is not required to wait until the Bank exhausts the 60-day workout period, as extended, to end the Project and release the funds to be used on other projects before it initiates a breach of contract claim.

**WHEREFORE**, the Plaintiff Charleston County respectfully requests that this Honorable Court enter judgment in its favor on each of its causes of action and award the following relief:

- a) Declare that the Defendant South Carolina Transportation Infrastructure Bank cannot unilaterally terminate the Agreement;
- b) Declare that the Bank cannot suspend its funding for the Mark Clark Extension Project;
- c) Declare that the Bank cannot release the \$420 million funding commitment in the Agreement for other state projects;
- d) Award damages of \$750 million to the County on its breach of contract claim;
- e) Issue a preliminary and/or permanent injunction enjoining the Bank from directing, using, or applying the Bank's funding commitment of \$420 for the Mark Clark Extension Project for other state projects;
- f) Award the County \$117 million as restitution for the local match spent on State roads;
- g) Order the Bank to specifically perform its duties and obligations under the Agreement;
- h) Declare that the Bank has repudiated the Agreement; and
- i) Award the County such other and further relief that this Court may deem just and proper.

**CHARLESTON COUNTY, SOUTH CAROLINA**



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**JOSEPH DAWSON, III**, County Attorney

**BERNARD E. FERRARA, JR.**, Deputy County Attorney

**JOHANNA S. GARDNER**, Assistant County Attorney

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**ATTORNEYS FOR PLAINTIFF**

Charleston, South Carolina

July 27, 2017

**EXHIBIT "A"**

Intergovernmental Agreement  
For Charleston County  
Mark Clark Expressway Extension /I-526 Project  
In Charleston County, South Carolina

Dated June 8, 2007

**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: [Signature]

Printed Name: Tim Scott

Title: Chairman

Attest:

By: [Signature]

Printed Name: MARIE SCHULTZ

Title: Project Officer

(SEAL)

[Approved by action of Charleston County Council at its meeting held on

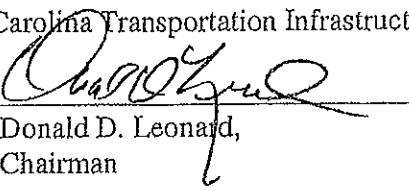
6/19/07 ]

SIGNATURE PAGE FOR BANK

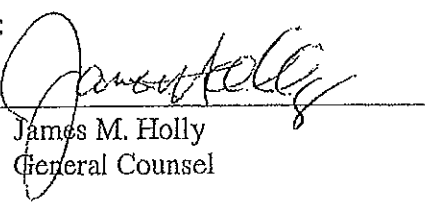
IN WITNESS WHEREOF, the South Carolina Transportation Infrastructure Bank has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

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:

Beacham O. Crocker, Jr.

Printed Name: Beacham O. Crocker, 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: Tim Scott

Printed Name: Tim Scott

Title: Chairman



# MUNICIPAL STATE HIGHWAY PROJECT AGREEMENT

## RESOLUTION

PIN

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>

**EXHIBIT “B”**

South Carolina Transportation Infrastructure Bank  
Board of Directors  
Resolution  
on  
Charleston County Mark Clark Extension Project

Adopted December 15, 2015

SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK  
BOARD OF DIRECTORS  
RESOLUTION  
ON  
CHARLESTON COUNTY MARK CLARK EXTENSION PROJECT

WHEREAS, on June 30, 2006, the Board of Directors of the South Carolina Transportation Infrastructure Bank (the Bank) approved initial financial assistance for the Charleston County Mark Clark Expressway Extension/Interstate 526 Project which then had an estimated total project cost of \$420 million (the Project);

WHEREAS, on August 1, 2006 and March 5, 2008, the Joint Bond Review Committee of the General Assembly approved the aforementioned financial assistance from the Bank for the Project not to exceed a total of \$420 million; and

WHEREAS, Charleston County, the South Carolina Department of Transportation (SCDOT) and the Bank entered into an Intergovernmental Agreement (the IGA) on the Project dated as of June 8, 2007, with total project costs not to exceed \$420 and with Charleston County having an obligation to obtain or provide additional funding to complete the original scope of the Project if the available funding of \$420 million was insufficient for that purpose;

WHEREAS, the IGA and Charleston County's application for financial assistance defined the original scope of the Project as extending the Mark Clark Expressway/Interstate 526 from U.S. Highway 17 (Savannah Highway) across John's Island to SC Highway 171 (Folly Road) on James Island at a total cost not to exceed \$420 million;

WHEREAS, since 2007, the County and SCDOT have been engaged, among other things, in work on preliminary design, redesign and environmental studies and analysis for the Project and in conferring with the Federal Highway Administration on the Project, and the Bank has reimbursed or paid SCDOT approximately \$26 million for such activities and costs, including approximately \$16.5 million in right-of-way acquisition costs and \$9.25 million in engineering fees and costs;

WHEREAS, since 2007, Charleston County and/or SCDOT have determined or have proposed, among other things, that the Project should be changed from an interstate project to a parkway project, and SCDOT determined twice that the total estimated costs of the parkway project have increased substantially with the most recent estimate being approximately \$725 million to \$773 million;

WHEREAS, the IGA requires that all material changes to the Project are subject to the approval of the Bank Board, a number of material changes to the Project have occurred or been proposed, and the Bank Board has not approved those changes; and

WHEREAS, the completion of the original full scope of the Project and the implementation of all of the public benefits from the completion of the Project was the essential purpose of the Bank's decision to commit \$420 million in financial assistance to the Project, and without Charleston County obtaining or providing funds to cover the aforementioned shortfall of \$305 to \$353 million, it will be impossible to complete the original full scope of the Project and implement all of those public benefits.

NOW, THEREFORE, the Board of the Bank hereby resolves that:

Section 1. The Board will reserve the balance of the \$420 million in financial assistance for the Project subject to the following conditions being met by Charleston County: (a) on or before March 30, 2016, the Charleston County Council adopts a binding resolution in which it sets forth the County's plan to fund, or secure funding for, the aforementioned shortfall for the Project from specified, dedicated revenue sources (other than the Bank) which plan is subject to review and approval by the Bank Board; (b) on or before April 30, 2016, Charleston County approves by a binding resolution or ordinance a new or amended Intergovernmental Agreement among the County, SCDOT and the Bank and any other related instruments requested by the Bank, all in a form and with contents the Bank determines are needed to implement the foregoing actions and protect the interests of the Bank; (c) before December 16, 2016, the

Charleston County Council adopts and implements a legally enforceable ordinance acceptable to the Bank Board putting the aforementioned plan into effect and making those funds available for the Project on a schedule acceptable to the Bank Board.

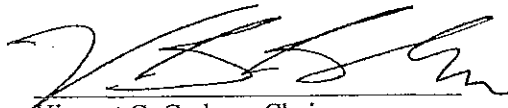
Section 2. All of the foregoing is subject to the Joint Bond Review Committee of the General Assembly (JBRC) granting the approvals required by the South Carolina Transportation Infrastructure Bank Act, if any, that are necessary to implement the foregoing actions.

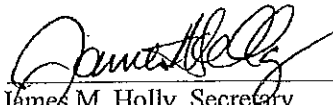
Section 3. Until the Charleston County meets all of the foregoing conditions, the Bank in its discretion may delay or mitigate further expenditures of funds on the Project.

Section 4. If Charleston County fails to meet any of the foregoing conditions by the dates specified above and the Chairman of the Bank Board declares the same in writing, Charleston County, SCDOT and the Bank shall, within sixty (60) days of the date that the Chairman issues such declaration, develop, approve, and implement a plan to end the Project in a manner that allows the Bank the option to direct the sale of the rights-of-way or other property interests acquired for the Project and retain the proceeds of those sales, allows SCDOT and the Bank to apply any acquired environmental mitigation credits to other important transportation projects as determined by SCDOT and the Bank, and takes into account the funds spent by Charleston County on improving state highways. In the event such a plan is not approved and implemented by those three parties within that sixty (60) day period, the Bank shall implement the plan it determines is appropriate to end its participation in the Project. In either event, the aforementioned reserved financial assistance will be released to be used on other projects approved by the Bank and JBRC.

Section 5. The Chairman is hereby authorized, upon the advice of legal counsel for the Bank, to sign any documents and undertake any measures necessary to implement the foregoing actions.

Adopted December 15, 2015.

  
\_\_\_\_\_  
Vincent G. Graham, Chairman

ATTEST:   
\_\_\_\_\_  
James M. Holly, Secretary

**EXHIBIT "C"**

Charleston County Resolution Number 16-07  
on Charleston County Mark Clark Expressway Extension/I-526 Project

Adopted April 7, 2016

Adopted 4/7/16

RESOLUTION

ON CHARLESTON COUNTY MARK CLARK  
EXPRESSWAY EXTENSION/I-526 PROJECT

WHEREAS, Charleston County, South Carolina ("County") is a party to the Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension/I-526 Project ("IGA") with the South Carolina Department of Transportation and the South Carolina Transportation Infrastructure Bank ("Bank") regarding construction of the Mark Clark Expressway Extension/I-526 Project ("Project"); and

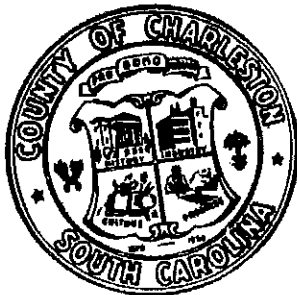
WHEREAS, the IGA provides in part in Article V, Section 5.5 that the County shall be responsible for obtaining or providing additional funding for the Project if the available funds are not sufficient to complete the Project within the scope of the Project, reducing the scope of the Project to conform to available funding, or some combination thereof; and

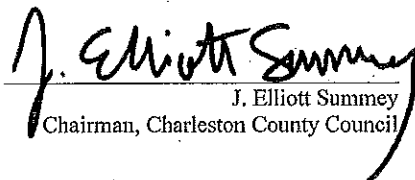
WHEREAS, the Board of Directors of the Bank passed a Resolution on the Charleston County Mark Clark Extension Project on December 15, 2015 ("Resolution"), reserving the balance of the \$420 million in financial assistance for the Project subject to several conditions, one of which is that on or before March 30, 2016, Charleston County Council adopt a resolution in which it sets forth the County's plan to fund, or secure funding for, the shortfall for the Project from specified, dedicated revenue sources (other than the Bank) which plan is subject to review and approval by the Bank Board; and

WHEREAS, although the IGA does not require or compel the County to provide a "plan" as requested in the Resolution, the County, in the spirit of cooperation, has identified potential funding sources that could be utilized if the County elects to provide additional funding as provided in Article V, Section 5.5 of the IGA, notwithstanding additional funding commitments from the Bank.

NOW, THEREFORE, BE IT RESOLVED IN MEETING DULY ASSEMBLED that Charleston County Council may explore funding from the following sources to fund a potential shortfall for the Project to include but not limited to: (a) Fixing America's Surface Transportation Act, (b) implementation of a toll road, (c) a transportation sales tax referendum, (d) Charleston Area Transportation Study Committee federal guide shares, (e) Charleston County Transportation Committee, (f) Berkeley-Charleston-Dorchester Council of Governments, (g) Charleston Regional Development Alliance, (h) Charleston County Economic Development, and (i) City of Charleston. Provided however; the County does not waive its rights to explore reducing the scope of the Project to conform to available funding.

Adopted April 7, 2016



  
J. Elliott Summey  
Chairman, Charleston County Council



**EXHIBIT "D"**

South Carolina Transportation Infrastructure Bank  
Board of Directors  
Mark Clark Project Resolution

Adopted May 26, 2016

SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK

BOARD OF DIRECTORS

MARK CLARK PROJECT RESOLUTION

May 26, 2016

Whereas, the Board of Directors of the South Carolina Transportation Infrastructure Bank (the Bank) adopted a Resolution on December 15, 2015, (the Resolution) that set forth the steps and conditions the Charleston County Council (the County Council) should engage in in order to provide or secure funding sources to cover the shortfall in funding determined by the South Carolina Department of Transportation as necessary to complete the full scope of the Mark Clark Extension Project (the Project), and the Board later amended the Resolution to address a concern of the County;

Whereas, after December 15, 2015, representatives of the Bank and the County Council met and had discussions concerning the aforesaid Resolution of the Board;

Whereas, the County failed to meet the initial date of March 30, 2016, in Section 1 of the Resolution by which it was to provide a resolution setting forth its plan to fund or secure funding from specified, dedicated revenue sources to cover the shortfall in funding for the Project, but the Board on this date granted an extension retroactively until April 8, 2016, for the County to provide the described plan;

Whereas, on April 7, 2016, a majority of the County Council adopted Resolution #16-07 which stated that County Council "may explore funding" from various sources to cover the shortfall for the Project, and that resolution on its face does not meet the requirements of Section 1 of the Resolution;

Whereas, County Council has indicated that it may not include the funding necessary to complete the Mark Clark Extension Project in its proposed transportation sales tax referendum that may be held in November of this year;

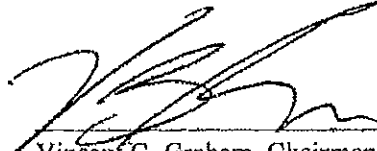
Whereas, County Council failed to meet the date of April 30, 2016, in Section 1 of the Resolution concerning a new or amended Intergovernmental Agreement for the Project;


Whereas, the Chairman of the Board and the Board have determined and hereby declare as of this date that County Council has failed to meet the first two conditions in Section 1 of the Resolution;

Whereas, the Bank has reserved \$420 million in funding for the Project since June of 2007, a period of nine years, but the Project is still years away from moving to construction in any form; and

Whereas, without the commitment of full funding for the full scope of the Project, the Project will not receive the necessary approvals and permits from federal agencies.

Now, therefore, based on the foregoing and the reasons stated in the Resolution of December 15, 2016, the Board of Directors of the South Carolina Transportation Infrastructure Bank hereby resolves that the Chairman, Director, Bank Counsel and other representatives of the Bank are directed to implement the provisions of Section 4 of the Resolution of December 15, 2015.

  
\_\_\_\_\_  
Vincent G. Graham, Chairman

ATTEST:   
\_\_\_\_\_  
Secretary

Adopted May 26, 2016

**EXHIBIT “E”**

Charleston County Ordinance Number 1926

Adopted March 3, 2017

**AN ORDINANCE**

**PROVIDING FOR AND AUTHORIZING THE EXPENDITURE OF REVENUES RECEIVED BY CHARLESTON COUNTY FOR THE PURPOSE OF FUNDING THE COSTS NECESSARY TO COMPLETE THE MARK CLARK EXPRESSWAY/I-526 PROJECT AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.**

**WHEREAS**, Charleston County, South Carolina ("County"), the South Carolina Department of Transportation (SCDOT), and the South Carolina Transportation Infrastructure Bank ("Bank") are parties to an agreement titled "Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension/I-526 Project in Charleston County, South Carolina" (hereinafter "IGA") regarding construction of the Mark Clark Expressway Extension/I-526 Project ("Project"); and

**WHEREAS**, the Bank approved initial financial assistance for the Project, which had a total Project cost of \$420 million in 2007; however, in 2015, the SCDOT indicated that the Project costs escalated to approximately \$750 million; and

**WHEREAS**, the IGA provides in part in Article V, Section 5.5 that the County shall be responsible for obtaining or providing additional funding for the Project if the available funds are not sufficient to complete the Project within the scope of the Project, reducing the scope of the Project to conform to available funding, or some combination thereof; and

**WHEREAS**, at the December 14, 2016, meeting of the Board of Directors of the Bank, the Bank requested assurances from the County regarding the County's ability to provide funding for the \$330 million shortfall. At that meeting, representatives from the County and City of Charleston indicated that funding was available from the Berkeley-Charleston-Dorchester Council of Governments via Charleston Area Transportation Study Committee federal guide shares for debt service and additional funding by the County for the Project; and

**WHEREAS**, although the IGA does not require or compel the County to provide such assurances as requested by the Bank, the County, in the spirit of cooperation, is willing to provide such assurances through a pledge of any and all revenues available to the County backed by its triple "A" credit rating to fulfill its financial obligations under the IGA, as provided in Article V, Section 5.5 of the IGA. Provided however, the County does not waive its rights to reduce the scope of the Project to conform to available funding.

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CHARLESTON COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:**

**Section 1. Recitals and Legislative Findings.** As an incident to the enactment of this Ordinance, the County Council of Charleston County, South Carolina (the "County

Council") hereby adopts the above-referenced recitals as legislative findings and incorporates them herein by reference.

**Section 2. Funding Commitment.** Charleston County pledges and commits an amount not to exceed \$150 million toward the Mark Clark Project and seeks funding from CHATS of \$195 million from federal guide shares toward the Mark Clark Project.

**Section 3. Severability.** If any provision of this Ordinance or its application to any circumstance is held by a court of competent jurisdiction to be invalid for any reason, this holding shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared by Council to be severable.

**Section 4. Adoption.** This Ordinance shall take effect immediately upon approval following third reading.

ADOPTED and APPROVED in meeting duly assembled this 3<sup>rd</sup> day of March, 2017.

CHARLESTON COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
A. Victor Rawl  
Chairman of Charleston County Council

ATTEST:

By: \_\_\_\_\_  
Kristen L. Salisbury  
Deputy Clerk to Charleston County Council

First Reading: February 2, 2017  
Second Reading: February 7, 2017  
Public Hearing: February 28, 2017  
Third Reading: March 3, 2017

**EXHIBIT “F”**

Charleston Area Transportation Study (CHATS)  
Resolution

Adopted February 13, 2017

**RESOLUTION  
TO SPEND GUIDESHARE FUNDS ON THE MARK CLARK COMPLETION PROJECT**

**Whereas**, the Charleston Area Transportation Study (CHATS) is the regional transportation planning agency and the designated Metropolitan Planning Organization (MPO) in the Berkeley-Charleston-Dorchester County urban area; and

**Whereas**, CHATS formulated and approved a Long Range Transportation Plan (LRTP), which identifies and prioritizes transportation projects of regional significance that increase access, decrease congestion and foster mobility to accommodate safety, commerce and an enhanced quality of life, and the construction of which should be pursued over the next 20 years; and

**Whereas**, the construction of what is now known as the Mark Clark Expressway, was identified in the 1968 CHATS LRTP as a needed and worthy project; and

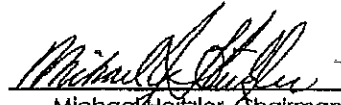
**Whereas**, the Mark Clark Expressway has been partially completed and remains in the most recent CHATS LRTP and continues to be needed to accommodate mobility, commerce, safety and quality of life; and the South Carolina Department of Transportation has available bonding capacity in excess of \$200 million and has previously made such capacity available to the CHATS Policy Committee to fund eligible projects; and

**Whereas**, the majority of citizens in the affected areas by the completion of the Mark Clark Expressway have expressed support for completing the Expressway; and

**Whereas**, in recognition of the importance of completing the Mark Clark Expressway, to include a financial contribution thereto, the CHATS Policy Committee enacts this Resolution.

**Now Therefore Be It Resolved that** the CHATS Policy Committee continues to endorse the completion of the Mark Clark Expressway and commits to aid Charleston County with its financial commitment to the project by obligating a portion of its Federal Guideshare funds.

**WITNESSED** this 13<sup>th</sup> day of February, 2017.

  
Michael Heitzler, Chairman

Certified true and correct copy of a resolution adopted at a legally convened meeting of the CHATS Policy Committee held on February 13, 2017.

  
Ronald E. Mitchem

Executive Director  
Title

2/13/17  
Date



THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

JUL 27 2017

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

S.C. SUPREME COURT

Charleston County, South Carolina, ..... Petitioner,

vs.

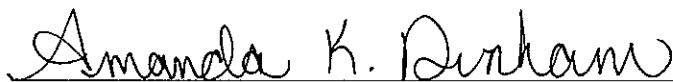
South Carolina Transportation Infrastructure Bank  
and the South Carolina Department of Transportation, ..... Respondents.

**PROOF OF SERVICE**

I certify that I have filed the original and six (6) copies of the **Petition for Original Jurisdiction, Notice Advising Respondents of Twenty (20) Days to File a Return and Complaint** with the Clerk of the Supreme Court on July 27, 2017, and further certify that I will serve filed copies upon Respondents in accordance with Rule 4, SCRCF, by depositing copies of the same in the United States mail, postage prepaid, on July 27, 2017, as follows:

James H. Holly, Esquire  
South Carolina Transportation Infrastructure Bank  
955 Park Street, Suite 120B  
Columbia, South Carolina 29201  
Attorney and Secretary for Respondent South Carolina Transportation Infrastructure Bank

Linda C. McDonald, Esquire  
South Carolina Department of Transportation  
955 Park Street, Suite 343  
Columbia, South Carolina 29201  
Attorneys for Respondent South Carolina Department of Transportation



AMANDA K. DURHAM, Certified Paralegal  
CHARLESTON COUNTY ATTORNEY'S OFFICE