

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	CASE NO.: 2019-CP-40-_____
South Carolina Coastal Conservation)	
League, Inc., Michelle Renee Orth, Elizabeth)	
M. Smith, and Abraham B. Jenkins, Jr.)	
)	
Plaintiffs,)	
)	
v.)	SUMMONS
)	
Charleston County, South Carolina; South)	
Carolina Transportation Infrastructure Bank;)	
and South Carolina Department of)	
Transportation,)	
_____)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 1629 Meeting Street, Suite A, Charleston, South Carolina, 29405, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

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June 3, 2019
Charleston, South Carolina

ATTORNEYS FOR PLAINTIFFS

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)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
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South Carolina Coastal Conservation)	
League, Inc., Michelle Renee Orth, Elizabeth)	
M. Smith, and Abraham B. Jenkins, Jr.)	
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Plaintiffs,)	
)	
v.)	COMPLAINT
)	
Charleston County, South Carolina; South)	(Declaratory Judgment)
Carolina Transportation Infrastructure Bank;)	
and South Carolina Department of)	<i>Non-Jury</i>
Transportation,)	
_____)	

TO: THE ABOVE-NAMED DEFENDANTS

The above-named Plaintiffs, complaining of the above-named Defendants, allege and state as follows:

PARTIES

1. Plaintiff South Carolina Coastal Conservation League, Inc. (the "CCL") is a non-profit corporation in good standing organized and existing under South Carolina law.
2. Plaintiffs Michelle Renee Orth, Elizabeth M. Smith and Abraham B. Jenkins, Jr. are each citizens, residents, property owners, registered voters and taxpayers in the County of Charleston, South Carolina.
3. Defendant Charleston County, South Carolina (the "County") is a county government and body politic created under and subject to the laws of the State of South Carolina.
4. Defendant South Carolina Transportation Infrastructure Bank (the "Bank") is a body corporate, body politic, and instrumentality of the State of South Carolina established through 1997 Act. No. 148.
5. Defendant South Carolina Department of Transportation (the "DOT") is a state

agency of the State of South Carolina.

JURISDICTION AND VENUE

6. This Honorable Court has both subject matter and personal jurisdiction over the parties to this action.

7. This case does not involve an alleged illegal or wrongful collection of taxes or attempt to collect taxes by the South Carolina Department of Revenue (“SCDOR”). This case does not seek tax refunds of any kind from either the SCDOR or any other governmental entity. Rather, this case challenges Charleston County’s purported entry into a certain intergovernmental agreement with the Bank and the SCDOT as described herein as violative of South Carolina law. The South Carolina Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10, et seq., does not apply, and this Court possesses subject matter jurisdiction.

8. Venue is proper in Richland County pursuant to S.C. Code Ann. § 15-7-30 and § 15-77-50. Among other things, the Bank and the SCDOT have principal places of business and headquarters in Richland County. Moreover, the Bank’s and the SCDOT’s performance of the contract at issue in this case, both in terms of funding and management, will take place in Richland County. Finally, one or more questions, actions, or controversies at issue in this case arise in Richland County.

FACTUAL ALLEGATIONS

9. This action arises out of that certain First Amended Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension Project in Charleston County, South Carolina dated January 10, 2019 and signed by the County, the Bank, and the DOT (the “Amended IGA”). A copy of the Amended IGA is attached hereto as Exhibit A and its terms are incorporated herein by reference.

10. The Amended IGA addresses, among other things, the funding, management, and construction duties and obligations associated with the controversial, complex, and costly Mark Clark Expressway extension project from the terminus of I-526 at U.S. Highway 17 to Folly Road on James Island (the “Project”).

11. This case challenges (a) language in the Amended IGA authorizing transportation sales tax revenue to fund the Project, (b) language purporting to require future County Councils to allocate by ordinance transportation sales tax revenue to the Project, (c) certain County appropriations made pursuant to the Amended IGA to date, and (d) the County’s authority to execute the Amended IGA in the first place.

Use of Transportation Sales Tax Revenue for the Project

12. S.C. Code Ann. §§ 4-37-10, et seq. allows a county government to impose a transportation sales tax not to exceed one full penny. These statutes place specific and strict limitations on how transportation sales taxes are authorized by elected officials, how they are approved by voters by way of referendum, and how they are allocated and spent.

13. Paragraph 3.2(B) of the Amended IGA states the County “**shall** pay from proceeds of the Sales Tax, or any lawful source, all of the costs incurred or to be incurred to complete the entire scope of the Extension Project in excess of the \$420 million in grants from the Bank (including past and future)” (emphasis added).

14. The Amended IGA defines “Sales Tax” as follows:

the roads portion of the one-half percent sales and use tax established in Charleston County by approval of a referendum following the adoption of Charleston County Council Ordinance Number 1324 pursuant to South Carolina Code Ann. Sections 4-37-10, *et seq.*, as amended, entitled “Optional Methods for Financing Transportation Facilities” and the subsequent 2016 sales and use tax established in Charleston County by approval of a referendum following the adoption of Charleston County Ordinance Number 1907 pursuant to South Carolina Code Ann. Sections 4-37-10, *et seq.*, as amended.

15. This case challenges the assertion that either County Ordinance Number 1324 or County Ordinance Number 1907 authorize transportation sales tax expenditures for the Project due to the factual circumstances surrounding their adoption and the ensuing referenda.

16. Charleston County Ordinance Number 1324, adopted August 11, 2004, authorized the County's first half-cent transportation sales tax and the issuance of \$113 million in general obligation bonds -- subject to public referendum. Ordinance Number 1324 is attached hereto as **Exhibit B** and incorporated herein by reference (the "First Half-Cent"). The language of the approved referendum is contained in Ordinance Number 1324. The referendum was approved by a majority of voters.

17. Ordinance Number 1324 specified the following project list for the \$113 million in general obligation bonds associated with the First Half-Cent:

- a. \$25,000,000 to begin the right-of-way acquisition and engineering process for the widening and improvement of Johnnie Dodds Boulevard from the Arthur Ravenel, Jr. Bridge to the I-526 overpass;
- b. \$7,000,000 for Glenn McConnell Parkway/Bees Ferry Road Intersection improvements;
- c. \$10,000,000 for road improvements on James Island (Folly Road and Maybank Highway intersection improvements, Harbor View Road Improvements, and an off-ramp interchange loop from the James Island Connector to Folly Road);
- d. \$6,000,000 for a US Highway 17 access ramp onto the US Highway 61 connector near Wesley Drive;
- e. \$29,000,000 for acquisition and construction of a roadway connecting Ashley Phosphate Road and the Palmetto Parkway through Spartan Blvd.; and
- f. \$36,000,000 for Greenbelts.¹

18. Charleston County Ordinance Number 1454, adopted July 18, 2006, authorized the issuance of \$205 million in additional bonds for specified road projects and \$95 million in

¹ The County's Greenbelt Program began in 2004. At the time the Greenbelt Plan was created, it was determined that at a minimum of 200,000 acres of greenspace were needed to meet the anticipated future population of the County. The Greenbelt Plan set a goal to protect the additional 40,000 acres needed to meet the goal. As of this filing, Greenbelt funds from the First Half-Cent have been exhausted.

additional bonds for Greenbelt projects in connection with the First Half-Cent revenue – subject to public referendum. Ordinance Number 1454 is attached hereto as **Exhibit C** and incorporated herein by reference. The language of the approved referendum is contained in Ordinance Number 1454. The referendum language specifies the following project list:

- a. Widening and improvements to US Route 17/Johnnie Dodds Boulevard from the Arthur Ravenel, Jr. Bridge to the Interstate I-526 Overpass;
- b. Folly Road (SC 171)/Maybank Highway (SC 700) Intersection Improvements;
- c. James Island Connector (SC 30) Interchange Loop to Folly Road (SC 171);
- d. Harbor View Road (S-1028) Improvements;
- e. Interstate I-526 Loop Ramp to Glenn McConnell Parkway (SC 61 Spur);
- f. Bees Ferry Road (S-57) widening from US Route 17 to Ashley River Road (SC 61);
- g. Folly Road (SC 171)/Camp Road (S-28) Intersection Improvements;
- h. Future Drive extension to Ladson Road and the extension of Northside Drive;
- i. Maybank Highway (SC 700) widening from proposed I-526/Mark Clark interchange to Bohicket Road/Main Road (S-20); and
- j. Roadway Improvements in the Medical University area including Lockwood Drive (S404), Courtenay Drive (S-550), and Bee Street (S-551) with additional improvements at the Courtenay Drive intersections with Calhoun Street (S-404) and Spring Street.

The referendum was approved by a majority of voters.

19. Charleston County Ordinance Number 1907, adopted August 9, 2016, authorized the County's second half-cent transportation sales tax and the issuance of \$200 million in general obligation bonds – subject to public referendum. Ordinance Number 1907 is attached hereto as **Exhibit D** and incorporated herein by reference (the "Second Half-Cent"). The language of the approved referendum is contained in Ordinance Number 1907. The referendum was narrowly approved by voters by a fifty one percent (51%) margin.

20. Ordinance Number 1907 specified that \$210 million of the Second Half-Cent revenue would be used for Greenbelt projects and the remaining \$1.89 billion would fund the following transportation project list:

a. Projects of regional significance:

- Airport Area Roads Improvements;
- Dorchester Road Widening;
- Michaux Parkway to County line;
- US 17 at Main Road flyover; and
- Widening Main Road from Bees Ferry to Betsy Kerrison with Parkway type section at Bohicket.

b. Projects of local significance:

- Annual Allocation continuation;
- Resurfacing;
- Bike/Pedestrian Facilities;
- Local Paving and Intersection Improvements;
- Glenn McConnell Parkway Widening;
- James Island Intersection and Pedestrian Improvements;
- Northside Drive Realignment at Ashley Phosphate Road;
- Rural Road Improvements;
- Savannah Highway/Ashley River Bridges/Crosstown Congestion Infrastructure Improvements;
- Savannah Highway Capacity and Intersection Improvements, SC;
- 41 Improvements / US 17 to Wando Bridge; and
- US 78 Improvements from US 52 to County line.

21. Charleston County Ordinance Numbers 1324, 1454, and 1907 all share one very important thing in common: **NONE** of them mention, much less authorize, transportation sales tax funding for the Project.

22. County Council's public deliberations prior to enacting Ordinance Number 1907 leave no doubt that the Project would not be funded with Second Half Cent revenue.

23. On July 19, 2016, County Council gave Ordinance Number 1907 its first reading. At that time, several projects of regional and local significance were identified in the ballot question. The Project was not included, and the Project was not discussed at this meeting.

24. On July 21, 2016, Ordinance Number 1907 was up for second reading by County Council. Several important events germane to the claims at issue in this case took place at this meeting. They are as follows:

- a. Prior to deliberating on Ordinance Number 1907, County Council went into executive session to receive legal advice on the original intergovernmental agreement with the Bank regarding funding and managing the Project. Upon information and belief, funding the Project by way of Second Half-Cent dollars was discussed during executive session.
- b. After emerging from executive session, Councilmember Teddy Pryor made a motion to add an additional ballot question to Ordinance Number 1907. This new question would specifically authorize funding the Project up to \$200 million and reduce the funding for other road projects by that same amount. Councilmember Anna Johnson seconded that motion. After extensive debate among the councilmembers, the motion to specifically authorize funding for the Project failed by a five to four vote.
- c. Councilmember Herb Sass then made a motion to put a non-binding ballot question on the referendum to gauge public support for the Project. After extensive discussion, Councilmember Sass withdrew this motion.
- d. Councilmember Vic Rawl then made a motion to add the "Johns Island Connector" to the projects of regional significance list. Councilmember Elliott Summey asked what the "Johns Island Connector" meant, and Councilmember Rawl responded it was up for interpretation. Councilmember Joe Qualey reminded his colleagues that legal counsel for the County had advised against adding the Project to the referendum question.² Councilmember Rawl's motion failed by a vote of six to three.
- e. Councilmember Rawl next moved to amend Ordinance Number 1907 by removing the project list entirely. Councilmember Qualey seconded the motion. In the ensuing discussion, Councilmember Dickie Schweers referred to the Project as the "elephant in the room" and noted his belief that Council was "deadlocked on this issue." The motion failed by a vote of five to three and one abstention.
- f. Councilmember Qualey then moved for a non-binding ballot question as follows: "Do you want to complete the 526?" Councilmember Sass seconded the motion. The motion failed by a vote of five to four.
- g. Finally, Councilmember Summey called for the second reading of Ordinance 1907 with no amendments. The vote failed by a vote of five to four.

25. The discussions, motions, and votes at the July 21, 2016 County Council meeting leave no doubt that County Council explicitly rejected the concept of funding the Project with

² In so doing, Councilmember Qualey waived attorney-client privilege on this issue.

Second Half-Cent funds.

26. On July 27, 2016, a special meeting of County Council was called to reconsider Second Reading of Ordinance Number 1907. The question was called, and second reading was granted by a vote of six to one with two absent. The version of Ordinance Number 1907 approved at second reading mirrored the version that received first reading.

27. On August 9, 2016, Ordinance Number 1907 received third reading. Several important events germane to the claims at issue in this case took place at this meeting. They are as follows:

- a. Councilmember Sass moved to amend Ordinance Number 1907 to remove the list of projects from the ballot question, but not the ordinance itself. Councilmember Condon seconded the motion. The County's attorney confirmed on the record that the project list, which did not include the Project, would remain in the ordinance. The amendment passed by a vote of six to two with one abstention.
- b. Prior to calling the question on third reading of Ordinance Number 1907, Councilmember Sass noted the project list contained in the ordinance, which did not include the Project, was a well thought out list and that every project was needed. Councilmember Pryor confirmed the Project was not under consideration. Councilmember Johnson lamented that the Project was not listed, and would not support it for that reason.
- c. After calling the question, Ordinance Number 1907, as amended, was approved by a vote of six to three. Councilmembers Johnson, Darby, and Rawl voted "nay."
- d. Finally, after the adoption of Ordinance Number 1907, as amended, Councilmember Rawl moved to place a non-binding ballot question on the referendum where the Second Half-Cent was to be voted on. The question would be "Do you want Charleston County to complete the Mark Clark/526 project?" Councilmember Summey seconded. The vote failed five to four. No question pertaining to the Project was ultimately placed on the ballot.

28. On October 29, 2016, which was after the adoption of Ordinance Number 1907 and mere days before the Second Half Cent referendum vote, Councilmember Sass wrote an editorial in the Post & Courier assuring voters the Second Half-Cent *would not* be used to fund the Project.

This editorial is attached hereto as **Exhibit E** and incorporated herein by reference. Some notable comments from that editorial include the following:

- a. **“The half-penny sales tax program Charleston County Council passed this summer,** which is on the November ballot, was the result of careful study of our road and transit needs and **did not include funding for the Mark Clark** [the Project].” (Emphasis added)
- b. “The reason it could not include the Mark Clark was that those negotiations to complete or fund the completion had not been resolved, and remain so. The Mark Clark is a three-party contract with the county, the Infrastructure Bank and the S.C. Department of Transportation. **That funding is a contractual matter and has nothing to do with the half-cent sales tax.**” (Emphasis added)
- c. “Worries that council will not complete these projects as proposed are unfounded for several reasons. **The first is that we have voted and given our word to the voters.** Most of the current council was not serving when the first half cent was approved. But, we have worked with staff, municipalities, and state and federal regulators to complete the named projects the voters approved.” (Emphasis added)

29. The Sass editorial clearly references and establishes a contract with voters, guaranteeing Second Half-Cent monies would not be spent on the Project.

30. The County’s Transportation Development Department, tasked with overseeing transportation sales tax funded projects, said in a public presentation in January 2017 that, in reference to the project list contained in Ordinance Number 1907, “every penny of the 2016 sales tax referendum has been allocated.”

31. The projects contained in the project lists found in Ordinance Numbers 1324, 1454, and 1907 have not been fully funded or completed, as the County promised to voters.

32. Given the foregoing, S.C. Code Ann. §§ 4-37-10, et seq., and the language of the aforementioned ordinances prohibit First Half Cent and the Second Half Cent revenue from funding the Project. Moreover, funding the Project with these specific revenue sources violates the “contract with voters” doctrine. See, e.g., 16 MCQUILLIN MUN. CORP. § 44:238 (3d ed.).

33. Paragraph 3.2(B) of the Amended IGA is unlawful to the extent it authorizes Project funding by way of the First Half-Cent and the Second Half-Cent. Neither of these revenue sources may legally be spent on the Project, notwithstanding anything in the Amended IGA to the contrary.

Binding Future Councils to Pledge Transportation Sales Tax Revenue

34. Paragraph 3.2(C) of the Amended IGA states “[t]he County Council **shall** adopt a budget for each Fiscal Year appropriating revenues of the Sales Tax, or any federal or state grant proceeds, or any lawful source to fund the payment obligations of the County under this Agreement.” (Emphasis Added).

35. This language purports to require future Charleston County Councils to adopt budget ordinances and supplemental appropriation ordinances committing First Half-Cent and Second Half-Cent revenue to the Project.

36. The Supreme Court of South Carolina has held as follows:

The general rule is that, if the contract involves the exercise of the municipal corporation's business or proprietary powers, the contract may extend beyond the term of the contracting body and is binding on successor bodies if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality. *However, if the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils.*

City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth., 325 S.C. 174, 179, 480 S.E.2d 728, 731 (1997) (citations omitted) (emphasis added).

37. Neither the Amended IGA nor the Project itself implicate the County's business or proprietary powers. Rather, as a factual matter, the Amended IGA directly involves the legislative functions or governmental powers of the government.

38. The budget and supplemental appropriation approval processes are quintessential legislative functions. These funding actions both require public notice and three ordinance readings

pursuant to S.C. Code Ann. §§ 4-9-120, -130. Moreover, the provision of public infrastructure is a legislative function.

39. Given the foregoing, Paragraph 3.2(C) of the Amended IGA is void and unlawful to the extent it purports to bind future County Councils and require them to use their legislative authority to commit First Half-Cent and Second Half-Cent revenue. Paragraph 3.2(C) is unenforceable by the Bank, the SCDOT, or others against future County Councils.

County Appropriations Under the Amended IGA

40. On or about February 12, 2019, County Council voted to appropriate \$3,156,640 from the transportation sales tax fund to satisfy its Fiscal Year 2019 commitment called for by the Amended IGA.

41. Upon information and belief, these funds have been conveyed to the SCDOT.

42. This appropriation violates S.C. Code Ann. §§ 4-9-120 and -130 because the County failed to provide public notice fifteen days in advance of the hearing and the requisite three ordinance readings required by law.

43. Instead, the County noticed this supplemental appropriation ordinance a mere thirty-two hours prior to the vote.

44. For the above reasons, the County's Fiscal Year 2019 appropriation was unlawful and should be voided.

County Authority to Execute the Amended IGA

45. Upon information and belief, County Council approved and executed the Amended IGA on January 10, 2019.

46. The County did not purport to execute the Amended IGA as part of a settlement agreement or through the executive session process established by the Freedom of Information

Act.

47. The Amended IGA purports to commit specific funding levels from specific sources, namely from First Half-Cent and Second Half-Cent revenue.

48. To the extent these funding commitments are lawful, which is denied, the Amended IGA would have to be considered an appropriations ordinance, as a factual matter.

49. However, prior to executing the Amended IGA, the County failed to provide public notice fifteen days in advance of the hearing and the requisite three ordinance readings pursuant to S.C. Code Ann. §§ 4-9-120 and -130.

50. Therefore, the County lacked authority to execute the Amended IGA.

STANDING ALLEGATIONS

51. Plaintiffs have constitutional, public importance, taxpayer, and associational standing to seek and obtain the declaratory and other relief sought herein.

52. The CCL is a non-profit organization representing thousands of supporters who are citizens, residents and taxpayers in Charleston County and throughout South Carolina.

53. The CCL and its supporters are committed to, among other things, improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes, and Greenbelt-funded conservation initiatives. Accomplishing these objectives requires that local governments act in a transparent manner pursuant to South Carolina law.

54. The County's unauthorized and unlawful commitment and diversion of First Half-Cent and Second Half-Cent revenue to the Project, via the Amended IGA and appropriations thereunder to date, directly threaten the CCL's and its supporters' interests. Spending these monies on the Project will inevitably come at the expense of the specific projects identified in Charleston

County Ordinance Numbers 1324, 1454, and 1907.

55. The County's proposed expenditure of, at minimum, \$305 million in First Half-Cent and Second Half-Cent revenue for the Project directly, materially, and substantially undermines the goals of improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes, and as a result Greenbelt funded conservation initiatives will all suffer and not be completed as pledged and promised by the County. All of these measures have been promised to voters, including CCL's members, and none have been completed nor are they even remotely close to resolved. Simply put, if the County is allowed to divert First Half-Cent and Second Half-Cent revenue to the Project, there will not be enough money to go around.

56. One or more CCL members voted on the First Half-Cent and Second Half-Cent referenda with the clear understanding, based on the language of the relevant ordinances' representations by County Council, that the Project would not be funded with these funds.

57. One or more CCL members are Charleston County taxpayers who pay First Half-Cent and Second Half-Cent sales tax on a regular basis.

58. Given the foregoing, the CCL and its members have a direct, concrete, and particularized interest in the outcome of this litigation.

59. If the County redirects, contrary to law, First Half-Cent and Second Half-Cent revenue to the Project, the CCL and its members will be directly injured.

60. Further, Plaintiffs Orth, Smith and Jenkins are entitled to standing based on their status as taxpayers and fee payers, and because of the great public importance of the issues that this civil action raises, that are capable of being repeated and regarding which judicial guidance is required.

61. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the CCL organization named as Plaintiff will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public.

62. Each of the above-described Plaintiffs alleging taxpayer standing has as an overriding public purpose or concern as the basis for his or its suit on behalf of their fellow taxpayers regarding the proper use and allocation of tax receipts by the County named as Defendant in this action. These questions are of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interest involved is the prevention of the unlawful expenditures of public money. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the County followed the requirements and procedures set out in the state constitution, state statutes and County ordinances, procedures, rules, guidelines and customs specifically designed to ensure wise management of the public fisc.

63. Plaintiff CCL has standing based on the individualized injuries that have been or will be suffered by those citizens whom it represents as a result of the actions of the Defendants described in this Complaint. Supporters of this organization would otherwise have standing to sue in their own right. The interests at stake in this case are germane to the organization's purpose. Neither the claims CCL asserts, nor the relief it requests, requires the participation of the individual supporters of the organization.

64. Each of the Plaintiffs, whether alleging taxpayer standing, actual injury to its or his real or personal property or acting on behalf of organizational members, has suffered and will

suffer an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

65. This Honorable Court has the power to redress the aforementioned injuries by, among other things, declaring that First Half-Cent and Second Half-Cent revenue may not lawfully be used to fund the Project, regardless what the Amended IGA purports to require.

66. This case is one of utmost public importance for the State – not just the County. Under the Amended IGA, the Bank is required to commit \$420 million in public money to the Project. The Amended IGA will result in a massive expenditure of limited resources, taking money away from other vital transportation projects. The Project itself will significantly impact James Island and Johns Island, and the surrounding communities in the Charleston area.

67. Judicial intervention is required to provide future guidance on the ability of Charleston County Council to use these funds for the Project or to require future councils to pass budget ordinances to allocate this tax revenue. The County intends to utilize these funds for the Project in accordance with the Amended IGA. Without guidance from the Court, County Council will continue to violate its contract with the voters and to bind future councils with respect to this Project, as well as future projects. Additionally, County Council may continue to ignore public statements and assurances made at the time a referendum is passed in order to use revenue for their own purposes in the future.

68. The State's Joint Bond Review Committee ("JBRC") must approve the Bank's issuance of up to \$420 million in bonds to fund its obligation under the Amended IGA. Should the Court grant the relief requested herein, the State must decide whether to commit substantial funds for a Project with an uncertain (at best) funding picture at the local level.

69. Upon information and belief, the Bank and the SCDOT would not have entered into

the Amended IGA, which resolved prior disputes and litigation between the contracting parties under the original intergovernmental agreement governing the Project, unless the County identified specific, legal revenue sources to fund the County's commitment to the Project.

70. Upon information and belief, the County represented to the Bank and the SCDOT that First Half-Cent and Second Half-Cent revenue could be legally used for the Project. This case squarely challenges that representation.

71. At an April 3, 2019 JBRC subcommittee hearing, a County representative testified no specific project lists were provided to voters in connection with the First Half-Cent and Second Half-Cent measures. That statement of fact was not correct, based on the language of Ordinance Numbers 1324, 1454, and 1907.

72. At that same JBRC subcommittee hearing, the County took the position that First Half-Cent and Second Half-Cent revenue could be spent on "anything that qualified as a road." This is a misstatement of law based on the facts and circumstances at issue in this case, especially the contract with voters doctrine.

73. This case also gives rise to several important and novel questions of law. The resolution of these questions is of critical importance to the State and will provide future guidance not just to the parties in this case, but to county governments throughout the State interested or engaged in transportation sales tax funding, not to mention the Bank.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment

74. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.

75. S.C. Code Ann. § 15-53-30 provides that any person whose rights, status or other legal relations are affected by a contract, statute, or ordinance may have determined any question

regarding construction or validity and obtain a declaration of rights, status or other legal relations.

76. Plaintiffs seek a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 and Rule 57, SCRCF, for the purposes of resolving one or more actual cases and controversies between and among the parties to this case.

77. These issues are ripe for this Court's determination because, among other things, the County has executed the challenged Amended IGA and begun the wrongful, unlawful and *ultra vires* allocation of First Half-Cent and Second Half-Cent revenue to the Project.

78. The County, the Bank, and the DOT are parties in interest, concerning the declaratory relief being sought, because they are all signatories to the Amended IGA.

79. Plaintiffs seek an Order containing the following declarations from this Court:

a. The County cannot legally spend First Half-Cent and Second Half-Cent revenue on the project because the referenda and the ordinances that authorized them listed projects other than the Project, and the Project was never the subject of an ordinance passed by Council or the subject of a referendum submitted to the voters;

b. The County cannot legally spend First Half-Cent and Second Half-Cent revenue on the Project pursuant to, among other things, the "contract with voters" doctrine.

c. Paragraph 3.2(B) of the Amended IGA is void and unenforceable to the extent it mandates or allows the County fund the Project with First Half-Cent and Second Half-Cent revenue.

d. Paragraph 3.2(C) of the Amended IGA unlawfully binds future County Councils, in contravention of State law, by mandating future County Councils use its legislative power to adopt annual budget and supplemental appropriation ordinances to fund the Project with First Half-Cent and Second Half-Cent revenue.

e. The present and future County Councils are not obligated to, rather they are prohibited from, allocating First Half-Cent and Second Half-Cent revenue to the Project through the annual budgetary and supplemental appropriation processes.

f. The County's fiscal year 2019 appropriation of First Half-Cent and Second Half-Cent revenue was unlawfully adopted pursuant to S.C. Code Ann. §§ 4-9-120 and -130.

g. The County lacked authority to execute the Amended IGA because it failed to

provide the requisite statutory notice and ordinance readings pursuant to S.C. Code Ann. §§ 4-9-120 and -130.

h. The Amended IGA is not a binding, fully executed contract under South Carolina law.

FOR A SECOND CAUSE OF ACTION
(Permanent Injunction and Other Equitable/Injunctive Relief)

80. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.

81. Based on the aforementioned declarations, Plaintiffs respectfully seek an Order containing the following injunctive relief:

- a. Prohibiting the County from pledging, allocating, spending, transferring, or otherwise utilizing First Half-Cent and Second Half-Cent revenue for the Project by way of the Amended IGA or otherwise.
- b. Requiring the DOT return to the County the fiscal year 2019 appropriation and any future appropriations pursuant to the Amended IGA to the extent said appropriation contained First Half-Cent or Second Half-Cent revenue.

82. Plaintiffs also respectfully seek all other injunctive and equitable relief necessary and appropriate to prevent the unlawful commitment and expenditure of transportation sales tax revenue by Charleston County.

FOR A THIRD CAUSE OF ACTION
(Attorney's Fees Pursuant to the State Action Statute)

83. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.

84. Plaintiffs in this case are contesting multiple instances of wrongdoing by the County.

85. Should this Court grant all, or some, of the declaratory and other relief requested herein, Plaintiffs respectfully request this Court deem Plaintiffs the “prevailing party” and award attorneys’ fees and costs under S.C. Code Ann. § 15-77-300.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for this Honorable Court to grant the declaratory, injunctive, and other relief requested herein; grant attorneys’ fees and costs pursuant to S.C. Code Ann. § 15-77-300, and grant such other, further, or different relief as may be deemed just and proper.

Respectfully Submitted,

AUSTEN & GOWDER, LLC

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ATTORNEYS FOR PLAINTIFFS

June 3, 2019
Charleston, South Carolina

EXHIBIT A

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

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

WITNESSETH

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

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

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

million is in the form expenditures by the County on roads to be constructed or improved, which directly relate to the Extension Project and as such constitutes the local match contribution for the Extension Project; and

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

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

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

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

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

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

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

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

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

WHEREAS, Parties agree that all applicable and relevant laws must be followed and complied with pursuant to State law; and

WHEREAS, the County, SCDOT, and the Bank now desire to set forth the respective responsibilities of the parties for the Extension Project, including the funding and construction of the Extension Project, as amended to take into account the changes in the Extension Project and cost of the Extension Project and related matters;

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

ARTICLE I

1. Definitions

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

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

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

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

"Budget" means the budget established by the Bank for the Extension Project;

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

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

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

"Event of Default" means the uncured breach by the County, Bank or SCDOT of a provision or obligation in this Agreement.

"Extension Project" means the highway construction and improvement project in Charleston County consisting of extending the Mark Clark Expressway from the current terminus of I-526 at U.S. Highway 17 to Folly Road on James Island.

"Sales Tax" means the roads portion of the one-half percent sales and use tax established in Charleston County by approval of a referendum following the adoption of Charleston County Council Ordinance Number 1324 pursuant to South Carolina Code Ann. Sections 4-37-10, *et seq.*, as amended, entitled "Optional Methods for Financing Transportation Facilities" and the subsequent 2016 sales and use tax established in Charleston County by approval of a referendum following the adoption of Charleston County Ordinance Number 1907 pursuant to South Carolina Code Ann. Sections 4-37-10, *et seq.*, as amended.

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

ARTICLE II

2. Term of Agreement

2.1 This Agreement shall be effective as of June 8, 2007, and shall terminate, except for specific provisions which are expressly stated to survive the termination of this Agreement, on the date when the last of the following events occurs: (i) the Bank makes its final Disbursement and the County makes its final payment on the Extension Project; or (ii) the Extension Project, in its full scope as defined in Article I of this Agreement, is declared completed by the SCDOT and accepted by the SCDOT.

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

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

ARTICLE III

3. Funding Commitments of Parties

3.1 Bank

A. The Bank shall establish a Budget for the Extension Project within the Account of the Bank and will, from time to time, deposit into the Account, or credit the Budget for, monies from one or more sources to fund Disbursements. The Bank will make Disbursements from the Account, pursuant to Article VI of this Agreement, to pay for Eligible Costs of the Extension Project incurred, or to be incurred, directly by the SCDOT, or the County or incurred, or to be incurred, for the Extension Project.

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

3.2 County

A. The County has spent \$117 million from the proceeds of the Sales Tax for highway and road construction and improvements as the local match contribution to the Extension Project. That local match contribution also has been deemed by the Bank as the local match contribution for the U.S. 17/Mark Clark Expressway Interchange Project.

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

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

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

3.3 Respective Allocations and Order of Payments

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

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

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

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

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

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

ARTICLE IV

4. Additional Obligations of the County and SCDOT

4.1 Additional Documents and Actions

A. At the request of the Bank, the County and SCDOT shall execute any other documents that the Bank determines are reasonably necessary to evidence or establish the County's or SCDOT obligations to the Bank set forth in this Agreement.

B. The County and SCDOT acknowledge that the Bank intends to raise funds for some portion or all of its commitment to the Extension Project and other qualified projects through the issuance of revenue bonds or other indebtedness as permitted under the Act. Accordingly, the County and SCDOT shall take such actions and enter into such other documents, including amendments to this Agreement or other agreements that are consistent with the substance hereof, as may be reasonably necessary to comply with South Carolina laws and regulations associated with such bonds or indebtedness and to satisfy requirements for documentation and information reasonably imposed by the Bank, prospective purchasers of such bonds, holders of such bonds, bond insurers, rating agencies, lenders or regulatory agencies and their attorneys, advisors, and representatives; provided, however, that such actions under this Section 4.1.B are legally permissible and that no such action or document shall create any additional material obligation or increase any material obligation of the County or SCDOT.

4.2 Additional Warranties, and Covenants

The County and Bank warrant and covenant that:

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

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

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

D. No litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving the Bank or County is pending or, to the knowledge of the Bank and County threatened, in which any judgment or order may be or has been rendered, or is sought, that may have a material and adverse effect upon the operations or assets of the Bank and County or would materially or adversely affect the validity of this Agreement, or the performance by the Bank and County of its respective obligations thereunder or the transactions contemplated thereby, including the payments pursuant to Article III of this Agreement. The Bank and County will immediately notify

each other in writing if any such litigation or proceeding is commenced or, to its knowledge, may be commenced at any time during the term of this Agreement.

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

4.3 Reimbursement of Bank

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

4.4 Extension Project Reporting

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

4.5 Assistance with Municipal Cooperation and Agreements

The County shall be responsible, with the assistance of the SCDOT, for obtaining from each municipality in which any portion of the Extension Project is to be constructed

a properly and duly executed Municipal State Highway Extension Project Agreement, as required by South Carolina Code Ann. Section 57-5-820, and delivering the original, executed Municipal State Highway Project Agreement to SCDOT. The Parties to this Agreement acknowledge that the failure of a municipality to cooperate in executing such an agreement may delay the Extension Project, increase the costs of the Extension Project, result in a modification of or reduction in the scope of the Extension Project, or otherwise impact the Extension Project.

ARTICLE V

5. Extension Project Administration

5.1 Extension Project Administration

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

The SCDOT shall be entitled to draw, and be paid hereunder, its normal and customary rates for its services that are Eligible Costs of the Extension Project subject to review and approval by the Bank or its designee as to the reasonableness of such rates and costs and the qualification of such costs as Eligible Costs. All work, services, construction and materials used on the Extension Project shall conform to the standards and specifications applied by SCDOT. The Extension Project shall be opened for public use upon completion subject to the terms of acceptance therefor set forth in Section 5.6 of this Agreement.

5.2 Contracting Methods

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

5.3 Scope of Extension Project

The scope of the Extension Project shall be as set forth in the definition of the Extension Project in Section 1 of this Agreement. Any material reduction in that scope of the Extension Project shall require the approval of SCDOT, the County, and the Bank and an amendment to this Agreement.

5.4 Extension Project Delivery

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

5.5 Utility Relocations

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

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

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

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

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

5.6 Acceptance

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

5.7 Right-of-Way Acquisition

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

5.8 Public Information

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

ARTICLE VI

6. SCDOT Draw Requests

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

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

6.1 Conditions Precedent to Bank's Disbursements

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

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

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

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

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

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

6.2 Conditions Precedent to County's Payments

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

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

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

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

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

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

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

ARTICLE VII

7. Indemnification of Bank.

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

Section 7 thereby requiring it to indemnify and hold harmless the Bank to the maximum extent permitted by law. This Section 7 shall survive the termination of this Agreement.

ARTICLE VIII

8. Rights and Remedies

8.1 Events of Default

In the event the County, SCDOT or Bank (the "Defaulting Party") shall violate or fail to comply with any provision or obligation under this Agreement (including other agreements and obligations incorporated herein), and if such failure continues for a period of thirty (30) days after receipt of a written notice by the Defaulting Party of such default from the Party not in default (the "Non-Defaulting Party"), such failure shall constitute an Event of Default hereunder. Among other rights and remedies available to the Non-Defaulting Party under this Agreement following an uncured Event of Default, the Non-Defaulting Party shall have the right to cease making any further Disbursements or payments under this Agreement with respect to the Extension Project until such Event of Default has been cured to the satisfaction of the Non-Defaulting Party.

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

8.2 Remedies for Bank and County

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

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

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

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

8.3 Remedies Cumulative; Nonwaiver; Attorney's Fees

All rights and remedies of the Parties provided for in this Agreement or in any other related document as to any Party are cumulative, shall survive the termination of this Agreement, and shall be in addition to any and all other related remedies provided for or available to the Parties at law, including those contained in the Act, or in equity. The exercise of any right or remedy by a Party shall not in any way constitute a cure or waiver of an Event of Default, nor invalidate any act done pursuant to any notice of the occurrence of an Event of Default. The Party that prevails in any litigation arising under this Article VIII shall be entitled to the payment of its reasonable attorneys' fees and litigation costs by the Party found by the court to have caused the Event of Default.

ARTICLE IX

9. General Conditions

9.1 Waivers

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

9.2 Benefit and Rights of Third Parties

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

9.3 No Liability of Bank

The Bank makes no representations and assumes no obligations or duties as to any person, firm, entity, or party, including the parties to this Agreement, concerning the quality of the design, construction, modification, or operation of the Extension Project, or any portion or component thereof, or the absence therefrom of defects of any kind. The Bank shall not be liable in any manner to any person, firm, entity, or party, including the Parties to this Agreement, for the design, location, construction, modification, or operation of the Extension Project, or the failure to design, locate, modify, operate, or construct the Extension Project or any portion or component thereof, generally or in any particular manner. The Bank shall not be liable in any manner on any Contract to which it is not a named party, the execution of which has not been properly and duly authorized by the Board, or which has not been so executed by the Bank.

9.4 Assignment

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

9.5 Captions

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

9.6 Notices

All notices required to be given hereunder, except as otherwise provided in this Agreement, shall be deemed effective when received by the other Parties, through certified

mail, registered mail, or by delivery by a nationally recognized service. All such notices shall be addressed to the parties as follows:

Charleston County

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

South Carolina Transportation Infrastructure Bank

Chairman

South Carolina Transportation Infrastructure Bank
955 Park Street, Room 120 B
Columbia, SC 29201

South Carolina Department of Transportation:

Secretary

P.O. Box 191
Columbia, SC 29202-0191 or
955 Park Street, Room 314
Columbia, SC 29201

9.7 Amendments

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

9.8 Savings Clause

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

9.9 Execution in Counterparts

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

9.10 Authority to Execute

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

9.11 Releases

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

(SEPARATE SIGNATURE PAGES FOR EACH PARTY TO BE ADDED)

SIGNATURE PAGE FOR 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: 

John B. White, Jr.
Chairman

1/10/15

Attest:

By: 

Robert E. Tyson, Jr.
General Counsel

(SEAL)

SIGNATURE PAGE FOR SCDOT

IN WITNESS WHEREOF, the 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: 

Christy A. Hall
Secretary of Transportation

Recommended by:

By: 

Linda C. McDonald
Chief Counsel

(SEAL)

SIGNATURE PAGE FOR CHARLESTON COUNTY

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

Charleston County, South Carolina

By:

Printed Name:

Title:



Attest:

By:

Printed Name:

Title:

(SEAL)

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

EXHIBIT B

CHARLESTON COUNTY ORDINANCE NO. 1324

TO LEVY AND IMPOSE A ONE-HALF (2) OF ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN CHARLESTON COUNTY PURSUANT TO SECTION 4-37-30 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY BE IMPOSED; TO PROVIDE THE ESTIMATED COST OF THE PROJECTS FUNDED FROM THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM ON THE IMPOSITION OF THE SALES AND USE TAX AND THE ISSUANCE OF GENERAL OBLIGATION BONDS AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTIONS IN THE REFERENDUM; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE BOARD OF ELECTIONS AND VOTER REGISTRATION OF CHARLESTON COUNTY; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

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 ACounty Council@) have made the following findings:

(a) The South Carolina General Assembly has enacted Section 4-37-30 of the Code of Laws of South Carolina 1976, as amended (the AAct@), pursuant to which the county governing body may impose by ordinance a sales and use tax in an amount not to exceed one percent, subject to the favorable results of a referendum, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.

(b) Pursuant to the terms of Section 4-37-10 of the Code of Laws of South Carolina 1976, as amended, the South Carolina General Assembly has authorized county government to finance the costs of acquiring, designing, constructing, equipping and operating highways, roads, streets and bridges and other transportation related projects either alone or in partnership with other governmental entities. As a means to furthering the powers granted to the County under the provisions of Section 4-9-30 and Sections 6-21-10, *et. seq* of the Code of Laws of South Carolina 1976, as amended, the County Council is authorized to form a transportation authority or to enter into a partnership, consortium, or other contractual arrangement with one or

more other governmental entities pursuant to Title 4, Chapter 37 of the Code of Laws of the South Carolina 1976, as amended. The County Council has decided to provide funding for roads, mass transit, and greenbelts, *inter alia*, without the complexity of a transportation authority or entering into a partnership, consortium, or other contractual arrangements with one or more other governmental entities at this time; provided that nothing herein shall preclude County Council from entering into partnerships, consortiums, or other contractual arrangements in the future. County Council may utilize such provisions in the future as necessary or convenient to promote the public purposes served by funding roads, mass transit, greenbelts as provided in this Ordinance.

(c) The County Council finds that a one-half of one percent sales and use tax should be levied and imposed within Charleston County, for the following projects and purposes:

(i) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities.

(ii) For financing the costs of greenbelts

(the above herein collectively referred to as the Aprojects®).

For a period not to exceed 25 years from the date of imposition of such tax, to fund the projects at a maximum cost not to exceed \$1,303,360,000 to be funded from the net proceeds of a sales and use tax imposed in Charleston County pursuant to provisions of the Act, subject to approval of the qualified electors of Charleston County in referendum to be held on November 2, 2004. The imposition of the sales and use tax and the use of sales and use tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act, the provisions of this Ordinance, and other applicable law. Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects, and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public.

(c) County Council finds that the imposition of a sales and use tax in Charleston County for the projects and purposes defined in this Ordinance for a limited time not to exceed 25 years to collect a limited amount of money will serve a public purpose, provide funding for roads and transportation, mass transit, and greenbelts to facilitate economic development, promote public safety, provide needed infrastructure, promote desirable living conditions, enhance the quality of life in Charleston County, and promote public health and safety in the event of fire, emergency, panic, and other dangers, and prepare Charleston County to meet present and future needs of Charleston County and its citizens.

Section 2. Approval of Sales and Use Tax Subject to Referendum.

2.1 A sales and use tax (the ASales and Use Tax@), as authorized by the Act, is hereby imposed in Charleston County, South Carolina, subject to a favorable vote of a majority of the qualified electors voting in a referendum on the imposition of the tax to be held in Charleston County, South Carolina on November 2, 2004.

2.2 The Sales and Use Tax shall be imposed for a period not to exceed 25 years from the date of imposition.

2.3 The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of \$1,303,360,000, and the maximum amount of net proceeds to be raised by the tax shall not exceed \$1,303,360,000, which includes administrative costs and debt service on bonds issued to pay for the projects. The estimated principal amount of initial authorization of bonds to be issued to pay costs of the projects and to be paid by a portion of the Sales and Use Tax is \$113,000,000. The proceeds of these bonds shall be used for the following projects, in estimated amounts as described: \$25,000,000 to begin the right-of-way acquisition and engineering process for the widening and improvement of Johnnie Dodds Boulevard from the Arthur Ravenel, Jr. Bridge to the I-526 overpass; \$7,000,000 for Glenn McConnell Parkway/Bees Ferry Road Intersection improvements; \$10,000,000 for road improvements on James Island (Folly Road and Maybank Highway intersection improvements, Harbor View Road Improvements, and an off-ramp interchange loop from the James Island Connector to Folly Road); \$6,000,000 for a US Highway 17 access ramp onto the US Highway 61 connector near Wesley Drive; \$29,000,000 for acquisition and construction of a roadway connecting Ashley Phosphate Road and the Palmetto Parkway through Spartan Blvd.; and \$36,000,000 for greenbelts.

2.4 The Sales and Use Tax shall be expended for the costs of the following projects, including payment of any sums as may be required for the issuance of and debt service for bonds, the proceeds of which are applied to such projects, for the following purposes:

(i) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than \$1,081,788,800.

(ii) For financing the costs of greenbelts. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than \$221,571,200.

2.5 If the Sales and Use Tax is approved by a majority of the qualified electors voting in a referendum to be held in Charleston County on November 2, 2004, the tax is to be imposed on the first day of May, 2005 provided the Board of Elections and Voter Registration of

Charleston County shall certify the results not later than November 30, 2004, to Charleston County Council and the South Carolina Department of Revenue. Included in the certification must be the maximum cost of the projects to be funded in whole or in part from the proceeds of the tax, the maximum time specified for the imposition of the tax, and the principal amount of initial authorization of bonds, if any, to be supported by a portion of the tax.

2.6 The Sales and Use Tax, if approved in the referendum conducted on November 2, 2004 shall terminate on the earlier of:

- (1) on April 30, 2030; or
- (2) the end of the calendar month during which the Department of Revenue determines that the tax has raised revenues sufficient to provide the greater of either the costs of the projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

2.7 Amounts of Sales and Use Tax collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of Charleston County on transportation infrastructure debts only.

2.8 The Sales and Use Tax must be administered and collected by the South Carolina Department of Revenue in the same manner that other sales and use taxes are collected. The Department may prescribe amounts that may be added to the sales price because of the tax.

2.9 The Sales and Use Tax is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 of the Code of Laws of South Carolina, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture Food Stamps are exempt from the tax imposed by this Ordinance. The tax imposed by this Ordinance also applies to tangible property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina.

2.10 Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

2.11 Utilities are required to report sales in the county in which the consumption of the tangible personal property occurs.

2.12 A taxpayer subject to the tax imposed by ' 12-36-920 of the Code of Laws of South Carolina 1976, as amended, who owns or manages rental units in more than one county must report separately in his sales tax return the total gross proceeds from business done in each county.

2.13 The gross proceeds of sales of tangible personal property delivered after the imposition date of the Sales and Use Tax, either under the terms of a construction contract executed before the imposition date, or written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this ordinance if a verified copy of the contract is filed with Department of Revenue within six months after the imposition date of the sales and use tax provided for in this Ordinance.

2.14 Notwithstanding the imposition date of the Sales and Use Tax with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this ordinance is imposed beginning on the first day of the billing period beginning on or after the imposition date.

**Section 3. Remission of Sales and Use Tax; Segregation of Funds;
Administration of Funds; Distribution to Counties: Confidentially.**

3.1 The revenues of the Sales and Use Tax collected under this Ordinance must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of such revenues, the State Treasurer shall distribute the revenues quarterly to the Charleston County Treasurer and the revenues must be used only for the purposes stated herein. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these distributions must be made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

3.2 (a) Any outside agencies, political subdivisions or organizations designated to receive funding from the Sales and Use Tax must annually submit requests for funding in accordance with procedures and schedules established by the County Administrator. The County Administrator shall prepare the proposed budget for the Sales and Use Tax and submit it to the County Council at such time as the County Council determines. At the time of submitting the proposed budget, the County Administrator shall submit to the County Council a statement describing the important features of the proposed budget.

(b) County Council shall adopt annually and prior to the beginning of fiscal year a budget for expenditures of Sales and Use Tax revenues. County Council may make supplemental appropriations for the Sales and Use Tax following the same procedures prescribed for the enactment of other budget ordinances. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for the Sales and Use Tax for purposes other than as specified in the annual budget when such transfers are approved by County Council. In the preparation of the annual budget, County Council may require any reports, estimates, and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the County.

(c) Except as specifically authorized by County Council, any outside agency or organization receiving an appropriation of the Sales and Use Tax must provide to County Council an independent annual audit of such agency=s or organization=s financial records and transactions and such other and more frequent financial information as required by County Council, all in form satisfactory to County Council.

3.3 The Department of Revenue shall furnish data to the State Treasurer and to the Charleston County Treasurer for the purpose of calculating distributions and estimating revenues. The information which must be supplied to the County upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of S.C. Code Ann. ' 12-54-240. Any person violating the provisions of this section shall be subject to the penalties provided in S.C. Code Ann. ' 12-54-240.

Section 4. Sales and Use Tax Referendum; Ballot Question.

4.1 The Board of Elections and Voter Registration of Charleston County shall conduct a referendum on the question of imposing the Sales and Use Tax in the area of Charleston County on Tuesday, November 2, 2004, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, mutatis mutandis. The Board of Elections and Voter Registration of Charleston County shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and purposes as set forth herein, and the cost of projects, and shall publish such election and other notices as are required by law.

4.2 The referendum question to be on the ballot of the referendum to be held in Charleston County on November 2, 2004, must read substantially as follows:

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

I approve a special sales and use tax in the amount of one-half (2) of one percent to be imposed in Charleston County for not more than 25 years, or until a total of \$1,303,360,000 in resulting revenue has been collected, whichever occurs first. The sales tax proceeds will be used for the following projects:

Project (1) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities. \$1,081,788,800.

Project (2) For financing the costs of greenbelts. \$221,571,200.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of levying the special sales and use tax shall vote AYES;@ and

All qualified electors opposed to levying the special sales and use tax shall vote ANO.@

QUESTION 2

I approve the issuance of not exceeding \$113,000,000 of general obligation bonds of Charleston County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed 25 years, to fund completion of projects from among the categories described in Question 1 above.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote AYES;@ and

All qualified electors opposed to the issuance of bonds for the stated purposes shall vote ANO.@

4.3 In the referendum on the imposition of a special sales and use tax in Charleston County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote Ayes@ and all qualified electors opposed to levying the tax shall vote Ano@. If a majority of the electors voting in the referendum shall vote in favor of imposing the tax, then the

tax is imposed as provided in the Act and this Ordinance. Expenses of the referendum must be paid by Charleston County government.

4.4 In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote Ayes@ and all qualified electors opposed to the issuance of bonds shall vote No@. If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Charleston County government.

Section 5. Imposition of Tax Subject to Referendum.

The imposition of the Sales and Use Tax in Charleston County is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing a sales and use tax in the area of Charleston County in a referendum to be conducted by the Board of Elections and Voter Registration of Charleston County on November 2, 2004, and the favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the imposition of a sales and use tax pursuant to the provisions of this Ordinance.

Section 6. Miscellaneous.

(c) If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever; provided, however, that the Sales and Use Tax may not be imposed without the favorable results of the referendum to be held on November 2, 2004

(d) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

(e) The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not effect the meaning, construction, interpretation, or effect of this ordinance.

(f) This Ordinance shall take effect immediately upon approval at third reading.

(g) All previous ordinances regarding the same subject matter as this ordinance are hereby repealed.

ENACTED THIS 10TH DAY OF AUGUST, 2004.

CHARLESTON COUNTY COUNCIL

(SEAL)

Chairman

Clerk of Council

First Reading: June 26, 2004
Public Hearing: July 8, 2004
Second Reading: July 27, 2004
Third Reading: August 10, 2004

EXHIBIT C

AN ORDINANCE

ORDERING AN ELECTION FOR THE DETERMINATION OF THE QUESTION OF WHETHER CHARLESTON COUNTY SHALL BE EMPOWERED TO ISSUE AND SELL GENERAL OBLIGATION BONDS OF THE COUNTY IN THE AMOUNT AND FOR THE PURPOSES SET FORTH HEREIN.

WHEREAS, pursuant to ordinance number 1324, adopted August 10, 2004 (the "Ordinance"), Charleston County Council provided for the imposition of a $\frac{1}{2}$ of one percent sales and use tax (the "Transportation Sales Tax") pursuant to the provisions of Section 4-37-10 *et seq.* of the Code of Laws of South Carolina, 1976, as amended (the "Act") and subject to the favorable result of a referendum vote in the County (the "Referendum"), and

WHEREAS, On November 2, 2004, voters in the County approved the Referendum, allowing for the imposition of the Transportation Sales Tax, and

WHEREAS, in addition to the approval of the imposition of the Transportation Sales Tax, voters in the Referendum approved an additional question allowing for the issuance of not exceeding \$113,000,000 of general obligation bonds of the County to fund projects from among the categories described in the Ordinance and the Act, and

WHEREAS, After receiving extensive public input through the advisory committees established by Council— the Greenbelts Advisory Board and the Transportation Advisory Board, as well as from the Park and Recreation Commission, the County's transportation consultants and from other sources of advice and comment, Council finds that it is of critical importance to the success of the County's greenbelts and transportation programs to pursue the issuance of additional general obligation bonds to further the purposes of and to finance the costs of projects authorized by the Ordinance and the Act; and

WHEREAS, if approved by the referendum and issued by Council, the bonds would be general obligation bonds, additionally secured by an irrevocable pledge of Transportation Sales Tax revenues; and

WHEREAS, pursuant to the provisions of Section 14(6) of Article X of the Constitution of South Carolina, the issuance of said bonds may be authorized by the favorable vote of a majority of the qualified electors of the County voting in referendum authorized by law; and

WHEREAS, pursuant to the provisions of Section 14 of Article X and Section 11-27-40 of the Code of Laws of South Carolina, 1976, as amended and other applicable law, County Council may order the holding of a referendum election in the County at which the question of the issuance of general obligation bonds of said political subdivision is submitted to the qualified electors of said political subdivision,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF CHARLESTON COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED, AS FOLLOWS:

SECTION 1

_____That the facts set forth in the recitals hereof are in all respects true and correct, and IT IS SO DECLARED.

SECTION 2

_____The Board of Elections and Voter Registration of Charleston County shall conduct a referendum on the question set forth herein on Tuesday, November 7, 2006, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, *mutatis mutandis*.

SECTION 3

_____That the designation of voting precincts for said Election shall be as established

by Section 7-7-140, Code of Laws of South Carolina, as amended by Act 225 of 2006. Polling places within said precincts shall be as designated by the Board of Elections and Voter Registration of Charleston County.

SECTION 4

_____As a result of the successful passage of the Referendum, through receipt of collections from the Transportation Sales Tax, County Council expects to be able to issue the bonds contemplated herein and pay the debt service therefor without the need for property tax or other revenues. Therefore, while the bonds shall be general obligation bonds, Council intends to pledge the Transportation Sales Tax revenues as the source of repayment and does not intend to levy any additional taxes or fees for the repayment of the bonds.

SECTION 5

_____5.1. That in conformity with Sections 7-13-400, 4-37-30 and 11-27-40 of the Code of Laws of South Carolina, 1976, as amended, and Article X, Section 14(6) of the Constitution of South Carolina, as amended, the form of ballot to be used in said Election must read substantially as follows:

QUESTION 1:

Shall Charleston County be empowered to issue not exceeding \$205,000,000 of general obligation bonds of Charleston County, payable from the ½-cent special sales and use tax approved by referendum November 2, 2004, the bonds maturing over a period ending no later than 2030, to fund the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, including, but not limited to the following projects:

Widening and improvements to US Route 17/Johnnie Dodds
Boulevard from the Arthur Ravenel, Jr. Bridge to the
Interstate I-526 Overpass
Folly Road (SC 171)/Maybank Highway (SC 700)
Intersection Improvements
James Island Connector (SC 30) Interchange Loop to Folly
Road (SC 171)
Harbor View Road (S-1028) Improvements
Interstate I-526 Loop Ramp to Glenn McConnell Parkway
(SC 61 Spur)

Bees Ferry Road (s-57) widening from US Route 17 to Ashley River Road (SC 61)
Folly Road (SC 171)/Camp Road (s-28) Intersection Improvements
Future Drive extension to Ladson Road and the extension of Northside Drive
Maybank Highway (SC 700) widening from proposed I-526/Mark Clark interchange to Bohicket Road/Main Road (S-20)
Roadway Improvements in the Medical University area including Lockwood Drive (S404), Courtenay Drive (S-550), and Bee Street (S-551) with additional improvements at the Courtenay Drive intersections with Calhoun Street (S-404) and Spring Street

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote "YES;" and All qualified electors opposed to the issuance of bonds for the stated purposes shall vote "NO."

QUESTION 2:

Shall Charleston County be empowered to issue not exceeding \$95,000,000 of general obligation bonds of Charleston County, payable from the ½- cent special sales and use tax approved by referendum November 2, 2004, the bonds maturing over a period ending no later than 2030, to fund the costs of greenbelts projects.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote "YES;" and all qualified electors opposed to the issuance of bonds for the stated purposes shall vote "NO."

5.2 In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote "yes" and all qualified electors opposed to the issuance of bonds shall

vote "no". If a majority of the electors voting in the referendum shall vote in favor of either or both questions on the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Charleston County government.

SECTION 6

____ Pursuant to Section 7-13-35, Code of Laws of South Carolina, 1976, as amended, and in order that all persons qualified to vote in said Election shall have full knowledge of said Election and due notice thereof, a Notice of Election shall be published in a newspaper of general circulation in Charleston County not later than sixty days before the election and republished not later than two weeks after the first notice. Pursuant to Section 4-15-50, Code of Laws of South Carolina, 1976, as amended, at least once, not less than 15 days prior to the election, a notice of the election must be placed in a newspaper published in the county. This notice must include, among other information, the amount of bonds to be issued and a brief description of the purpose for which the proceeds of the bonds are to be applied. The Notice shall be substantially in the form set forth in attachment A hereto.

SECTION 7

____ That the Board of Elections and Voter Registration of Charleston County be given notice of the passage of this Ordinance, and of the action of County Council in ordering the aforesaid Election, and be requested and directed:

- (a) to join in the action of County Council in providing for the giving of Notice of Election;
- (b) to name the Managers of Election;
- (c) to provide polling places for the Election;
- (d) to print and make available the form of ballot set forth in this Ordinance;

(e) to conduct said Election pursuant to the laws of this State and of the United States, receive the returns thereof, and to report the same to County Council.

SECTION 8 Miscellaneous.

8.1 If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question

inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

8.2 This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

8.3 The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not effect the meaning, construction, interpretation, or effect of this ordinance.

8.4 The County Attorney, or his designee, is authorized and directed to submit this ordinance and other information necessary to the United States Department of Justice to obtain pre-clearance pursuant to Section 5 of the Voting Rights Act regarding any and all aspects that may be subject to such pre-clearance.

8.5 The County Administrator, or his designee, is hereby authorized and directed to undertake any and all additional acts necessary and proper for the holding of the referendum described herein pursuant to applicable law.

8.6 This Ordinance shall take effect immediately upon approval at third reading.

DULY ADOPTED this 18th day of July, 2006.

Leon E. Stavrinakis
Chairman, Charleston County Council

Attest:
Beverly T. Craven
Clerk of Council

First Reading: June 7, 2006

Second Reading: June 21, 2006

Third Reading: July 18, 2006

NOTICE OF ELECTION

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Notice is hereby given that the General Election for Federal, State and County officers, Statewide Constitutional Amendment questions and any local questions will be held at the voting precincts fixed by law in this County on Tuesday, November 7, 2006, this day being Tuesday following the first Monday, as prescribed by the State Constitution. Any person wishing to register to vote in this election must do so no later than October 7, 2006.

The polls shall be open from 7:00 a.m. until 7:00 p.m. at the locations designated below [TO BE COMPLETED]. The Managers of Election shall see that each person offering to vote takes the oath that he/she is qualified to vote at this election according to the Constitution of this State and he/she has not voted before in this election.

Voters who are blind, physically disabled, or unable to read or write are entitled to assistance in casting their ballot. This assistance may be given by anyone the voter chooses except his employer, an agent of his employer, or an officer or agent of his union. The Managers must be notified if assistance is needed.

Voters who are unable to enter their polling place due to physical handicap or age may vote in the vehicle in which they drove, or were driven, to the polls. When notified, the Managers will help these voters using the curbside voting provision.

In an effort to notify the disabled voter of inaccessibility of a polling place, an asterisk * is being placed after a polling place that is listed below. The asterisk indicates a polling place is inaccessible to handicapped voters.

Registered electors who cannot vote in person may be eligible to vote by absentee ballot. Persons wishing more information concerning absentee voting should contact the Board of Elections and Voter Registration of Charleston County at 744-VOTE (8683).

At 2:00 p.m. on election day the County Election Commission will begin its examination of the absentee ballot return envelopes at the Board of Elections & Voter Registration office, 4367 Headquarters Road, North Charleston, SC.

On Friday, November 10, 2006 at 10:00 a.m. the County Board of Canvassers will hold a hearing to determine the validity of all ballots cast in these elections. This hearing will be at the Board of Elections and Voter Registration office, 4367 Headquarters Road, North Charleston, SC.

The following Countywide Referendum Questions will appear on the ballot:

QUESTION 1:

Shall Charleston County be empowered to issue not exceeding \$205,000,000 of general obligation bonds of Charleston County, payable from the ½- cent special sales and use tax approved by referendum November 2, 2004, the bonds maturing over a period ending no later than 2030, to fund the costs of highways, roads, streets, bridges, and other transportation- related projects facilities, and drainage facilities related thereto, including, but not limited to the following projects:

Widening and improvements to US Route 17/Johnnie Dodds Boulevard from the Arthur Ravenel, Jr. Bridge to the Interstate I-526 Overpass
Folly Road (SC 171)/Maybank Highway (SC 700) Intersection Improvements
James Island Connector (SC 30) Interchange Loop to Folly Road (SC 171)
Harbor View Road (S-1028) Improvements
Interstate I-526 Loop Ramp to Glenn McConnell Parkway (SC 61 Spur)
Bees Ferry Road (s-57) widening from US Route 17 to Ashley River Road (SC 61)
Folly Road (SC 171)/Camp Road (s-28) Intersection Improvements
Future Drive extension to Ladson Road and the extension of Northside Drive
Maybank Highway (SC 700) widening from proposed I-526/Mark Clark interchange to Bohicket Road/Main Road (S-20)
Roadway Improvements in the Medical University area including Lockwood Drive (S404), Courtenay Drive (S-550), and Bee Street (S-551) with additional improvements at the Courtenay Drive intersections with Calhoun Street (S-404) and Spring Street

QUESTION 2:

Shall Charleston County be empowered to issue not exceeding \$95,000,000 of general obligation bonds of Charleston County, payable from the ½- cent special sales and use tax approved by referendum November 2, 2004, the bonds maturing over a period ending no later than 2030, to fund the costs of greenbelts projects?

The questions are being submitted at the direction of the Charleston County Council pursuant to Sections 7-13-400, 4-37-30, and 11-27-40 of the Code of Laws of South Carolina 1976, as amended, and Article X, Section 14(6) of the South Carolina Constitution. As a result of the successful passage of the sales tax referendum held

November 2, 2004, through receipt of collections from the transportation sales tax, County Council expects to be able to issue the bonds described above and pay the debt service therefore without the need for property tax or other revenues. Therefore, while the bonds shall be general obligation bonds, County Council intends to pledge the transportation sales tax revenues as the source of repayment and does not intend to levy any additional taxes or fees for the repayment of the bonds.

EXHIBIT D

AN ORDINANCE

TO LEVY AND IMPOSE A ONE-HALF (1/2) OF ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN CHARLESTON COUNTY PURSUANT TO SECTION 4-37-30 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY BE IMPOSED; TO PROVIDE THE ESTIMATED COST OF THE PROJECTS FUNDED FROM THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM ON THE IMPOSITION OF THE SALES AND USE TAX AND THE ISSUANCE OF GENERAL OBLIGATION BONDS AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTIONS IN THE REFERENDUM; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE BOARD OF ELECTIONS AND VOTER REGISTRATION OF CHARLESTON COUNTY; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

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") has made the following findings:

1.1 The South Carolina General Assembly has enacted Section 4-37-30 of the Code of Laws of South Carolina 1976, as amended (the "Act"), pursuant to which the county governing body may impose by ordinance a sales and use tax in an amount not to exceed one percent, subject to the favorable results of a referendum, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.

1.2 Pursuant to the terms of Section 4-37-10 of the Code of Laws of South Carolina 1976, as amended, the South Carolina General Assembly has authorized county government to finance the costs of highways, roads, streets, bridges and other transportation related projects either alone or in partnership with other governmental entities. As a means to furthering the powers granted to the County under the provisions of Section 4-9-30 and Sections 6-21-10, *et seq.* of the Code of Laws of South Carolina 1976 as amended, the County Council is authorized to form a transportation authority or to enter into a partnership, consortium, or other contractual arrangement with one or more other governmental entities pursuant to Title 4, Chapter 37 of the Code of Laws of the South Carolina 1976, as amended. The County Council has decided to provide funding for highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects, *inter alia*, without the complexity of a transportation authority or entering into a partnership, consortium, or other contractual arrangements with one or more other

governmental entities at this time; provided that nothing herein shall preclude County Council from entering into partnerships, consortiums, or other contractual arrangements in the future. County Council may utilize such provisions in the future as necessary or convenient to promote the public purposes served by funding highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects as provided in this Ordinance.

1.3 The County Council finds that a one-half of one percent sales and use tax should be levied and imposed within Charleston County, for the following projects and purpose:

(i) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities.

(ii) For financing the costs of greenbelts.

(the above herein referred to as the "projects").

For a period not to exceed 25 years from the date of imposition of such tax, to fund the projects at a maximum cost not to exceed \$2,100,000,000 to be funded from the net proceeds of a sales and use tax imposed in Charleston County pursuant to provisions of the Act, subject to approval of the qualified electors of Charleston County in referendum to be held on November 8, 2016. The imposition of the sales and use tax and the use of sales and use tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act, the provisions of this Ordinance, and other applicable law. Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects, and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public.

1.4 County Council finds that the imposition of a sales and use tax in Charleston County for the projects and purposes defined in this Ordinance for a limited time not to exceed 25 years to collect a limited amount of money will serve a public purpose, provide funding for highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects as provided in this Ordinance to facilitate economic development, promote public safety, provide needed infrastructure, promote desirable living conditions, enhance the quality of life in Charleston County, and promote public health and safety in the event of fire, emergency, panic, and other dangers, and prepare Charleston County to meet present and future needs of Charleston County and its citizens.

Section 2. Approval of Sales and Use Tax Subject to Referendum.

2.1 A sales and use tax (the "Sales and Use Tax"), as authorized by the Act, is hereby imposed in Charleston County, South Carolina, subject to a favorable vote of a majority of the qualified electors voting in a referendum on the imposition of the tax to be held in Charleston County, South Carolina on November 8, 2016.

2.2 The Sales and Use Tax shall be imposed for a period not to exceed 25 years from the date of imposition.

2.3 The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of \$2,100,000,000, and the maximum amount of net proceeds to be raised by the tax shall not exceed \$2,100,000,000, which includes administrative costs and debt service on bonds issued to pay for the projects. The estimated principal amount of initial authorization of bonds to be issued to pay costs of the projects and to be paid by a portion of the Sales and Use Tax is \$200,000,000.

2.4 The Sales and Use Tax shall be expended for the costs of the following projects, including payment of any sums as may be required for the issuance of and debt service for bonds, the proceeds of which are applied to such projects, for the following purposes:

(i) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities, which may include, but not limited to:

Projects of regional significance: Airport Area Roads Improvements, Dorchester Road Widening, Michaux Parkway to County line, US 17 at Main Road flyover and widening Main Road from Bees Ferry to Betsy Kerrison with Parkway type section at Bohicket

Projects of local significance: Annual Allocation continuation: Resurfacing, Bike/Pedestrian Facilities, Local Paving and Intersection Improvements, Glenn McConnell Parkway Widening, James Island Intersection and Pedestrian Improvements, Northside Drive Realignment at Ashley Phosphate Road, Rural Road Improvements, Savannah Highway/Ashley River Bridges/Crosstown Congestion Infrastructure Improvements, Savannah Highway Capacity and Intersection Improvements, SC 41 Improvements / US 17 to Wando Bridge, US 78 Improvements from US 52 to County line

The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than \$1,890,000,000;

(ii) For financing the costs of greenbelts. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than \$210,000,000.

2.5 If the Sales and Use Tax is approved by a majority of the qualified electors voting in a referendum to be held in Charleston County on November 8, 2016, the tax is to be imposed on the first day of May, 2017, provided the Board of Elections and Voter Registration of Charleston County shall certify the results not later than November 30, 2016, to Charleston County Council and the South Carolina Department of Revenue. Included in the certification must be the maximum cost of the projects to be funded in whole or in part from the proceeds of the tax, the maximum time specified for the imposition of the tax, and the principal amount of initial authorization of bonds, if any, to be supported by a portion of the tax.

2.6 The Sales and Use Tax, if approved in the referendum conducted on November 8, 2016 shall terminate on the earlier of:

- (1) on April 30, 2042; or
- (2) the end of the calendar month during which the Department of Revenue determines that the tax has raised revenues sufficient to provide the greater of either the costs of the projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

2.7 Amounts of Sales and Use Tax collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of Charleston County on transportation infrastructure debts only.

2.8 The Sales and Use Tax must be administered and collected by the South Carolina Department of Revenue in the same manner that other sales and use taxes are collected. The Department may prescribe amounts that may be added to the sales price because of the tax.

2.9 The Sales and Use Tax is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 of the Code of Laws of South Carolina 1976, as amended, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina 1976, as amended. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina 1976, as amended, are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture Food Stamps are exempt from the tax imposed by this Ordinance. The tax imposed by this Ordinance also applies to tangible property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina 1976, as amended.

2.10 Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina 1976, as amended, must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

2.11 Utilities are required to report sales in the county in which the consumption of the tangible personal property occurs.

2.12 A taxpayer subject to the tax imposed by Section 12-36-920 of the Code of Laws of South Carolina 1976, as amended, who owns or manages rental units in more than one county must report separately in his sales tax return the total gross proceeds from business done in each county.

2.13 The gross proceeds of sales of tangible personal property delivered after the imposition date of the Sales and Use Tax, either under the terms of a construction contract executed before the imposition date, or written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this ordinance if a verified copy of the contract is filed with Department of Revenue within six months after the imposition date of the sales and use tax provided for in this Ordinance.

2.14 Notwithstanding the imposition date of the Sales and Use Tax with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this ordinance is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Section 3. Remission of Sales and Use Tax; Segregation of Funds; Administration of Funds; Distribution to Counties; Confidentially.

3.1 The revenues of the Sales and Use Tax collected under this Ordinance must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of such revenues, the State Treasurer shall distribute the revenues quarterly to the Charleston County Treasurer and the revenues must be used only for the purposes stated herein. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these distributions must be made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

3.2 (a) Any outside agencies, political subdivisions or organizations designated to receive funding from the Sales and Use Tax must annually submit requests for funding in accordance with procedures and schedules established by the County Administrator. The County Administrator shall prepare the proposed budget for the Sales and Use Tax and submit it to the County Council at such time as the County Council determines. At the time of submitting the proposed budget, the County Administrator shall submit to the County Council a statement describing the important features of the proposed budget.

(b) County Council shall adopt annually and prior to the beginning of fiscal year a budget for expenditures of Sales and Use Tax revenues. County Council may make supplemental appropriations for the Sales and Use Tax following the same procedures prescribed for the enactment of other budget ordinances. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for the Sales and Use Tax for purposes other than as specified in the annual budget when such transfers are approved by County Council. In the preparation of the annual budget, County Council may require any reports, estimates, and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the County.

(c) Except as specifically authorized by County Council, any outside agency or organization receiving an appropriation of the Sales and Use Tax must provide to County Council an independent annual audit of such agency's or organization's financial records and transactions and such other and more frequent financial information as required by County Council, all in form satisfactory to County Council.

3.3 The Department of Revenue shall furnish data to the State Treasurer and to the Charleston County Treasurer for the purpose of calculating distributions and estimating revenues. The information which must be supplied to the County upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of S.C. Code Ann. Section 12-54-240. Any person violating the provisions of this section shall be subject to the penalties provided in S.C. Code Ann. Section 12-54-240.

Section 4. Sales and Use Tax Referendum; Ballot Question.

4.1 The Board of Elections and Voter Registration of Charleston County shall conduct a referendum on the question of imposing the Sales and Use Tax in the area of Charleston County on Tuesday, November 8, 2016, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, mutatis mutandis. The Board of Elections and Voter Registration of Charleston County shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and purposes as set forth herein, and the cost of projects, and shall publish such election and other notices as are required by law.

4.2 The referendum question to be on the ballot of the referendum to be held in Charleston County on November 8, 2016, must read substantially as follows:

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

I approve a special sales and use tax in the amount of one-half (½) of one percent to be imposed in Charleston County for not more than twenty-five (25) years, or until a total of \$2,100,000,000

in resulting revenue has been collected, whichever occurs first. The sales tax proceeds will be used to fund the following projects:

Project (1) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities. \$1,890,000,000.

Project (2) For financing the costs of greenbelts. \$210,000,000.

YES _____
NO _____

Instructions to Voters: All qualified electors desiring to vote in favor of levying the special sales and use tax shall vote "YES;" and

All qualified electors opposed to levying the special sales and use tax shall vote "NO."

QUESTION 2

I approve the issuance of not exceeding \$200,000,000 of general obligation bonds of Charleston County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed twenty-five (25) years, to fund completion of projects from among the categories described in Question 1 above.

YES _____
NO _____

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote "YES;" and

All qualified electors opposed to the issuance of bonds for the stated purposes shall vote "NO."

4.3 In the referendum on the imposition of a special sales and use tax in Charleston County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "yes" and all qualified electors opposed to levying the tax shall vote "no". If a majority of the electors voting in the referendum shall vote in favor of imposing the tax, then the tax is imposed as provided in the Act and this Ordinance. Expenses of the referendum must be paid by Charleston County government.

4.4 In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote "yes" and all qualified electors

opposed to the issuance of bonds shall vote "no". If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Charleston County government.

Section 5. Imposition of Tax Subject to Referendum.

The imposition of the Sales and Use Tax in Charleston County is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing a sales and use tax in the area of Charleston County in a referendum to be conducted by the Board of Elections and Voter Registration of Charleston County on November 8, 2016, and the favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the imposition of a sales and use tax pursuant to the provisions of this Ordinance.

Section 6. Miscellaneous.

6.1 If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever; provided, however, that the Sales and Use Tax may not be imposed without the favorable results of the referendum to be held on November 8, 2016.

6.2 This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in this State.

6.3 The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this ordinance.

6.4 This Ordinance shall take effect immediately upon approval following third reading.

6.5 All previous ordinances regarding the same subject matter as this Ordinance are hereby repealed.

Enacted this 9th day of August, 2016.



CHARLESTON COUNTY, SOUTH CAROLINA

J. Elliott Summey
By J. Elliott Summey

Int. Chairman of Charleston County Council

ATTEST:

K. Kraisbury
Clerk of Charleston County Council
Charleston County, South Carolina

First Reading: 7/19/16

Public Hearing: 7/21/16

Second Reading: 7/27/16

Third Reading: 8/9/16

EXHIBIT E

SPECIAL COVERAGE

Have a complaint about a South Carolina judge? Help us investigate.

Opinion

https://www.postandcourier.com/opinion/commentary/complete-the-penny-to-meet-road-needs/article_b321612a-9d47-11e6-b08c-6b3163e2b9a8.html

Complete the penny to meet road needs

BY HERB SASS

OCT 29, 2016

SUBSCRIBE FOR \$2.98 / WEEK

It is unfortunate that the half-cent sales tax and the Mark Clark project were being discussed at the same time in the last six months.

As I have said many times, each needs to be considered separately. The half-penny sales tax program Charleston County Council passed this summer, which is on the November ballot, was the result of careful study of our road and transit needs and did not include funding for the Mark Clark.

The reason it could not include the Mark Clark was that those negotiations to complete or fund the completion had not been resolved, and remain so. The Mark Clark is a three-party contract with the county, the Infrastructure Bank and the S.C. Department of Transportation. That funding is a contractual matter and has nothing to do with the half-cent sales tax.

The half-cent tax program specifically includes funding for named roads, mass transit, and the Greenbelt program.

The roads and drainage component includes approximately \$900 million to fund much needed improvements to 17 South/Main Road, widening of the Glenn McConnell Parkway, intersection improvements for Savannah Highway and West Ashley, Dorchester Road widening, airport area road improvements, widening Highway 78, and widening Highway 41 to the new bridge over the Wando River in Mount Pleasant, with improvements at 17/41 intersection.

These are much-needed projects to improve mobility for the entire county. The mass transit component includes a bus rapid transit system designed to help relieve I-26 congestion, capital improvements for CARTA buses, and improved bus service, all at a cost of approximately \$600 million.

The last component is \$210 million for greenbelt preservation to complement those sites already conserved in Charleston County.

Sponsored



Welcome to Latitude Margaritaville

Latitude Margaritaville Hilton Head is located in Hardeeville, South Carolina — the scenic gateway to Hilton Head Island.

Critics claim council may have other “agendas” than fixing our road and transportation projects. That is not true. Council is committed to seeing these projects completed. The best way to gauge council’s promise to complete these projects is to examine past performance.

In 2004, voters agreed to add a half cent sales tax on purchases made for 25 years or \$1.3 billion; whichever came first. We are now 12 years into that program that included roads, mass transit and greenbelt preservation. Named projects included Johnnie Dodds Boulevard, the Glenn McConnell/Bees Ferry intersection, Folly Road/Maybank Highway, Harbor View Road, the James Island Connector Loop, U.S. 17/Wesley Drive, Palmetto Commerce Parkway, Folly/Camp Road, Bees Ferry Road, Future/Northside Drive, Maybank Highway, Bee Street, plus mass transit and greenbelt preservation.

All of the above named projects are complete or under construction except for two; Maybank Highway and the James Island Connector Loop. The Maybank Highway project has undergone changes following extensive public input, and regulatory scrutiny is scheduled to begin in early 2017. The James Island Connector Loop was not built after analysis showed it would not provide traffic relief. County staff has managed these projects well and has been awarded \$43.9 million in additional funding which has stretched our road dollars further.

In addition to the named road projects, each year staff makes plans for additional improvements. Each year council has approved \$10.5 million for county needs, which include \$4 million for resurfacing, \$2 million for local paving, \$1 million for drainage, \$1 million for public works, \$500,000 for bike/pedestrian projects, and \$2 million for intersection improvements. By managing our tax dollars, and acquiring additional funding, the county has been able to complete 185 such "allocation" projects. These include projects such as the sidewalk along Highway 171 from Charles Towne Landing to Northbridge Park; additional turning lanes on Johns Island at River Road and Maybank Highway, the Ben Sawyer Causeway multi-use path, and the paving of New Road in Ravenel.

One ongoing allocation project is the realignment and adding of turning lanes to the intersection of Highway 61 and 7. After planning, public meetings, permitting, and right-of-way acquisition, construction is ready to begin this year.

So in addition to the named projects, we are funding and completing additional projects each year. We plan to complete more allocation projects as needed each year over the remaining life of the sales tax. This allows staff to identify and make improvements according to need. The second half penny will continue that program.

Worries that council will not complete these projects as proposed are unfounded for several reasons. The first is that we have voted and given our word to the voters. Most of the current council was not serving when the first half cent was approved. But, we have worked with staff, municipalities, and state and federal regulators to complete the named projects the voters approved.

Second, as soon as the tax is approved, county road staff will begin working to secure the necessary engineering, permitting and right of way, and will hold meetings for input from the public for each project, just as we did last time. This is expensive and that is why the second question is on the ballot.

That provides the funding to pay for the engineering, planning, and permitting so that it can begin immediately. This allows us to waste no time getting the projects completed in as timely manner as possible.

The public meetings for each project can be held once this has been completed. Often this leads to new ideas and can extend the time needed for completion. The process of submitting changes can lead to more engineering and permitting. And obtaining approval from municipalities can extend the length of time needed to complete the projects.

Council members change, but staff mostly remains and since each project is already in process. That will help to ensure that each is carried through. When each project is finally ready to construct, council holds public hearings before the money to complete them is approved.

Some people say we are the victims of our own success; strong job growth in manufacturing, local business growth, and people moving to Charleston in record numbers are a reflection both of our success and quality of life. The downside is we are not getting much help from Columbia; maybe in the future that will change.

However, these projects are needed now, and it is important that we get started working on them as quickly as possible. Council will work to make sure we get these projects completed as quickly and efficiently as possible. Our record speaks for itself; let's get them started now instead of having to wait two or four years from now when it will be more expensive and harder to work around.

Please vote to complete the penny.

Herb Sass is a member of Charleston County Council.

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