

**INTERGOVERNMENTAL AGREEMENT
FOR WOODRUFF ROAD IMPROVEMENTS
IN GREENVILLE, SOUTH CAROLINA**

This Intergovernmental Agreement is made and entered into as of _____ by and between **GREENVILLE COUNTY**, a body politic and corporate and a political subdivision of the State of South Carolina, (the “County”) and the **SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK**, a body corporate and politic and an instrumentality of the State of South Carolina (the “Bank”), which shall be collectively hereinafter referred to as the “Parties,” and individually referred to hereinafter, where appropriate, as a or the “Party,” concerning the construction of the new 5-lane new roadway located parallel to existing Woodruff Road (SC 146) from Verdae Boulevard to Smith Hines Road, hereinafter referred to as the “Project,” located in Greenville County, South Carolina, which Project is described in more detail below and in Greenville County’s Application for Financial Assistance submitted to the Bank, and this Intergovernmental Agreement is hereinafter referred to as the “Agreement.”

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 (“SCTIB Act”), S.C. Code Ann. §§ 11-43-110, *et seq*, as amended;

WHEREAS, pursuant to the SCTIB Act, the Bank has all power necessary, useful, and appropriate to provide grants, loans and other Financial Assistance in a manner as the Board determines advisable; routinely provides such Financial Assistance; and solicited applications for Financial Assistance pursuant to the authority granted in the SCTIB Act;

WHEREAS, by an Application submitted to the Bank on or about September 5, 2019, as supplemented by other submissions to the Bank, the County requested Financial Assistance for the Project;

WHEREAS, at a meeting on July 6, 2020, the Bank’s Evaluation Committee reviewed applications for Financial Assistance and made recommendations to the Bank Board concerning those applications, including the County’s Application;

WHEREAS, at a meeting on July 7, 2020, the Bank’s Board of Directors (hereinafter referred to as the “Bank Board,” reviewed and considered its available funding capacity, the project applications for funding, and the Evaluation Committee’s recommendations;

WHEREAS, at the meeting on July 7, 2020, the Bank Board determined that the Project was eligible and qualified for Financial Assistance in the form of a grant and resolved to provide the grant subject to certain conditions specified in the Resolution approved by the Bank Board or contained within the Bank’s Overall Operating Guidelines, Procedures and Standard Conditions for Financial Assistance, including an agreement in a form and with contents acceptable to the Bank;

WHEREAS, the SCDOT Commission reviewed and approved the Financial Assistance to be provided to the Project by the Bank at its meeting on July 16, 2020;

WHEREAS, the Joint Bond Review Committee of the General Assembly reviewed and approved the Financial Assistance to be provided to the Project by the Bank at its meeting on August 11, 2020;

WHEREAS, the Parties now desire to set forth the respective responsibilities of the Parties for the Project, including the funding of the Project;

NOW, THEREFORE, in consideration of the mutual benefits, promises and obligations set forth herein, the sufficiency of which are hereby acknowledged and accepted by each Party hereto, the Parties 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 Project.

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

“Application” means the final Application for Financial Assistance submitted by the County to the Bank, as supplemented by other materials submitted by the County to the Bank prior to and after the date of the Application up to the date on which the Bank Board approved Financial Assistance to the Project which was July 7, 2020.

“Budget” means the budget established by the Bank for the Project.

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

“Disbursements” means the transfer or payment of monies pursuant to draw requests to reimburse SCDOT or the County for Eligible Costs of construction of the Project or for the payment of invoices approved by Bank for Eligible Costs of construction of the Project incurred pursuant to a Contract.

“Eligible Cost(s)” has the same meaning as set forth in S.C. Code Ann. § 11-43-130(5) as applied to qualified projects to be funded from the state highway account of the Bank, but is limited on this Project to Eligible Costs related to actual construction of the Project. Eligible Costs do not include those costs set forth in Section 6.2 of this Agreement that are recognized in that section as not being Eligible Costs for the Project for payment or reimbursement by the Bank from its Financial Assistance.

“Event of Default” means the breach by the County of a provision or obligation in the Agreement, including a provision applicable to SCDOT.

“Financial Assistance” includes, but is not limited to, loans, grants, contributions, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, provision of bond or other debt financing instrument security, and other lawful forms of financing and methods of leveraging funds that are approved by the board, as contemplated by and described in the SCTIB Act, S.C. Code Ann. §§ 43-11-110, *et seq., as amended*. For purposes of this Agreement, Financial Assistance means a grant from the Bank not to exceed \$49,010,199.

“Fiscal Year” means the fiscal year of the State of South Carolina that runs from July 1 to June 30.

“Project” means, for the purposes of this Agreement only, the construction of the new 5-lane, new limited access roadway located parallel to existing Woodruff Road (SC 146) from Verdae Boulevard to Smith Hines Road hereinafter and described in the Application, as updated and revised up to the date on which the Bank Board approved Financial Assistance for the Project which was July 7, 2020.

“SCDOT” means the South Carolina Department of Transportation.

ARTICLE II

2. Term of Agreement

This Agreement shall be effective as of _____, 2021, and shall terminate, except for specific provisions set forth herein that are expressly stated to survive the termination of this Agreement, on the date the last of the following events occurs (i) the Bank makes the final Disbursement on the Project; (ii) the final local financial contribution or financial contribution from any source other than the Bank for the Project is received; (iii) the Bank receives the final payment or reimbursement due it from the County pursuant to the terms and provisions of this Agreement; or (iv) the Project, including all components, is declared completed and accepted by the Bank, (or alternatively), is declared completed and accepted by SCDOT on projects managed by SCDOT.

ARTICLE III

3. Funding Commitments of Parties

The total estimated cost of the Project is \$121,346,932 which will be funded by the sources described hereinbelow in this Section 3.

3.1 Bank

Subject to the provisions, terms, and conditions in this Agreement, the Bank shall establish a Budget for the Project within the Account of the Bank. From revenues and funds of the Bank as determined by the Bank in its discretion, the Bank may deposit into the Account, or credit the Budget, in such increments as it determines, Financial Assistance in the form of a grant for the Project not to exceed \$49,010,199. The Bank may make Disbursements from the Account, pursuant to Section 6 of this Agreement, to pay for Eligible Costs of the Project incurred by the SCDOT on behalf of the County or the County on contracts related to the Project. This grant shall be used only for Eligible Costs of the Project and shall be paid out through Disbursements from the Account subject to the provisions of this Agreement, including Section 6.

In no event at any time shall the Bank be required to increase its Financial Assistance, grants, credits, disbursements, or contributions to the Project beyond \$49,010,199 or to disburse, advance, transfer or pay its own monies in excess of \$49,010,199 for the Project.

Any savings or reductions in the total cost of the Project shall be credited against and reduce the amount of the Bank's grant to the Project. Furthermore, any additional state (other than the Bank's), county, municipal, regional government or private funds of any kind or any Federal funds of any kind provided or available for the Project in any form other than those identified in the Application that have been previously committed to the Project shall offset and reduce the amount of the Bank's grants for the Project on a dollar for dollar basis unless those funds are needed, as determined by the Bank Board in its discretion, to complete the Project in a manner consistent with its original scope or with an expanded or upgraded scope approved by the Bank. To the extent allowed by applicable law, any funds committed to or allocated for the Project from any source remaining after completion of the Project

must be transferred to the Bank by the County or SCDOT unless this obligation is waived or modified by action of the Bank Board.

To the extent that Financial Assistance or a portion of that Financial Assistance, provided by the Bank for the Project is subject to an annual appropriation made by the General Assembly to the Bank as a matter of law, the provision by the Bank of that Financial Assistance, or portion thereof, for the Project in each fiscal year of the State is subject to an appropriation by the General Assembly to the Bank of funds sufficient to cover the Disbursements for the Project for that fiscal year that need to be made from such an appropriation. In the event the amount of any such appropriation required by law is not sufficient for that purpose, the Bank shall confer and work with the County to reduce or manage the amount of Financial Assistance used for the Project to an amount within the appropriation to the Bank for the Project and all other sources of funds available to the Bank for the Project for that fiscal year. If the appropriation required by law and all other sources of funds available for the Project to the Bank are insufficient as determined by the Bank to provide any Financial Assistance for the Project for a fiscal year, the Financial Assistance from the Bank for the Project may be suspended by the Bank Board until sufficient funds are appropriated by the General Assembly to the Bank and/or other sources of funds are available to the Bank for the Project for such Financial Assistance to resume. The suspension of Financial Assistance under this Section shall not constitute a termination of, or a default of an obligation under, this Agreement.

3.2. Greenville County and Other Funding Sources

The County shall provide the local match funds and other financial contributions for the Project that consist of the following sources:

A. The County shall provide \$30,336,733 from its own funds for the Project. The County intends to issue Revenue Bonds in Fiscal Year 2023 in the amount of \$30,336,733 to fulfill this obligation. and to use its original road maintenance fee of \$15 per vehicle established in 1993 as the source of repayment of the Revenue Bonds. The County hereby warrants, covenants, and represents that this use of this road maintenance fee is legally permissible and enforceable. The debt service on the Revenue Bonds shall be a legally enforceable first priority lien on all such road

maintenance fee revenues. The foregoing funding obligation by the County is due and payable by the County regardless of whether the aforementioned Revenue Bonds are issued or the revenue from the aforementioned road maintenance fees are available for this funding obligation. The Greenville-Pickens Area Transportation Study (“GPATS”) shall make a contribution of \$42,000,000 to the Project from sources available to it.

The County or SCDOT must expend all of the financial contributions and funds to the Project listed in this Section 3.2. above, for Eligible Costs of the Project before the Bank will be obligated to pay or reimburse any Eligible Costs on the Project.

The Bank shall be provided full and complete access by the County to all records and information concerning the financial contributions and funds listed in this Section 3.2 and expenditures of those financial contributions and funds. The Bank may require the financial contributions identified in this Section 3.2 to be deposited in an account or fund authorized by the South Carolina State Treasurer from which the Bank may make Disbursements and payments for the Project, and in that event, the Bank will provide Greenville County reports on all expenditures from that account or fund.

3.3. Additional Funding

The County shall provide additional funding to complete the Project if the amount of monies and funds needed to complete construction of the Project exceeds the current total estimated costs of \$121,346,932, or if any funds or contributions to be provided for the Project by a source other than the Bank, including those listed above in Section 3.2, are not received, or provided. As stated in Section 3.1, the Bank’s maximum Financial Assistance to the Project shall not exceed \$49,010,199. Provided however, if the Bank does not provide any of the Financial Assistance offered herein, the County will not be responsible for providing additional funding to complete the Project.

ARTICLE IV

4. Additional Obligations of Greenville County

4.1 Additional Documents and Actions

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

B. The County acknowledges that the Bank in its discretion may raise funds for its commitment to the Project and other qualified projects through the issuance of revenue bonds or other indebtedness as permitted under the Act. Accordingly, the County shall take such actions and enter into or provide such other documents or agreements, 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 or 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, documents and agreements are legally permissible and that no such action or document shall create any additional material obligation or increase any material obligation of the County.

C. At the request of the Bank, the County shall enter into and execute any amendments to this Agreement or a new intergovernmental agreement consolidating all or some intergovernmental agreements between them, including this Agreement, into one intergovernmental agreement, all in a form and with contents, provisions, and terms acceptable to the Bank.

D. The County promptly shall provide the Bank upon request by it copies of any and all contracts, agreements and documents relating to the Project.

4.2 Additional Warranties and Covenants of Greenville County

In addition to other requirements and obligations contained within this Agreement, the County warrants, covenants, represents, and acknowledges that:

A. The County has full power and authority to execute, deliver and perform and to enter into and carry out the transactions contemplated by the provisions in this Agreement, and the execution and performance of these provisions and transactions by the County does not and will not violate any applicable law or existing decision of a court of competent jurisdiction and does

not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound, a violation of which would cause a material adverse effect to the Bank. This Agreement has, by proper action, been duly authorized, executed and delivered by the County.

B. This Agreement is valid, binding and enforceable as to the County in accordance with its terms, and the County shall perform its obligations as set forth in this Agreement in accordance with its terms.

C. No further authorizations, consents or approvals of governmental bodies or agencies are required in connection with the execution and delivery by the County of this Agreement and the performance of its obligations hereunder, including the obligations to provide the financial contributions listed in Section 3.2 of this Agreement and to construct the Project.

D. No litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving the County is pending or, to the knowledge of the County threatened, in which any judgment or order may be or has been rendered, or is sought, that may have a material and adverse effect upon the operations or assets of the County or would materially or adversely affect the validity of this Agreement, or the performance by the County of its obligations hereunder or the transactions contemplated hereby. The County will immediately notify the Bank in writing if any such litigation or proceeding is commenced or threatened at any time during the term of this Agreement.

E. Greenville County shall, to the maximum extent permitted by the law of South Carolina, defend, indemnify and hold the Bank harmless from and against any and all liabilities, claims, or actions arising out of or relating to the Project.

F. No further authorizations, consents or approvals of governmental bodies or agencies are required in connection with the execution and delivery of the financial contributions and funds listed in Section 3.2 of this Agreement to be provided by entities other than the County.

G. The County has no knowledge of any pending or threatened litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving the financial contributions and funds listed in Section 3.2 of this Agreement to be provided by entities other than the County in which any judgment or order may be or has been rendered, or is sought, that would materially or adversely affect the validity of this Agreement or the performance by those other entities of their respective obligations hereunder or the transactions contemplated

hereby. The County will immediately notify the Bank in writing if any such litigation or proceeding is commenced or threatened at any time during the term of this Agreement.

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

4.3 Reimbursement of Bank

A. If the Bank determines at any time that any Disbursements made by it on the Project were for costs or expenses that were not Eligible Costs, were based on the services, or materials that do not meet the design and construction specifications and standards of SCDOT and that have not been corrected to meet those specifications and standards, the Bank, at its option, may require the County and/or SCDOT to reimburse the Bank for all such costs and expenses and the County and/or SCDOT shall make such reimbursements to the Bank. In the event that the County does not pay the full amount of the reimbursement to the Bank within ninety (90) days of the date of the notification to the County by the Bank that such reimbursement is due the Bank, Greenville County's obligation to reimburse the Bank shall be subject to the provisions of S.C. Code Ann. § 11-43-210 and Section 8.2 of this Agreement. In lieu of requiring the payment of such reimbursement(s) by the County or SCDOT, the Bank may in its discretion reduce the amount of the grant by the amount of the reimbursement due the Bank under this Section. This Section 4.3 shall survive the termination of this Agreement.

B. If the Bank Board determines that (i) the County or SCDOT has abandoned the Project, or any component thereof, at any time, (ii) the County or SCDOT has failed to commence and pursue completion of the Project, including all components, with due diligence after having received one written warning notice from the Bank of such failure by the County or SCDOT no less than sixty (60) days prior to the notification for reimbursement and the County or SCDOT thereafter fails to commence construction by December 31, 2022, and maintain pursuit of completion of the Project, including all components, with due diligence during that sixty (60) day period, or (iii) the County or SCDOT fails to commence construction of the Project by December 31, 2022 or complete the Project, including all components, by December 31, 2025, the County shall reimburse the Bank fully for all Disbursements within ninety (90) days of the date of the notification to the County by the Bank that such reimbursement is due the Bank and stating the

reason(s) for such reimbursement. Further, in that event, all Disbursements for the Project shall cease, and the Bank shall have no further obligations to the County or SCDOT under this Agreement. If the County fails to make such reimbursements in full to the Bank within that ninety (90) day period, the County's obligation to reimburse the Bank shall be subject to the provisions of S.C. Code Ann. § 11-43-210 of the Act and Section 8.2 of this Agreement. In the event exigent circumstances prevent the County or the SCDOT on behalf of the County from commencing or completing the Project by the dates identified above, the Bank may in its discretion, but is not required to, grant an extension of the commencement or completion date identified above on such terms and conditions as it may determine in its discretion.

C. The County shall reimburse the Bank promptly for all reasonable costs and expenses incurred by the Bank in responding to requests for records and information submitted to it pursuant to the South Carolina Freedom of Information Act (FOIA) relating to the Project after the Bank provides the County a written itemization of such costs and expenses and a copy of the request. Prior to seeking reimbursement from the County, the Bank will make a reasonable effort to collect such costs and expenses from the person or entity requesting such records or information pursuant to the FOIA.

4.4 Project Reporting

The County shall report in writing to the Bank at least quarterly on the status of the Project, including, but not limited to, reports on the status of design, right-of-way acquisition, environmental approvals, construction, scheduled draw requests, costs to date, estimated costs to complete the Project, project changes, and any other matters identified or requested by the Bank. The report shall be in a form acceptable to the Bank.

ARTICLE V

5. Project Administration and Related Matters

5.1 Project Administration and Management

SCDOT on behalf of County will administer and manage the Project. SCDOT shall approve the design and construction of the Project. SCDOT shall be responsible for all engineering, right-of-way acquisition, and construction for the Project and may perform all or any part of the work with its own forces or may contract out any of the work or services

to outside private or governmental consultants or contractors should it determine that such contracting out would be more efficient or would result in more timely completion of the Project. SCDOT shall enter into Contracts in its own name. All rights-of-way shall be acquired in the name of SCDOT, and the laws and procedures of the State of South Carolina for acquiring rights-of-way shall apply and be followed. At its option, the Bank at any time may require that the County request SCDOT to accept the conveyance of any or all rights-of-way acquired by the County that are needed for the Project, and if SCDOT grants the request, the County shall complete that conveyance. Any rights-of-way acquired by the County or SCDOT but not needed for the Project shall be conveyed to the Bank at no cost to the Bank upon its request. SCDOT shall be entitled to draw, and be paid hereunder, its normal and customary rates for its services that are Eligible Costs of the Project. All work, services and materials used on the Project shall conform to the standards and specifications required by SCDOT and for the Project to be accepted by SCDOT into the State Highway System. SCDOT or the County shall complete the Project and open the Project for public use upon such completion.

5.2 Scope of Project

The scope of work of the Project shall be as set forth in the in the definition of Project in Section 1 of this Agreement. Any material changes in that scope of the Project proposed by the County or SCDOT shall require the review and approval of the Bank Board be stated in an amendment to this Agreement. A material change includes, but is not limited to, a change to the Project that (a) requires a revision of the Record of Decision issued by FWHA, the permit(s) issued by the U. S. Army Corps of Engineers, or the permits, approvals or authorizations required for the Project issued by other Federal or State regulatory agencies; (b) materially changes the overall design or purpose of the Project; or (c) materially increases the total cost of the Project.

5.3 Project Maintenance

The County shall be responsible for and shall provide maintenance for all improvements and components of the Project after completion of that Project unless and until SCDOT accepts that responsibility in writing. Prior to completion of the Project, the County shall

seek the written agreement or written commitment of SCDOT to provide maintenance for the improvements and components of the Project and provide the Bank a copy of that agreement or commitment if obtained. The County shall continue to provide maintenance of such improvements and components of the Project in perpetuity for which SCDOT does not accept responsibility for maintenance. The County shall make all modifications to the Project required by SCDOT for SCDOT to accept responsibility for maintenance of the Project.

5.4 Contracting Methods

SCDOT on behalf of the County shall solicit contractor, construction and consultant services and materials needed to complete the Project by the procurement methods it deems will result in the selection of the best qualified firms and vendors, the lowest responsible contract price, and the best value for the Project as long as it is authorized by law to employ such methods. Contract forms shall be design-build, design-bid-build, or any other form or combination of forms or project phases that are permissible by law that the SCDOT determines will result in the most cost-effective, efficient, and timely delivery and completion of the Project.

5.5 Bonds and Insurance

SCDOT on behalf of the County shall require that the contractor for the Project provide and maintain throughout the life of the project the same types and amounts of payment bonds, performance bonds, and insurance coverages that the SCDOT usually recognizes from contractors on projects that it manages.

SCDOT on behalf of the County shall require that subcontractors, engineering or design firms, and other vendors and providers on the Project provide and maintain the same types and amounts of payment bonds, performance bonds, and insurance coverages that or SCDOT usually requires from subcontractors, engineering or design firms, and other vendors and providers on projects it manages.

The County shall obtain from SCDOT and provide the Bank proof of such required bonds and insurance coverages prior to each respective contractor, subcontractor, engineering or design firm, vendor and provider commencing the provision of services or materials on the Project. The County shall certify to the Bank in writing between July 1 and July 30 of each year during the life of the Project that all such required bonds and insurance coverages remain in force. The County shall immediately notify the Bank in writing if any required bonds or insurance coverages lapse or are terminated. The Bank may decline to make payments or Disbursements for any services or materials provided by any contractor, subcontractor, firm, vendor or provider on which any required bonds or insurance coverages have lapsed or been terminated until such lapse or termination is corrected to the satisfaction of the Bank.

Upon request, the County promptly shall obtain from SCDOT and provide the Bank copies of any required bonds and any certificates or policies for any required insurance coverages.

ARTICLE VI

6. Conditions to Bank's Disbursements and Draw Requests

6.1 Conditions to Bank's Disbursements and Draw Requests

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

A. No lien or other interest may have attached to a Contract or Project, nor to any rights-of-way, real property or improvements related thereto.

B. Construction of the completed portions of the Project described in the relevant Contract shall have been carried out substantially in accordance with the applicable plans, standards, and specifications.

C. No event of default exists under this Agreement, any related agreement with the Bank, SCDOT, or GPATS or any Contract.

D. No event or condition shall have occurred or arisen which prevents the Bank from obtaining funds sufficient to complete its Financial Assistance to the Project, and no other matches

or contributions listed in Section 3.2 of this Agreement have failed to be provided on the schedule approved by the Bank or required by this Agreement.

E. The County has fulfilled all of the warranties, covenants and obligations set forth in this Agreement.

F. The County or SCDOT shall have certified that the entire payment applied for in the draw request is for Eligible Costs of the Project and that the design of and work on the Project and materials used in the Project comply with the terms of applicable Contracts, the approved plans, and the applicable standards of SCDOT.

G. Any material change in the scope of the Project has been approved by the Bank, this Agreement has been modified or amended as determined necessary by the Bank, and additional approvals from the Joint Bond Review Committee of the General Assembly other governmental entities have been obtained as determined necessary by the Bank.

H. The County warrants that no litigation, nor any proceeding before any governmental agency involving the County, SCDOT or GPATS is pending, or to the knowledge of the County, threatened, in which any potentially adverse outcome would have a materially adverse impact on the ability of the County to meet its obligations under this Agreement.

I. Any entities, agencies or firms providing funds, financial contributions, grants funds, or assistance to, or otherwise participating in, the Project have executed any other documents, agreements or instruments that are required by the Bank to evidence or establish their obligations to the Bank and/or the Project in a form and with contents acceptable to the Bank.

6.2 Costs Not Paid or Reimbursed

The Bank will not make Disbursements for or pay or reimburse expenses, expenditures or costs of the following which are hereby deemed and defined as not qualifying as Eligible Costs under this Agreement for which the Bank's Financial Assistance may be used in any way:

A. Any costs, expenses, expenditures, attorneys' fees, damages, awards, judgments or settlements arising from, or alleged to arise from, permits for the Project, claims, or legal or administrative actions or proceedings of any kind, asserted under any Federal, state, local or government agency law, ordinance or regulation, for condemnations; inverse condemnations; regulatory takings; physical takings; trespasses; nuisances of any kind; flooding; damages to real

or personal property or interests of any kind; diminutions in real or personal property values; loss of road, street, highway or other access; environmental, noise, visual, odor or similar damages or impacts; similar demands, assertions or allegations; or payments or obligations established under any compensation programs or plans established by the County, the SCDOT, or any other entity.

B. Any costs, expenses, expenditures, damages, awards, judgments or settlements arising from, or alleged to arise from, any claims, disputes, proceedings, or lawsuits of any kind, including disputes between or among the County, SCDOT, and/or any third parties.

C. Landscaping and beautification for the Project other than for required grassing or other erosion control measures or replacement or repair of trees, vegetation or landscaping affected by construction of the Project.

D. Excessive or unreasonable attorneys', engineering or other professional fees or expenses based on the lesser amount of reasonable fees and expenses as determined by applicable industry standards or what State agencies, including SCDOT and the South Carolina Attorney General's Office, usually pay or authorize for such services, fees and expenses.

E. Any costs that are not for the actual construction of the Project.

ARTICLE VII

7. Indemnification of Bank

To the maximum extent permitted by the law of South Carolina, the County shall defend, indemnify and hold the Bank and its Bank Board members, officers and employees harmless from and against any and all liabilities, claims, actions, damages, judgments and attorneys' fees and related expenses and costs in any way arising out of or relating to the design, location, construction, modification, funding, pursuit, implementation, completion or operation of the Project, or any portion or component thereof, or this Agreement or any contract, or the selection, use or payment of persons or firms for design, construction, modification, or operation of the Project, or any portion or component thereof. In the event the County does not pay the full amount of any such indemnification to the Bank within ninety (90) days of the date of the notification to the County that such indemnification is due the Bank, the County's obligation to pay the Bank for such indemnification shall be subject to the provisions of S.C. Code Ann. § 11-43-210 and Section 8.2 of this Agreement. In lieu of requiring the payment of such indemnification by the County, the Bank may in

its discretion reduce the amount of the grant stated in Section 3.1 of this Agreement by the amount of the indemnification due the Bank under this section. This Section 7 shall survive the termination of this Agreement.

ARTICLE VIII

8. Bank's Rights and Remedies

8.1 Events of Default as to Greenville County

In the event the County shall violate or fail to comply with any provision in or obligation under this Agreement (including other agreements and obligations incorporated herein) and if such failure continues for a period of thirty (30) days after receipt of a written notice of such default from the Bank, such failure shall constitute an Event of Default hereunder.

8.2 Remedies as to Greenville County

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

A. As to any Event of Default, any obligation or duty the County failed to perform shall be deemed a ministerial act and subject to the remedies of mandamus and mandatory injunction requiring the County to perform the obligation or duty, and the Bank shall be deemed to have no adequate remedy at law for such Event of Default.

B. Among other rights and remedies available to the Bank following an uncured Event of Default, the Bank shall have the right to cease making any further Disbursements under this Agreement with respect to the Project until such Event of Default has been cured and the right to require the County to reimburse it for any or all Disbursements on the Project. The Bank shall also have and may pursue any other remedies available under South Carolina law, except as such remedies may be expressly limited by the specific provisions of this Agreement.

C. The County shall pay the Bank the reasonable attorneys' fees and expenses incurred by the Bank in pursuing any remedy for an Event of Default.

D. In the event the County fails to make any payment or reimbursement to the Bank in full as required by this Agreement, it acknowledges the authority of the State Treasurer under S.C. Code Ann. § 11-43-210 to withhold funds allotted or appropriated by the State to Greenville

County and to apply those funds to make or complete any such payment in full to the Bank. Greenville County agrees that the current provisions of Section Coded Ann. §11-43-210 are hereby incorporated into this Agreement verbatim as an independent and separate contractual obligation of the County and shall be enforceable against the County and survive even if S.C. Code Ann. § 11-43-210 is repealed or its application is reduced or amended by action of the General Assembly, or it is otherwise abrogated, or its application is reduced or modified by a court or court decision. The Bank will notify the County prior to requesting that the State Treasurer withhold such funds.

8.3 Remedies Cumulative; Nonwaiver

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

ARTICLE IX

9. General Conditions and Provisions

9.1 Waivers

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

9.2 Benefit and Rights of Third Parties

This Agreement is made and entered into for the sole protection and benefit of the Parties, and their successors and assigns. No other persons, firms, entities, or parties shall have any rights, or standing to assert any rights, under this Agreement in any manner, including, but not limited to, any right to any Disbursements at any time, any right to require any Party to apply any portion of the amounts committed herein that have not been disbursed to the payment of any such claim, or any right to require any Party to exercise any right or power under this Agreement or arising from any Event of Default of any kind by any Party. 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 Project. No other persons, firms, entities, or parties shall, under any circumstances, be deemed to be a beneficiary of any conditions or obligations set forth in this Agreement, any or all of which may be freely waived in whole or in part by the Bank at any time pursuant to Section 9.1 of this Agreement, 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, completion or operation of the Project, or any portion or component thereof, or the absence therefrom of defects of any kind. The Bank and its Bank Board members, officers and employees 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, completion, or operation of the Project, or the failure to design, locate, modify, operate, complete, or construct the 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, and that 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, the Parties shall not assign or delegate this Agreement, any of its respective rights, interest, duties or obligations under this Agreement, nor any Disbursements without the prior written consent of the other Parties; 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 Greenville County occurs which is not cured by Greenville County to the satisfaction of the Bank, the Bank may require Greenville County to assign all contracts, licenses, permits, approvals, and authorizations for the Project, together with all plans, drawings, and specifications, to the 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, must be in writing and shall be deemed effective when received by the other Party, through certified mail, registered mail, personal delivery, or courier delivery. All such notices shall be addressed to the Parties as follows:

Greenville County

Greenville County Administrator

301 University Ridge

Greenville County Square, Suite 2400

Greenville, South Carolina 29601

South Carolina Transportation Infrastructure Bank
Chairman
South Carolina Transportation Infrastructure Bank
955 Park Street
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. Notwithstanding the foregoing sentence, in the event that a court invalidates or modifies any one or more provisions, in whole or in part, of this Agreement, the Bank may in its discretion terminate this Agreement by providing notification of such termination to the County, and upon providing such notification to the County, all of the Bank's obligations under this Agreement shall terminate immediately.

9.9 Execution in Counterparts

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

9.10 Authority to Execute

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

[SEPARATE SIGNATURE PAGES FOR EACH PARTY FOLLOW]

SIGNATURE PAGE FOR GREENVILLE COUNTY

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

Greenville County, South Carolina

By: _____

Printed Name: _____

Title: _____

Attest:

By: _____

Printed Name: _____

Title: _____

(SEAL)

Note: This Agreement was approved by _____ adopted by the Greenville County Council on _____, 2021.

SIGNATURE PAGE FOR THE 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: _____

Ernest Duncan
Vice Chairman

Attest:

Robert E. Tyson, Jr.
Secretary

(SEAL)