

*Dave Bowers  
Tras. Engr.*



**South Carolina Department of Transportation**

**Minutes**

Department of Transportation Commission

Meeting of

July 21, 2005

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MINUTES

DEPARTMENT OF TRANSPORTATION  
OF  
SOUTH CAROLINA

July 21, 2005

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On July 21, 2005 the SCDOT Commission held a conference call meeting in the Commission Room of the headquarters building in Columbia, South Carolina at 1:00 p.m. In accordance with the Freedom of Information Act, the news media was advised in writing of the time, place and date of the meeting.

Present

John N. Hardee

Present by Phone:

Tee Hooper, Chairman, Presiding  
Robert W. Harrell, Sr.  
J. M. "Moot" Truluck  
Bud Turner

Absent

Marion Carnell  
Bobby Jones

Also Present: Elizabeth S. Mabry, Executive Director

SECTION 1: On motion of Commissioner Hardee, seconded by Commissioner Harrell, the Commission unanimously passed a motion authorizing the Executive Director to execute the intergovernmental agreements between the South Carolina Department of Transportation and the South Carolina Transportation Infrastructure Bank, as presented by staff and shown in detail in the Appendix.

SECTION 2: There being no further business to come before the Commission, the meeting was adjourned at 1:32 p.m.

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Tee Hooper, Chairman  
Presiding



## **Appendix**

Department of Transportation Commission

Meeting of

July 21, 2005

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SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK

RESOLUTION  
ON  
MULTI-PROJECT FUNDING PROPOSAL

WHEREAS, approximately \$32,000,000 in funding is desired to complete or expand the scope of the Horry County RIDE Project, Lexington County Project, and Beaufort County Project, which are all projects receiving financial assistance from the South Carolina Transportation Infrastructure Bank ("Bank") and being managed by South Carolina Department of Transportation ("SCDOT");

WHEREAS, SCDOT is in need of financial assistance in the amount of \$62,100,000 to pay the cost of demolishing the Grace and Pearman Bridges as part of the Charleston County (Cooper River Bridge) Project, and such demolition is necessary for shipping access to the facilities of the State Ports Authority and also mandated by the United States Army Corporation of Engineers;

WHEREAS, the Bank previously committed to provide \$25,000,000 in needed additional funding for the Horry County RIDE Project and must issue bonds to fund that commitment;

WHEREAS, the Board of the Bank, the SCDOT Commission and their respective staffs have been investigating possible solutions for the foregoing needs for several months; and

WHEREAS, the Bank and SCDOT have a history of working together to meet the State's transportation needs by maximizing the use of the funds available to them;

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

Section 1. The Board approves the funding proposal presented by SCDOT whereby (a) the total approved costs for the Horry County Ride Project is increased by \$37,000,000, the Lexington County Project by \$10,000,000, the Beaufort County Project by \$10,000,000, and the Charleston County (Cooper River Bridge) Project by so much of \$62,100,000 as is necessary to increase the total to fund demolition of the Grace and Pearman Bridges; (b) the Bank will increase its financial assistance to each Project listed in (a) of this Section 1 by the respective amount listed for each such Project therein and issue revenue bonds or otherwise provide funds for the costs identified hereinabove in the total amount of \$119,100,000; (c) the Bank will assign to SCDOT the unpledged portion of all remaining Horry County RIDE Loan II Payments and the Aiken County Payments for fiscal years 2006, 2007, and 2008 in exchange for SCDOT making payments to the Bank in amounts equal thereto subject to the terms of the Master Intergovernmental Funding Agreement between the Bank and SCDOT and the other agreements identified in Section 2 hereinbelow; and (d) SCDOT will make payments to the Bank in the amount of \$6,000,000 in fiscal year 2009 and \$10,000,000 per year from fiscal year 2010 through fiscal year 2022, subject to the terms of the Master Intergovernmental Funding Agreement between the Bank and SCDOT and the other agreements identified in Section 2 hereinbelow.

Section 2. The foregoing approval is conditioned upon (i) the Bank and SCDOT entering into amendments to existing agreements, including the Master Intergovernmental Funding Agreement and the Intergovernmental Agreement Relating to Replacement of the

Cooper River Bridges, and new agreements to implement the foregoing actions in a form and with contents acceptable to the Bank, and (ii) the Joint Bond Review Committee of the General Assembly granting any approvals required by the South Carolina Transportation Infrastructure Bank Act to implement the foregoing actions.

Section 3. The Chairman is hereby authorized, upon the advice of legal counsel for the Bank, to sign any agreements or documents and undertake any other measures necessary to implement the foregoing actions, and the Chairman's signature shall be conclusive evidence of the form and content of each such agreement or document signed by him.

Adopted July 15, 2005.

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Donald D. Leonard, Chairman

INTERGOVERNMENTAL AGREEMENT  
FOR  
ADDITIONAL MULTI-PROJECT FUNDING  
BETWEEN  
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION  
AND  
SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK

This Agreement made by and between the South Carolina Department of Transportation and the South Carolina Transportation Infrastructure Bank on this \_\_\_\_ day of \_\_\_\_\_, 2005.

WITNESSETH

WHEREAS, approximately \$32,000,000 in funding is desired to complete or expand the scope of the Horry County RIDE Project, Lexington County Project, and Beaufort County Project, which are all projects receiving financial assistance from the South Carolina Transportation Infrastructure Bank("Bank") and being managed by South Carolina Department of Transportation ("SCDOT");

WHEREAS, SCDOT needs financial assistance in the amount of \$62,100,000 to pay the cost of demolishing the Grace and Pearman Bridges as part of the Charleston County (Cooper River Bridge) Project, and such demolition is necessary for shipping access to the facilities of the State Ports Authority and also mandated by the United States Army Corps of Engineers;

WHEREAS, to address the aforementioned matters, SCDOT has proposed that it make certain additional payments to the Bank pursuant to the Master Intergovernmental Funding Agreement previously entered into between them that may be pledged to bonds, and the Bank has proposed to exchange those payments in the same amount for certain payments owed to the Bank by other entities through an assignment of those payments to SCDOT;

WHEREAS, to address the aforementioned matters, SCDOT also has proposed extending for an additional period of time certain payments it is making to the Bank;

WHEREAS, to address the foregoing matters, the Bank has proposed to issue bonds or use other sources of funds to fund the aforementioned project costs;

WHEREAS, the Board of Directors of the Board approved the forgoing actions at its meeting on July 15, 2005, and the Commission of the SCDOT approved the forgoing actions at its meeting of July 15, 2005; and

WHEREAS, the Joint Bond Review Committee of the General Assembly granted the approvals of the foregoing actions required by the South Carolina Transportation Infrastructure Bank Act at its meeting on \_\_\_\_\_, 2005;

NOW, THEREFORE, the Bank and SCDOT, in consideration of the mutual benefits to each and to the State of South Carolina [**Insert additional language on consideration.**], hereby agree as follows:

1. The Bank hereby assigns to SCDOT all payments owed and to be paid to it by Aiken County pursuant to Section 3.2 the Intergovernmental Agreement for Interstate 520 Project in Aiken County, South Carolina, dated June 25, 2002, commencing with the payment due from Aiken County on \_\_\_\_\_, \_\_\_\_\_. A schedule of the aforesaid payments hereby assigned to SCDOT pursuant to this Section 1 is set forth in Schedule A which is attached hereto and incorporated herein verbatim by reference. These assigned annual fiscal year payments as set forth in Schedule \_\_\_\_ shall be made by the Bank to SCDOT shall be made in equal monthly installments by the twenty-fifth (25<sup>th</sup>) day of each month.

2. The Bank hereby assigns to SCDOT all payments owed and to be paid it by Horry County identified as "Loan II Uninsured Payments" in the Second Amendments to Various Agreements dated as of May 31, 2004, including Schedule A attached thereto, which have not been pledged by the Bank to the payment of any bonds as of the date of this Intergovernmental Agreement, commencing with the payment due \_\_\_\_\_, \_\_\_\_\_. A schedule of the payments hereby assigned to SCDOT pursuant to this Section 2 is set forth in Schedule B which is attached hereto and incorporated herein verbatim by reference. These assigned annual fiscal year payments as set forth in Schedule \_\_\_\_ shall be made by the Bank to SCDOT shall be made in equal monthly installments by the twenty-fifth (25<sup>th</sup>) day of each month.

3. In exchange for Bank assigning the payments to SCDOT as set forth in Sections 1 and 2 hereinabove, SCDOT promises to and shall make payments to the Bank in the amounts and on the dates set forth in Schedule C attached hereto which is incorporated herein by reference, which payments shall equal those made to the Bank pursuant to Sections 1 and 2 of this Agreement. Those payments required by this Section 3 of this Agreement shall be made by SCDOT to the Bank pursuant to the terms and in the manner set forth in the First Amended and Restated Master Intergovernmental Funding Agreement between SCDOT and the Bank, including, but not limited to, Sections 6 through 9 thereof.

4. In consideration of the foregoing, SCDOT promises to and shall make the payments to the Bank in the amounts and on the dates set forth in Schedule D which is attached hereto and incorporated herein by reference. Those payments required by this Section 4 of this Agreement shall be made by SCDOT to the Bank pursuant to the terms and in the manner set

forth in the First Amended and Restated Master Intergovernmental Funding Agreement between SCDOT and the Bank, including, but not limited to, Sections 6 through 9 thereof.

5. The Intergovernmental Agreements which the Bank has with Beaufort County, Horry County, Lexington County, and SCDOT on the projects identified on page 1 of this Agreement, which will be receiving additional funds from the Bank as a result of the terms of this Agreement, shall be amended to include the amount of those additional funds being provided by the Bank. The amount of the increase for each such project is set forth on Exhibit "A" attached hereto and incorporated herein by reference. **[Exhibit A will be Bank Resolution, July 15, 2005.] [Consider attaching amended IGA's.]**

6. In the event the amount of funds needed for any of the projects identified in Section 5 of this Agreement is less than listed in Exhibit A and that determination is made at a time that will not affect Bank's issuance of bonds or other debt to fund its obligation to that project, the Bank and SCDOT may decrease the respective obligations between them set forth herein in the amount of that reduced cost. If the foregoing determination is made at a time that does not allow the foregoing reduction to be implemented prior to the issuance of bonds or other debt by the Bank, the Bank and SCDOT agree that they will review the matter for the purpose of agreeing on a mechanism for equitably adjusting the commitments between them to account for that reduction in a manner that will not affect the Bank's pledge of any revenues to bonds or any other debt **[Provision needs further review and revision.]**

7. SCDOT hereby consents to the Bank applying and pledging the payments owed to it by SCDOT pursuant to this Agreement to the payment of principal and interest on bonds issued by the Bank to the extent the Bank may deem it appropriate to issue such bonds. Nothing

contained in this Section 5 shall limit the authority of the Bank to use such payments from SCDOT to pay the costs of the projects identified hereinabove or the costs of debt service for financing those projects in the manner it deems best.

8. Upon request of the Bank, SCDOT shall do any act or execute any additional documents reasonably required by the Bank to enable the Bank to procure necessary funds to fund the projects as set forth hereinabove or to comply with any state or federal laws to which the Bank may be subject. SCDOT shall enter into such other documents, including amendments to this Agreement which are consistent with the substance hereof, as may be necessary in order to comply with South Carolina laws and regulations associated with such bonds or other instruments and to satisfy requirements for documentation and information reasonably imposed by prospective purchasers of bonds, bond insurers, rating agencies, other lenders and their respective attorneys, advisors, and representatives.

9. SCDOT warrants and covenants that:

A. SCDOT 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 do not, and will not, conflict with or result in a default under any agreement or instrument to which SCDOT 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 SCDOT.

B. This Agreement is valid, binding and enforceable as to SCDOT in accordance with its terms.

C. No litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving SCDOT is pending or, to the knowledge of SCDOT 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 SCDOT or would materially or adversely affect the validity of this Agreement, or the performance by SCDOT of its obligations hereunder or the transactions contemplated hereby, including the obligation to make timely payments pursuant to this Agreement. SCDOT 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.

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

10. In the event either party shall fail to pay in full the amount of any payment by its due date as required under this Agreement, then such failure shall be deemed a Payment Event of Default. Whenever any Event of Default occurs, any one or more of the following remedies may be pursued by and shall be available to the non-defaulting party against the defaulting party in addition to those provided in other agreements between the parties:

A. In the event of a Payment Event of Default, the past due amount owed shall accrue interest, until paid in full by the defaulting party, at a rate equal to the rate of the short-term investment return the non-defaulting party's funds and deposits were earning for the period of time such payment was past due. The aforementioned rate of return shall be determined and certified by the State Treasurer. This provision shall not

apply to any delay in payment not exceeding fifteen (15) calendar days caused by a delay in the State Treasurer or another entity transferring funds to one of the parties hereto, so long as the delay is not caused by or related to any act or omission by the party owing the payment.

B. The defaulting party shall pay the non-defaulting party the reasonable attorneys' fees and expenses incurred by the non-defaulting party in pursuing any remedy for an Event of Default.

C. All rights and remedies of a party provided for in this Agreement or in any other related document as to any party are cumulative and shall be in addition to any and all other related rights and remedies provided for or available to the party at law 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.

11. No waiver of any Event of Default by SCDOT or the Bank hereunder shall be implied from any delay or omission by either 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 breach of the same covenant, term or condition. The consent or approval by a party to or of any act by the other 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 a party

hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.

12. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, SCDOT and the Bank shall not assign this Agreement or any of its respective rights, interest, duties or obligations under this Agreement without the prior written consent of the other party.

13. All notices given with respect to this Agreement shall be deemed effective when received by the other party, through certified mail, registered mail, personal delivery, or courier delivery. All such notices shall be addressed to the parties as follows:

Bank:

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

SCDOT:

Executive Director  
South Carolina Department of Transportation  
955 Park Street, Room 304  
Columbia, SC 29201

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

15. 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.

16. 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 PAGES TO BE ADDED]**

**SCHEDULE A**  
**INTERGOVERNMENTAL AGREEMENT**  
**FOR**  
**ADDITIONAL MULTI-PROJECT FUNDING**

Dated: \_\_\_\_\_, 2005

Section 1

AIKEN COUNTY PAYMENTS ASSIGNED TO SCDOT

<u>South Carolina State Fiscal Year</u>	<u>Total of Annual Fiscal Year Payments</u>
FY 2006	\$4,136,667
FY 2007	\$4,136,667
FY 2008	<u>\$4,136,667</u>
Total	\$12,410,001

**SCHEDULE B**  
**INTERGOVERNMENTAL AGREEMENT**  
**FOR**  
**ADDITIONAL MULTI-PROJECT FUNDING**

Dated: \_\_\_\_\_, 2005

Section 2

**HORRY COUNTY LOAN II UNINSURED/UNPLEDGED PAYMENTS**  
**ASSIGNED TO SCDOT**

<u>South Carolina State Fiscal Year</u>	<u>Total of Annual Fiscal Year Payments</u>
FY 2006	\$2,487,813
FY 2007	\$2,648,387
FY 2008	\$2,739,080
FY 2009	\$2,760,948
FY 2010	\$2,815,081
FY 2011	\$2,843,684
FY 2012	\$2,917,432
FY 2013	\$2,838,129
FY 2014	\$2,807,654
FY 2015	\$2,527,960
FY 2016	\$3,272,718
FY 2017	\$4,693,476
FY 2018	\$4,693,476
FY 2019	\$4,693,476
FY 2020	\$4,693,476
FY 2021	\$4,693,476
FY 2022	\$4,693,476
Total	\$58,819,742

**SCHEDULE C**  
**INTERGOVERNMENTAL AGREEMENT**  
**FOR**  
**ADDITIONAL MULTI-PROJECT FUNDING**

Dated: \_\_\_\_\_, 2005

Section 3

**PAYMENTS TO BANK**

<u>South Carolina State Fiscal Year</u>	<u>Total of Annual Fiscal Year Payments</u>
FY 2006	\$6,624,480
FY 2007	\$6,785,054
FY 2008	\$6,875,747
FY 2009	\$2,760,948
FY 2010	\$2,815,081
FY 2011	\$2,843,684
FY 2012	\$2,917,432
FY 2013	\$2,838,129
FY 2014	\$2,807,654
FY2015	\$2,527,960
FY 2016	\$3,272,718
FY 2017	\$4,693,476
FY 2018	\$4,693,476
FY 2019	\$4,693,476
FY 2020	\$4,693,476
FY 2021	\$4,693,476
FY 2022	<u>\$4,693,476</u>
Total	\$71,229,743

**SCHEDULE D**

**INTERGOVERNMENTAL AGREEMENT**

**FOR**

**ADDITIONAL MULTI-PROJECT FUNDING**

Dated: \_\_\_\_\_, 2005

Section 4

**PAYMENTS TO BANK**

South Carolina State Fiscal Year

Total of Annual Fiscal Year Payments

FY 2009	\$6,000,000
FY 2010	\$10,000,000
FY 2011	\$10,000,000
FY 2012	\$10,000,000
FY 2013	\$10,000,000
FY 2014	\$10,000,000
FY 2015	\$10,000,000
FY 2016	\$10,000,000
FY 2017	\$10,000,000
FY 2018	\$10,000,000
FY 2019	\$10,000,000
FY 2020	\$10,000,000
FY 2021	\$10,000,000
FY 2022	<u>\$10,000,000</u>
Total	\$136,000,000

EXHIBIT "A"

SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK

RESOLUTION  
ON  
MULTI-PROJECT FUNDING PROPOSAL

WHEREAS, approximately \$32,000,000 in funding is desired to complete or expand the scope of the Horry County RIDE Project, Lexington County Project, and Beaufort County Project, which are all projects receiving financial assistance from the South Carolina Transportation Infrastructure Bank ("Bank") and being managed by South Carolina Department of Transportation ("SCDOT");

WHEREAS, SCDOT is in need of financial assistance in the amount of \$62,100,000 to pay the cost of demolishing the Grace and Pearman Bridges as part of the Charleston County (Cooper River Bridge) Project, and such demolition is necessary for shipping access to the facilities of the State Ports Authority and also mandated by the United States Army Corporation of Engineers;

WHEREAS, the Bank previously committed to provide \$25,000,000 in needed additional funding for the Horry County RIDE Project and must issue bonds to fund that commitment;

WHEREAS, the Board of the Bank, the SCDOT Commission and their respective staffs have been investigating possible solutions for the foregoing needs for several months; and

WHEREAS, the Bank and SCDOT have a history of working together to meet the State's transportation needs by maximizing the use of the funds available to them;

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

Section 1. The Board approves the funding proposal presented by SCDOT whereby (a) the total approved costs for the Horry County Ride Project is increased by \$37,000,000, the Lexington County Project by \$10,000,000, the Beaufort County Project by \$10,000,000, and the Charleston County (Cooper River Bridge) Project by so much of \$62,100,000 as is necessary to increase the total to fund demolition of the Grace and Pearman Bridges; (b) the Bank will issue revenue bonds or otherwise provide funds for the costs identified hereinabove in the total amount of \$119,100,000; (c) the Bank will assign to SCDOT the unpledged portion of all remaining Horry County RIDE Loan Repayments and the Aiken County Payments for fiscal years 2006, 2007, and 2008 in exchange for SCDOT making payments to the Bank in amounts equal thereto subject to the terms of the Master Intergovernmental Funding Agreement between the Bank and SCDOT and the other agreements identified in Section 2 hereinbelow; and (d) SCDOT will make

payments to the Bank in the amount of \$6,000,000 in fiscal year 2009 and \$10,000,000 per year from fiscal year 2010 through fiscal year 2022, subject to the terms of the Master Intergovernmental Funding Agreement between the Bank and SCDOT and the other agreements identified in Section 2 hereinbelow.

Section 2. The foregoing approval is conditioned upon (i) the Bank and SCDOT entering into amendments to existing agreements, including the Master Intergovernmental Funding Agreement and the Intergovernmental Agreement Relating to Replacement of the Cooper River Bridges, and new agreements to implement the foregoing actions in a form and with contents acceptable to the Bank, and (ii) the Joint Bond Review Committee of the General Assembly granting any approvals required by the South Carolina Transportation Infrastructure Bank Act to implement the foregoing actions.

Section 3. The Chairman is hereby authorized, upon the advice of legal counsel for the Bank, to sign any agreements or documents and undertake any other measures necessary to implement the foregoing actions, and the Chairman's signature shall be conclusive evidence of the form and content of each such agreement or document signed by him.

Adopted July 15, 2005.

\_\_\_\_\_  
Donald D. Leonard, Chairman

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**FIRST AMENDED AND RESTATED  
MASTER INTERGOVERNMENTAL FUNDING AGREEMENT  
BETWEEN SCDOT AND SCTIB**

This Agreement made by and between the South Carolina Department of Transportation ("SCDOT") and the South Carolina Transportation Infrastructure Bank ("SCTIB") on the 2<sup>nd</sup> day of July, 2001, and as first amended and restated by and between SCDOT and SCTIB on \_\_\_\_\_, 2005.

**WITNESSETH**

**WHEREAS**, pursuant to an Intergovernmental Agreement by and between the SCDOT and the SCTIB dated March 10, 1998, the SCDOT agreed to pay the SCTIB \$114,000,000 payable in eleven annual installments each of \$10,000,000, and one payment in the twelfth year of \$4,000,000, commencing in 1998, for the initial phase of the Conway Bypass in Horry County; and

**WHEREAS**, pursuant to the Intergovernmental Agreements by and between the SCDOT and SCTIB dated April 27, 1999, and May 7, 1999, the SCDOT agreed to pay the SCTIB \$7,600,000 annually for twenty (20) years commencing July 1, 1999, for Phase II of the Conway Bypass; and

**WHEREAS**, on June 30, 2000, the SCTIB and SCDOT entered into an Intergovernmental Funding Agreement pertaining to the foregoing obligations;

**WHEREAS**, at its meeting on April 25, 2001, the Commission of SCDOT approved providing \$7 million annually for twenty-five (25) years for the Cooper River Bridges Replacement Project; at its meeting of June 28, 2001, the Commission approved providing an

additional \$1 million annually for twenty-five (25) years for the Project; and those obligations are set forth in an Intergovernmental Agreement between the parties dated July 2, 2001; and

**WHEREAS**, SCDOT and SCTIB intend to enter into additional Intergovernmental Agreements or amend existing Intergovernmental Agreement which will include new payment obligations; and

**WHEREAS**, for purposes of this Agreement, all Intergovernmental Agreements described hereinabove and all Intergovernmental Agreements or similar funding agreements entered into between SCTIB and SCDOT at any time are referred to hereinafter as "Intergovernmental Agreement" or "Intergovernmental Agreements" as is appropriate for the context; and

**WHEREAS**, pursuant to South Carolina Code Section 11-43-160, the SCTIB may set and receive, and does so set and receive annually, an annual contribution from the State of South Carolina of an amount equal to the revenues produced by one cent a gallon of the tax on gasoline imposed by South Carolina Code Section 12-28-310;

**WHEREAS**, Section 12 of Act Number 176 of 2005, which became effective June 14, 2005, amended South Carolina Code Section 56-3-910(B) so as to provide that SCDOT must contribute an amount annually to the SCTIB from non-state tax sources equivalent to certain vehicle registration fees credited to SCDOT; and

**WHEREAS**, Section 4 of Act Number 176 of 2005 also amended Title 12 of the South Carolina Code of Laws by adding thereto Section 12-28-2915 which provides that SCDOT must make an annual contribution to SCTIB from non-state tax resources in an amount equivalent to that credited to SCDOT from certain revenues identified in Section 12-28-2915; and

**WHEREAS**, the SCTIB has issued, and intends to issue in the future, revenue bonds, the repayment of which may not be from revenues that involve any tax within the meaning of Article X, Section 13(9) of the South Carolina Constitution; and

**WHEREAS**, the SCTIB has requested that the SCDOT make all payments contemplated by this Agreement to the SCTIB from revenues that do not involve any tax; and

**WHEREAS**, SCDOT and SCTIB wish to amend and restate the Master Intergovernmental Funding Agreement so as to make the aforesaid annual contributions to the SCTIB contained in Act Number 176 of 2005 subject to the terms of this Agreement and to clarify that payment obligations owed by SCDOT to SCTIB set forth in future Intergovernmental Agreements or amended Intergovernmental Agreements also are subject to the terms of this Agreement unless otherwise expressly stated in those Intergovernmental Agreements; and

**WHEREAS**, the SCDOT and SCTIB have engaged in cooperative efforts for the purpose of maximizing the use of the funds available to the State of South Carolina for the construction and improvement of public highways and, as part of those efforts, wish to enter into this Agreement that will govern all funding arrangements between them, including those identified hereinabove and any future funding arrangements contained in Intergovernmental Agreements or other documents, in consideration of the mutual benefits to each;

NOW, THEREFORE, the SCTIB and SCDOT hereby agree as follows:

1. For purposes of this Agreement, "Federal Highway Reimbursement Funds" means (a) revenues repaid by the Federal Highway Administration of the United States Department of Transportation (FHWA) from the Highway Trust Fund to reimburse SCDOT for expenditures related to approved highway projects eligible under Title 23 of the United States Code, as amended and supplemented from time to time and any

successor or replacement provision thereto, with such repayments being made to SCDOT after it invoices FHWA for actual expenditures for eligible activities, and (b) revenues repaid to SCDOT from a loan to a private or public entity made under Section 129 (a)(7) of Title 23 of the United States Code, as amended and supplemented from time to time and any successor or replacement provision thereto.

2. SCDOT has complied with all requirements for SCDOT to be eligible to receive Federal Highway Reimbursement Funds, including, without limitation, funds received by or on behalf of SCDOT pursuant to Title 23, United States Code, as amended and supplemented from time to time and any successor or replacement provision of law.
3. SCDOT will, during the term of this Agreement, use its best efforts to continue to comply with all requirements for SCDOT to continue to be eligible for Federal Highway Reimbursement Funds.
4. For each state fiscal year commencing with the 2000 – 2001 Fiscal Year, SCTIB hereby sets the annual contribution provided by South Carolina Code Section 11-43-160(A)(1) at the maximum amount available pursuant to the calculation set forth in South Carolina Code Section 11-43-160(A)(1).
5. SCDOT will, to the extent Federal Highway Reimbursement Funds are available, make all annual contributions to the SCTIB authorized by any provision of South Carolina Code Section 11-43-160(A)(1), South Carolina Code Section 56-3-910(B) as amended by Act Number 176 of 2005, and South Carolina Code Section 12-28-2915, all as amended and supplemented from time to time and any successor or replacement provision thereof (hereinafter all referred to individually as "Statutory Obligation")

and collectively as "Statutory Obligations"), from monies SCDOT receives from Federal Highway Reimbursement Funds, or subject to the provisions of paragraph 6 of this Agreement, from other sources that do not involve revenues from any tax (referred to herein as "Non-Tax Revenues"). SCDOT warrants that it is authorized, has all the necessary power, and has the lawful right to make the aforesaid annual contributions to the SCTIB from Federal Highway Reimbursement Funds or from other Non-Tax Revenues.

6. SCDOT will, to the extent Federal Highway Reimbursement Funds are available, make payments to the SCTIB pursuant to each Intergovernmental Agreement and make contributions to the SCTIB pursuant to each Statutory Obligation from monies SCDOT receives from Federal Highway Reimbursements Funds. With respect to that covenant, SCDOT represents and warrants that:

- a. it is authorized, has all necessary power and authority, and has the lawful right to make payments to the SCTIB pursuant to the Intergovernmental Agreements and contributions to the SCTIB pursuant to the Statutory Obligations from Federal Highway Reimbursement Funds;
- b. the Federal Highway Reimbursement Funds sufficient to pay 1.50 times SCDOT's obligations to the SCTIB as set forth in this Agreement are not pledged for the payment of any obligation of the SCDOT or any other entity;
- c. it will not create any priority of assignment or security interest in the Federal Highway Reimbursements Funds that is senior or superior to the obligation to make payments to the SCTIB pursuant to the Intergovernmental Agreements

or to make contributions to the SCTIB pursuant to the Statutory Obligations;  
and

- d. in the event, in the future, SCDOT obligates Federal Highway Reimbursement Funds to be paid on a parity with SCDOT's obligations under the Intergovernmental Agreements or Statutory Obligations, SCDOT will ensure that such Federal Highway Reimbursement Funds will have 1.50 times historical coverage of the total sum of the annual payments under the Intergovernmental Agreements, the annual contributions under the Statutory Obligations, and all such parity obligations.
7. SCDOT will, in the event Federal Highway Reimbursement Funds are not available to SCDOT to make payments under the Intergovernmental Agreements and/or the annual contribution under the Statutory Obligations, use its best efforts to make such payments and contributions to the SCTIB from Non-Tax Revenues within the meaning of Article X, Section 13(9) of the South Carolina Constitution. SCDOT will discuss its proposed source(s) of payments and contributions with the SCTIB's bond counsel prior to making such payment from monies other than Federal Highway Reimbursement Funds.
8. Notwithstanding any provision in any other agreement, SCDOT agrees to and shall transfer the contribution due SCTIB pursuant to each Statutory Obligation and the payments due SCTIB pursuant to each Intergovernmental Agreement from Federal Highway Reimbursement Funds, or other Non-Tax Revenues subject to the provisions of paragraph 7 of this Agreement, in monthly installments on or before the twenty-fifth (25) day of each month commencing July 25, 2001, or such other date as

is expressly required by a specific Intergovernmental Agreement or Statutory Obligation, until each such obligation or contribution is paid in full.

9. In the event SDOT fails to make a payment or contribution in full to the SCTIB as required by any Intergovernmental Agreement or this Agreement, it acknowledges the authority of the State Treasurer under South Carolina Code Section 11-43-210, as amended and supplemented from time to time and any successor or replacement provision thereof, to withhold funds allotted or appropriated by the State to SCDOT and to apply those funds to make or complete any such payment or contribution to the SCTIB. The SCTIB will consult with SCDOT prior to requesting that the State Treasurer take any action under Section 11-43-210.
10. The term of this Agreement shall commence upon the first date entered in the first paragraph on page 1 hereof and will expire on the date the last payment on the last remaining Intergovernmental Agreement is made by the SCDOT to the SCTIB or the date the last annual contribution is made by SCDOT to the SCTIB pursuant to the Statutory Obligations, as amended and supplemented from time to time and any successor or replacement provision thereof, whichever occurs last.
11. In the event of a conflict between the provisions in this Agreement and those in any Intergovernmental Agreements or other agreements between SCDOT and SCTIB, the provisions of this Agreement shall control.

[SIGNATURES ON FOLLOWING PAGES 8 AND 9]

IN WITNESS WHEREOF, SCDOT and SCTIB have each caused this Agreement  
to be executed on its behalf and its respective seals to be affixed hereto.

SOUTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
Elizabeth S. Mabry,  
Executive Director

Recommended by:

\_\_\_\_\_

[SIGNATURE OF SCTIB ON PAGE 9]

SOUTH CAROLINA TRANSPORTATION  
INFRASTRUCTURE BANK

By: \_\_\_\_\_  
Donald D. Leonard,  
Chairman

**FIRST AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN SCTIB AND SCDOT  
RELATING TO REPLACEMENT OF  
COOPER RIVER BRIDGES**

THIS INTERGOVERNMENTAL AGREEMENT, is dated and entered into this 2nd day of July, 2001, by and among the South Carolina Department of Transportation ("SCDOT") and the South Carolina Transportation Infrastructure Bank ("Bank") relating to the replacing of the Cooper River Bridges, as first amended and restated by and between SCDOT and SCTIB on \_\_\_\_\_, 2005;

**WITNESSETH:**

**WHEREAS**, the Bank was created by the South Carolina Transportation Infrastructure Bank Act, South Carolina Code §§11-43-110, et seq. ("Act"), for the primary purpose of selecting and assisting in the financing of major qualified projects by providing loans and other financial assistance to governmental units and private entities for constructing and improving highway and transportation facilities necessary for public purposes, including economic development; and

**WHEREAS**, various provisions in Title 57 of the South Carolina Code authorize SCDOT to design, build and maintain public highways and bridges;

**WHEREAS**, on July 1, 1998, the Board of Directors of the Bank approved as qualified for assistance under the Act, a project to replace the John P. Grace Memorial Bridge ("Grace Bridge") and the Silas N. Pearman Bridge ("Pearman Bridge") in Charleston County, South Carolina ("Project");

**WHEREAS**, on July 28, 1998, the Bank obtained the approval of the Project, including financing, from the Joint Bond Review Committee of the General Assembly of the State of South Carolina as required by the Act with a total project amount of \$420 million, which included \$312 million from the Bank in the form of a grant, certain contributions from SCDOT from Federal funds available to it, and the remainder to be identified from other local, state, or Federal funds;

**WHEREAS**, on January 3, 2001, the Board of the Bank approved increasing its grant to the Project to \$325 million which was approved by the Joint Bond Review Committee on February 6, 2001;

**WHEREAS**, on September 29, 2000, the Federal Highway Administration (FHWA) of the United States Department of Administration issued a Secured Term Loan Sheet to the SCTIB committing to fund thirty-three percent (33%) of the eligible costs of the project, not to exceed \$215 million, through a loan under the Transportation Infrastructure Finance and Innovation Act of 1998 ("TIFIA");

**WHEREAS**, on April 17, 2001, the Charleston County Council approved providing \$3 million annually for twenty-five (25) years for the Project;

**WHEREAS**, on April 25, 2001, the SCDOT Commission approved providing \$7 million annually for twenty-five (25) years for the Project and has obtained certain Federal funding for the Project;

**WHEREAS**, on May 4, 2001, the Board of the Bank approved increasing the total project costs of the Project to the amount of the guaranteed maximum fixed price contract to be approved by the SCDOT Commission for the Project, plus all TIFIA allowable costs, but in no event to exceed \$650 million, subject to certain conditions;

**WHEREAS**, on June 13, 2001, the Board of Directors of the State Ports Authority (SPA) approved providing \$3 million annually for twenty-five (25) years for the Project subject to certain conditions;

**WHEREAS**, on May 29, 2001, the Joint Bond Review Committee approved increasing the total cost of the Project to the amount of the guaranteed maximum fixed price contract to be awarded by SCDOT Commission, plus all TIFIA allowable costs, but in no event to exceed \$650 million, to be financed in part by a loan under the TIFIA Program, which included the estimated costs to demolish the Grace and Pearman Bridges;

**WHEREAS**, on June 28, 2001, the Commission of SCDOT authorized the execution of a design/build contract for the Project and approved providing an additional \$1 million annually for twenty-five (25) years for the Project;

**WHEREAS**, the Board of the Bank and the Joint Bond Review Committee took action on April 1, 2004, and April 20, 2004, respectively, changing the Bank's financial assistance to the Project through approving the issuance of additional bonds in the amount of \$215 million so that the Bank could cancel its Secured Loan Agreement with the FHWA under the TIFIA program thereby generating savings in interest payments;

**WHEREAS**, on July 15, 2005, the Board of the Bank approved increasing the total cost of the Project by the amount over the previously approved total of \$650 million necessary to include up to \$62.1 million for the demolition of the existing Grace and Pearman Bridges, which demolition is required to facilitate shipping access and by decision of the U.S. Army Corp of Engineers, and advancing not to exceed \$62.1 million for the costs of such demolition ("Demolition") in exchange for SCDOT making certain payments to the Bank as set forth in a

separate Intergovernmental Agreement for Additional Multi-Project Funding between the parties dated \_\_\_\_\_, 2005;

**WHEREAS**, on \_\_\_\_\_, 2005, the Joint Bond Committee approved the matters set forth in the proceeding paragraph to the extent required by the Act;

**WHEREAS**, SCDOT and the Bank wish to establish herein the respective entities, obligations and provisions concerning the Project and the Demolition;

**NOW, THEREFORE**, in consideration of the mutual benefits, covenants, and obligations set forth hereinafter, SCDOT and the Bank hereby agree as follows:

### **ARTICLE I**

1. **Term of Agreement**

1.1 This Agreement shall be effective as of July 2, 2001, and shall terminate with respect to the, except where a different termination date is specifically stated elsewhere in this Agreement with respect to a specific obligation owed the Bank, on the date the Bank makes the final Disbursement payment or SCDOT makes the final payment on the Project, whichever occurs last. However, in the event any work under contract relating to the Project is not completed on that date, the parties hereto may extend the term of this Agreement for such reasonable period of time as may be necessary to complete that work. If there are any pending and unresolved claims for compensation for rights-of-way for the Project on the termination date, SCDOT may apply to the Bank for reimbursement of any award or payment thereon made by SCDOT and the Bank shall make the reimbursement provided there are sufficient funds authorized to be expended for that purpose remaining in the appropriate account for the Project.

1.2 This Agreement shall be effective as of \_\_\_\_\_, 2005, with respect to the Demolition and shall terminate on the date the Bank makes the final Disbursement or SCDOT makes the final payment on the Project, whichever occurs last.

## ARTICLE II

### 2. Funding Commitments of Bank and SCDOT

#### 2.1 Bank.

The Bank will make available to SCDOT for eligible expenses for the Project the total of \$540 million from its sources of revenue. In addition, the Bank will make available to SCDOT an amount not to exceed \$62.1 million for the costs approved by the Bank for the Demolition.

#### 2.2 SCDOT

A. SCDOT shall program for the Project monies available to it from various Federal sources (including, but not limited to, TEA-21, ISTEA, and Bridge Discretionary funds) the amount of \$96.6 million as reduced by the amount of the eligible expenditures made by SCDOT on the Project prior to the date of this Agreement. SCDOT, in consultation with the Charleston Area Transportation Study shall continue to budget and program such funds in each annual revision of the State Transportation Improvement Program (STIP) until the full \$96.6 million has been programmed. Such funds maybe used for any costs of the Project as maybe permitted by Federal laws, regulations or guidelines. In the event additional Federal funds are received for the Project at any time, SCDOT, after consultation with the Bank, shall use those funds to offset the expenditures incurred by the Bank and SCDOT as a result of any

deficiency between the actual funding provided by SPA and that described hereinabove on page 2. Any such Federal funds received in addition to those needed to offset expenditures by SCTIB and SCDOT for deficiencies in SPA's funding will be used by SCDOT for eligible Project activities, including demolition of the existing Cooper River Bridges.

B. In addition to the foregoing, SCDOT promises to pay the Bank \$8 million annually for the twenty-five (25) consecutive years for the Project subject to the terms and covenants set forth in the Master Intergovernmental Funding Agreement between SCDOT and the Bank dated July 2, 2001. The annual payments shall be made in equal monthly installments with the first installment being due on or before July 25, 2002, and each subsequent monthly installment being due on or before the twenty-fifth (25<sup>th</sup>) of each month until the aforesaid obligation is paid in full. This obligation shall terminate when the Bank has received payment of the aforesaid amount in full from SCDOT.

C. In addition to the foregoing, SCDOT promises to make payments to the Bank as set forth in the Intergovernmental Agreement for Additional Multi-Project Funding between the parties dated \_\_\_\_\_, 2005;

### 2.3 Draws by SCDOT

SCDOT shall have the right to draw funds from the account established herein for necessary expenses of the Project provided the conditions set forth herein have been satisfied. In no event, shall the aggregate of such draws for the Project exceed the total of \$540 million. In addition, SCDOT shall have the right to draw

funds from the account in an amount not to exceed \$62.1 million for the Demolition. Upon completion of the Project and Demolition, respectively, the balance, if any of the funds committed hereunder by the Bank and not drawn for necessary Project or Demolition expenses shall be retained by the Bank to be used for debt retirement or to satisfy any other obligation of the Bank as permitted by law.

2.4 For purposes of this Agreement, all amounts to be disbursed by the Bank under this Agreement are herein referred to as "Disbursements". Each contract entered into by SCDOT with respect to the Project or Demolition is referred to herein as a "Contract".

2.5 In no event shall the Bank or SCDOT be obligated to advance any funds or do any act to complete any work or Contract relating to the Project or Demolition should the funds committed to the Project or Demolition identified hereinabove be insufficient to complete the Project or Demolition or any portion or component of the Project or Demolition.

2.6 In the event any payments from or related to the SPA are paid later than expected or are in excess of that described hereinabove, those payments shall be used to offset expenditures incurred by the Bank or SCDOT as a result of the action or inaction of SPA. This provision shall survive the term of this Agreement.

### **ARTICLE III**

#### **3. Project or Demolition Administration**

3.1 SCDOT will administer the Project and Demolition.

3.2 SCDOT shall be responsible for all Project and Demolition engineering, right-of-way acquisition, and project construction and perform all or any part of the work with its own forces or may, as its sole option, contract out any of the work to outside consultants or contractors should it deem such contracting out to be more efficient or result in more timely completion of the work. SCDOT shall enter into such Contracts in its own name. All rights-of-way shall be acquired in the name of SCDOT, and SCDOT procedures for securing such rights-of-way shall be followed. SCDOT shall be entitled to draw hereunder its normal and customary rates for its services.

#### ARTICLE IV

4. Conditions Precedent to Bank's Disbursements.

4.1 Draw Requests. The Bank's obligation to reimburse SCDOT or pay firms providing services or materials upon receipt of a draw request from SCDOT on the Project or Demolition is conditioned upon all of the following being met:

4.1.1 No lien or other interest shall have attached to a Contract hereunder, nor any land or improvements related thereto.

4.1.2 Construction of the completed portions of the Project or Demolition described in a Contract shall have been carried out substantially in accordance with the plans and specifications, if any.

4.1.3 No event of default exists.

4.1.4 No event or condition shall have occurred or arisen which prevents the Bank from obtaining the funds necessary to make the remaining Disbursements due under this Agreement.

## ARTICLE V

### 5. SCDOT's Covenants and Agreements

5.1 Assurances. Upon request of the Bank, SCDOT shall do any act, or execute any additional documents reasonably required by the Bank to enable the Bank to procure necessary funds to make the Disbursements required hereunder or to comply with any state or federal laws to which the Bank may be subject. SCDOT acknowledges that the Bank intends to raise funds for its commitment to the Project, Demolition and other qualified projects through the issuance of general obligation bonds and/or revenue bonds, as permitted under the Act. Accordingly, SCDOT shall enter into such other documents, including amendments to this Agreement which are consistent with the substance hereof, as may be necessary in order to comply with South Carolina laws and regulations associated with such bonds and to satisfy requirements for documentation and information reasonably imposed by prospective purchasers of such bonds, bond insurers, rating agencies, and their attorneys, advisors, and representatives.

5.2 Use of Funds. SCDOT shall use all Disbursements made by the Bank under this Agreement solely for purposes of making payments to contractors or consultants under a Contract or for other purposes directly related to a Contract, the Project, Demolition, or making payments to itself for services or materials provided by SCDOT for the Project or Demolition.

5.3 Indemnification. To the extent permitted by law, 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 in

any way arising out of or relating to the design, construction or operation of the Project or Demolition or the selection or payment of firms for design, construction or operation of the Project or Demolition. This provision shall survive the termination of this Agreement.

## ARTICLE VI

### 6. Bank's Rights and Remedies

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

6.2 Remedies Cumulative; Nonwaiver. All remedies of the Bank provided for herein or in any other document are cumulative and shall be in addition to any and all other rights and remedies provided for or available under said document, at law or in equity. The exercise of any right or remedy by the Bank hereunder 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.

6.3 No Liability of the Bank. Whether or not the Bank elects to employ any or all remedies available to it following the occurrence of an uncured Event of Default, the Bank shall not be liable to any party for the design of, construction of, or failure to construct or complete any portion of the Project, Demolition or any Contract relating thereto.

## ARTICLE VII

### 7. General Conditions

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

7.2 Benefit. This Agreement is made and entered into for the sole protection and benefit of the Bank and SCDOT, and their successors and assigns, and no other persons, or parties shall have any rights hereunder in any manner to any Disbursements at any time, nor shall the Bank owe any duty whatsoever to any

claimant for labor performed or material furnished in connection with the construction of the Project, or 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 to exercise any right or power of the Bank hereunder or arising from any Event of Default by SCDOT.

7.3 Assignment. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, SCDOT shall not assign this Agreement or any of its rights, interest, duties or obligations hereunder or any Disbursements without the prior written consent of the Bank; and any such attempted assignment (whether voluntary or by operation by law) without said consent shall be void.

7.4 Prior Agreements. The Intergovernmental Funding Agreement entered into between the Bank and SCDOT dated September 30, 1999, shall remain in full force and effect, but in the event of a conflict between the provisions of that Funding Agreement and the provisions of this Agreement, the provisions of this Agreement shall control.

7.5 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 of any provision hereof.

7.6 Notices. All notices required to be given hereunder shall be deemed effective when received by the other party, through certified mail, registered mail, personal delivery, courier delivery, or facsimile transmission. All such notices shall be addressed to the parties as follows:

South Carolina Transportation Infrastructure Bank:

Chairman  
955 Park Street, Room 304  
Columbia, SC 29201

South Carolina Department of Transportation:

Deputy Director of Finance, Administration and Operations  
Post Office Box 191  
Columbia, SC 29202-0191

- 7.7 Rights of Third Parties. All conditions, terms and provisions of or relating to the obligations of the Bank hereunder, including the obligation to make Disbursements, are imposed solely and exclusively for the benefit of the Bank, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions, terms, or provisions or be entitled to assume that the Bank shall refuse to make advances in the absence of strict compliance with any or all thereof. No other person or party shall, under any circumstances, be deemed to be a beneficiary of such conditions, 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. In particular, the Bank makes no representations and assumes no obligations as to any person or party concerning the quality of the construction of the Project, the Demolition or any portion thereof or the absence therefrom of defects.
- 7.8 Amendments. Any amendment to this Agreement shall only be through a written instrument duly authorized and signed by each party hereto.

- 7.9 Savings Clause. Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.
- 7.10 Execution in Counterparts. This Agreement may be executed in two 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.
- 7.11 Authority to Execute. By executing this agreement, the undersigned affirm that they have authority to bind their principals thereto and that all acts have been taken to duly authorize this Agreement under applicable law.

[SIGNATURES ON FOLLOWING PAGES 14 AND 15]

IN WITNESS WHEREOF, SCDOT and the Bank have each caused this Agreement to be executed on its behalf and its respective seals to be affixed hereto.

SOUTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
Elizabeth S. Mabry,  
Executive Director

Recommended by:

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

SOUTH CAROLINA TRANSPORTATION  
INFRASTRUCTURE BANK

By: \_\_\_\_\_  
Donald D. Leonard,  
Chairman