

**Cooperative Intergovernmental Agreement
Between
Beaufort County, South Carolina
And the
South Carolina Department of Transportation
For
The Beaufort County Sales Tax Transportation Program Projects
US 21 Corridor and Sidewalk/Multiuse Pathways**

THIS AGREEMENT is made this 17th day of February, 2021, by and between Beaufort County, hereinafter referred to as "County," and the South Carolina Department of Transportation, hereinafter referred to as "SCDOT," collectively "the Parties."

WITNESSETH THAT:

WHEREAS, on November 6, 2018, under Chapter 37 of Title 4 of the Code of Laws of South Carolina (Supp. 2007), and pursuant to County Ordinance No. 2017/34, the voters of Beaufort County approved the imposition of a one-percent sales tax within the county for the purposes of funding certain transportation infrastructure improvements; and

WHEREAS, County and SCDOT desire to work together in the planning and implementation of the Beaufort County Sales Tax Transportation Program, hereinafter "the Program;" and

WHEREAS, County is a body politic with all the rights and privileges of such including the power to contract as necessary and incidental powers to carry out County's functions covered under this Agreement; and,

WHEREAS, SCDOT is an agency of the State of South Carolina with the authority to enter into contracts necessary for the proper discharge of its functions and duties;

NOW THEREFORE, in consideration of the several promises to be faithfully performed by the Parties hereto as set forth herein, County and SCDOT do hereby agree as follows:

I. GENERAL RECITALS:

A. Purpose:

The purpose of this work is to construct and improve certain transportation facilities throughout Beaufort County using, in part, funds derived from the one cent special sales and use tax imposed by Beaufort County and approved by referendum on November 6, 2018.

B. Description of Work:

This agreement covers the US 21 Network Improvements Project on Lady's Island and Sidewalks/Multiuse Pathways, hereinafter referred to as the "Project." The provisions herein shall only apply to the portions of the Project which are currently on the State Highway System or are proposed to be conveyed to SCDOT for acceptance into the State Highway System. Unless otherwise agreed, these provisions shall not apply to projects which are to be owned or maintained by County, a municipality, or any other non-state entity. Where local roadways tie into state or federal roadways, changes within SCDOT's right-of-way will fall under the terms of this agreement unless changes are approved by SCDOT through an encroachment permit.

Prior to Project initiation, County shall identify whether federal funds will be used. If use of federal funds is anticipated, the Project must be identified in either SCDOT's most current Statewide Transportation Improvement Program (STIP), or the most current fiscally constrained long range plan for the specific project improvement category. If federal funds are used, Project shall be developed and constructed in accordance with the joint Stewardship and Oversight Agreement between the Federal Highway Administration (FHWA) and SCDOT. The FHWA will make the determination of eligibility for Federal Transportation Funding at the time of request for authorization of each phase of the Project.

The scope of the Project shall be determined by County during the planning phase. County shall carry out the specific activities necessary to implement and construct the Project, which includes: planning, design, right-of-way acquisition, utility and railroad coordination, construction, and other associated coordination and administrative activities, unless noted otherwise herein. If County requests that SCDOT administer any phase of work for this Project, a supplemental agreement will be drafted to outline the responsibilities of County and SCDOT. Any Project phases administered by SCDOT will be subject to scheduling and prioritization within SCDOT's current workload.

C. Scope of Work:

The scope of the Project is described in Attachment A, attached hereto and incorporated herein. Nothing contained in this Agreement shall be construed to require County to undertake or complete the Project. Those obligations shall be solely governed by the actions of Beaufort County Council and applicable State law. However, if federal funds are expended and the Project is not completed, for whatever reason, repayment of the federal funds may be required.

II. COMMUNICATIONS:

- A. County and SCDOT agree that regular and thorough communication about this work is essential for the completion of the Project. County and SCDOT further agree that each Party will strive to communicate at both the management and staff levels.

1. The County Transportation Director and/or the designated County Representative shall meet with SCDOT's Program Manager on an as-needed basis.
 2. Additional coordination meetings will be planned and mutually agreed upon as necessary to coordinate the work.
- B. SCDOT will provide such technical support and advice as requested by County to assist in the planning and execution of the Project, subject to the provisions of Section IV.C. of this Agreement.

III. OBLIGATIONS OF SCDOT:

- A. To the extent permitted by existing South Carolina law, SCDOT hereby assumes complete responsibility for any loss resulting from bodily injuries (including death) or damages to property, arising out of any negligent act or negligent failure to act on SCDOT's part, or the part of any employee or agent of SCDOT in the performance of or participation in the work undertaken under this Agreement.
- B. SCDOT shall 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 at SCDOT's sole discretion if SCDOT determines that such contracting out would be more efficient or cost effective or would result in more expeditious completion of the Project.
- C. SCDOT shall be entitled to bill or draw payment at its normal and customary billing rates for services by its in-house personnel.
- D. SCDOT agrees to accept responsibility for normal maintenance of standard transportation materials, structures, and workmanship within SCDOT rights-of-way according to common local practices for the Project.
- E. SCDOT agrees to accept the Project in accordance with Section VI.E. of this Agreement.

IV. OBLIGATIONS OF COUNTY:

- A. To the extent permitted by existing South Carolina law, County hereby assumes complete responsibilities for any loss resulting from bodily injuries (including death) or damages to property, arising out of any negligent act or negligent failure to act on County's part, or the part of any employee or agent of County in performance of the work undertaken under this Agreement.
- B. County shall provide or cause to be provided all services for the execution of activities for the planning, development, and delivery of the Project, unless noted otherwise herein.

- C. County shall reimburse SCDOT for costs incurred as part of SCDOT's reviews, coordination, and oversight. SCDOT will invoice County no more often than quarterly for these costs.
- D. County agrees to assign a right of entry or other property rights necessary to SCDOT in order for SCDOT to maintain the Project until such time as all rights-of-way and other property rights are transferred to SCDOT after completion of the Project.
- E. The cost of the Project shall be borne solely by Beaufort County unless additional funding is secured through SCDOT, other sources, or as otherwise provided for in this Agreement.
- F. The Parties agree that, because the Project is not an SCDOT project, the consent of municipalities in which the work occurs is not required under S.C. Code Ann. §57-5-820. Should a court of competent jurisdiction rule that such consent is required, it will be the responsibility of County to obtain the same.

V. GENERAL PROVISIONS:

A. Conformance:

The Project shall be developed and constructed to SCDOT standards and specifications, and any other applicable legal standards. The current edition of each standard and specification shall be the edition as of the beginning of the design work for the Project with the expectation that the standards and specifications shall be applicable through the completion of the Project. However, where there is a significant delay in the completion of the design of the Project, the most current standards and specifications may be incorporated into the contract documents. It is the intent of both County and SCDOT to design the Project in compliance with the applicable standards and specifications; however, both Parties recognize that exceptions to these standards and specifications may be mutually beneficial. Such exceptions will be granted if both Parties agree in writing.

County acknowledges that the Buy America provisions apply to all contracts within the scope of a National Environmental Policy Act (NEPA) determination and eligible for assistance under Title 23 U.S. Code, so long as one such contract is funded with federal aid.

If federal funds are used, County shall administer all phases of the Project in compliance with the SCDOT / Federal Highway Administration STEWARDSHIP AND OVERSIGHT PLAN dated June 2014 and any revisions, addenda, or other modifications thereto (included herein by reference), located on SCDOT's website at www.scdot.org/doing/stewardship.aspx. Pursuant to this Stewardship and Oversight Plan, FHWA retains approval and oversight authority for all phases of the Project, and may require documentation and activities not expressly mentioned in this Agreement.

B. Planning and Environmental Activities:

County shall make a determination as to the exact scope of the proposed improvement(s). In this planning phase, County shall consider the following aspects of the Project in determining the scope of the proposed improvement(s):

- Public involvement
- Source of funding (does the Project utilize federal funds or not)
- Environmental considerations including determination of necessary environmental documentation
- Traffic requirements for the Project based on traffic projections for the design year 20 years beyond the scheduled construction date of the Project. For example, a scheduled construction start in 2020 would require design year traffic projections for the year 2040. Where available, the Lowcountry Area Transportation Study / Lowcountry Council of Governments (LATS / LCOG) traffic projections would be supplied by SCDOT for use in these planning activities. In instances where these LATS / LCOG traffic projections are not available, County will make traffic projections based on standard industry methodology for the appropriate design year as indicated above.
- Right-of-way to encompass all facility improvements
- Decision by County whether County or SCDOT will issue all Utility Agreements and No Cost Letters
- Determination of any railroad involvement on the Project and a recommendation as to the involvement by SCDOT with regard to agreements, drawing reviews, coordination, etc.
- Constructability
- Other issues impacting the planning and execution of the work as deemed appropriate and beneficial to County

County will carry out their work and services in compliance with all applicable Federal, State, and local environmental laws and regulations, and shall monitor and oversee the Project for such compliance. This responsibility shall include:

1. Complying with those stipulations and conditions under which SCDOT received approval of applicable environmental documents and permits. Individual permits issued by the U.S. Army Corps of Engineers (USACE) will be signed over to County. If County will be responsible for letting the Project, the Notice of Intent (NOI) will be signed and submitted by County.
2. County will ensure compliance with all secured permits. The permittee will be responsible for Project compliance. If SCDOT is required to inspect Project for compliance, either through the use of SCDOT staff or consultants, County is responsible for reimbursing SCDOT for the cost of inspection. SCDOT is authorized to use the Project charge code for all compliance activities. County will

be the sole party responsible for resolution of any enforcement actions as a result of non-compliance with permit conditions and requirements to the extent that County or its agents were responsible for such breach or action causing the enforcement action.

3. Complying with applicable laws and regulations relating to potential or actual hazardous materials that may be encountered in the course of implementing the Project.
4. Carrying out all required social, economic, and environmental studies required by law.
5. Making all necessary modifications to approved permits as required by law. If SCDOT is still the permittee, any modifications will be submitted to SCDOT's Environmental Office for review and approval prior to submittal to the appropriate regulatory agency. In the event a USACE Individual Permit is required, SCDOT will sign over any and all individual permits to County.

County recognizes that SCDOT and/or the FHWA or other agencies may have final review and approval for the environmental documentation required under the implementing regulations of the National Environmental Policy Act of 1969, 23 C.F.R. §771, *et seq.* County will be responsible for the preparation of any necessary permit applications required by any governmental agency to complete the Project and will work with SCDOT in coordinating and negotiating with the agency to secure the permits. County and their consultant must coordinate with the SCDOT Environmental Permitting Division when submitting a USACE 404 Permit application. Additionally, all coordination with USACE and SCDHEC is to occur through SCDOT's Environmental Permitting Division. All work performed must be in accordance with SCDOT's Environmental Consultant Scope, latest edition, and any amendments thereto, if applicable. Where necessary, County shall prepare all permit applications in the name of SCDOT. County will comply with any regulatory agency requirements, and be responsible for resolution of any enforcement actions that may arise as a result of non-compliance with regulatory agency requirements. All permit conditions set by the regulatory agencies must be reviewed and approved by SCDOT for all roads in, or to be included in, the state system.

County must provide an assessment of potential jurisdictional impacts for the Project within 180 days of the execution of this Agreement to the SCDOT Environmental Mitigation Manager. County will coordinate, throughout Project development, with the SCDOT Environmental Office to develop a strategy that meets County's needs and assists in streamlining permit acquisition. County is responsible for developing a conceptual mitigation plan if the Project requires compensation for unavoidable impacts. This plan may be submitted to the Environmental Mitigation Manager for review prior to any submittal of a 404 permit application to USACE. County should not assume they will have access to SCDOT mitigation banks. Access to SCDOT mitigation banks will be determined by SCDOT's Mitigation Manager.

County shall conduct required public involvement meetings for the Project in accordance with NEPA regulations, or as otherwise specified by SCDOT. In addition, non-mandatory public meetings may be held to discuss Project issues if desired by County. County shall notify representatives of SCDOT in advance of all meetings and shall notify other representatives from state, federal, and resource agencies as required. The Project shall not be advanced to right-of-way acquisition and/or construction phases until final approval of environmental documentation is obtained.

SCDOT and County both recognize that the FHWA will not take any action on projects that are funded solely by local sources. In order for FHWA to review and approve NEPA documents, the project must include federal funds in the STIP and/or the fiscally constrained portion of the Long Range Transportation Plan. County must also adhere to the transportation planning process in 23 CFR 450 for how to apply federal funds to Project. If County decides to add federal money to Project late in the development process, the Parties acknowledge that certain steps in the process may need to be repeated to ensure federal eligibility.

C. Design Activities:

Design of the Project will be County's responsibility except as otherwise provided for in this Agreement. Regardless of funding sources, FHWA may, in its discretion, retain any specific approval or related activity for the Project.

1. SCDOT shall assign a Project Identification Number to the Project for tracking purposes. County shall use this number on all right-of-way instruments, plans, and permits as applicable.
2. All Project surveys related to the setting of horizontal control, vertical control, mapping, and aerial photography will comply with SCDOT's current edition of the "Preconstruction Survey Manual."
3. All structural components of the Project shall comply with the "AASHTO Standard Specifications for Highway Bridges," latest edition, including the latest Interim Specifications thereto. Bridge structures shall be designed with the LRFD criteria. This will include all seismic requirements in accordance with these AASHTO criteria.
4. Upon completion of the work, County shall certify that the contract documents have been prepared in conformance with the provisions of Items 1, 2, and 3 above. County shall require that all construction plans and specifications be sealed by a South Carolina registered professional engineer.

5. If County has federal funds programmed in either the STIP or Long Range Transportation Plan, County shall comply with all applicable federal and state statutes and regulations to maintain the eligibility of those funds for reimbursement.
6. In the event that state or federal funding becomes available for the Project, and in the event that County should desire to utilize these funds, the Parties shall cooperate with regard to amendments to this Agreement that may be required to secure that funding. Such amendments will provide for policies and procedures including direct SCDOT administration or assistance with administration of the Project that would be most advantageous in securing that funding.
7. If County starts Project without federal funds and then later seeks to add federal funds to the Project, County acknowledges that some steps in the process (NEPA) may need to be redone to ensure eligibility.
8. SCDOT's Office of Materials and Research shall approve the pavement design on roads within or intended for the state system and shall respond to County within 30 business days from the time County submits the pavement design for review. Approval of pavement designs on state maintained roadways require the SCDOT Pavement Design Engineer's signature on the typical sections of the final construction plans. Any changes to this pavement design must be reviewed and approved by the SCDOT Pavement Design Engineer.
9. SCDOT will provide reviews of the design plans and other contract documents and will provide written comments to County. Plans or other design documentation will be sent to SCDOT at the following stages of the Project: design criteria, concept (optional), preliminary right-of-way, and final design. County shall submit the design in a form that is acceptable to SCDOT's reviewer. Design reviews will be accomplished by SCDOT and review comments will be returned to County within 30 business days from the time County submits the review documents to SCDOT. County will notify SCDOT at least two weeks in advance of the submission of documents to be reviewed. Project shall not be advanced to right-of-way or construction until written authorization is provided by SCDOT.
10. Design plans and documents submitted to SCDOT for reviews shall be provided in electronic (.pdf) format. County shall utilize file transfer protocol (FTP) or other agreed upon platform to transfer the documents to be reviewed.
11. During the development of design of the Project, consideration should be given to costs associated with long-term maintenance of items incorporated into the Project. SCDOT reserves the right to request alternative solutions that would present lower long-term maintenance costs.
12. SCDOT's written "authority to proceed" with right-of-way acquisition activities shall serve as approval for County to begin right-of-way activities on the Project.

SCDOT agrees to provide written notice of “authority to proceed” or review comments for the right-of-way plans within 25 business days from the time County submits the right-of-way plans for review.

13. SCDOT’s written “authority to proceed” with construction shall serve as approval of right of entry and encroachment on to SCDOT’s right-of-way for construction of the Project by County. SCDOT agrees to provide written notice of “authority to proceed” or review comments for the final plans within 25 business days from the time County submits the final plans for review.
14. In the event that federal funding is sought by County through SCDOT, County shall perform a value engineering analysis as required by 23 C.F.R. Part 627.

D. Utility Activities:

1. All utility coordination and relocation activities shall be in accordance with 23 C.F.R. 645 and SCDOT’s “A Policy for Accommodating Utilities on Highway Rights of Way,” and other applicable State law.
2. Utility relocations will be paid based on prior rights and applicable state law. Where a utility establishes a prior right of occupancy in its existing location, County will be responsible for the cost of that relocation, including all real and actual costs associated (engineering, easements, construction, inspections, etc.). Prior Rights may be established by the following means:
 - a. The utility holds a fee, an easement, or other real property interest, the taking of which is compensable in eminent domain.
 - b. The utility occupies SCDOT right-of-way through an existing agreement with SCDOT and is not required to relocate at its own expense.
3. Where the utility cannot establish a prior right of occupancy, the utility will be required to relocate at its own expense. However, in some cases for not-for-profit utilities, County may elect to use Program funds for all or part of such utility relocation costs. In such cases, federal funds would not be eligible for reimbursement.
4. Utility work will be coordinated and executed in accordance with SCDOT’s Design Manual and Construction Manual.
5. If federal funds are used for any development or construction contract within the scope of the NEPA determination, the Buy America provisions apply to all utility relocations that are otherwise eligible for federal aid reimbursement, regardless of whether federal funds are actually used.

6. Utilities to remain in SCDOT rights-of-way, or to be relocated to a point within SCDOT rights-of-way, shall be in compliance with SCDOT's "A Policy for Accommodating Utilities on Highway Rights of Way."
7. County will honor the terms of any pre-existing agreements between SCDOT and a utility owner.
8. County shall comply with Act 36 of 2019, as codified in S.C. Code Section 57-5-880 for relocation of public water and sewer utilities.
9. County will provide utility deliverables as defined in Section VI.E.
10. County will provide a Utility Certification in a form acceptable to SCDOT insuring that all utility relocation agreements, letters, and relocation plans necessary for construction of the Project have been secured and provide the schedule for relocation work.

E. Railroad Activities:

1. County shall coordinate with the operating Railroad(s) during the planning phase of Project development to discuss the Railroad's requirements and future plans at that location.
2. County shall solicit comments early in the design process from Railroad(s) by providing an overview map, description of the Project, and railroad milepost. Railroad company and milepost information can be found on a sign at the crossing of the railroad and the roadway. Information such as train data, passenger operations, valuation maps (VAL Maps) of railroad right-of-way, future track and utility road requirements, and any other special considerations not described in Railroad(s) general criteria, etc. shall be discussed with the Railroad(s). County shall also, as instructed by the Railroad(s), submit plans and correspondence to Railroad(s) for engineering review / approval and subsequent development of Railroad Force Account Costs. County shall assist in drafting and executing required Railroad agreements. Understanding the Railroad(s) requirements, process, review schedules, and costs early is crucial to the success of the Project.
3. County, or County's consultant, shall obtain all necessary Railroad(s) Right-of-Entry permits which may be required for survey, subsurface utility engineering (SUE), geotechnical operations, etc. Upon permit approval and as instructed by the Railroad(s), County shall coordinate with Railroad(s) flagman and engineering representative during times when field operations shall be occurring within the Railroad(s) right-of-way.
4. If the Project involves an SCDOT maintained roadway, County shall coordinate with SCDOT's Railroad Projects office, located within SCDOT's Right-of-Way

Department. During the Project's planning phase, SCDOT and County shall discuss the necessity of a Tri-Party Agreement and other joint requirements.

5. County shall reimburse Railroad(s) for all work performed by or on behalf of the Railroad(s) in support of the Project.
6. County, and County's consultants and contractors, shall retain all records pertaining to the Project for three years after completion and acceptance of the Project. All such records shall be made available to SCDOT for review and audit upon request.
7. County will provide a Railroad Certification in a form acceptable to SCDOT insuring that all railroad coordination is complete and all railroad agreements have been secured for construction of the Project.

F. Right-of-Way Acquisition Activities:

1. County shall acquire all right-of-way necessary for highway purposes in its own name. Acquisition of rights-of-way to be turned over to SCDOT and rights-of-way for projects that may or will be made using federal funds shall be acquired in accordance with the United States Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, P.L. 91-646, 42 U.S.C. §§4601 *et seq.*, regulations thereunder including 49 C.F.R. Part 24, the South Carolina Eminent Domain Procedures Act, and SCDOT's Office of Right of Way Acquisition Manual. Title instruments acquired for this Project to be conveyed to SCDOT shall be documented on standard SCDOT right-of-way forms. Right-of-way limits shall be set according to standard SCDOT practices, utilizing the SCDOT Highway Design Manual and the SCDOT Road Design Plan Preparation Guide. These limits shall encompass all pertinent highway facilities and structures necessary for the construction and maintenance of the roadway.

With respect to the acquisitions:

County Shall:

- a. Acquire right-of-way in fee simple title or easement interest as directed by SCDOT.
- b. Perform title searches for each property to be acquired and provide SCDOT with Certificates of Title signed by an attorney licensed to practice in South Carolina. Preliminary title abstracts must be provided prior to property being appraised.
- c. In accordance with and when required by SCDOT's Appraisal Manual, provide an acceptable appraisal for each tract by an appraiser from SCDOT's approved appraisal list. All contracts for appraisals shall obligate the appraiser to provide

court testimony in the event of condemnation. County shall obtain appraisal reviews complying with technical review guidelines of the Appraisal Manual and make a recommendation of just compensation. The appraisal reviewer shall be approved by SCDOT. The reviewed appraisal must be approved by SCDOT's right-of-way representative prior to the offer to purchase being made to the Landowner.

- d. Secure approval from SCDOT's right-of-way representative for any settlement above the approved appraisal if federal funds are utilized on the Project.
- e. Titles shall be in fee simple absolute by recordable warranty deeds unless otherwise approved by SCDOT. All titles shall be recorded in the land records of Beaufort County.
- f. In the event of condemnation, the necessary documents as required by the Eminent Domain Procedures Act, S.C. Code Ann. §§ 28-2-10 *et seq.*, will be prepared and County will utilize its Eminent Domain authority to acquire title. County shall be responsible for securing legal representation familiar with Eminent Domain in South Carolina. Condemnation shall be by way of trial after rejection of the amount tendered as provided in S.C. Code § 28-2-240.
- g. Retain all records dealing with property acquisition and all other costs associated with this project for three years after the "Final Acceptance Date" of the Project by SCDOT. County or its authorized representative will make such records available for audit and review upon request.
- h. County is responsible for establishing and maintaining Quality Control and Quality Assurance procedures for the entire right-of-way acquisition process.
- i. Provide relocation assistance in accordance with SCDOT's Relocation Manual. All relocation housing payment offers shall be approved by SCDOT prior to being offered to displacees. County shall issue 90 and 30 - day notices of displacement in accordance with State and federal guidelines.
- j. County shall be responsible for the disposition of all identified improvements being acquired on the Project prior to the obligation date of the construction.
- k. Establish specific milestone dates for the different phases of the right-of-way acquisition and provide bi-monthly reports indicating the status of each individual parcel.
- l. Provide a Right-of-Way Certification in a form acceptable to SCDOT ensuring that all property necessary for construction of the Project has been secured and that all displacees have been relocated prior to advertising for construction bids.

- m. At the completion of the Project, County shall prepare a ROW exhibit and master deed reflecting the rights-of-way to be conveyed to SCDOT as a part of this Project. These documents must be prepared and submitted prior to or at Project close-out.

SCDOT Shall:

- a. Designate a representative from the Right-of-Way office to approve offers of just compensation as well as any settlements above the approved appraisal amounts, participate in mediation of legal settlements, and coordinate and provide approval for all relocation benefits for displaced persons or businesses.
- b. Provide approval of the Right-of-Way Certification and authorization to proceed to construction.

G. Construction Activities:

1. County shall include the required Federal Aid contract provisions in the contract and shall coordinate with SCDOT to establish a Disadvantaged Business Enterprise (DBE) goal if the project is federally funded.
2. County shall obtain SCDOT concurrence prior to awarding the construction contract.
3. County will construct the Project in conformance with the technical sections of SCDOT's current Standard Specifications for Highway Construction, Supplemental Specifications, Supplemental Technical Specifications, Standard Drawings, the Access and Roadside Management Standards (ARMS), and related AASHTO standards in effect at the time of the Project letting unless otherwise agreed to by SCDOT and County in accordance with Section V.A. of this Agreement. County will apply ARMS requirements to the construction effort and to the relocation of utilities within the SCDOT right-of-way. County must obtain written approval from SCDOT if there will be any significant deviation from the construction contract documents.
4. To the extent applicable, materials and services shall be procured in accordance with Beaufort County Procurement Procedures, S.C. Code Ann. §§ 11-35- 10 *et seq.*, SCDOT standard policies, applicable Federal statutes and regulations (2 C.F.R. Part 200, 23 C.F.R. Parts 172 and 635), and State statutes and regulations.
5. County shall provide administrative, contract management, Quality Acceptance testing, inspection, and other services sufficient to provide certification to SCDOT that the construction and the materials used for construction are in conformance with the plans and specifications set forth in the contract documents. The inspectors and engineers performing Quality Acceptance testing and inspection on the Project shall be SCDOT certified in the area of testing and inspection being performed. All acceptance sampling and testing shall be performed in accordance with the quality control (QC)

sampling and testing schedule and frequency specified in SCDOT's Construction Manual. The engineer of record may not also provide Construction Engineering and Inspection services on State-maintained facilities.

6. County shall obtain SCDOT concurrence to accept material that does not conform to contract requirements. Such concurrence shall be documented by the use of SCDOT Form 100.09, and must be approved by the SCDOT District Engineering Administrator and SCDOT's Director of Construction. The request for concurrence must be initiated by County to SCDOT no later than 45 days after incorporation of the non-conforming material into the Project.
7. SCDOT shall conduct construction oversight, to include sampling and testing of materials, on all State-maintained roadways at the discretion of the Deputy Secretary for Engineering. All SCDOT costs associated with construction oversight shall be reimbursed by County in accordance with Section IV.C. of this Agreement.
8. SCDOT will perform independent assurance (IA) sampling and testing on projects with federal funding.
9. The Project may be subject to periodic reviews/inspections by SCDOT's Quality Management Team and the Environmental Compliance Team at SCDOT's discretion.
10. To facilitate the coordination of construction activities and to ensure that the work is constructed in accordance with the applicable provisions, County and SCDOT agree as follows:
 - a. Weekly Project field reviews will be made by both County's and SCDOT's construction representatives to discuss Project status, mutual concerns, and construction issues.
 - b. Contract documents will be furnished to SCDOT.
 - c. Copies of test results will be submitted to SCDOT so test data and results can be evaluated. Periodic reviews of test reports and summaries may be made by SCDOT.
 - d. Copies of Daily Work Reports, Diaries, Meeting Minutes, and all documents associated with the Construction Management of the Project shall be provided to SCDOT upon request.
 - e. Project traffic control reviews for safety and specification compliance will be made and documented on SCDOT Form 600.02 by County or their agent. Daytime reviews shall be conducted at least once per week, and a nighttime inspection will be performed at least once per month.

- f. Erosion control reviews will be made on a schedule as required in the NPDES General Construction Permit. Erosion Control reviews will be made in accordance with the latest edition of SCDOT's Supplemental Specification on Seeding and Erosion Control Measures. Observations will be documented on SCDOT's Erosion Control form 800.02. County will apply for and acquire all necessary permits, to include the NPDES General Construction Permit in the name of County unless otherwise agreed upon by SCDOT and County. County will comply with any NPDES requirements, and be responsible for resolution of any enforcement actions that may arise as a result of non-compliance with NPDES requirements.

- 11. When all aspects of the Project have been properly and fully performed and the work is substantially complete, County shall coordinate with SCDOT to establish a date for final inspection of the work. County, SCDOT, and the prime contractor shall jointly conduct the final inspection and develop a Final Project Punch-list. County shall require that any deficiencies identified on the Final Project Punch-list are appropriately addressed in a timely manner and shall advise SCDOT in writing of the completion of any corrective action. The date of this notice shall become the date of Final Completion.

VI. OTHER PROVISIONS:

A. Maintenance of Traffic:

County shall require that its contractors keep all existing State highways open to traffic while they are undergoing improvements, except for temporary construction detours or closures. Additionally, County shall be responsible for maintaining the entire section or sections of highway within the limits of the Project area from the time its construction contractor is issued the Notice to Proceed until the time Project is delivered to SCDOT under the terms of this Agreement. Traffic control activities shall be in accordance with the MUTCD (current edition), the SCDOT District 6 Daytime Lane Closure policy (current edition), and SCDOT's standard guidelines and standard drawings for maintenance of traffic in a work zone. Traffic control plans will be required for all types of lane closures, shoulder closures, and detours.

B. Maintenance of Project:

County shall accept responsibility for normal maintenance of the roadway within the Project limits during construction.

C. Tie-in Agreements:

Where the limits of the Project meet or overlap into the project limits established for projects that are or will be executed by SCDOT before the completion of this Project, County and SCDOT will develop agreements to outline provisions that would be beneficial

to both County projects and SCDOT projects with respect to funding, traffic control, improved safety for the traveling public, coordination of drainage systems, or other design or construction considerations. These agreements will stipulate the funding implications of such provisions and the responsible parties thereof.

D. Encroachment Rights:

SCDOT shall deliver possession of its highways to County in the same manner and under the same terms it does to highway contractors working under contract with SCDOT, and hereby grants encroachment and access rights to the right-of-way and easements along the proposed Project corridors as set forth below. This possession shall be delivered after approval of the final construction plans as outlined below.

1. When a construction contract has been awarded by County, County will notify SCDOT of the anticipated Notice to Proceed date for the contract. After written approval of the final construction plans by SCDOT as outlined in Section V.C.9 of this Agreement and on the Notice to Proceed date for construction, County and/or its agents will assume maintenance responsibilities for the Project.
2. Where applications for encroachment permits with regard to any segment of road covered by the Project are received by SCDOT, SCDOT will forward those applications to County within 10 business days of receipt for review to ensure that those proposed improvements described in the permit applications will not conflict with the Project plans. County shall review the applications and return comments within 15 business days.
3. From the time of execution of this Agreement up to Project completion, SCDOT hereby grants County access to the Project corridors for the purposes of gathering field information necessary for accomplishing the planning, design, and right-of-way aspects of the Project. County will publish an Eminent Domain notice for the Project in accordance with the Eminent Domain Act, SC Code Section 28-2-70(C).

E. Acceptance:

In the event that additional centerline miles are created by the Project, the Project will be presented by SCDOT staff to the SCDOT Commission upon Final Completion, as defined by Section V.G.11 of this Agreement. The Commission will determine if the additional mileage is to be accepted by SCDOT. In the event that additional miles of secondary roads are added to the State Highway System as a result of the Project, an equal mileage of existing roads on the State Highway System in Beaufort County will be turned over to County for maintenance. The exact roads to be exchanged will be as mutually agreed between County and SCDOT.

Upon completion of the Project, County shall submit the Project Closure Checklist, attached hereto as Attachment C, including the following Project documentation to SCDOT.

1. Copies of required environmental documents
2. Design documents
 - a. As described elsewhere in this agreement
 - b. Final Project plans suitable for delivery and recording pursuant to S.C. Code §57-5-570 and in accordance with the current version of SCDOT's As-Built Construction Plans Supplemental Specification
 - c. Electronic files of the Final Project plans as described in SCDOT's "Road Design Reference Material for Consultant Prepared Plans"
 - d. Final Stormwater Reports
3. Right-of-way documents
 - a. Appraisals
 - b. Title search information
 - c. Deeds sufficient to convey the additional highway right-of-way acquired by County to SCDOT. Titles shall be by special warranty and sufficient to convey the entire interest obtained by County from the Landowner.
 - d. Correspondence with property owners
 - e. Master exhibit prepared by the engineer of record outlining the rights-of-way to be conveyed to SCDOT
 - f. Diaries or agents' worksheets related to the acquisition of right-of-way
 - g. All Utility Agreements and No Cost Letters with supporting documentation
 - h. Summary sheet showing all payments made by County against each Utility Agreement
 - i. If applicable, all supporting information for cost increases to Utility Agreements
4. Construction documents
 - a. As-built drawings - In addition to those documents set forth elsewhere in this Agreement, County shall provide, within 90 days after Final Completion, two marked-up sets of final construction drawings reflecting the as-built condition of the Project based on information provided by the construction contractor and verified by County. "As-built" plans must be drawn to scale, and be based on the project survey stationing. These plans will include as-built information for utilities. These plans will be sufficient to establish the precise location of all utilities and appurtenances as well as provide key information for future determination of the extent of prior rights. "As-built" utility plans must include at a minimum the following:
 - Survey centerline and existing roadway centerline if different, with labeled stationing.
 - Existing and new right-of-way lines, and County easement lines
 - Final location of utility lines and appurtenances
 - b. Test reports
 - c. Daily construction diaries
5. Other documents

- a. Assignments to SCDOT of all contractors' payment and performance bonds in connection with the Project and a copy of the Consents of Surety for final payment
- b. Releases, affidavits, or other proof of payment to indicate full payment of all claims by contractors, their subcontractors, or suppliers.
- c. For federally funded projects with a DBE goal, a DBE closeout document obtained from SCDOT's Office of Business Development

SCDOT shall accept the Project and assume responsibility for maintenance of the Project upon receipt of County's submittal of the Project Closure Checklist signed by the representative of County and upon SCDOT's review and signature approval of the Checklist.

County shall be responsible for maintenance of specialized or unique features, enhancements, or nonstandard materials that are incorporated into the Project, such as, but not limited to: noise walls, sidewalks wider than five (5) feet, shared use paths, hardscape treatments, landscaping, lighting, mast arms, and street furniture.

A separate Maintenance Agreement between the Parties will address specific maintenance responsibilities for any special features, enhancements, or nonstandard materials incorporated into the Project.

F. Warranty:

1. County warrants that it will perform the work necessary under this Agreement in accordance with the standards of care and diligence normally practiced in the transportation industry for work of similar nature. To the extent County's construction contractor warranties are obtained in connection with the Project intended to be turned over to SCDOT, County shall ensure that those warranties are assignable.
2. County shall take all steps necessary to transfer to SCDOT any manufacturer or other third party warranties of any materials or other services used in the construction of the Project.

VII. Miscellaneous General Provisions:

A. Disputes:

County and SCDOT shall cooperate and consult with each other with respect to the Project intended to be turned over to SCDOT for maintenance to the extent set forth herein. The Parties may utilize the Issues Escalation and Dispute Resolution Process included as Attachment "B" to determine the appropriate person(s) and timeframe to resolve any issues that may arise. In the event that a dispute arises, the following procedures will be used to resolve the matter.

Any dispute or claim arising out of or related to this Agreement shall be submitted for resolution under the procedures outlined in Attachment "B." Within 90 days of the date of this Agreement, an ad hoc board designated as the Dispute Resolution Board, will be selected pursuant to the procedures identified below. The Dispute Resolution Board will be composed of two members from County and two members from SCDOT. These four members shall choose a fifth member employed neither by County nor SCDOT. This fifth member shall be a mediator certified in the State of South Carolina. The cost for the mediator shall be shared equally between County and SCDOT. The Board shall be empanelled for the entire duration of this Agreement and shall hear all disputes between County and SCDOT relating to this Agreement that cannot be resolved through the normal resolution process outlined in the Issues Escalation chart. In the event this process does not produce a resolution, the Parties may seek redress from the Court of Common Pleas for Beaufort County. Any court proceedings shall be non-jury. Exhaustion of this Dispute Resolution Process is a condition precedent to seeking a legal or equitable remedy.

B. Successors/Assigns:

County and SCDOT each bind themselves and their respective successors, executors, administrators, and assigns to the other Party with respect to these requirements, and also agree that neither Party shall assign, sublet, or transfer its interest in the Agreement without the written consent of the other.

C. Disadvantaged Business Enterprises:

County will provide opportunities for Disadvantaged Business Enterprises as required by state laws and regulations. County will coordinate with SCDOT's DBE Office when establishing goals for the Project. The Parties hereto and their agents shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement or the work provided for herein. Where required, the Parties hereto and their agents shall carry out applicable requirements of 49 C.F.R. Part 26 in the administration of this Agreement.

D. Enforceability:

All of the terms, provisions, and conditions of this Agreement shall be binding upon and enforceable by the Parties, their respective elected officials, legal representatives, agents, employees, and their respective successors.

E. Amendment:

This Agreement may be amended or modified only by a written document, which has been signed by the Parties hereto, or by their duly authorized officials. County, or its authorized agent, shall agree to hold consultations with SCDOT as may be necessary with regard to the execution of supplements, modifications, or amendments to this Agreement during the course of the Project for the purpose of resolving any items that may have been

unintentionally omitted from this Agreement or arise from unforeseen events or conditions. Such supplemental agreements shall be subject to the approval and proper execution of the Parties hereto. No supplements, modifications, or amendments to this Agreement shall be effective or binding upon either Party unless both Parties agree in writing to any such changes.

F. Termination:

This Agreement may be terminated by County upon written notice to SCDOT, provided that County covers all costs incurred prior to termination and as the result of termination, including any required repayment of federal funds. If County fails to advance the Project to completion, SCDOT may terminate the Agreement upon written notice and County shall be responsible for all costs incurred prior to termination and as the result of termination, including any required repayment of federal funds.

G. Waiver:

No waiver of a breach of any of the covenants, promises, or provisions contained in this Agreement shall be construed as a waiver of any succeeding breach of the same covenant or promise or any other covenant or promise thereof. In no event shall any failure by either Party hereto to fully enforce any provision of this Agreement be construed as a waiver by such Party of its right to subsequently enforce, assert, or rely upon such provision.

H. Severability:

In the event that any part or provision of this Agreement shall be determined to be invalid or unenforceable, the remaining parts and provisions which can be separated from the invalid or unenforceable provision or provisions shall continue in full force and effect.

I. Captions:

The captions or headings herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

J. Notices:

All notices pertaining to this Agreement shall be in writing and addressed as set forth below, and shall be deemed properly delivered, given, or served when: (i) personally delivered, or (ii) sent by overnight courier, or (iii) three days have elapsed following the date mailed by certified or registered mail, postage prepaid.

Notices to County:
Beaufort County Government
Attn.: County Engineer
2266 Boundary Street

Beaufort, South Carolina 29902

Notices to SCDOT:

South Carolina Department of Transportation
Attn.: Deputy Secretary for Engineering
PO Box 191
Columbia, South Carolina 29202

K. Further Documents:

Each Party will, whenever and as often as it shall be requested by the other Party, promptly and within a reasonable time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such further instruments or documents as may be necessary to carry out the intent and purpose of this Agreement.

L. Assignment:

This Agreement may not be assigned by either Party without the written consent of the other Party, unless otherwise provided by applicable law.

M. No Third-party Beneficiaries:

No rights in any Third-party are created by this Agreement, and no entity not a party to this Agreement may rely on any aspect of this Agreement, notwithstanding any representation, written or oral, to the contrary, made by any person or entity. The Parties hereto affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any Third-party who is not a signature party hereto. No party other than the signature Parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

N. Multiple Counterparts:

This Agreement may be executed in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by both Parties hereto. All counterparts taken together shall constitute one and the same Agreement and shall be fully enforceable as such. Delivery of counterparts via facsimile transmission or via email with scanned attachment shall be effective as if originals thereof were delivered.

O. Prior Agreements, Entire Agreement:

All obligations of the Parties, each to the other, relating to the subject matter of this Agreement, contained in any other document or agreement or based on any other communication prior to the execution of this Agreement have been satisfied or are

superseded by this Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof.

This Agreement, with the Appendices and Attachments hereto, sets forth the full and complete understanding of the Parties as of the date first above stated, and it supersedes any and all agreements and representations made or dated prior thereto.

The Parties make no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth herein. The Parties' rights, liabilities, responsibilities, and remedies with respect to the services provided for in this Agreement shall be exclusively those expressly set forth in this Agreement.

This Agreement is to be interpreted under the laws of the State of South Carolina.

P. Reviews and Approvals:

Any and all reviews and approvals required of the Parties herein shall not be unreasonably denied, delayed, or withheld.

IN WITNESS WHEREOF, the Parties herein have executed this AGREEMENT as of the day and year first written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Cheryl Harris
Witness

BEAUFORT COUNTY

By: Eric H. Greenway
(Signature)

Title: Interim County Administrator

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Lauren Benjamin
SCDOT Witness

By: Chris Snee
Secretary of Transportation

RECOMMENDED BY:

[Signature]
Deputy Secretary for Finance and Administration or
Designee

[Signature]
Deputy Secretary for Engineering or
Designee

Attachment "A"
Description of the Project

APPENDIX A

FORM OF BALLOT
OFFICIAL BALLOT – REFERENDUM
LOCAL QUESTION NUMBER 2A
AUTHORIZATION TO IMPOSE A ONE PERCENT (1%)
TRANSPORTATION SALES AND USE TAX
TO FINANCE THE TRANSPORTATION-RELATED PROJECTS DESCRIBED IN THE
QUESTION 2A

Precinct _____

No. _____

Initials of Issuing Officer

Local Question 2A

I approve a special transportation sales and use tax in the amount of one percent (1%) to be imposed in Beaufort County for not more than Four (4) years, or until a total of \$120,000,000 in resulting revenue has been collected, whichever comes first. The sales tax proceeds will be used for the following projects as described and for which an estimated capital cost is stated.

Hilton Head Island – US 278 Corridor Traffic Improvements: Repair and/or replace the existing spans of the bridges to Hilton Head Island and other improvements between Moss Creek Drive and Squire Pope Road\$80,000,000

Lady's Island Corridor Traffic Improvements: Roadway traffic improvements between the Woods Memorial Bridge and the Chowan Creek Bridge as outlined in the Lady's Island Corridor Study dated May 19, 2017\$30,000,000

Sidewalks and Multi-Use Pathways – Safe Routes to Schools: Installation and repair of sidewalks and multi-use pathways at multiple locations within Beaufort County so as to provide safe walking routes to schools and improved access to residential communities: (1) Burnt Church Road, Ulmer Road, and Shad Road, (2) Laurel Bay Road Pathway Widening, (3) Bluffton Parkway Phase 1, (4) Joe Frazier Road, (5) Meridian Road, (6) Alljoy Road, (7) Salem Road, Old Salem Road, and Burton Hill Road, (8) Middle Road, (9) Stuart Point, (10) Broad River Boulevard and Riley Road, (11) Broad River Drive, (12) Lake Point Drive and Old Miller Road Pathway Connection, (13) Dr. Martin Luther King, Jr. Drive, (14) Ribaut Road to Parris Island Gateway, (15) Pine Grove Road and Burton Wells Road, (16) Spanish Moss Trail Extension, (17) Seabrook Road, (18) Depot Road, (19) Chowan Creek Bluff, (20) U.S. 17 Pathway Extension, (21) Bruce K. Smalls, (22) Puige Point, (23) Big Road, and (24) Big Estate Road \$10,000,000

Total\$120,000,000



Yes, in favor of the question []

No, opposed to the question []

If you are in favor of the question, place a check or cross-mark in the square after the words "Yes, in favor of the question"; if you are opposed to the question, place a check or cross-mark in the square after the words "No, opposed to the question."

**Attachment “B”
Issue Escalation and Dispute Resolution Process**

The purpose of this process is to define the different levels of management in County and SCDOT that have the authority and responsibility to make decisions when lower levels of staff are unable to resolve issues that may arise during the life of the Program. Such issues should be addressed promptly in order to minimize delays to the Program and to avoid negative impacts to the Program, County, and SCDOT. County and SCDOT agree that if an issue cannot be resolved by the normal process of communications between County or its designee and SCDOT’s Program Manager, the following procedure will be adhered to by County and SCDOT. This diagram describes the escalation process, personnel involved, and time limitations for resolution. Should resolution not be reached in the duration listed below, the next level of management will be informed of the issue and they will then be responsible to make a decision within the allotted time period as shown below. These allotted time periods may be changed based on mutual agreement of the managers working to resolve the issue. Decisions reached through this process will be recorded in writing and signatures of the responsible person from County and SCDOT will sign an acknowledgement of the decision made within two days of concluding the decision.

SCDOT (Planning, Design, Right of Way Issues)	SCDOT (Construction issues)	County	Work Days
PROGRAM MANAGER	DISTRICT ENGR. ADMINISTRATOR	COUNTY ENGINEER	2
			
DIRECTOR OR PRECONSTRUCTION	DIRECTOR OF CONSTRUCTION	COUNTY ENGINEER / COUNTY ADIMINISTRATOR	3
			
DEP. SECRETARY FOR ENGINEERING	DEP. SECRETARY FOR ENGINEERING	COUNTY ADMINISTRATOR	5

The Deputy Secretary for Engineering shall review and make the final determination on unresolved issues pertaining to right-of-way, design, and construction for routes within or to be added to the State Highway System. Should the County Administrator and the Deputy Secretary for Engineering be unable to resolve other issues that may arise during the program, either Party may request a resolution by the Dispute Resolution Board that shall hear the matter and reach a resolution to the dispute within ten days. By majority decision of the Board, this ten-day time frame to reach a resolution may be amended.

Attachment C

Project Closure Checklist Submitted by Beaufort County
(Enter Project Name)
(Enter Date of Submittal)

The following documentation has been provided to SCDOT, in a format acceptable to SCDOT:

County's Initial

1. Copies of required environmental documents/permits
 - a. Report showing NEPA/Permit Commitments complied with
 - b. US Army Corps of Engineers Close-out report
 - c. Notice of Termination for NPDES Permit

2. Design documents
 - a. As described elsewhere in this Agreement
 - b. Final Project plans suitable for delivery and recording pursuant to S.C. Code §57-5-570 (1991), and in accordance with SCDOT's As-Built Construction Plans Supplemental Specification, latest version
 - c. Electronic files of the Final Project plans as described in SCDOT's "Road Design Reference Material for Consultant Prepared Plans."

3. Right of way documents
 - a. Appraisals
 - b. Title search information
 - c. Deeds sufficient to convey to the SCDOT the additional highway right of way acquired by the Town. Titles shall be by special warranty and sufficient to convey the entire interest obtained by the Town from the Landowner.
 - d. Correspondence with property owners
 - e. Master exhibit prepared by the engineer of record outlining the rights of way to be conveyed to SCDOT.
 - f. Diaries or agents worksheets related to the acquisition of right of way
 - g. All Utility Agreements and No Cost Letters with supporting documentation.
 - h. Summary sheet showing all payments made by the Town against each Utility Agreement.
 - i. If applicable, all supporting information for cost increases to Utility Agreements.



4. Construction documents

- a. As-built drawings – As detailed in the IGA.
- b. Test reports
- c. Daily construction diaries



5. Other documents

- a. Assignments to the SCDOT of all contractors' payment and performance bonds in connection with the Project and a copy of the Surety's Consent for final payment.
- b. Releases, affidavits or other proof of payment to indicate full payment of all claims by contractors, their subcontractors or suppliers.
- c. DBE closeout obtained from SCDOT Office of Business Development, if federally funded and the project had a DBE goal.

This is to certify that results of the tests on job control samples indicate that the materials incorporated into the construction work and the construction operation controlled by sampling and testing are in reasonably close conformity with the approved plans and specifications, and such results compare favorably with the results of record sampling and testing. SCDOT concurrence was obtained in all instances in which materials did not conform to contract requirements.

DATED: _____

Beaufort County

By: _____

Its: _____

DATED: _____

South Carolina Department of Transportation

By: _____

Its: _____